



COMMUNICATION TO THE COMMISSION ON THE STATUS OF WOMEN

Concerning the loss of sex-based rights in Australian law,
and the case for restoring sex-based analysis to Australia's gender equality framework.

Submitted by: Australian Feminists for Women's Rights (AF4WR)

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1. INTRODUCTION

Australian Feminists for Women's Rights (AF4WR) is an incorporated association of feminists from all over Australia campaigning for women's sex-based rights protections within a broader context of social and economic justice for all.

We endorse in full the Affiliation of Australian Women's Advocacy Alliances' (AAWAA) communication to the Commission on the Status of Women (CSW) of 22 July 2026 on patterned and specific violations of women's human rights in Australia and ask the CSW to read this submission with theirs.

AF4WR presents this communication so that the CSW can track, as part of its ongoing work, a pattern in which a national human rights institution has itself been the vehicle through which Australia's sex-based protections were displaced by an undisclosed, self-authorised process. Sections 3 and 4 below set out that pattern and the need to restore sex-based analysis to Australia's gender equality framework.

This submission is anchored to the Beijing Platform for Action

AF4WR anchors this communication explicitly to the Beijing Declaration and Platform for Action (1995), the instrument the CSW's own mandate has followed up since 1996.

We ask that this submission be tracked as part of the CSW's ongoing consideration of critical area of concern H, institutional mechanisms for the advancement of women, and critical area of concern I, the human rights of women. Both are engaged directly as a national human rights institution has itself been the vehicle through which Australia's sex-based protections were displaced.

AF4WR raises Australia's experience not as a uniquely domestic failure, but as a documented case study relevant to any Member State whose institutions have relied on the Yogyakarta Principles' own characterisation of their legal status.

CSW70 highlighted the priority theme of access to justice for all women and girls, a theme the pattern in Section 3 speaks to as it documents how Australian courts came to have no operative statutory definition of sex left to apply.

The CSW's next session, CSW71 in March 2027, takes accelerating gender equality in the context of the 2030 Agenda for Sustainable Development as its priority theme. AF4WR submits that reliable

sex based legal categories, formulated under a coherently legislated Sex Discrimination Act or Equality Act and an independent national human rights institution are a precondition for accelerating gender equality and for equal access to justice under Sustainable Development Goal 16 that seeks to:

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

We ask that this submission inform the CSW's preparation for CSW71 on that basis.

2. ENDORSEMENT OF AAWAA'S COMMUNICATIONS

AF4WR endorses AAWAA's account of the Federal Court's confirmation, in *Giggle for Girls Pty Ltd v Tickle* [2026] FCAFC 64 (15 May 2026) and *Lesbian Action Group Inc v Australian Human Rights Commission*, that the Sex Discrimination Act (SDA) no longer gives pre-eminence to women's rights, and its findings on the corruption of sex disaggregated data, the absence of older women from national violence frameworks, and the erosion of sex based language in the proposed midwifery guidelines and National Construction Code covering bathroom design. AF4WR affirms all eight consolidated recommendations in AAWAA's 22 July 2026 communication and asks the CSW to treat them as if repeated here in full.

3. HOW A PRIVATE MANIFESTO MANAGED TO DISPLACE SEX IN AUSTRALIAN LAW

AF4WR's concern in this section is institutional. It is about how the Australian Human Rights Commission (AHRC) came to operate outside its own statutory mandate to mimic binding-sounding domestic advice that was not based on agreed international law. This AHRC advice was nonetheless the basis of the Australian Parliament's decision in 2013 to amend Australia's Sex Discrimination Act to insert gender identity as a ground and remove the Act's definitions of man and woman.

3.1 The Yogyakarta Principles were a private lobbying instrument, not an international treaty

The Yogyakarta Principles were a manifesto produced in November 2006 at a private meeting in Yogyakarta, Indonesia and that were signed in March 2007 outside a UN meeting in Geneva. The meeting was organised by:

- ARC International, a company registered in Nova Scotia, Canada, whose website is no longer operating.
- The International Commission of Jurists, a private association incorporated in Switzerland
- The International Service for Human Rights, a private NGO registered in Switzerland. Its then Executive Director, Chris Sidoti, was a former Australian Human Rights Commissioner at the then Human Rights and Equal Opportunity Commission, since renamed the AHRC, from 1995 to 2000, before that its founding Secretary from 1987 to 1992, (and before then National Secretary of the Australian Catholic Commission for Justice and Peace which was the national justice and peace agency of the Australian Catholic Bishops Conference, part of a global network of national commissions loosely coordinated with the Vatican's Pontifical Council for Justice and Peace).

