

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

16 December 2022

Dear Officer,

RE: Inquiry Into the Rights of Women and Children

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Joint Standing Committee on Foreign Affairs and Trade, responding to terms of reference 1, 2 and 4 of the inquiry.

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

Summary of Recommendations:

1. Prioritising the voices and perspectives of women and children regarding discussions concerning their rights;
2. Understanding the ways intersectionalities impact gender-based violence and that these differences are crucial to comprehend when tackling the issue;
3. The criminalisation of any offence related to acid attacks, regulating the sale of any type of acid, and domestic imprisonment as a punitive measure prior to deportation;
4. Expanding the capacities of existing legal and support services, specifically support for those experiencing violence and men's behaviour change programs; and
5. Including issues of gender-based discrimination and violence in the new school curriculum on mandatory consent education, and that this be continued throughout Years 11 and 12.

If further information is required, please contact us at anulrsjresearchhub@gmail.com.

On behalf of the ANU LRSJ Research Hub,

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We are also grateful for comments provided by Farshad Moradi.

Introduction

This submission addresses the government's role in supporting the rights of women and children, integrating these issues into mainstream political discourse, educating the public on the prevalence of gender-based discrimination and violence and how to prevent these. Where incidences of these issues do occur, the government should have response mechanisms in place to support and empower women and children in a timely manner. This submission prioritises the importance of government funding to assist existing organisations alongside funding for improvement of consent education.

1. Prioritising the Voices of Women and Children in Conversations and Policymaking Concerning their Rights

As this inquiry concerns the rights of women and children, it is their voices that should be at the forefront of this discussion. Furthermore, discussions regarding issues outside of the rights of women and children should also not exclude their voices. Gender should not be absent from conversations surrounding other human rights and political concerns. By not including the perspectives of women in policy-making, UN Security Council *Resolution 1325* is not complied with, which states that women are entitled to 'equal participation and full involvement in all efforts for the maintenance and promotion of peace and security'¹. Therefore, women should be included in all conversations about politics and security, regardless of whether or not their rights are directly affected.

Particularly in recent years, global activism by women and children regarding their rights has been strong. Having won TIME Magazine's 2022 'Heroes of the Year'², the women of Iran have continually challenged gender inequality, despite the threats of the formidable authoritarian regime that is the Islamic Republic. Young women in Iran have begun to lead a movement for gender equality including improvement of job prospects, rule of law, meaningful roles in politics, and the freedom to wear and say what they want.³ Following the death of Mahsa Amini by mortality police on September 16, this movement has surged incredibly⁴. Taking to the streets to chant 'woman, life, freedom', Iranian women have demonstrated their will for social and political reform; regardless of the consequences protesting will have for them and their families.⁵ These individual and collective voices, expressing the ways in which gender-based discrimination has impacted them directly, are a necessity when policymaking. Without hearing the perspective of those impacted by the issue at hand and the change that they personally want to see, responses are limited.

In the Committee's Public Hearing as a part of this inquiry, producers of the documentary 'Geeta' had Mrs Geeta and Ms Neetu join the hearing to speak on their experiences with

¹ SC Res 1325, UN SCOR, 4213th mtg, UN Doc S/RES/1325 (31 October 2000).

² Azadeh Moaveni, 'TIME 2022 Heroes of the Year: Women of Iran', *Time Magazine* (Web Page, 8 December 2022) <<https://time.com/heroes-of-the-year-2022-women-of-iran/>>.

³ Ibid.

⁴ Kay Armin Serjoie, 'The Protests in Iran Have Shaken the Islamic Republic to Its Core', *Time Magazine* (Web Page, 24 September 2022) <<https://time.com/6216024/iran-protests-islamic-republic-response/>>.

