X. A "Fair Go" in the Lucky Country? Gender Equality and The Australian case

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In the spirit of respect, the authors acknowledge the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and future and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

INTRODUCTION

It is easy to assume that Australia is making great strides in meeting its international commitments to gender equality. The Global Gap Index ranked Australia 36 out of 145 countries (World Economic Forum, 2015). And within the Asia Pacific region, Australia ranks 3rd (out of 24 countries) in closing 73% of the gender gap in economic participation and opportunity, educational attainment, health and political participation, although in varying degrees for each category, (World Economic Forum, 2015, pp. 15-26). Such rankings fuel the belief that Australia is a world leader in achieving gender equality (Inglehart & Norris, 2003; Scott, 2008; Plibersek, 2008). However, whilst Australia is discursively constructed as a "fair" and "lucky" country, we find that Australian egalitarianism is mediated by race, ethnicity, postcode, migration status, sexual orientation, gender identity, and whether a person lives with a disability, among other factors.

In addition, although Australia was an early adopter of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), gender equality is a contested space occupied by differing definitions and varying levels of commitment to its adoption. This contestation, we argue, is because the pursuit of gender equality has been and remains dependent on the government of the day and their priorities; support for governance mechanisms including the presence of feminists or "femocrats" within women's policy units; and the mobilization of vocal and visible non-government actors. As a result, gender equality in Australia is neither evenly distributed throughout the population, nor is it a story of incremental gains.

The definition of gender equality, as articulated in this book, embodies the three principles of equality enshrined in CEDAW, namely non-discrimination, state obligations and substantive equality. The first two principles reflect formal equality. The third refers to lived experience of access to rights. In this chapter we argue that, in Australia, there is a tension in the translation of formal equality into substantive equality. There are significant regional variations causing a disjointed uptake of laws, policies and programs. For instance, accessing abortion remains unlawful (with variations in when it is performed) in most states, but is decriminalized in the states of South Australia, Victoria and the Australian Capital Territory (Costa & Douglas, 2015). This is in part due to the federated system of governance dividing legislative powers between Federal (also called Commonwealth), State and Territory governments. The Federal Government legislates on matters of national interest (such as trade, foreign affairs, defence, immigration, taxation, marriage and divorce), while a State's legislative powers extend over sectors like health, education, policing, infrastructure and so forth.

Another layer of complexity in the regional variations can be attributed to the ruling

political party, which could vary based on the Federal and State levels. At the time of writing this chapter, the more conservative Coalition (comprising the Liberal Party of Australia, National Party of Australia, Liberal National Party and Country Liberal Party) was returned to power during the 2016 Federal election. In the States of Victoria, Queensland, South Australia and the Australian Capital Territory, the more progressive Australian Labor Party (ALP) is in power. These challenges and their impacts on the gender equality agenda are highlighted in the Concluding Observations of the CEDAW Committee's on Australia's Combined 6th and 7th CEDAW report (CEDAW, 2010).

As in the rest of the world, "women" are not a homogenous group. Aboriginal and Torres Strait Islander women are 35 times more likely to be hospitalised as a result of intimate partner violence as compared with non-Aboriginal and Torres Strait Islander women (UPRA, 2015, p. 2). Women born overseas were more likely to be unemployed, compared with women born in Australia; unemployment rates for Aboriginal and Torres Strait Islander women stood at 14.5%; and rates of disability for Aboriginal and Torres Strait Islander people was just under 51% for both male and female Aboriginal and Torres Strait Islanders (ABS, 2016). Women with disabilities are more likely to live in poverty, less likely to be accessing sexual and reproductive health rights and more likely to be affected by the lack of affordable housing (UPRA, 2015). Australia's Human Rights Commissioner Gillian Trigg (2013b) underscores that rather than any single attribute it is a combination of race, gender, migration status and disability that results in multiple and intersecting forms of discrimination faced by some Australian women.

