INQUIRY INTO AUSTRALIA'S HUMAN RIGHTS FRAMEWORK
by the Parliamentary Joint Committee on Human Rights

Submission from the
AUSTRALIAN AFFILIATION OF WOMEN'S ACTION ALLIANCES (AAWAA)

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30 June 2023

OPENING REMARKS
Thank you for the opportunity to comment on Australia's human rights framework. We trust you will accept this submission from the Affiliation of Australian Women's Action Alliances (AAWAA).

The Affiliation of Australian Women's Action Alliances brings together women's liberation groups from the ACT, Tasmania, Queensland, South Australia, and Western Australia, all of whom contributed to and endorsed this submission. We advocate for women and girls in all domains that impact the lives and welfare of females, but especially where we face discrimination or are vulnerable by reason of our sex. We campaign against homophobia and against gender-based stereotyping in education and the media and we are keenly committed to supporting and advocating for young people impacted by gender medicine. Our groups are not aligned with any political party or parties.

AAWAA is enthusiastic about the prospect of an open, constructive, and respectful discussion of human rights in Australia. We believe that a well-considered human rights act could provide better human rights protections for Australians, especially women, than would re-establishing the earlier Australian Human Rights Framework (AHRF). In addition to this, we hope this inquiry will serve to drive immediate action to remedy critical gaps in existing freedoms and protections especially for women and girls.

1. DEVELOPMENTS SINCE 2010 IN HUMAN RIGHTS LAW AND PRACTICE IMPACTING WOMEN AND GIRLS
Australian women have made significant progress since 2010 (when the AHRF was launched) in education, politics, business, and the workplace in large part because of the protections afforded us through the *Sex Discrimination Act 1984* (SDA); the SDA also incorporated the Convention for the Elimination of Discrimination Against Women (CEDAW) into domestic law.[1]

Measures including maternity leave and other affirmative actions have begun to address the discrimination and the sexist stereotypes that hold women back, and this has started to erode our historic disadvantage to the point where, for example, women have tripled their representation on the Parliamentary Joint Committee on Human Rights (PJCHR) since it was constituted in 2011. Women have similarly tripled their representation on ASX boards[2] (without yet reaching numerical parity), and now predominate in the public service — albeit not yet in leadership positions; however, there is still much to do.

Lesbian and bisexual women (along with gay and bisexual men) have also achieved significant progress since 2010. Amendments in 2013 to the *Sex Discrimination Act*,[3] which prohibited discrimination on the grounds of sexual orientation and intersex status, and the *Marriage Amendment Act 2017*[4] levelled the playing field — even though belatedly — for same-sex-attracted people in Australia.

Sadly, however, the playing field has tilted back against women, perversely because those same 2013 amendments to the *Sex Discrimination Act* created new and unanticipated complications. We outline how this happened, and present its consequences, below.

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[1] Convention for the Elimination of Discrimination Against Women (CEDAW)

[2] Women On Boards, Boardroom Gender Diversity Index

[3] Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013

[4] *Marriage Amendment (Definition and Religious Freedoms) Act 2017*

1.1 The 2013 amendments to the *Sex Discrimination Act 1984*

The 2013 amendments to the *Sex Discrimination Act 1984* not only prohibited discrimination on the grounds of sexual orientation and intersex status but also prohibited discrimination based on "gender identity." In implementing these amendments, Parliament recognised — at least implicitly — that establishing gender identity as a new ground for protection from discrimination would impact the existing rights that women enjoyed to safety and dignity in certain circumstances. We can see this in the exemptions that were carved out to mitigate the impact of the amendments so that discrimination on the grounds of sex was still lawful, including, for example, in the employment of change room attendants, to "preserve decency or privacy because they involve the fitting of clothing for persons of that sex"; for voluntary organisations; in competitive sporting activity; and in the residential care of children, as well as in other limited circumstances.[5]

But unfortunately, the drafters in 2013 appeared not to appreciate the logic underlying these exemptions and neglected either to make explicit a statement of principle — that sex discrimination is lawful where the safety, dignity, and privacy of women and girls is at risk — or to extend the exemptions to those circumstances where that safety, dignity, and privacy might be impacted (and not just by change room attendants). (We can only speculate as to how this happened, but certainly the decision of the relevant parliamentary committee[6] to forego public hearings denied the Parliament an opportunity to explore the concerns of women's groups such as the Women's Legal Service NSW[7] and the Equality Rights Alliance,[8] both of which warned that extending discrimination law could reduce protections on the grounds of sex.)