No public disclosure exists of who funded these three organising organisations or the meeting. Of the 29 signatories, only one signed in an official UN capacity, Australian Philip Alston, then Special Rapporteur on extrajudicial executions, lending the document a reflected authority it never received through any intergovernmental process.

Michael O'Flaherty, a former Irish Priest, who guided the drafting conceded in his curriculum vitae to the European Parliament that the drafting was contested: he secured "agreement of lawyers and activists worldwide on extremely sensitive formulations in context of heated discourse and legal uncertainty".

Australia's treatment of this private manifesto as though it carried binding force is not necessarily unique to Australia. The Yogyakarta Principles have been cited in comparable terms by domestic institutions and international bodies elsewhere, and Australia's documented paper trail, as we have collected it, may just be the clearest available account of how that reliance occurred, not an isolated case.

3.2 The AHRC has pursued the implementation of the Yogyakarta Principles outside its own statutory mandate

The Australian Human Rights Commission Act 1986 defines human rights, for the purposes of the AHRC's own initiative functions under section 11, as a closed list of instruments scheduled to or declared under the Act. The AHRC's own published guidance confirms this definition limits the scope of those functions. The Yogyakarta Principles have never been scheduled or declared. Within about a year of the Yogyakarta Principles' March 2007 launch, the AHRC's own Sex and Gender Diversity Project cited them as its sole stated legal foundation, a marked departure from the AHRC's approach only months earlier in its Same-Sex: Same Entitlements inquiry, which was grounded throughout in the ICCPR and in a specific, on-point 1994 ruling of the UN Human Rights Committee, *Toonen v Australia*. No equivalent Committee ruling on gender identity existed then, and none exists now.

3.3 AHRC activity to promote the Yogyakarta Principles was funded and directed by a body its own former Commissioner built

The Asia Pacific Forum of National Human Rights Institutions (APF) was established in 1996 with the then Human Rights Commissioner who was described as a 'driving force' in its establishment. It has operated under a formal accommodation and corporate services agreement with the AHRC ever since sharing its Sydney premises, and is core funded by AusAID, whose statutory mandate is reducing poverty overseas, not domestic law reform.

In May 2009, APF members including Australia attended a workshop in Yogyakarta addressed by the organisers and drafters of the Yogyakarta Principles to promote their implementation. The outcomes released from that workshop, and which remain online today, were:

The workshop also recommends action by the APF itself, including providing a reference to its Advisory Council of Jurists to review and advise whether laws in States whose national human rights institutions are members of the APF are consistent with international human rights law in their application in relation to sexual orientation and gender identity and what amendments to existing laws or what new laws are required to ensure consistency.

The APF will also establish a webpage on its website for information and exchange on issues and work in relation to human rights and sexual orientation and gender identity. All papers from the Yogyakarta workshop will be included on that website.

The Yogyakarta workshop will be included as an agenda item at the APF's annual meeting in 2010. The report of the ACJ will also be discussed then. The APF and its member institutions are moving forward with work on these important issues. Hopefully, national human rights institutions in other regions and at the international level will follow the APF's lead.

This led to the APF reporting to AusAID on funding outcomes of the AHRC's 2010/11 public consultation on making gender identity a discrimination ground.

3.4 Inconsistent under its own steam

The AHRC's own 2011 consultation report described the Yogyakarta Principles as merely "persuasive". Yet it nonetheless told the Australian High Court, in submissions in *AB and AH v State of Western Australia* (2011), that the Yogyakarta Principles reflect "binding international legal standards with which all states must comply", quoting the Principles' own self-description as though it were agreed international law.