⁵ Azadeh Moaveni, 'TIME 2022 Heroes of the Year: Women of Iran', *Time Magazine* (Web Page, 8 December 2022) <<https://time.com/heroes-of-the-year-2022-women-of-iran/>>.

acid attacks. As said by Neetu during the hearing, 'If we understand the pain of the survivor and we understand how they are suffering, we should look into this matter and resolve it.'⁶ Despite Neetu's acid attack occurring 30 years ago, it is concerning that the issue is still prevalent in society. Including the voices of those who have faced gender-based discrimination and violence, inquiries can have a more powerful impact. It is the voices of these individuals and communities that should be prioritised. Not only is Neetu a woman, but also was a child at the time the attack occurred. Whilst including women in these conversations, children should not be excluded as the inquiry concerns their rights as well. Children also have the capacity to invoke significant change, as demonstrated by Greta Thunberg and her powerful voice on climate change.

Therefore, we submit that legislation drafting should be conscious of the historically patriarchal undertones of the Australian parliamentary system in order to ensure women are empowered and included. Moreover, the perspectives of women and children should be encouraged and prioritised.

Recommendation 1: Prioritising the voices and perspectives of women and children regarding discussions concerning their rights. We recommend further inclusion of women and children in relation to all policy matters. Legislation should explicitly state the gender-based inequalities it is addressing so as to avoid reinforcement of the underlying heteronormative patriarchal structure of society.

2. Understanding the Intersectionalities of Gender-Based Violence

Applying intersectionality to the study of gender-based violence may assist with understanding how such violence develops its prevalence in patterns. These patterns may highlight the heightened risk of violence to women and children who are of differing religions, cultural backgrounds, genders and sexualities, and levels of physical and psychological capability. One of the more prevalent forms of intersectional gender-based violence in Australia is violence towards Aboriginal and Torres Strait Islander women, who are 34 times more likely to be hospitalised from violence and report three times as many incidents of sexual violence as non-Indigenous women.⁷ Furthermore, 53.2% of Australian transgender and gender-diverse people reported experiencing sexual violence or coercion in 2014, significantly higher than the 13.3% reported by the general population.⁸ This evident discrimination towards non-binary and transgender people is a prevalent issue that should be focused on alongside violence against cisgender women.

Women from culturally and linguistically diverse, migrant and refugee backgrounds tend to experience heightened difficulties accessing support services, including legal services, especially in the context of gender-based violence. 1 in 3 migrant and refugee

⁶ Evidence to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, Canberra, 23 November 2022, 3 (Neetu Mahor).

⁷ Anna Olsen and Ray Lovett, ANROWS, *Existing Knowledge, Practice and Responses to Violence Against Women in Australian Indigenous Communities: State of Knowledge Report*, (ANROWS Landscapes No 2, January 2016).

⁸ Denton Callandar et al, The Kirby Institute, *The 2018 Australian Trans and Gender Diverse Sexual Health Survey* (Report of Findings, 2018).

women experience domestic violence,⁹ compared to 1 in 6 of the general population.¹⁰ Not only are these rates of violence higher, but their access to support and legal services is far lower. With added barriers of fear of discrimination and racism, language and cultural differences, risks to their visa statuses, lack of support networks, migrant and refugee women report sexual violence at far lower rates than other Australians.¹¹

Recommendation 2: To address the increased rates of gender-based violence against intersectional groups, we recommend actively seeking the input of women and children from those groups in the creation of your inquiry, understanding that the ways these groups experience gender-based violence differs from that of the general Australia population, and that these differences are crucial to comprehend when tackling the issue. To address the difficulty of culturally and linguistically diverse, migrant and refugee women and children accessing support services due to language barriers, we recommend making the national Translating and Interpreting Service free of charge for all people accessing legal or other support. To address the fear of discrimination and racism experienced by these women and children, we recommend increasing funding towards culturally diverse medical centres where they can receive medical assistance following gender-based violence in an environment free from fear of racism, and without having to remove traditional clothing in a way that violates their religious beliefs and practices.