Fast-forward to 2023, and legislative changes at the state and territory level through amendments to births, deaths, and marriages registration acts — which allow men to self-identify as women, including by amending the sex on their birth certificates, but which don't also provide safeguarding for females in the presence of male-bodied persons — have indeed reduced our protections and created serious gaps in the human rights of women and girls.

1.2 Women in prison

One of the most salient of these gaps exists now for women in prison.

The lack of Commonwealth protections coupled with ambiguous laws and regulations at the state and territory levels means that women in prison in Australia must rely on the administrative discretion of local prison authorities to guarantee their fundamental rights to safety and dignity — rights that are spelt out in the International Convention for Civil and Political Rights[9] in the UN's Standard Minimum Rules for Treatment of Prisoners (the Mandela Rules),[10] as well as in CEDAW — including specific recommendations provided by the CEDAW Committee regarding gender-

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[5] Division 4, Exemptions, *Sex Discrimination Act 1984*

[6] Report, Legal and Constitutional Affairs Legislation Committee, Report, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 [Provisions], 1.19

[7] Women's Legal Service, Submission, Inquiry into the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013

[8] Equality Rights Alliance, Submission, Inquiry into the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013

[9] Article 10, International Covenant for Civil and Political Rights, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

[10] Standard Minimum Rules for Treatment of Prisoners (the Mandela Rules)

based violence.[11] We are aware that these guarantees may be proving inadequate in Australia[12] (and of myriad instances where similarly poor guarantees have failed women prisoners overseas[13]), and we also understand that some prison authorities in Australia may in fact no longer track the sex at birth of prisoners.

AAWAA urges the committee to consider the situation for women in Australian prisons, noting the few resources that they have themselves to exercise their rights. We urge the committee to acknowledge the reality that a high proportion of women prisoners are themselves victims of male sexual abuse and housing them separately to men is essential to prevent re-traumatisation as well as to minimise the risk of further abuse, noting recent research from the UK[14] and Canada[15] that suggests that there are elevated rates of sexual violence among gender-diverse, male-bodied prisoners.

1.3 Rape crisis shelters and services

The lack of adequate safeguards in the *Sex Discrimination Act* also impacts the situation for women and girls escaping male violence in the broader community. Prohibitions on discrimination on the basis of gender identity in the absence of appropriate safeguards for the physical and psychological safety of women and girls places the providers of rape counselling services and domestic violence shelters in legal jeopardy if they choose to provide single sex services. Inevitably, because they lack the resources for litigation, most providers have themselves opted to refocus their operations to pre-empt legal challenge. We do not know the precise extent of this problem, but we nevertheless understand that it is having a disproportionate impact on disadvantaged women, including migrant and refugee women, who have no alternative places to go.

Of course, Australia has an obligation to protect *all* prisoners and people vulnerable to violence, but as we discuss below, the protection of one group need not — indeed, must not — come at the expense of the protection of women and girls, who constitute a clearly defined vulnerable group in the presence of male-bodied people. This conflict of rights is currently being resolved in favour of gender identity over sex but must be addressed by the principle of proportionality, a point that we address below.

AAWAA believes that, with the fair counsel of the PJCHR, these problems should not be beyond the scope of the Australian Parliament to correct. Even in advance of any human rights act, we recommend a review of the adequacy of the *Sex Discrimination Act* to protect women and girls. It may be useful in this regard to consider work undertaken by the UK Equality and Human Rights Commission[16] and the debate in the UK Parliament[17] to remedy similar shortcomings in the operation of the UK Equality Act.

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[11] CEDAW Committee General Recommendation 35

[12] Women's Forum Australia, Demand the removal of men from women's prisons in Victoria; also, Australian Government, List of issues and questions in relation to the eighth periodic report of Australia, 138, "In all states and territories, female prisoners are accommodated separately to male prisoners, often in separate facilities. This separation provides a measure of protection against gender-based violence."

[13] Keep Prisons Single Sex, How many males are in women's prisons?