The AHRC's March 2026 Equal Identities report mentions the Yogyakarta Principles 49 times, citing as authority for the same proposition an article written by the Yogyakarta Principles' own drafter, Michael O'Flaherty about his own document. At every point, the argument for treating gender identity as a ground of discrimination under Australia's SDA has rested only on the assertions of the Yogyakarta Principles' own authors and organisers writing about, and endorsing, themselves.

O'Flaherty's own account of the Yogyakarta Principles carries the same inconsistency. In 2008 he addressed a meeting of global philanthropists organised and hosted by Jon Stryker, the heir to the Stryker medical device company, via his Arcus Operating Foundation in Bellagio, Italy, to plan the implementation of the Yogyakarta Principles. O'Flaherty is recorded in the funder's own published report as advising donors regarding the Yogyakarta Principles:

They affirm the primary obligation of states to implement human rights. He noted that the story of the Yogyakarta Principles is a reminder of what can be achieved in human rights-based advocacy and how funding can be calibrated to trigger impressive results.

... They represent existing international law. They do not constitute an aspirational statement but instead offer a description of present obligations. There are some gaps, as well as uncertainties, but the results convincingly show that major new legal initiatives are not needed. Instead, the Principles illustrate there must be proper enforcement of existing law.

... As an advocacy tool, O'Flaherty noted that the Principles are having far more success than anticipated. ... In response to these attempts at promoting the application of the Principles, some governments have endorsed or adopted the Principles, referencing them in official statements in United Nations human rights forums and in official government policy statements.

3.5 The circularity reached the Government itself

The circularity of self-authorisation, in the absence of any treaty capable of supplying binding authority, had by 2017 been accepted twice over in Australia: first by Parliament in 2013, when it legislated on the strength of AHRC advice grounded in the 2007 Principles, and then by the Government again in 2017 at the launch of the Yogyakarta Principles 'update' Plus 10.

An Australian diplomat from Australia's Geneva Mission gave closing remarks at the 2017 launch citing Australia's 2013 SDA amendment as evidence of Australia's alignment with the Yogyakarta Principles. Australia had funded the meeting that produced this update, CHF 48,959 confirmed by Foreign Affairs FOI release LEX8443, together with the Arcus Foundation and the City of Geneva.

The former Australian Human Rights Commissioner was named as one of eight members of the Drafting Committee for that update.

3.6 AF4WR's submission

Taken together, these findings show that Australia's grounding of gender in the Sex Discrimination Act does not rest on any binding source of international law. It rests on a private manifesto whose authority was supplied by its own drafters, advanced through AHRC that had stepped outside its own statutory mandate to promote it and ultimately validated by a government that part funded the manifesto's 2017 update and referred to the 2013 SDA amendment as proof of its domestic implementation.

Where AAWAA's communication documents what this process has cost women in practice, this section documents how the process itself was built, and why the CSW cannot rely on Australia's own account of its compliance with the Convention on the Elimination of Discrimination Against Women (CEDAW).

3.7 A more radical amendment than the AHRC itself once proposed

The 2013 amendment did not merely add gender identity as a ground. It repealed the Sex Discrimination Act's statutory definitions of man and woman outright, a course more radical than HREOC itself had proposed seventeen years earlier in 1996. In his submission No. 156, Vol 7, HREOC acknowledged that transgender discrimination does not fit easily within the existing definition of sex discrimination in the Act, and that a pre-operative transgender person could not be considered as satisfying the definition of sex in section 5 of the SDA without legislation to recognise their gender identity. Its recommendation was not to remove or reinterpret the Act's sex definitions, but for new, separate national legislation incorporating a sensitive definition of who is to be covered in a prohibition of discrimination on the ground of transgender identity.

A decade later, under the directorship of the former Human Rights Commissioner, the International Service for Human Rights co-convened the private project that produced a different answer to the same question. Principle 3 of the Yogyakarta Principles asserted states shall:

take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all state-issued identity papers which indicate a person's gender/sex, including birth certificates, passports, electoral records and other documents, reflect the person's profound self-defined gender identity.

Where HREOC's own 1996 position had proposed a sensitive, case-specific definition while leaving the Act's sex categories intact, Principle 3 answers the same question with self-identification alone, with no definition or threshold at all. The 2013 SDA amendment adopted that later model, repealing the sex definitions HREOC's own 1996 submission had left untouched.