3. Domestic Punitive Measures Before Deportation for all Gender-Based Violence: Is Deportation Solving the Problem?

Acid attacks remain an ongoing and persistent issue to this day. The prevalence and harm caused by acid attacks has become a worldwide problem. Acid attacks are increasingly reported across many parts of the world, especially in developing countries. For example, in Bangladesh between 1999 and 2013, it was reported that 3,512 women were victims of acid attacks.¹² In India, acid attacks are increasingly reported every year. Although the reported number of attacks is estimated between 250 and 300, the actual number of attacks could exceed 1,000.¹³

Although acid attacks are more common in South Asia, this type of violence has become more prevalent in Western countries as well, such as the United Kingdom. According to Acid Survivors Trust International (ASTI), the United Kingdom has one of the highest rates of acid attacks per capita in the world.¹⁴ In 2016, there were reported over 601 acid attacks and 67 percent of victims were men, whereas global statistics indicate that the

⁹ Marie Segrave, Rebecca Wickes and Chloe Keel, 'One Third of Migrant and Refugee Women Experience Domestic Violence, Major Survey Reveals' (2021) Monash University Lens.

¹⁰ Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence* (Report, November 2022) <<https://lens.monash.edu/@politics-society/2021/07/01/1383466/one-third-of-migrant-and-refugee-women-experience-domestic-violence-major-survey-reveals>>.

¹¹Ibid.

¹² Lisa M Taylor, 'Saving Face: Acid Attack Laws after the UN Convention on the Elimination of All Forms of Discrimination Against Women' (2000) 29 *Georgia Journal of International and Comparative Law* 395.

¹³ Ibid.

¹⁴ Samuel Moffatt and Portia Rhimes, 'Deliberate Corrosive Substance Attacks: A Systematic Review' (2020) 22(3) *Trauma* 169.

majority of victims, approximately 80 percent, are women.¹⁵ This can be attributed to the fact that acid attacks are a form of gender-based violence because of established gendered roles and hierarchies. In the vast majority of cases, the perpetrators are men, and society's patriarchal patterns and demonstration of power and brutality are its main drivers.

But the most important aspect of this problem remains unaddressed- deportation. As referred to in the public hearing of the Inquiry into the rights of women and children on 23 November 2022, non-citizens perpetrators are immediately deported. As a result, their crime remains unpunished and the victims' sense of justice unresolved. More importantly, deportation does not guarantee safety. In the public hearing, it was mentioned that acid attack victims were harassed by the offender's family members with death threats and on-going stalking, which, in turn, had an adverse socio-economic impact on their lives.

Domestic imprisonment could be considered as a punitive measure prior to deportation. According to s 501 (3A) of the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth), the Minister must cancel a person's visa if satisfied that the person does not pass the character test and is serving a full time custodial sentence.¹⁶ This means that a person sentenced to more than 12 months of imprisonment will be deported. Therefore, imprisonment of more than 12 months instead of deportation can be used as a punitive measure to acid attack offenders. This not only will send a strong signal to society that perpetrators of this form of violence are prosecuted and punished to the full extent of the law but also it will create an environment of safety for the victims. However, in this case we need to consider the implications of this across all jurisdictions since in some states the risk of deportation is the determining factor into sentencing, including Victoria, Queensland, Australian Capital Territory and Tasmania. Particularly, in the state sentencing case of *Guden v The Queen* [2010] VSCA 196,¹⁷ the offender's prospects of deportation was a relevant sentencing factor. In New South Wales, Western Australia and the Northern Territory, deportation is not considered as a determining factor and in South Australia it remains unsettled.¹⁸ If the relevant legislation was to be enacted, in some states, the risk of deportation and impact of such risk would be taken into account, which, in turn, would give the offender a lesser sentence and the possibility to remain in Australia. To mitigate this risk, we could assess its coherency with the existing law and with other mitigating factors, including pleading, cooperation with law enforcement authorities, remorse and circumstances around the offence.¹⁹

Recommendation 3: To ensure that this form of violence is addressed at the federal, state and territory levels, we recommend that the Government needs to introduce a legislation that would criminalise any offence related to acid attacks, regulating the sale of any type of acid attack and impose punitive measures prior to deportation of the offender.

¹⁵ BBC Three, *Everything You Know About Acid Attacks is Wrong* (17 November 2017) <<https://www.bbc.co.uk/bbcthree/article/5d38c003-c54a-4513-a369-f9eae0d52f91>>.

¹⁶ *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) s501 (3A).

¹⁷ *Guden v The Queen* [2010] VSCA 196.