Against such a sobering reality, this chapter will discuss Australia's progress towards achieving gender equality. A brief recounting of Australia's engagement with CEDAW is followed by a critical review of a few significant legal and policy frameworks and formal institutional mechanisms established to advance gender equality. We then focus on the unique challenges of intersectional inequality faced by Aboriginal and Torres Strait Islander women and conclude with a summary of where Australia stands in terms of CEDAW's definition of gender equality and what is required to achieve substantive equality.

AUSTRALIA'S ENGAGEMENT WITH CEDAW

Australia's engagement with CEDAW is founded on a long history of the women's movement dating back to 1827 when female convicts at the Parramatta Female Factory rioted over conditions and food deprivation. The Victorian Women's Suffrage Society was founded in 1884 and in March 1895 South Australia became the first state to grant women the right to vote and to stand for elections. Eight years later in 1902, the Commonwealth Franchise Act granted women the right to vote and stand for election for the Australian parliament on the same basis as men. However, it would take sixty years for Aboriginal and Torres Strait Islander peoples to access the same rights (AEC, 2006). It took some forty years before the first woman, Dame Enid Lyons, was elected to House of Representatives. The Australian Labor Party's Dorothy Tangney became the first female member of the Senate and 108 years later, Julia Gillard from 2010-2013, became the first female Prime Minister (Australian Women's History Forum, n.d.). It took until 2016 for the first Aboriginal woman, Linda Burney from the ALP, to be elected to the House of Representatives.

The decade prior to the signing of CEDAW in 1983 was characterised by significant shifts in social, economic and political rights for women and other groups such as working people, single mothers, Aboriginal and Torres Strait Islander peoples, lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) communities. In 1969, the Arbitration Commission

committed to incremental increases in women's wages, with the intention that pay parity would be achieved in 1972 (Australian Women's History Forum, n.d.). At the time of writing this chapter, Australian women are still waiting for this to be realised with the current gender wage gap unmoving at 17.9% (WGEA, 2016, para. 1). The appointment of Australia's first advisor of women's affairs, Elizabeth Reid AO, by the former Prime Minister Gough Whitlam in 1973, and later, "femocrats", who joined the Australian Public Service in the 1970s, played a pivotal role in the advancement of the political, economic and social status of women. Femocrats, i.e. feminists who joined women's policy units, were part of a strategy, devised by a visible and active women's movement, to achieve social justice through the implementation of progressive social and economic policy (Sharp & Broomhill, 2013). Under the ALP, in 1983, femocrats were instrumental in initiating, the world's first Women's Budget Statement which systematically analysed the different flow-on effects for men and women of the federal budget and in doing so consolidated Australia's position as a women's rights leader on the global stage during this period (Sharp & Broomhill, 2012).

However, in Australia international treaties are not self-executing – that is, formal acceptance does not mean that treaty provisions become part of domestic law. Nevertheless, because of the strong presence of femocrats in the public machinery and the influence of non-state actors such as women's and union movements, women's rights were codified in Australia's law. Starting with the enactment of the Sex Discrimination Act 1984, significant legislations since signing the CEDAW include Fair Work Act 2009, the Paid Parental Leave Act 2010 and Workplace Gender Equality Act 2012. In addition, the National Plan to Reduce Violence against Women and their Children 2010-2022 (DSS, n.d.) is a significant initiative, in keeping with CEDAW commitments, to address the endemic levels of violence against women in Australia.

It is noteworthy that Australia committed to CEDAW with two reservations – one relating to paid parental leave and the second to the employment of women in combat/combat-related positions in the defence force. It is unclear why Australia is yet to revoke these reservations given that the Paid Parental Leave Act 2010 provides eighteen weeks of paid parental leave and in 2011 the Federal Government announced the removal of gender restrictions from Australian Defence Force combat roles with implementation scheduled for 2016 (Thompson, 2011; Department of Defence, n.d.). Recent federal developments in ensuring accountability to human rights (including women's rights) include the Human Rights (Parliamentary Scrutiny) Act 2011 and Australia's third National Human Rights Action Plan (released in 2012). The Human Rights (Parliamentary Scrutiny) Act 2011 ensures that any proposed laws comply with Australia's human rights obligations with respect to the seven main treaties to which Australia is a signatory (Triggs, 2013a). The third National Human Rights Action Plan outlines a number of measures to improve the protection and promotion of human rights, including women's rights (Broderick, 2014).