This was more radical than the practice in nine comparable jurisdictions AF4WR has reviewed: the United Kingdom, Canada, Ireland, New Zealand, South Africa, Sweden, Finland, New York State, and even Malta, known for its expansive self-identification laws, none of which removed their sex definitions when extending protection on gender identity grounds. The consequence reached the Full Federal Court in *Giggie for Girls Pty Ltd v Tickle*: with no biological definition left in the statute to anchor an alternative reading, a person's legal sex for the purposes of Australia's primary CEDAW implementing statute is now whatever their identity is asserted to be.

4. RESTORING SEX-BASED ANALYSIS WITHIN AUSTRALIA'S GENDER EQUALITY FRAMEWORK

AF4WR's central submission is that Australia's gender equality architecture has lost the capacity to analyse, measure, and protect women as a sex class, and that this loss traces directly to the process set out in Section 3. This is a submission that sex and gender identity are distinct attributes, that the ability of the CSW and the CEDAW to have impact depends on sex remaining a legally operative category in its own right, and that Australia's framework must revert to recognise sex-based legal definitions.

The practical cost of that loss is already documented in AAWAA's communications: sex marker data corrupted by self-identification with no equivalent replacement measure, and current regulatory reviews, the Nursing and Midwifery Board's proposed guidelines and the National Construction Code, that would remove the last remaining definitions of biological sex from clinical and built environment regulation, following the same path as the 2013 amendment. Each of these is a downstream consequence of the same institutional choice: displacing a legal category of sex rather than adding a separate, clearly bounded category of gender identity alongside it.

This engages CEDAW Article 4, which protects special measures for women as a sex class, General Recommendation No. 9, on the necessity of reliable sex disaggregated data, and General Recommendation No. 28, which confirms that the definition of discrimination against women under Article 1 is anchored in sex. AF4WR submits that a gender equality framework cannot deliver substantive equality for women if it no longer has a stable, legally defined sex category through which to identify, measure, and remedy discrimination against them.

5. CONSOLIDATED RECOMMENDATIONS

AF4WR affirms all eight recommendations of AAWAA's 22 July 2026 communication, and asks the Commission on the Status of Women to additionally:

1. Track the pattern documented in this submission as part of its ongoing monitoring of the Beijing Platform for Action's critical areas of concern H and I, regardless of which annual

priority theme is current, and have regard to it in preparing for CSW71, given the bearing that reliable sex based legal categories have on achieving the 2030 Agenda.

2. Have regard to whether comparable reliance on the Yogyakarta Principles' own characterisation of their legal status may exist in other domestic frameworks.
3. Have regard to this submission, together with Section D of AAWAA's 22 July 2026 communication, when it takes up the equality and empowerment of older women as a focus area, as ECOSOC has invited it to do.
4. Press Australia to direct the AHRC to publish a full account of its institutional and funding relationships with the Asia Pacific Forum and the Yogyakarta Principles network, and to produce a CEDAW compatibility analysis of sex and gender identity as protected attributes in the Sex Discrimination Act.
5. Press Australia to restore statutory definitions of sex to the Sex Discrimination Act, so that sex-based analysis, and the single sex services, spaces and data collection that depend on it, again have an operative legal anchor distinct from gender identity.
6. Press Australia to ensure current regulatory reviews, including the Nursing and Midwifery Board's midwifery guidelines and the National Construction Code, retain an operative definition of biological sex.
7. Draw this submission, together with AAWAA's communications, to the attention of the CEDAW Committee and the Special Rapporteur on violence against women and girls, given their direct bearing on Australia's CEDAW reporting obligations and on matters already before those mechanisms.

6. CONCLUSION

AF4WR thanks the Commission on the Status of Women for its continued attention to the situation of women and girls in Australia, and asks that this communication, and AAWAA's communications, be read as documenting a single pattern for the CSW's own tracking purposes, consistent with its mandate under the Beijing Platform for Action. AF4WR would welcome the opportunity to provide further primary source material to the CSW on any matter raised in this submission as we have all references.

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