[14] Submission to the UK Parliament's Women and Equalities Committee, Evidence and data on trans women's offending rates

[15] Correctional Service Canada, Gender diverse offenders with a history of sexual offending

[16] UK Equality and Human Rights Commission, Clarifying the definition of 'sex' in the Equality Act

[17] UK Parliament Hansard, Legislative Definition of Sex

1.4 Developments since 2010 in human rights law and practice impacting children and young people

Australia has much work to do to address child poverty, enhance access to education, and ensure the rights of children in the criminal justice system. But in addition to this, AAWAA assesses that the practice of paediatric gender medicine in Australia is impacting the human rights of a cohort of young people, a cohort that has been growing exponentially since 2010.[18]

We draw the attention of the committee to the body of professional medical opinion[19] that has found that the evidence base for puberty blockers and cross-sex hormones is weak,[20] that puberty blockers can impact brain maturation and bone health,[21] and that medical transition does not improve mental health outcomes, and indeed impairs fertility and future sexual functioning. Peer-reviewed research has also found that young people with autism and trauma dominate presentations — co-morbidities that indicate other treatments.[22] We also draw the committee's attention to studies that demonstrate that children (up to 98% in some studies) who use puberty blockers will go on to cross-sex hormones leaving them permanently sterile and/or in need of life-long medication.[23] Other studies suggest that the overwhelming majority of children who struggle with their sex come to accept that sex by adulthood without medical intervention, and that a high proportion grow up to be well-adjusted lesbian, gay, or bisexual adults.[24]

We also note that, following independent and expert investigations, a growing number of countries have judged such medicine experimental and have placed strict guidelines in place to control such practices, at a minimum requiring treatment to take place only in clinical trials. These countries now include Finland,[25] Norway,[26] Sweden,[27] England,[28] and France.[29]

We recognise the risks of politicising the issue for those young people who are currently taking puberty blockers and cross-sex hormones, or undergoing other possible medical interventions, and for those who have de-transitioned. We are not asking this committee to review the practice of gender-affirming medicine but rather to recognise that the failure of the Australian Government to

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[18] Dianna T. Kenny, Number of children enrolled, receiving puberty blockade and cross sex hormones in five gender clinics in Australia, 2014-2021; Society for Evidence Based Gender Medicine (SEGM), Sharp increase in incidence of gender dysphoria in children and young people

[19] Society for Evidence Based Gender Medicine (SEGM)

[20] Joseph Ekaldi, et al., 2023, Developmental pathway choices of young people presenting to a gender service with gender distress: A prospective follow-up study; Abbruzzese, E. et al., 2023, The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies—and research that has followed

[21] Stats for Gender, Hormones

[22] Stats for Gender, Comorbidity

[23] Stats for Gender, Puberty blockers

[24] Ristori and Steemsma, Gender Dysphoria in Childhood

[25] Council for Choices in Health Care in Finland (COHERE Finland), Medical treatment methods for dysphoria associated with variations in the gender identity of minors

[26] Norwegian Healthcare Investigation Board, Patient safety for children and young people with gender incongruence

[27] National Board of Health and Welfare, Sweden, Care of children and adolescents with gender dysphoria

[28] Interim report of the Cass Review of the Gender Identity Development Service (GIDS) at the Tavistock and Portman NHS Foundation Trust

[29] Académie nationale de médecine, France, Medicine and gender transidentity in children and adolescents

conduct an impartial assessment of the evidence base for gender medicine as currently practised here, and to properly monitor its application, puts Australia in breach of multiple human rights obligations.

The most salient of these obligations is the prohibition on medical experimentation without consent as set out in Article 7 of the International Covenant on Civil and Political Rights[30] and the obligations central to the Convention on the Rights of the Child (CRC) to safeguard the special needs of children for care and protection due to their physical, emotional, and developmental immaturity.[31] PJCHR members might also note the exhortations of the Committee on the Rights of the Child[32] to implement, among other things, national accountability mechanisms to conduct routine and periodic evaluations of the evidence to evaluate what is working and what is not, what to remedy and reform,[33] and not to over-medicalise children[34]. The CRC Committee has also counselled that, "if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side-effects."[35]

