



Australian
Human Rights
Commission

Comments on the CEDAW Committee's D Update of General Recommendation 19 gender based violence against wom

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE CEDAW COMMITTEE**

30 September 2016

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1 Introduction

1. The Australian Human Rights Commission is an 'A status' National Human Rights Institution. The Commission is an independent statutory body and its function is to monitor and report on the promotion and protection of human rights in Australia.
2. The Commission appreciates the opportunity to provide comments on the CEDAW Committee's 'Draft Update of General Recommendation No. 19 (1992) on Gender-based Violence Against Women'. The Commission commends the Committee for updating General Recommendation 19 to reflect the new and merging contexts in which gender-based violence against women is occurring and to provide guidance for accelerating efforts to eliminate gender-based violence against women.
3. The Commission will focus its comments in three areas:
 - Paragraph 15 (Prevention) (e): Gender-based violence in workplace settings
 - Domestic and family violence against children
 - Paragraph 15 (Protection and address), para (d): Gender-based violence against women and girls with disability

2 Recommendations

4. The Australian Human Rights Commission recommends the Committee include guidance to States in the update of General Recommendation 19 on:
 - Addressing domestic and family violence as a workplace issue, including provision of workplace entitlements for employees experiencing domestic and family violence;
 - Recognising and addressing domestic and family violence and other forms of gender-based violence against children;
 - Specifically recognising and addressing all forms of gendered disability violence in national plans and policies on violence and disability;
 - Recognising and addressing gender-based violence, as it is experienced by specific groups of women and girls facing intersectional discrimination.

3. Domestic and family violence as workplace issue

5. Increasingly, workplaces are key sites for change and sites for introducing preventative measures to reduce violence against women, and address the root causes of violence against women such as gender inequality. Workplaces are spaces where incidents of violence (eg sexual harassment, sexual assault, domestic and family violence) are occurring as well as being sites that are

impacted by violence against women. Violence and discrimination whether within the workplace or outside of it, has been shown to have an impact on reducing women's workforce participation.

6. Domestic and family violence is a workplace issue and impacts upon workplaces in several ways. It affects a large number of employees and workplaces: in 2005, two out of three Australian women who reported violence by a current partner were in paid employment.¹ It is a leading contributor to poor health and it costs both employers and the Australian economy more broadly. The cost of violence against women to the Australian economy in 2015 was estimated at \$21.7 billion a year; if no further action is taken to prevent violence against women, we estimate that costs will accumulate to \$323.4 billion over a thirty year period from 2014-15 to 2044-45.²
7. In Australia, nearly one third of the National Domestic Violence and the Workplace Survey respondents had personally experienced domestic violence, of which nearly half reported that the violence affected their capacity to get to work. 19 per cent of respondents who experienced domestic violence in the last 12 months reported that the violence continued at the workplace.³
8. In 2013, the *Fair Work Act 2009* (Cth) was amended to grant employees who are experiencing domestic violence the right to request flexible working arrangements to assist them with these circumstances.⁴ Leave and other protections are available through domestic violence clauses in the agreement or award conditions of over 1 million Australians (as at 2013).⁵
9. An ACTU/UNSW survey of employers in 2015 found that three quarters of respondents reported having a domestic/family violence clause in operation for over 12 months in their organisations. Over a third of organisations reported that employees had requested leave in the past 12 months and of these 92 per cent were women. On average employees requested 43 hours of paid leave in a year and 19 hours of unpaid leave.⁶
10. Workplace entitlements such as additional leave and flexible work arrangements are an important means of supporting employees who are experiencing domestic and family violence, and increases options for them to be retained in paid employment.
11. Employers and the private sector can play a positive role in the prevention of violence, and specifically through introducing preventative measures, such as bystander programs and creating safe spaces at work. For examples of private sector initiatives see: Male Champions of Change, [*Playing our part: Workplace responses to Domestic and Family Violence \(2015\)*](#)
12. Further progress can be made to address the impact of domestic violence as a workplace issue by introducing domestic and family violence as a ground of discrimination to existing grounds in discrimination and employment legislation.⁷ Existing legislative frameworks provide limited protection for women who are experiencing or have experienced domestic and family violence from further discrimination. The introduction of domestic violence as a ground of discrimination would:

