SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT

Australia's Seventh Periodic Report under Article 40 of the

International Covenant on Civil and Political Rights (ICCPR)

Submitted by:

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18 June 2026

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1. Introduction

Australian Feminists for Women's Rights (A4WR) is a feminist advocacy organisation focused on sex-based rights. AF4WR works to restore and strengthen the legal protections for women and girls grounded in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) and reflected in Australia's domestic anti-discrimination law.

This submission responds to Australia's Consultation Draft Seventh Periodic Report and the Human Rights Committee's List of Issues Prior to Submission (CCPR/C/AUS/QPR/7). AF4WR makes submissions in respect of the following questions from the List of Issues:

- Question 4: Independence of the Australian Human Rights Commission (AHRC) and its compliance with the Paris Principles
- Question 5: Comprehensive federal anti-discrimination legislation
- Question 7: Discrimination based on sexual orientation or gender identity; access to healthcare for persons with gender dysphoria; court authorisation requirements
- Question 12: Non-therapeutic sterilisation; intersex regulation; and—as we argue below—the unaddressed question of irreversible medical interventions on children and adolescents in the context of gender dysphoria treatment

AF4WR's central argument is that the draft report systematically mischaracterises the applicable international human rights framework. It conflates assumptions arising from the Yogyakarta Principles—a privately produced lobbying document with no treaty status—with binding ICCPR and CEDAW obligations. This conflation has produced, and continues to produce, concrete failures of the Australian Government's sex-based human rights obligations.

2. Preliminary Observations: The Yogyakarta Principles are Not International Law

Throughout the draft report and the underlying domestic policy framework it describes, references to "gender identity" as a protected attribute invoke a framework derived not from the ICCPR or CEDAW but from the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006) and the Yogyakarta Principles Plus 10 (2017).

AF4WR draws the Committee's attention to the following material facts about the status of the Yogyakarta Principles:

- The Yogyakarta Principles (YP) were drafted by a private group of experts convened by the International Commission of Jurists (ICJ) and the International Service for Human Rights (ISHR). They were not negotiated or adopted by any intergovernmental body. By the Australian Government's own published framework, they have no status as binding international law. DFAT's current Treaties page defines a treaty as "an international agreement concluded in written form between two or more States (or international organisations) and governed by international law" that "gives rise to international legal rights and obligations". DFAT's current Guidance

Note on less-than-treaty-status instruments defines such instruments as those "intended to embody a political commitment without creating (of its own force) legal rights or obligations" and states that they are "not subject to Australia's treaty-making process". The AHRC's 2011 characterisation of the YP as reflecting "binding human rights obligations" directly contradicts the Australian Government's own treaty-making framework.

- The Yogyakarta Principles Plus 10 (YP+10) were funded by, among others, the Arcus Foundation (a private US foundation) and the City of Geneva, and—as confirmed by Australian Government FOI documents (LEX8443)—by the Australian Government's own Geneva Mission through the Innovative Development Fund (CHF 48,959). Australian Government co-funding of an advocacy instrument that was then cited as the basis for domestic law reform represents a significant conflict of interest that the Committee should note.
- The CEDAW Committee, whose mandate is the protection of women and girls as a sex class, has issued general recommendations grounded in the biological reality of sex, including GR 28 and GR 35, which address discrimination against women "based on sex and gender". The conflation of sex and gender identity in domestic law—including through the 2013 amendments to the Sex Discrimination Act (1984, hereinafter the Act)—creates structural tension with CEDAW-based protections for women.
- The 2013 amendments giving effect to the AHRC's advice were made without any of the procedural protections that apply to genuine treaty obligations. No National Interest Analysis was prepared. No JSCOT examination occurred. No Commonwealth-State consultation was conducted. No Impact Analysis assessed the domestic effects on women as a class or on same-sex attracted people. None of these processes were triggered because the AHRC characterised the Yogyakarta Principles not as a new international declaration requiring scrutiny, but as a clarification of obligations Australia already had. That characterisation still rests entirely on the assertion of the self-appointed experts who produced the document. DFAT's own framework has always directly contradicted it: a document not concluded between states and not intended to be binding at international law does not have treaty status, regardless of how its authors characterise its legal effect.
- The Act derives its constitutional validity from the external affairs power under section 51(xxix) of the Australian Constitution, and is grounded in CEDAW, as confirmed by DFAT's own 2000 Australia International Treaty Making Information Kit and by the Act's long title, second reading speeches, and explanatory memorandum. The 2013 amendments were enacted on the basis of AHRC advice presenting the Yogyakarta Principles as reflecting binding international obligations, which as already demonstrated is not the case. This is a question of constitutional integrity that the Australian Government has not addressed.