Far from meeting these obligations, the Australian Government continues to promote puberty blockers, which it claims — without evidence — are fully reversible, as well as cross-sex hormones for children.[36] It has, instead — again, without any evidence of evaluation,[37] simply asserted that the appropriate care takes place, overseen by industry practitioners. This is despite the very serious questions that many have raised about industry advocates' standards of care[38] overseas and in Australia.[39]

We believe that the conversion therapy bans at the state and territory levels[40] — which mistakenly equate exploratory, professional psychological therapy with the abhorrent practice of gay conversion, and erroneously assume that not affirming a gender identity constitutes gender conversion — also violate the Convention on the Rights of the Child, including the right of the child to alternative treatments.

AAWAA believes that the prohibition on exploratory therapy discriminates egregiously against LGBTQI+ children as it denies them the right to access psychological therapy that other Australians might similarly access in their time of need. We ask the committee to consider the

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30 International Covenant on Civil and Political Rights

31 Convention on the Rights of the Child

32 Committee on the Rights of the Child

33 CRC, General Comment 15, para. 118

34 CRC, General Comment 15, para. 38

35 CRC, General Comment 15, para. 77

36 Health Direct, Gender incongruence

37 Department of Health and Aged Care, FOI 4366 (decision, unpublished)

38 Health Services Research journal, International clinical practice guidelines for gender minority/trans people: systematic review and quality assessment

39 Society for Evidence Based Gender Medicine, SEGM Response to "AusPATH Public Statement on Gender Affirming Health Care, including for trans youth"

40 State of Victoria, *Change or Suppression (Conversion) Practices Prohibition Act 2021*; ACT Government, *Sexuality and Gender Identity Conversion Practices Act 2020*; Queensland Government, amendments to the *Public Health Act 2005*

potential harm in the context of “gender education” in schools[41] and the wider community which encourages young people to think that they might have a gender identity that may be different to the sex they were born with because they might want to “dress or act in certain ways.”[42]

AAWAA is concerned that this substitution of gender identity for gender stereotyping is resulting in the medical ‘conversion’ of young people — especially young lesbian and gay and non-conforming children — to a transgender identity (as has happened overseas).[43] We believe a compassionate and caring society should encourage young people — particularly same-sex-attracted youth — to accept their bodies and not seek to modify them.

AAWAA believes that Australia’s commitment to human rights is rendered meaningless if we fail to protect those who are especially vulnerable, that is, our children and especially those who are autistic or suffering from trauma. If Australia is to fulfil its legal obligations, Australia must evaluate the evidence base for gender-affirmative medical treatment and regulate it accordingly.

Finally, we note that the UN Committee on the Rights of the Child called in its last review for Australia to prohibit unnecessary medical and surgical treatment of intersex children, a reform that the Australian Government undertook to advance.[44] We commend the ACT Government for taking the first steps in this regard.[45] It is essential, however, that the same standards of care should apply nationally and to children and young people suffering gender dysphoria who are currently at risk of unproven and risky medical interventions.

1.5 Developments since 2010 in human rights law and practice impacting freedoms of speech and association, especially for lesbians, ‘gender critical’ women, and others
AAWAA is concerned that a right to freedom of association is also emerging as a gap in human rights law and practice for Australian women in part, we believe, because the existing exemption for voluntary organisations in the *Sex Discrimination Act* is not adequately respected at the state and territory levels. We bring to the committee’s attention the decision[46] of the Tasmanian Administrative Appeals Tribunal that denied a lesbian the right to discriminate (for the purpose of a social event) on the basis of sex because “Sex is not an attribute covered by the Anti-Discrimination Act 1998 (Tas).”

AAWAA is also concerned that a poor understanding, or the questionable application, of the *Sex Discrimination Act* by service providers is curtailing the rights of women to access facilities and resources (for example, pools, gyms, and social media services) on the basis of sex, even when a range of alternative (non-discriminating) services is also available. We believe this is impacting opportunities and access, especially for migrant and refugee women, who for cultural reasons may wish to make use of single-sex spaces.[47] We are also aware of instances where local authorities have seemingly pre-emptively decided *not* to uphold the sex-based protections set out in Section

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[41] Western Australian Department of Health, Gender diversity

[42] AHRC, Let's talk about bodies, identity and sexuality

[43] Hannah Barnes, *Time to Think. The inside story of the collapse of the Tavistock’s gender service for children*

[44] Convention on the Rights of the Child, Australia’s concluding observations on the combined fifth and sixth periodic reports

[45] ACT Government, ACT leads the way on intersex human rights

[46] Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption) [2022] TASCAT 142 (24 November 2022)

[47] See, for example, Muslim Sisters to ACTion, MustACT.org

32 of the *Sex Discrimination Act* in order, it would appear, to avoid litigation (see examples regarding women-only pool access in Canberra[48] and in Sydney[49]).