¹⁸ National Judicial College of Australia, *Deportation* (16 December 2022) <<https://csd.njca.com.au/deportation2/>>.

¹⁹ Mirko Bagaric, Theo Alexander and Brienna Bagaric, 'Offenders Risking Deportation Deserve a Sentence-Discount- But the Reduction Should be Provisional' (2020) 43 (3) *Melbourne University Law Review* 1.

4. Prioritising Funding for Existing Organisations Assisting People Experiencing Violence and Offering Men's Behaviour Change Programs

Domestic and sexual abuse disproportionately impacts women and children, causing significant long-term mental health implications. This has the capacity to deteriorate educational and economic progress for individuals and families that have been subject to such violence. Many survivors of domestic and sexual abuse, particularly in regional and rural communities, are not aware of the support systems and reporting mechanisms available to them.²⁰ According to the ABS, 1 in 3 women have been subject to physical violence and 1 in 5 women have experienced sexual violence since the age of 15 in Australia,²¹ 23% of women in Australia have faced emotional abuse from a partner, which can have equally as harmful effects as physical abuse.²²

The Government needs to ensure that it has the response mechanisms ready and available to help women because, whilst we would rather these issues were not occurring at all, we cannot deny that gender-based discrimination and violence will not cease for a significant period of time. Therefore, it is vital that long-term funding is injected into pre-existing organisations that prioritise these issues so that responses to incidences of gender-based discrimination and violence are timely, affordable and effective in supporting victims.

Many Australian legal and support services that currently exist to prevent violence against women and children are extremely capable of doing so, but could better address the issue with greater funding. It is likely far more costly for the Australian Government to establish new non-profit organisations with this purpose in mind than to provide more resources to the existing organisations doing life-saving work for women and children around Australia. One element is legal support, which is already established in Legal Aid and other community legal services throughout Australia. These services are capable of assisting women apply for protection orders to keep them safe from perpetrators, as well as assisting with family custody matters to help protect children from future violence. These are incredibly useful services and would be capable of assisting more people at a faster turnaround with greater funding. For example, the World Bank has endorsed Indonesia's PEKKA Women's Legal Empowerment program which trains paralegals to go into communities and support women in applying for protection orders.²³ Furthermore, establishing more legal aid centres in regional communities would help those in remote areas – particularly Indigenous women and children who are generally at a far greater risk of experiencing violence – find legal support. However, these services operate after violence has been perpetrated, rather than as preventative measures.

²⁰ Deakin University Australia, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria* (Report, 2014).

²¹ Australian Bureau of Statistics, *Domestic Violence: Experiences of Partner Emotional Abuse* (Released 24 August 2022)
<<https://www.abs.gov.au/articles/domestic-violence-experiences-partner-emotional-abuse>>.

²² Ibid.

²³ 'Indonesia: Women Headed Household Empowerment Program (PEKKA)', World Bank (Text/HTML)

<<https://projects.worldbank.org/en/results/2012/04/19/indonesia-women-headed-household-empowermentprogram-pekka>>.

Some success in preventing violence against women and children has been found in men's behaviour change programs ('MBCPs') throughout Australia. The proportion of men who use violence continuing to do so after participating in a MBCP is drastically reduced²⁴. These programs appear to be the most successful at prevention of violence against women and children, so would greatly benefit from further funding to increase their capacity. Helping women out of violent relationships is only a short-term solution, but MBCPs are a means of ending the cycle of violence for future prevention. Helping men who use violence change their attitudes and behaviour towards women allows them to raise future men who do not use violence, ending the cycle of violence within that family and contributing to more respectful relationships between all people.

Recommendation 4: Putting significant funding into expanding the capacities of existing legal and support services rather than establishing new ones. Specifically, in both support for those experiencing violence and in men's behaviour change programs to end the cycle of violence. Furthermore, introducing mandatory respectful relationships education modules for all Australians to better educate the public, including migrants before gaining residency in Australia.

5. Mandatory Respectful Relationships Education to be Introduced in Schools; Ensuring Issues of Gender-Based Discrimination are Taught Throughout Schools and How to Break Down These Barriers.