AF4WR does not submit that gay, lesbian, and bisexual people should not receive protection from discrimination. Nor do we suggest that transgender-identifying people should not also receive such protection. Human rights as encoded in the international treaties to which Australia is a signatory, including the ICCPR, apply to all.

We submit, rather, that the mechanism by which "gender identity" has been introduced into Australian law via the Act as a protected attribute, without the procedural safeguards that apply to genuine treaty obligations, and without identifying any ratified treaty as authority, raises serious questions of institutional independence, procedural integrity, and constitutional legitimacy that the Committee should address directly. Indeed, as the Act was intended to be the Australian enactment of its treaty obligations under CEDAW to safeguard the rights of female people, it is hardly the appropriate instrument for introducing other protected categories that also include males (sexual orientation, gender identity).

We further note that the Act as amended is thin on definition and provides no guidance for dealing with actual or perceived conflicts of rights. Definitions of "man" and "woman" have been removed; "gender" is not defined at all; and "gender identity" is defined in opaquely circular fashion as "the gender-related identity…of a person", and adds "with or without regard to the person's designated sex at birth", as if sex were something decided upon at birth rather than determined at conception.

3. Question 4: Independence of the AHRC and Paris Principles Compliance

3.1 The draft report's position

The draft report states (paragraphs 28–32) that the Australian Government legislated a merit-based AHRC appointment process in 2022, that GANHRI re-accredited the AHRC as an 'A' status institution in 2023, and that the AHRC interprets its mandate broadly. The draft report addresses the GANHRI sub-committee's recommendation regarding expanding the AHRC's mandate by noting only that the AHRC already works across instruments beyond those scheduled in the Australian Human Rights Commission Act 1986 (AHRC Act).

3.2 What the draft report omits

The draft report does not address a substantive and documented failure of AHRC institutional independence: the Commission's entanglement, over multiple years, with the network that produced the Yogyakarta Principles, and the consequential failure to discharge its statutory advisory functions in respect of sex-based protections under CEDAW.

AF4WR draws the Committee's attention to the following:

- The AHRC established the Asia Pacific Forum of National Human Rights Institutions (APF) which is funded by AusAID. The May 2009 APF workshop held in Yogyakarta was used to strategise on integrating the Yogyakarta Principles into member NHRI programs. This shows that the AHRC's institutional culture during the critical 2010–2013 period of changes to the Sex Discrimination Act was deeply embedded in the same network producing the Yogyakarta Principles that would reshape Australian anti-discrimination law using methods that fall outside the Paris Principles.
- The APF formally committed in its 2009 program to integrating the Yogyakarta Principles into the work of member NHRIs including Australia. One month later, the AHRC submitted to the Brennan Inquiry to promote the Yogyakarta Principles

accordingly. This commitment predated the AHRC's 2012 advisory role to the Gillard Government on changes to the Act.

- The AHRC's advice to the Gillard Government in the lead-up to the 2013 Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) introduced "gender identity" as a ground of protection in terms derived from the Yogyakarta Principles rather than from CEDAW or the ICCPR. The AHRC did not, in that advisory role, disclose its institutional entanglement with the Yogyakarta Principles network.
- In 2024, the current AHRC Sex Discrimination Commissioner, Anna Cody, suppressed correspondence from the UN Special Rapporteur on Violence against Women and Girls, Reem Alsalem, concerning the tension between gender identity provisions and CEDAW-based sex protections. This suppression, documented through the email exchange between Dr Cody and Ms Alsalem, represents a further failure of institutional independence: the AHRC withheld expert CEDAW treaty advice from public and parliamentary consideration.