AAWAA is also concerned about emerging restrictions on freedom of expression for Australian women, including the freedom to raise concerns about our rights and protections. We are aware of instances where women have been investigated or sanctioned for raising such concerns in the workplace and at least one of own members has personal experience of being disciplined by her employer for simply alerting others to some of the women's rights and protections issues we raise in this submission. In this regard, we note a recent statement by the UN Special Rapporteur on violence against women and girls about the escalation of intimidation against politicians, academics, and women's rights advocates in the global north.[50]

2. A HUMAN RIGHTS ACT: SHOULD AUSTRALIA ENACT A HUMAN RIGHTS ACT, AND IF SO, WHAT SHOULD SUCH AN ACT INCLUDE?

AAWAA advocates immediate action to remedy critical gaps in Australia's current human rights coverage and hopes that the committee can note these in its recommendations. Though we envisage it may prove a longer-term project, we also support in principle a human rights act to inform the Australian people, to guide Australian public authorities, and in certain circumstances to provide remedies when human rights are not respected or when there is a conflict of rights.

2.1 The principle of proportionality

An Australian human rights act must embody the principle of proportionality (which recognises that limitations on rights must be reasonable and proportionate to achieving a legitimate aim) as an essential but insufficient safeguard for human rights. This principle is especially relevant to women who have witnessed the subordination of our rights and protections in recent years. AAWAA supports prohibitions on discrimination that serve to protect the privacy and dignity of all Australians, but new rights for specific individuals and groups cannot derogate from the fundamental right of women and girls to safety and, in certain circumstances, privacy, fairness, and dignity, as well as our rights to freedoms of association and speech.

2.2 Clarity in language: Sex and gender

In providing a right for protection for women and girls, an Australian human rights act would need to demonstrate clarity in language to properly protect women and girls where sex is relevant (such as in the case of having access to certain female-only spaces, services, and protections) and that sex be defined objectively as recorded or observed at birth.

Clarity of language is an important corollary to the principle of proportionality because striking a proportionate balance in relation to new rights will require talking to women and engaging experts who can speak to the nature and lasting impact of male violence against women. Clarity of language is also essential to ensuring that accurate sex-disaggregated data is maintained so that rights and protections can be monitored over time.

2.3 Defining human rights: Incorporating international treaties and other sources

AAWAA supports incorporating those international instruments to which Australia is a state party into domestic legislation. While this might take time, and were it decided that an Australian human rights act were to privilege some international instruments over others (as the Australian Human

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[48] Women's Action Alliance Canberra, Will men will be allowed in to women-only swimming sessions at ACT public swimming pools?

[49] Sydney Morning Herald, Sydney ladies-only pool lashed for 'ban' on some transgender women

[50] Special Rapporteur on violence against women and girls, Statement by Ms Reem Alsalem

Rights Commission (AHRC) advocates in its position paper[51]) we regard it imperative that CEDAW be included along with the UN Declaration on the Rights of Indigenous Peoples, the UN Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child.

Indeed, reaffirming CEDAW is especially important in light of the advocacy by some within the UN system for the 'Yogyakarta Principles'.[52] These principles, which were negotiated by activists, call not only for the removal of all barriers to gender self-identification but also for states to end the practice of recording sex and gender on legal documents such as birth certificates — a principle that, if implemented, would render CEDAW meaningless. As feminists and one of the original negotiators point out, the implementation of the 'Yogyakarta Principles' would benefit men to the disadvantage of women reinforcing systemic and structural inequalities.[53] In this regard, we are similarly concerned that these principles have been used to justify state government policies when they have no standing in Australian law.[54]

2.4 Participatory duties

AAWAA supports embodying 'participatory duties' in any Australian human rights act. A duty to actively consult with and engage people who may be impacted by legislative and policy changes is especially important to disadvantaged groups, including First Nations People, persons with disability, and children, as well as women who are impacted by male violence, including women in prison. We recognise the importance of consulting children at the same time noting the recommendations of the Committee on the Rights of the Child to take into consideration the special vulnerabilities of children to peer pressure and bullying[55] — a recommendation that has special significance in the context of the social influences in the development of gender dysphoria.