Thanks to the advocacy of another woman, Chanel Contos, all Australian schools will now be required to engage in consent education from the beginning of school up until Year 10. Collecting over 6,000 testimonies on sexual assault and sexual harassment over the course of a year,²⁵ Chanel Contos' efforts entail that the new consent curriculum in schools will promote a holistic understanding of consent, including coercion, gender stereotypes and power imbalances.²⁶

Whilst this is a significant step in the right direction, issues such as gender-based violence and intersectional discrimination will not be covered under this new curriculum. As explored above, gender inequality is not experienced in the same way by all women and cannot be viewed as separate from other forms of discrimination different women face including ethnicity, disability, sexuality, socio-economic status and age.²⁷ Hence, it should not only be taught in schools how to mitigate gender-based violence, but also its intersections. For example, how to make queer-identifying women feel safe and included as well as those whose second language is English and may face a language or cultural barrier.

²⁴ Women NSW, *Men's Behaviour Change Programs* (Evaluation Summary).

²⁵ <<https://www.teachusconsent.com/>>.

²⁶ 'Mandatory Consent Education is a Huge Win for Australia – But Consent is Just One Small part of Navigating Relationships', *The Conversation* (Web Page, 21 February 2022) <<https://theconversation.com/mandatory-consent-education-is-a-huge-win-for-australia-but-consent-is-just-one-small-part-of-navigating-relationships-177456>>.

²⁷ ACT Community Services, *Domestic and Family Violence Risk Assessment and Management Framework* (Fact Sheet No 2, July 2022).

Furthermore, consent education should not stop in Year 10 and should be extended for students completing Years 11 and 12, particularly as most become adults during this time period and may be more likely to start being sexually active. Considering 28 percent of children experience sexual harassment or assault before the end of high school,²⁸ consent education should not be seen as just another subject you can discard going into Years 11 and 12. Considering teaching looks significantly different in Years 11 and 12, consent and gender-based education can be continued in the form of mandatory workshops and talks throughout the year - perhaps one session per term. This will ensure they do not 'forget' what they have learnt throughout school and that they properly engage in conversations surrounding consent and gender-based issues as they mature into adults where these issues become more prevalent.

Another area the new initiative is lacking in is training and development for school teachers who are expected to implement consent education into their everyday teaching. All teachers will need significant background on consent and other gender-based issues, otherwise the new curriculum risks giving students a superficial or neglected understanding of the prevalence of these issues and how to stop them. Teachers would need to be first taught the curriculum themselves and may be reluctant to engage without incentive as it will take up some time. How to address this could include funding to assist teachers in taking time away from school to attend consent training sessions provided by outside organisations that specialise in gender-based and consent issues. Without adequate training for teachers, the information will not be taught effectively and with the impact required to end high rates of consent issues.

Therefore, whilst we acknowledge that the introduction of mandatory consent education in schools is commendable, the content of the curriculum and the ways in which teachers engage with it requires improvement.

Recommendation 5: We recommend including issues of gender-based discrimination and violence in the new school curriculum on mandatory consent education, and that this be continued throughout Years 11 and 12. We propose that this education does not exclude the intersectionalities of women and children and how to mitigate discrimination associated with these. Implementation of additional resources and funding for school teachers to ensure the initiative is effective would be beneficial.

Concluding Remarks

This Inquiry will play a key role in Australia's current capacity to assess the rights of women and children, as well as the mechanisms in place to protect them from violence both in Australia and internationally. We thank you for your time in reading our submission. Australia's current laws and organisations do a lot to protect the safety and rights of women and children, but there are many ways it could be improved. These include prioritising the voices and perspectives of women and children in these discussions, understanding intersectional disadvantage and violence, criminalising acid attacks and domestically imprisoning acid-attackers, expanding capacities of existing legal and support services, and including issues of gender-based discrimination and violence in the new school curriculum on mandatory consent education.

²⁸ La Trobe University, *National Survey of Secondary Students and Sexual Health 2018: Results of the 6th National Survey of Australian Secondary Students and Sexual Health* (Report, June 2019).