These matters go directly to the GANHRI Paris Principles requirement that a national human rights institution must be independent of government and of entities whose interests it is tasked to evaluate. The AHRC cannot credibly discharge its function of advising on CEDAW-based protections for women and girls when its institutional culture and senior personnel have been systematically embedded in the advocacy network promoting a framework in direct tension with CEDAW.

3.3 Recommendation to the Committee

AF4WR recommends that the Committee ask Australia to:

- Provide a comprehensive account of AHRC personnel involvement with the Yogyakarta Principles drafting and promotional networks, including the APF workshop of May 2009.
- Explain what steps the AHRC took to disclose or manage any conflict of interest in advising the Gillard Government on the 2013 amendments to the Act.
- Explain the suppression of UN Special Rapporteur correspondence in 2024 and what remedial steps have been taken.
- Report on whether the AHRC's mandate review will address the structural tension between gender identity protections derived from the snon-binding Yogyakarta Principles and sex-based protections derived from CEDAW, which is binding.

4. Question 5: Comprehensive Anti-Discrimination Legislation

4.1 The draft report's position

The draft report (paragraphs 33–52) describes Australia's federal anti-discrimination framework as comprehensive and lists the Sex Discrimination Act1984 among its key instruments. It notes that the Act "prohibits discrimination on the grounds of sex, sexual orientation, gender identity or intersex status" (paragraph 51).

4.2 The structural problem: conflation of sex and gender identity

The addition of "gender identity" as a protected ground in the Act through the 2013 amendments has created a structural incoherence in the statute that the draft report does not acknowledge. "Sex" and "gender identity" are defined differently in the Act, and these definitions generate contradictions that Australian courts are now being required to resolve.

The Federal Court's decision in Tickle v Giggle for Girls Pty Ltd [2024] FCAFC 117 (affirmed on appeal to the Full Bench of the Court in May 2026) illustrates this incoherence directly. The case turned on whether a digital platform created to facilitate connection among women (defined by sex) discriminated unlawfully against a transgender woman (a person with male sex characteristics who holds a gender identity of woman). The Court held that the respondent discriminated on the basis of gender identity. The effect of this decision is that single-sex spaces established by and for women, as a sex class, can be considered unlawful under the same statute that purports to protect sex as a ground. Tickle v Giggle is the direct legal consequence of introducing into the Act a definition of gender identity—derived from the Yogyakarta Principles—that is structurally incompatible with CEDAW's sex-based foundation. That incompatibility was not identified, assessed, or resolved before the 2013 amendment was enacted.

This is not a fringe concern. The CEDAW Committee has consistently held that sex-specific measures for women are not discriminatory and may be required. Australian law, following the 2013 amendments, has merged sex and gender identity in a single statute in a manner that places the two grounds in structural competition.

AF4WR submits that a genuinely comprehensive anti-discrimination framework would:

- maintain clear conceptual and operational distinction between the protected attribute of sex as a biological reality and gender identity as another protected attribute that is not conflatable with sex;
- preserve the capacity of women to organise single-sex services, facilities, and associations without that capacity being characterised as discrimination; and
- ensure that CEDAW-grounded protections for women are not diminished by the expansion of gender identity protections.

4.3 Recommendation to the Committee

AF4WR recommends that the Committee ask Australia to:

- Report on whether the Government intends to address the structural tension between sex and gender identity as grounds in the Act, including in the context of Tickle v Giggle and the principle of single-sex services and spaces.
- Explain how the current framework complies with CEDAW, and in particular whether the Government sought or received advice from the CEDAW Committee on the compatibility of the 2013 amendments with CEDAW obligations.

5. Question 7: Discrimination and Healthcare Access on Grounds of Gender Dysphoria

5.1 The draft report's position

The draft report (paragraphs 49–56) addresses combating discrimination on the grounds of sexual orientation and gender identity and notes that the NHMRC is developing national clinical practice guidelines for the care of people under 18 with gender dysphoria (paragraph 54). The draft report does not engage with the clinical governance concerns that have emerged from domestic and international review of pædiatric gender medicine, nor with the protective function currently served by residual judicial oversight in contested cases.