3. OTHER IMPROVEMENTS TO HUMAN RIGHTS MECHANISMS AT THE FEDERAL LEVEL

Improvements to the functioning and charge of independent bodies must be made if we are to have a robust and impartial oversight of human rights in Australia. We focus on two of the most significant: the PJCHR and the AHRC.

3.1 Enhancing the role of the Parliamentary Joint Committee on Human Rights (PJCHR)

AAWAA supports enhancing the role of the PJCHR, a democratic safeguard to ensure public debate and scrutiny in the event that legislative changes produce unintended consequences, as we assess happened with the 2013 amendments to the *Sex Discrimination Act*, or when the government fails to act in regards to paediatric gender medicine. Indeed, we hope this committee can provide an empowering and inclusive space to hear the views of all Australians even as pressure exists in other places not to debate certain issues.

An ability to initiate its own inquiries (however much it may discomfit executive governments) will be essential to the PJCHR performing its proper role. Of course, adequate resources and support would also be necessary to this outcome.

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[51] AHRC, A National Human Rights Act for Australia

[52] The Yogyakarta Principles

[53] Robin Singer, The man who suddenly heard women - and renounced the Yogyakarta Principles; Hannah Harrison, Yogyakarta Principles: International Threat to Women's Rights

[54] Queensland Parliament, Report no. 41, 57th Parliament – Births, Deaths and Marriages Registration Bill 2022

[55] CRC General Comment 14, para. 73

3.2 The role of the Australian Human Rights Commission (AHRC)
AAWAA is disappointed that the Australian Human Rights Commission has not adequately addressed the interests of women and children in recent years, in large part through its poorly considered advocacy of gender over sex and by failing to practise the discipline of the participatory duties it now (rightly) advocates.

The AHRC was an early and conscientious advocate of LGB rights but pivoted around 2008 to champion gender recognition, a process that culminated in the 2009 publication of the 'Sex Files: the legal recognition of sex in documents and government records'.[56] We do not doubt the need at the time for measures to address stigma and breaches of privacy of gender non-conforming people. But we disagree strongly with the AHRC's recommendation in the 'Sex Files' to relax all legal requirements for people to change their legal sex — perversely without addressing the potential impact on women or the stereotyping that underpins the stigma that non-conforming people may experience in the first place.

In drafting the 'Sex Files,' the AHRC sought input from the transgender community and some government departments but not from women's groups; neither, as FOI inquiries confirm,[57] did it seek input from the Office of the Status of Women in the Department of Prime Minister and Cabinet. Instead, the AHRC expressly drew on the 'Yogyakarta Principles' that advocates had negotiated two years prior, but which had not been canvassed more widely.

Sadly, the AHRC has also failed children. Through its *amicus curiae*[58] interventions to the Family (and Federal) Court in puberty blockade and cross-sex hormones cases since 2004, the Commission presented a simplistic and selective interpretation of the Convention rights of children "to be heard" and to "necessary medical assistance and health care". These interventions gloss over the complexities of 'consent' and the evidence base for medical interventions, presenting the effects of puberty blockers as reversible, or with minimal consequences and as essential in the absence of alternative treatments.[59]

While the court was already hearing the arguments of transgender advocacy groups, as is its right, we believe the one-sided interventions by the AHRC effectively delayed the court's proper consideration of these issues. (We understand that, thankfully, the court has more recently considered the complexity of the medical evidence.[60])

AAWAA of course has no in-principle objection to the AHRC retaining in a future human rights act a right to intervene in court cases, but guidelines and scrutiny — including scrutiny by the PJCHR — will be essential to ensuring balance and that the AHRC does not presume to speak beyond its competency.