- Clarify and strengthen existing discrimination provisions
 - Decrease social and economic costs of violence against women
 - Serve an educative function
 - Complement other strategies to reduce violence against women.⁸
13. The UN Commission on the Status of Women's 57th Session Agreed Conclusions identified the need for measures to address discrimination and violence against women and girls, as appropriate, through measures such as regulatory and oversight frameworks and reforms, collective agreements, codes of conduct, including appropriate disciplinary measures, protocols and procedures, referral of cases of violence to health services for treatment and police for investigation; as well as through awareness-raising and capacity-building, in collaboration with employers, unions and workers, including workplace services and flexibility for victims and survivors.⁹
14. The updated General Recommendation 19 could usefully elaborate on how State and non-State actors could address domestic and family violence as a workplace issue, including:
- Introduce workplace entitlements for employees experiencing domestic and family violence, such as domestic and family violence leave, in employment laws, enterprise agreements and awards.
 - Encourage public and private sector workplaces to implement workplace policies and programs to prevent violence, and provide awareness raising across workplaces on domestic and family violence.
 - Recognise domestic and family violence as a protected attribute in anti-discrimination legislation and employment laws.
 - Support the development and adoption of an ILO international labour standard on gender-based violence in the world of work that includes domestic violence as a workplace issue.

4 Violence against children

15. In 2015 the National Children's Commissioner conducted a national investigation into the impact of domestic and family violence on children, which she reported on in the *Children's Rights Report 2015* (Chapter 4).¹⁰
16. The report noted that children are both witnesses to and victims of domestic and family violence. Children's exposure to domestic and family violence has clearly been identified as a human rights issue and is increasingly understood as a form of child abuse.¹¹ This exposure is a significant driver of children into care and protection and out of home care systems.
17. The United Nations Committee on the Rights of the Child has expressed grave concern at Australian children's exposure to domestic and family violence, the high levels of violence against women and children, and the particular situation of Aboriginal and Torres Strait Islander women and children.¹²
18. Under Article 19 of the United Nations Convention on the Rights of the Child (CRC), Australia has taken on specific obligations to protect children from all

forms of violence, which includes preventing domestic and family violence.¹³ The CRC also requires Australia to use a child rights-based approach to address domestic and family violence.¹⁴

19. The UN Committee on the Rights of Children has called for comprehensive, integrated measures to address the impact of domestic and family violence on children, from prevention through to reporting, policing and treatment. It also requires educational measures which promote positive non-violent relationships.
20. The Commission refers the CEDAW Committee to the National Children's Commissioner's report and its recommendations which include:
 - addressing domestic and family violence experienced by children in national plans to reduce violence against women;
 - developing child-focused policy frameworks for responses to domestic and family violence;
 - improving data collection and reporting on children's experience of domestic and family violence and other violence, including:
 - establishing segregated data holdings in relation to children, broken down by age and other demographic and socio-economic information, as well as by relationship to perpetrator;
 - recording data on lesbian, gay, bisexual, transgender and intersex status; and
 - on screening for domestic and family violence during pregnancy;
 - undertake further research into: sibling violence; and female children aged 15 to 17 years affected by domestic and family violence.¹⁵

5. Gender-based violence against women and girls with disability

21. Women with disability, Indigenous women, migrant and refugee women, older women, young women, women in rural areas, and women who are of diverse sexual orientation, gender identity or intersex status can be at greater risk of gender-based violence and may experience gender-based violence in different ways, due to the intersectional discrimination they face. There would be value in the General Recommendation providing greater guidance to States on recognising and addressing gender-based violence, as it is experienced by specific groups of women facing intersectional discrimination, particularly where this has not been addressed in other CEDAW Committee General Recommendations.
22. Women and girls with disability can experience violence at significantly higher rates, and more frequently, for longer, in more ways and by more perpetrators compared to women and girls without disability.¹⁶ There is limited data available on the prevalence of violence against women and girls with disability,

however, a Victorian study found that 45 per cent of women in psychiatric hospitals had been sexually assaulted, 67 per cent had been sexually harassed and 85 per cent felt unsafe.¹⁷