A CRITICAL REVIEW OF KEY LEGISLATIVE / POLICY FRAMEWORKS

While Australia does not have a Bill of Rights to guarantee protection of human rights, some protections are contained in Federal and State legislations. In this section, we critically analyse the extent to which some legislations have advanced gender equality in Australia.

Sex Discrimination Act (SDA) 1984

The SDA, making discrimination based on sex unlawful, was one of the first pieces of

legislations passed after Australia signed CEDAW. The Act does not provide a definition of gender equality, but its provisions are aligned with principles of non-discrimination articulated in CEDAW. The Act prohibits discrimination on the basis of sex, marital status, pregnancy or potential pregnancy, breastfeeding, and family responsibilities in public life. It also makes it unlawful to sexually harass another person. The most recent amendment to the Act, The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 makes it unlawful to discriminate against a person on the basis of sexual orientation, gender identity and intersex status.

Cusack (2009) succinctly summarises key limitations of the SDA beginning with its focus on public life and limited grounds for discrimination, as opposed to CEDAW's call for prohibiting all forms discrimination in all spheres of life. Pointing to the 2008 report of the Senate Committee on the Effectiveness of the Sex Discrimination Act, Cusack (2009) further highlights SDA's limitations in addressing multiple and intersecting forms of discrimination on grounds that women are treated as a homogenous group. For example, the lack of an overarching framework that consolidates all of the anti-discrimination laws (Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992 and Age Discrimination Act 2004), results in a fragmented scheme which is difficult to utilise. The Gillard Government drafted the Human Rights and Anti-Discrimination Bill 2012 which among other reforms sought to consolidate all the anti-discrimination laws, along the lines of the United Kingdom's Equality Act 2010 which combines previous sex, race and disability anti-discrimination laws under a single Act. However, in 2013 a decision was made not to proceed with this bill on grounds of the need for "appropriate balance between the right to freedom of speech and the right to be protected from discrimination" (as cited in Rout, 2013), business groups' displeasure over the ALP's proposal to create new grounds for discrimination (e.g. political opinion, industrial activity, and nationality) and shifting the onus away from the complainant. States like Victoria, New South Wales and Queensland also raised concerns that the new law could potentially conflict with State anti-discrimination laws.

The mechanism of filing individual complaints, also restricts the ability of SDA to addresses systemic discrimination for two reasons. First "individual relief is limited in its ability to prevent future acts of discrimination before they occur…[and] is also dependent on a woman asserting her rights, which may often prove difficult in circumstances where there are obstacles that impede access to justice" (Cusack, 2009, p. 88). These obstacles include resources to pursue legal action and access adequate legal representation. Thus supporting women's organisations such as Working Women's Centres, Women and Community Legal Services, Legal Aid Services is vital in order to ensure access to justice. Unfortunately, this access has received a significant setback in the wake of the 2014 budget, where the Coalition has cut $6 million from community legal centres, $15 million from legal aid commissions and $43 million from advocacy services (Doran, 2016, para. 3).

Fair Work Act (2009), Paid Parental Leave Act (2010) and Workplace Gender Equality Act (2012)

Australia has significant legal provisions in the sphere of labour market, such as the Fair Work Act (FW Act) 2009, Paid Parental Leave (PPL) 2010 and Workplace Gender Equality Act (WGE Act) 2012, all of which appear to conform to the CEDAW definition of gender equality. Nevertheless, a critical evaluation of these legal provisions reveals several constraints related to applying the CEDAW definition of gender equality in practice. The

latest census data reveals that 65.1% women and 78.3% men (aged 20-74) made up the Australian labour force (ABS, 2016). However, for every dollar that men earned in the labour market, women earned only 87 cents (ABS, 2015) even with similar or higher educational background (for instance, 57% of higher education students in 2011 were women, AHRC, 2014, p. 15). In addition, the labour market is highly segregated into female and male dominated occupations. For instance, occupations in the health care and social assistance industries have 79% female employees whereas the construction industry has 88% male employees (Huppatz & Goodwin, 2013, p. 292). Within the sex segregated labour market, employed Australian women face discrimination through suboptimal working conditions such as uncertainty about wage rates and pay rises, lack of holiday or leave entitlements, job insecurity, restricted promotional opportunities, limited access to education and training and so on.