5.2 The clinical governance dimension

The draft report's response to Question 7 focuses almost entirely on anti-discrimination law and makes no substantive engagement with the clinical governance concerns that have emerged from domestic and international review of pædiatric gender medicine. This is a significant omission.

The following matters are directly relevant to Australia's ICCPR obligations, including Article 7 (prohibition of cruel, inhuman or degrading treatment); Article 24 (rights of the child); and Article 17 (right to privacy and bodily integrity):

- The Cass Review (2024), an independent review commissioned by the National Health Service (NHS) England and conducted by Dr Hilary Cass, found that the evidence base for puberty suppression and cross-sex hormone treatment in children and adolescents is "remarkably weak" and that clinicians have been working in an "uncertain" environment without adequate systematic review. The Cass Review's findings are directly relevant to Australian clinical practice.
- Systematic reviews commissioned by the Johns Hopkins Evidence-based Practice Center and suppressed by WPATH (the World Professional Association for Transgender Health) for its Standards of Care 8 document—as established in litigation in the United States (Boe v Marshall)—reached conclusions consistent with the Cass Review regarding the weakness of the evidence base.
- The Family Court of Australia's decision in Re: Devin [2025] FedCFamC1F 211 documented significant clinical governance failures at the Royal Children's Hospital (RCH) Gender Service in Melbourne, including the absence of adequate psychological assessment prior to medical treatment, and failure to explore causative factors of gender distress.
- The Australian Commission on Safety and Quality in Health Care (ACSQHC), which is responsible for accrediting health services in line with the National Safety and Quality Health Service Standards, has not taken regulatory action in response to the clinical governance concerns documented in Re: Devin, notwithstanding its mandate to do so.
- The Australian Health Practitioner Regulation Agency (AHPRA) has imposed conditions on the registration of at least one Australian medical practitioner (Dr Andrew Amos) that effectively prevent him from providing clinical care in the area of

gender medicine or from publicly commenting on gender medicine policy. These conditions were imposed in February 2026 and appear to be inconsistent with the principle of good medical practice that requires clinicians to raise concerns about patient safety. They also appear to engage freedom of expression obligations under ICCPR Article 19.

- Court authorisation for pædiatric gender medicine is now required only where genuine dispute exists between parents, practitioners, or parents and the child—a residual oversight role performing a critical protective function. Re: Devin [2025] FedCFamC1F 211 demonstrates this directly: it was parental dispute that brought the matter before the Court, and it was the Court's scrutiny that exposed the absence of adequate psychological assessment; failure to explore causative factors of gender distress; and the circular self-endorsement role played by the treating clinician. That protective function is being eroded by advocacy to remove court involvement even in contested cases.

5.3 Recommendation to the Committee

AF4WR recommends that the Committee ask Australia to:

- Report on the status of the NHMRC clinical practice guidelines process, including whether the systematic review commissioned for that process will engage with the Cass Review and the Johns Hopkins systematic reviews suppressed by WPATH.
- Report on what measures are in place to ensure that the residual judicial oversight framework remaining following Re: Kelvin [2017] FamCAFC 258 and Re: Imogen (No. 6) [2020] FamCA 761 is not further eroded, and in particular what safeguards exist to ensure that clinical disputes that ought to trigger court oversight are not suppressed by regulatory pressure on dissenting practitioners.
- Report on what action ACSQHC has taken in response to the clinical governance failures documented in Re: Devin [2025] FedCFamC1F 211.
- Explain the basis for AHPRA's conditions on the registration of practitioners who raise clinical concerns about gender medicine, and whether this is consistent with ICCPR Article 19 and with Australia's obligations to maintain independent clinical safety oversight.

6. Question 12: Non-Therapeutic Sterilisation and Irreversible Medical Interventions on Children

6.1 The draft report's position

The draft report (paragraphs 125–129) addresses non-therapeutic sterilisation of women and girls with intellectual disabilities and intersex persons. It acknowledges ongoing work under the National Action Plan for the Health and Wellbeing of LGBTIQA+ People 2025–2035 to improve protections for people with innate variations of sex characteristics.