23. Women and girls with disability face significant issues in relation to violence and abuse in institutional settings, violence in care settings and other forms of violence including forced sterilisation and forced treatment.¹⁸ The Commission notes General Comment 6 by the Committee on the Rights of Persons with Disabilities, on women with Disabilities, which recognises physical, sexual, or psychological violence, which may be institutional or interpersonal.¹⁹
24. Current conceptualisations of violence against women fall short of encompassing the key experiences of many women and girls with disabilities.²⁰ Violence perpetrated against them in institutional and care settings remains outside the current legislative and policy frameworks and responses to preventing and addressing violence against women in Australia.²¹ These experiences of violence are not properly recognised across the legal and service systems, and they receive less protection.²² Crimes of violence committed against women and girls with disability therefore often go unreported, and when they are, they are either dismissed, ignored, covered up by service staff and/or management, inadequately investigated, remain unsolved or result in minimal sentences.²³
25. The CEDAW Committee, other treaty monitoring bodies, and the Human Rights Council, through the Universal Periodic Review, have called on Australian Governments to take urgent measures to address violence and abuse experienced by women and girls with disabilities, particularly those living in institutional, residential and/or service settings.²⁴ They have urged Australian Governments to ensure access for women with disabilities to an effective, integrated response system, and include a more comprehensive consideration of women with disabilities in policies on the prevention of gender-based violence.²⁵
26. Specialist support is critical to providing appropriate, relevant and niche services and care for victims of violence who have a disability, particularly given their increased level of vulnerability. Australia's Stop the Violence Project identified a range of strategies for service sector and development reform, to enable better support and access to disability sector services and gender specific services that are inclusive of and responsive to women and girls with disabilities.²⁶
27. The Commission recommends the updated General Recommendation 19 provide guidance on addressing all forms of gendered disability violence including:
 - violence, abuse and neglect against people with disability in institutional and residential settings;
 - involuntary or coerced sterilisation of people with disabilities; and²⁷
 - Specific recognition and address of all forms of gendered disability violence within national plans and policies on violence and disability.