Both the FW Act and the WGE Act provide useful illustrations in understanding how CEDAW's definition is adopted with regard to wage discrimination. The FW Act contains mechanisms to intervene in minimum wage determination, equal remuneration and to safeguard minimum safety net of terms and conditions of employment (Charlesworth & Macdonald, 2015). The principle of equality for men and women seems evident in these mechanisms as they seek to protect people in part time and casualised employment (primarily women, for instance 43.8% of employed women worked part time relative to 14.6% of employed men ABS, 2016) through the quest for higher minimum wage, gender equal wage and equal terms and conditions of employment. Nevertheless, enforcement of these regulations and provisions are contingent upon political will and civil society support. For example, the female dominated social and community service (SACS) industry, was the first sector to test FW Act in 2010 with a favourable outcome leading to a pay increase from 19 – 41% (Charlesworth & Macdonald, 2015, p. 433). Cortis and Meagher (2012) note that this case won because of unprecedented support from federal and state governments (the employers) and employee unions. Without the key stakeholder support, the case may not have succeeded (FWA, 2012) which calls into question the equality-enhancing feature of the law if stakeholder support is not guaranteed.

The WGE Act, which evolved from the original Affirmative Action Act 1986 and the Equal Opportunity for Women in the Workplace Act 1999, sets it first principal outcome "to promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace" (WGE Act 2012, p. 5). Compared to previous iterations of the Act, it represents a shift in focus from procedural measures to substantive outcomes (Thornton, 2012) in gender equality, such as requiring employer reporting on gender equality indicators in the workplace. However, these standards are not set by legislation, rather they are determined by the relevant minister in office. Therefore, the onus of reporting is on the employer with no requirement to address discrimination nor is there legal recourse for employees if benchmarks are not met (Abetz & Cash, 2014; WGEA, 2013).

Another significant area of discrimination for Australian women in the labour market is the gender gap in unpaid work and life/work balance. Australian men on average spend twice as long as women on paid work leaving the bulk of unpaid work to women (ABS, 2008). Interestingly, even when couples work similar hours, women end up doing significantly more unpaid domestic work relative to men (Daley et al., 2012, p. 40). The astounding gap is seen in childcare provision, where working mothers spend more time on childcare than non-working father (Miranda, 2011, p. 19). The gendered nature of unpaid work is a structural impediment to achieving equality between men and women. Consequently, time spent in unpaid work has a direct impact on time available for paid work, and given the above statistics, women are forced into false options of part time, flexible and casual work. In 2014-

15, 62.2% women with a child under five worked part time as compared to 7.7% for men (ABS, 2016).

These trends also have detrimental effects on superannuation benefits for men and women. Given the tight linking of superannuation to paid work, men are likely to accumulate higher average superannuation compared to women. In 2013-14, men had a superannuation balance of $321,993, whilst women had a balance of $180,013 in the age group 55-64 (ABS, 2015). Due to the efforts of non-state actors, worker's unions, media and support from general public, the Paid Parental Leave Act came into existence in 2010. Under this Act, the Paid Parental Leave scheme came into force with the stated objective to assist mothers to stay at home with their infants, increase female workforce participation by linking leave payments to employment and recognise caring role of both parents (Baird & Whitehouse, 2012). The PPL pays national minimum wage of approximately $543.78 per week for a period of 18 weeks to new mothers or primary carers if a child is adopted (Pocock et al., 2013). Findings from evaluation reports of the scheme highlight that 99.4% of the recipients were women (ISSR, 2013, p. xvi). When augmented by Dad and Partner Pay scheme (specifically for men), about 36% of fathers chose to use the benefit (ISSR, 2014, p. 11). In other words, there is little take up of parental leave by fathers. And even if they intended to, the options provided are limited.