4. HOW FEDERAL INSTITUTIONS ENGAGE WITH HUMAN RIGHTS
We agree that all federal institutions, including public service agencies, and Australian courts, have a responsibility to promote and ensure human rights.

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[56] AHRC, Sex Files: the legal recognition of sex in documents and government records

[57] Department Prime Minister and Cabinet, FOI/2023/137 (decision, unpublished)

[58] AHRC, Table of interventions. Authorisation of hormonal treatment for gender dysphoria

[59] AHRC, Submission re Kelvin

[60] Bernard Lane, No blockers

4.1 Statements of compatibility
AAWAA assesses that 'statements of compatibility with human rights' are essential to identify conflicts of rights so that parliament — and ultimately the Australian people — might decide the appropriate proportional balance in mediating rights in conflict.

These statements should not be treated as one-off exercises, but rather require periodic updates to ensure the ongoing validity of the original assessment. In cases where the assessment is no longer valid, the updates should include recommendations for mitigating actions or amendments to the original legislation. AAWAA therefore recommends periodic review of *all* legislation that engages important issues of human rights.

Ideally, statements of compatibility should not be drafted by the agency or minister proposing the original legislation; instead, they should be prepared through an interagency process or by an independent party, such as the Australian Human Rights Commission. At the same time, the regular review of statements of compatibility would serve both an educational purpose for the community and the bureaucracy *and* as a deterrent against a government's suspending or overriding its human rights obligations. [61] A timely review could even prompt early action to eliminate the need for overriding the act.

AAWAA is struck by the extremely narrow focus the Attorney General took in his statement of compatibility for the 2013 amendments to the *Sex Discrimination Act*.[62] It is disconcerting that he made no reference to the original purpose of the Act — namely, to provide equal opportunity for women — and he offered no assessment as to whether the proposed amendments, including removing the definition of man and woman, would impact the Act's original purpose. (FOI inquiries have confirmed that the Office for the Status of Women in the Prime Minister's Department was not involved in any inter-agency discussions, and did not provide the Prime Minister with advice about the amendments.[63] The statement of compatibility mentions women only a handful of times: mostly as tick-box references to CEDAW and/or as part of a list. One cannot help thinking that a more comprehensive inter-agency and public discussion might have anticipated and pre-empted some of the shortcomings of these amendments; the acceptance of same-sex marriage might also have enabled a more thoughtful analysis at the time.

4.2 Ideological capture of Commonwealth agencies
AAWAA is concerned that a number of Australian Public Service agencies have compromised their capacity to provide impartial advice to the government including on a range of human rights issues through agencies' participation in the Australian Workplace Equality Index (AWEI), which is conducted by the LGBT non-governmental organisation ACON.[64] AAWAA does not object to agencies consulting ACON — indeed agencies should always consult widely as part of their 'participatory duties.' Rather, our concern is that by striving to win points and public recognition under the AWEI scheme — recognition that is celebrated in gala events and in agencies annual reports[65] — agencies have created an irreconcilable conflict of interest.

AAWAA is particularly concerned that agencies have used core government policies to claim AWEI points, including for the administration of grants and the de-gendering of public-facing health

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[61] *The Guardian*, Queensland to override states Human Rights Act in bid to make breach of bail an offence for children

[62] Commonwealth of Australia Explanatory Memoranda, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013

[63] PMC, Notice of Decision, 31 May, 2023 FOI – 2023-137 (unpublished)

[64] Pride in Diversity, Australian Workplace Equality Index (AWEI)

[65] Australian LGBTQ Inclusion Awards results

policies — confirmed in documents obtained under FOI.[66] (This is in addition to the points agencies win for inclusion policies in the workplace — the stated purpose of the scheme — including for gender-neutral toilets and facilities in the workplace, gender-affirmation leave, and the promotion of pronouns and other 'gender identity' markers in staff communications.) Inevitably, the perception is created that through their participation in the AWEI scheme, agencies have made themselves answerable to a private NGO for matters relating to the performance of their core public functions, including policies that relate to the human rights of women and children.[67]

We note that government agencies in the UK, including the Equality and Human Rights Commission[68] (the UK equivalent of the AHRC), the Government's Legal Department,[69] the Department for Work and Pensions,[70] the BBC,[71] Ofsted, the Cabinet Office,[72] and others have all withdrawn from Stonewall's Diversity Champions Scheme (a scheme on which ACON has modelled the AWEI) to avoid the risk of perceived bias.