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- ¹ Australian Bureau of Statistics, *Personal Safety Survey 2005* (2005), Canberra. At: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/> (viewed 22 February 2016).
- ² PwC, *A high price to pay: The economic case for preventing violence against women* (2015). At <http://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html> (viewed 22 February 2016).
- ³ Australian Domestic & Family Violence Clearinghouse, *Key Findings – National Domestic Violence and the Workplace Survey* (2011).
- ⁴ Australian Human Rights Commission, *Fair work changes recognise carers and domestic violence* (2013). At <https://www.humanrights.gov.au/news/stories/fair-work-changes-recognise-carers-and-domestic-violence-0> (viewed 22 February 2016).
- ⁵ Ludo McFerran, Safe at Home, Safe At Work Project, Australian Domestic and Family Violence Clearing House, UNSW, 'When domestic violence becomes a workplace problem', ABC The Drum Opinion 13 February 2013. At <http://www.abc.net.au/unleashed/4516492.html> (viewed 22 February 2016).
- ⁶ Australian Council of Trade Unions, University of New South Wales, *Implementation of Domestic Violence Clauses, - An Employer's Perspective* (2015).
- ⁷ Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law* (6 December 2011), p 24. At http://humanrights.gov.au/legal/submissions/2011/20111206_consolidation.html (viewed 22 February 2016).
- ⁸ In Australia the Australian Law Reform Commission, *Family Violence and Commonwealth Laws - Improving Legal Frameworks Final Report* (2011), ALRC Report 117, Recommendation 16-8. At <http://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117> (viewed 22 February 2016). Senate Legal and Constitutional Affairs Committee, *Report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2013), Recommendation 3. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/antidiscrimination2012/report/index (viewed 22 February 2016).
- ⁹ UN Commission on Status of Women, *57th Session Agreed Conclusions*, UN Doc. E/2013/27 (2013), para yy. At <http://www2.unwomen.org/en/csw/outcomes#57> (viewed 22 February 2016)
- ¹⁰ Australian Human Rights Commission, *Children's Rights Report 2015*, Chapter 4, 'All I want is a life free from violence' (2015). At <https://www.humanrights.gov.au/our-work/childrens-rights/projects/childrens-rights-report-2015> (viewed 28 July 2016).
- ¹¹ See for example the 2006 World Report on Violence against Children for the United Nations Secretary-General (the UN World Report): P Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence against Children, *World Report on Violence Against Children*, GA Res 62/141 (11 October 2006) 70. At <http://www.unicef.org/violencestudy/reports.html> (viewed 3 August 2016).
- ¹² Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [46].
- ¹³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) Article 19.
- ¹⁴ Committee on the Rights of the Child, *General Comment No 13: The right of the child to freedom from all forms of violence*, 56th sess, UN Doc CRC/C/GC/13 (18 April 2011) [59–63].
- ¹⁵ Australian Human Rights Commission, *Children's Rights Report 2015*, Chapter 4, 'All I want is a life free from violence' (2015). At <https://www.humanrights.gov.au/our-work/childrens-rights/projects/childrens-rights-report-2015> (viewed 28 July 2016).
- ¹⁶ Women With Disabilities Australia, Carolyn Frohmader, Leanne Dowse, Aminath Didi, *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* (2015). At <http://wwda.org.au/papers/confpaps/confpaps2011/> (viewed 23 August 2016)
- ¹⁷ Victorian Mental Illness Awareness Council, *Zero Tolerance for Sexual Assault: A Safe Admission for Women* (2013), cited in Stop the violence Project, *Report of the Proceedings and Outcomes: National Symposium on Violence against Women and Girls with Disabilities* (2013). At <http://www.stvp.org.au/National-Symposium.htm> (viewed 8 September 2016).
- ¹⁸ Stop the Violence Project, *Stop the Violence: Addressing violence against women and girls with disabilities in Australia: Discussion Paper* (2013). At <http://www.stvp.org.au/> (viewed 23 August 2016). 'Understanding the vast array of 'settings' and 'places' in which women with disabilities reside and/or receive services, is a fundamental element in conceptualising gendered disability violence. For

example, as well as those women and girls with disabilities in Australia who live in traditional domestic settings including private and family dwellings, large numbers of women with disabilities still reside in and receive support in a range of 'institutional' and/or 'service' settings, such as group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Women and girls with disabilities who experience these types of settings are at particular and significant risk of violence, abuse, neglect and exploitation.' Women With Disabilities Australia, Carolyn Frohmader, Leanne Dowse, Aminath Didi, *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* (2015). At <http://wwda.org.au/papers/confpaps/confpaps2011/> (viewed 23 August 2016).

¹⁹ Committee on the Rights of Persons with Disabilities, *General Comment No 3 on Article 6: Women and Girls with Disabilities* (2016) UN Doc CRPD/C/GC/3. At <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx> (viewed 26 September 2016). Article 16 of *Convention on the Rights of Persons with Disabilities* on 'Freedom from exploitation, violence and abuse' requires State Parties to take measures to protect persons with disabilities from violence and abuse inside and outside their homes, including their gender-based aspects. See also Office of the United Nations High Commissioner for Human Rights, *Thematic study on the issue of violence against women and girls and disability* (2012), UN Doc A/HRC/20/5. At www2.ohchr.org/english/issues/women/docs/A.HRC.20.5.pdf (viewed 28 September 2016).

²⁰ Committee on the Rights of Persons with Disabilities, *General Comment No 3 on Article 6: Women and Girls with Disabilities* (2016) UN Doc CRPD/C/GC/3. At <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx> (viewed 26 September 2016).

²¹ Women With Disabilities Australia, Carolyn Frohmader, Leanne Dowse, Aminath Didi, *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* (2015). At <http://wwda.org.au/papers/confpaps/confpaps2011/> (viewed 23 August 2016).