Gender stereotypes of males as breadwinner and females as care givers are institutionalised in Australian social policy, exacerbating structural inequalities in everyday life. The concept of family wage is one such example. The family wage was calculated based on the minimum income needed to support a wife and three children. The widespread assumption that women are not the primary breadwinner and should be paid less, as they do not have dependents has become institutionalised even though the family wage model does not exist in Australia anymore (Sayer et al., 2009). Recent statistics suggest that only 51.5 % and 41.4% of Aboriginal and Torres Strait Islander men and women, respectively are employed in the labour market (ABS, 2012). Interestingly, while the proportion of Aboriginal and Torres Strait Islander women who worked part-time was similar to that of non-Aboriginal employed women (45%), the proportion of Aboriginal and Torres Strait Islander men who worked part-time (23%) was more compared with non-Aboriginal men (18%) (ABS, 2013a).

Substantive changes that can lead to a genuine adoption of the CEDAW concept of gender equality in Australia requires a shift in the gender division of roles and gender hierarchy of activities, practices and relations. Just as reforms aimed at facilitating women's entry into paid work have gained ground, so too should reforms aimed at encouraging men in care and domestic work. There are useful policy examples from universal welfare policies of Nordic countries which Australia can emulate. For instance, a comparison study of fathers' uptake of paternity and paid leave in Sweden, Finland, Norway, Denmark and Iceland concluded that fathers are more likely to use parental leave options if there is a generous period of leave, universal coverage, substantial compensation, work flexibility and incentives to share/transfer leave (Baird & Whitehouse, 2012; Haas & Rostgaard, 2011). As recommended by the Australian Human Right Commission (AHRC) (2010), Australian families would benefit from twelve months of paid parental leave that can be shared by the parents, a minimum of four weeks paid to fathers and supporting carers, leave paid at the rate of two thirds of income and superannuation on paid leave (p. 4).

National Plan to Reduce Violence Against Women and their Children (2010-2020)

If the pervasiveness of gender-based violence is a key indicator of gender equality, Australia has not yet achieved substantive equality. Whilst some legislative protections exist, men's

violence towards women and children in the home persists with deadly consequences. Australian women are over-represented in intimate partner homicide statistics. Their partners or ex-partners kill one Australia woman each week (AIC, 2013). Domestic and family violence is the greatest preventable cause of death, disability and illness for Australian women aged 15 – 44 years (VicHealth, 2004). According to the National Council to Reduce Violence against Women and their Children, unless appropriate action is taken "three-quarters of a million Australian women will experience and report violence in the period of 2021-22, costing the Australian economy an estimated $15.6 billion" (FaHCSIA, 2009, p. 4). The cost to the nation of violence against Aboriginal and Torres Strait women is estimated to be $2.2 billion by 2021 (NCRVWC and KPMG, 2012). But more importantly, the economic cost does not capture the detrimental impact of violence on lives and communities.

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As a result of profound transformation in public awareness, elected political leaders have made commitments to addressing violence against women. Prior to signing CEDAW, the Family Law Act 1975 (Cth) was introduced. Each state has legislation intended to protect a person from intimate partner violence (Bartels, 2010). Other relevant developments at the Federal level include the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2008); the National Partnership Agreement on Homelessness (2009) and the National Plan to Reduce Violence against Women and their Children (the National Plan). Whilst not legally binding, the National Plan is an unprecedented twelve-year bipartisan strategy to end violence against women in Australia (Dunkley & Phillips, 2015). At the State level, progress was achieved through the Domestic and Family Violence Protection Act 2012 (Qld), Criminal Justice Legislation Amendment Act 2011 (NT), the Special Taskforce on Domestic and Family Violence 2015 (Qld), and the Royal Commission into Family Violence in Victoria (2015).