4.3 Freedom of Information

AAWAA is committed to accurate and evidence-based advocacy of women's and girls' human rights and protections, for which our right to access information is critical. We hope this committee can recommend that the government properly fund the Office of the Information Commissioner, and other agencies, to fulfil their legally mandated functions.

5. HUMAN RIGHTS ACTS AND CHARTERS IN THE ACT, VICTORIA, AND QUEENSLAND

AAWAA assesses that the state and territory human rights acts and charters have strengths that the Commonwealth could further refine and integrate into its own act.

We commend the innovative approach of the Victorian Human Rights Charter (and other acts) to mandate periodic reviews. We believe this requirement should apply to *all* acts that address sensitive human rights issues, serving as a safeguard against unintended consequences (as we assess have resulted from the 2013 amendments to the *Sex Discrimination Act*).

This safeguard would also help address situations where drafters rely on an evidence base that later proves unreliable or biased towards a single viewpoint. In this regard, we hope Victorians are given an opportunity to contribute to their government's review of Victoria's *Change or Suppression (Conversion) Practices Prohibition Act 2021*[73] in light of calls from the medical profession to ensure exploratory psychotherapy should be the recommended first treatment for gender dysphoric young people.[74]

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[66] DOHAC AWEI Submission and Scorecard 2022 FOI 4058 (unpublished)

[67] Government News, Concerns raised about government relationship with LGBTQ group

[68] The Guardian, Human rights body exits Stonewall UK's diversity scheme

[69] Daily Mail, Government's Legal Department DROPS Stonewall Diversity Champions scheme after backlash over the LGBT rights charity's controversial practices

[70] The Times, Department for Work and Pensions abandons Stonewall diversity plan

[71] BBC, BBC pulls out of Stonewall diversity scheme

[72] Daily Mail, Government's Legal Department DROPS Stonewall Diversity Champions scheme after backlash over the LGBT rights charity's controversial practices

[73] Victorian Government, *Change or Suppression (Conversion) Practices Prohibition Act 2021*

[74] Position Statement, Royal Australian and New Zealand College of Psychiatrists (RANZCP), Recognising and addressing the mental health needs of people experiencing Gender Dysphoria

We similarly commend those acts that include more expansive definitions of human rights than does, for example, the Commonwealth's *Human Rights (Parliamentary Scrutiny) Act 2011.*[75] We also commend those who have introduced important and specific clauses to address critical human rights challenges. We note the *ACT Human Rights Act 2004*[76] sets out a Right to Protection from Medical or Scientific Experimentation without consent freely given.

We strongly urge the Commonwealth to include a comparable clause in any human rights act that might be developed. We also urge the ACT government to implement effective oversight of the practice of gender medicine in the territory, including in private medical practices, to ensure compliance with its own human rights act. To this end, it must review its *Sexuality and Gender Identity Conversion Practices Act 2020*[77] with the aim of not prohibiting or discouraging exploratory professional psychological therapy for gender dysphoria: providing patients with comprehensive information about the full spectrum of treatment options is vital for obtaining informed consent.

FINAL COMMENT

Neither a reinvigorated human rights framework nor a human rights act will guarantee human rights and protections for women and girls without a change in politics, culture, and political culture, including attitudes towards women and children. But this committee can make a good start in that change, including by recommending immediate action to address critical shortcomings in our human rights in parallel with a consideration of the best platform for future human rights protections.

With that in mind, we would like to see the PJCHR recommend that in addition to, and in advance of, any human rights act for Australia that the Australian Parliament

- Update the *Sex Discrimination Act 1984* to guarantee safety, privacy, fairness, and dignity for women and girls where sex is relevant
- Recommend an expert inquiry into gender affirmation medicine to ensure that Australia is properly upholding the rights of our children

We thank the committee for its time and consideration of these matters, and we now place our concerns in your trust.

[75] Commonwealth of Australia, *Human Rights (Parliamentary Scrutiny) Act 2011*

[76] ACT Government, *ACT Human Rights Act 2004*

[77] Australian Capital Territory, Sexuality and Gender Identity Conversion Practices Act 2020