6.2 The gap: pædiatric gender medicine as non-therapeutic or inadequately-evidenced irreversible intervention

The draft report addresses non-therapeutic sterilisation as a practice affecting women with intellectual disabilities and intersex persons. It does not address the application of the same human rights principles to children and adolescents who undergo puberty suppression followed by cross-sex hormone treatment, which renders the majority of such children infertile.

AF4WR submits that this omission is inconsistent with the Committee's own question, which asks specifically about "the current regulation of irreversible medical treatment, especially surgery, of intersex infants and children" (Question 12[c]). The principle animating that question—that irreversible medical interventions on children require rigorous justification and robust safeguards—applies with equal force to the irreversible consequences of pædiatric gender medicine.

The relevant considerations are:

- Puberty suppression followed by cross-sex hormone treatment results in infertility in the large majority of cases. This is an irreversible consequence of a treatment pathway that is initiated in children, typically before the age of 16.
- The Cass Review found that there is no evidence that puberty suppression is reversible in its psychological effects, and that children treated with puberty blockers "almost universally" proceed to cross-sex hormones, which raises serious questions about whether initial consent to puberty suppression constitutes informed consent to subsequent infertility.
- The principle that children cannot give valid consent to sterilisation as an incidental consequence of an intersex intervention—a principle the Australian Government accepts—should apply with equal force where infertility is a foreseeable consequence of a pædiatric gender medicine pathway.
- The Australian Government has funded AusPATH (the Australian Professional Association for Transgender Health), an advocacy organisation that promotes the clinical pathway described above, as a co-participant in clinical guideline development. AusPATH has financial and philosophical ties to WPATH, whose systematic review suppression has been established in US litigation. This funding relationship raises conflicts of interest that have not been disclosed in the NHMRC guidelines process.
- The Yogyakarta Principles Plus 10 (YP+10, 2017) contains Principle 17, which requires states to fund gender-affirming healthcare through public health systems. Australian Government FOI release LEX8443 confirms that DFAT co-funded YP+10 in 2017 via the Geneva Mission International Development Fund (CHF 48,935 to the International Service for Human Rights). The NHMRC guidelines process now underway, and MSAC Application 1754 seeking Medicare funding for gender-affirming surgeries for adults, would each give domestic effect to Principle 17. Neither process was preceded by any National Interest Analysis, JSCOT examination, Commonwealth-State consultation, or Impact Analysis. Both are implementing through Australia's public health system the recommendations of an instrument that

DFAT itself co-funded, that has never been tabled as a treaty, and that by DFAT's own current framework is an instrument of less-than-treaty status with no binding legal force.

6.3 Recommendation to the Committee

AF4WR recommends that the Committee ask Australia to:

- Explain why the protections against non-therapeutic sterilisation of children with disabilities are not applied to children and adolescents on gender medicine pathways where infertility is a foreseeable and near-universal consequence.
- Report on what conflicts of interest disclosures are required for participants in the NHMRC clinical practice guidelines process, including AusPATH's financial and institutional relationship with WPATH and how they are addressed.
- Report on the basis on which the Government allows AusPATH's participation in clinical guideline development given AusPATH's advocacy role and its relationship with an organisation (WPATH) that has suppressed commissioned systematic reviews of the evidence base for the clinical pathway AusPATH promotes.

7. Conclusion

AF4WR submits that Australia's draft Seventh Periodic Report fails to engage honestly with a series of structural failures in Australia's domestic human rights framework, namely:

1. The AHRC's loss of institutional independence through its entanglement with the Yogyakarta Principles advocacy network, and the consequential failure to discharge its statutory advisory functions in respect of CEDAW-based protections for women.
2. The structural incoherence introduced into the Sex Discrimination Act 1984 by the 2013 amendments, which placed sex and gender identity in competition as protected grounds, in a manner inconsistent with CEDAW.
3. The absence of adequate clinical governance oversight of pædiatric gender medicine, including the failure of ACSQHC to respond to documented failures, and the use of AHPRA conditions to suppress clinical dissent.
4. The failure to apply the principle opposing non-therapeutic sterilisation of children consistently across intersex interventions and gender medicine pathways.

AF4WR is willing to provide further evidence or oral briefing to the Committee or to Australian Government officials engaged in preparing the final report.

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June 2026

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