²² Women With Disabilities Australia, Carolyn Frohmader, Leanne Dowse, Aminath Didi, *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* (2015). At <http://wwda.org.au/papers/confpaps/confpaps2011/> (viewed 23 August 2016).

²³ Women With Disabilities Australia, Carolyn Frohmader, Leanne Dowse, Aminath Didi, *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* (2015). At <http://wwda.org.au/papers/confpaps/confpaps2011/> (viewed 23 August 2016).

'Typically, most women with disabilities do not report the violence perpetrated against them. We often lack access to legal protection, and law enforcement officials and the legal community are ill-equipped to address the violence. Our testimony is often not viewed as credible by the courts; and we are not privy to the same information available to non-disabled women. The lack of appropriate, available, accessible and affordable services, programs and support is a major factor that increases and contributes to violence against us.' Stop the Violence Project, *Report of the Proceedings and Outcomes: National Symposium on Violence against Women and Girls with Disabilities* (2013), p14. At: <http://www.stvp.org.au/National-Symposium.htm> (viewed 8 September 2016).

²⁴ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the initial report of Australia* (2013), UN Doc. CRPD/C/AUS/CO/1. At: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en (viewed 8 September 2016). Committee on the Elimination of all forms of Discrimination Against Women, *Concluding Observations: Australia* (2010), UN Doc. CEDAW/C/AUL/CO/7. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fFUL%2fAUS%2f15067&Lang=en (viewed 8 September 2016). The Committee on the Rights of the Child also recommended that the Australian Government develop and enforce strict guidelines to prevent the sterilization of women and girls who are affected by disabilities and are unable to consent. Committee on the Rights of the Child, *Concluding Observations: Australia* (2012), UN Doc. CRC/C/AUS/CO/4. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f4&Lang=en (viewed 8 September 2016). The Committee against Torture recommended the Australian Government increase its efforts to address violence against indigenous women and women with disabilities; and enact national uniform legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of

the person concerned, and ensure that, once adopted, this legislation is effectively applied. Committee Against Torture, *Concluding observations on the fourth and fifth periodic reports of Australia – Advanced Unedited Version*. At

http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf (viewed 8 September 2016). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia* (2015). UN Doc A/HRC/31/14. At <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/004/89/PDF/G1600489.pdf?OpenElement> (viewed 8 August 2016). See also *Australian NGO Joint Report* (2015). At <http://hrlc.org.au/upr/> (viewed 8 September 2016).

²⁵ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the initial report of Australia* (2013), UN Doc. CRPD/C/AUS/CO/1. At:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en (viewed 8 September 2016). Committee on the Elimination of all forms of Discrimination Against Women, *Concluding Observations: Australia* (2010), UN Doc. CEDAW/C/AUL/CO/7. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fFUL%2fAUS%2f15067&Lang=en (viewed 8 September 2016); Committee on the Rights of the Child, *Concluding Observations: Australia* (2012), UN Doc. CRC/C/AUS/CO/4. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f4&Lang=en (viewed 8 September 2016); Committee Against Torture, *Concluding observations on the fourth and fifth periodic reports of Australia – Advanced Unedited Version*. At

http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf (viewed 8 September 2016);). UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia* (2015). UN Doc A/HRC/31/14. At <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/004/89/PDF/G1600489.pdf?OpenElement> (viewed 8 August 2016). See also *Australian NGO Joint Report* (2015). At <http://hrlc.org.au/upr/> (viewed 8 September 2016).

²⁶ Stop the Violence Project, *Report of the Proceedings and Outcomes: National Symposium on Violence against Women and Girls with Disabilities* (2013), p25. At: <http://www.stvp.org.au/National-Symposium.htm> (viewed 8 September 2016).

²⁷ Senate Standing Committee on Community Affairs, *Report of Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (2015). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report (viewed 23 August 2016); Senate Community Affairs Committee, Report on Involuntary or coerced sterilisation of people with disabilities in Australia (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/First_Report (viewed 23 August 2016).