However, whilst legal and policy infrastructure exists, it has not yet produced equality of outcomes. In the case of family courts, for example, arbitrations typically happen when women and children are at considerable risk of escalating violence and negotiating state-issued court orders (Braaf & Meyering, 2011). Women frequently describe feeling "re-victimised" by having to relive experiences of abuse and defend their competency as parents (Bancroft et al., 2012). Part of the problem is that contested definitions of violence against women appear across policy and legislation in Australia (Campo et al., 2014). Not all legislation describes domestic and family violence as a pattern of masculinist assertion of power and control over women and children. Instead, some state-based laws, such as the Domestic and Family Violence Protection Act 2012 (Qld) refer to the mostly female victims as "applicants", "aggrieved" and "persons applying for an order". Even the National Plan, which enjoys bipartisan support, uses a gender-neutral definition of "acts of violence that occur between people who have, or were, an intimate relationship" (Dunkley & Phillips, 2015). Domestic violence restraining orders, which are state-based, use diverse definitions of domestic and family violence. Gender-neutral legislation places the onus on magistrates to understand the gendered dynamics of violence and impacts of abuse.

In July 2010, the CEDAW Committee requested information within two years on how effectively the National Plan was implemented with a recommendation "to implement specific strategies within the National Plan to address violence against Aboriginal and Torres Straits Islander women including funding culturally-appropriate Indigenous women's legal services in urban, rural and remote areas of Australia" (CEDAW, 2010, p. 8). An egalitarian society requires recognition of Aboriginal and Torres Strait Islander people, their sovereignty and the profound pain caused by colonisation. While family violence is not part of Aboriginal culture, the on-going impacts of European colonization include vulnerability to victimization and perpetration of violence by Aboriginal and Torres Strait Islander peoples (Al-Yaman et al., 2006). Despite bringing unique insights and knowledge, Aboriginal women's voices are

conspicuously absent in domestic and family violence discourse (Smallacombe, 2004). If Aboriginal and Torres Strait Islander women were leading the solution, there would be likely be a focus on healing, restoration of family and community, culturally appropriate courts and services, and restorative justice for perpetrators (Olsen & Lovett, 2016). Aboriginal women use domestic violence refuges differently from non-Aboriginal women (Gordon et al., 2002) and value opportunities to come together with other Aboriginal women (Karahasan, 2014).

The National Plan's efficacy will rely on the presence of vocal and visible non-government actors. In particular, specialist women's services are central to a coordinated, national response to violence against women. Specialist services use feminist principles to comprehensively guide women and children through high-risk situations to long-term recovery from trauma. They include women's refuges, women's court support, women's legal, rape crisis centres and Aboriginal women's services. Many evolved due to demand for gender-specific, empowering and holistic support for women. The history of the women's movement in Australia is instructive in this space. Because women needed safe accommodation when fleeing violence at home, Australia's first women's refuge began in 1974 in Sydney by young women (Power, 1995). Since then, specialist women's organisations have lead prevention and response efforts, advocated for survivors, changed negative public attitudes to women, described barriers to services, supported women and children through complex legal systems, and created behaviour change programs for men who use violence (AWAVA, 2016). In contrast to this feminist approach was the rise of neoliberalism in Australia in since the late 1980s. The austerity cuts to public services is part of the neoliberal agenda with serious implications for women and children. The most recent example of this trend is a $34 million cut to community legal services announced in the May 2016 Federal budget.

The political leadership in Australia is fraught with contradictions. For instance, the political posturing of the need for a cultural shift and to "stop disrespecting women" (Ireland, 2015) by the current Australian Prime Minister Malcolm Turnbull is not substantiated by befitting, consistent action. On International Women's Day in March 2016, domestic and family violence leave provisions for Commonwealth public servants, who work for the Commonwealth Minister for Women Senator Michaela Cash, were stripped. Specified leave entitlements for victims of family violence were said to be an enhancement to workplace entitlements (Towell, 2016). But the removal of these rights is at odds with government rhetoric about addressing the national crisis of violence against women. Even with a national strategy for ending gender-based violence, if structural and non-government support are not jettisoned, women and children will face barriers to escape violent relationships.

INSTITUTIONAL MECHANISMS, POLITICAL PARTICIPATION AND ACCESS TO POLITICAL POWER

The legislative and policy frameworks discussed previously enjoy Federal support through institutional mechanisms such as the Office for Women. Located within the Department of Prime Minister and Cabinet, the Office for Women provides strategic policy advice to the Prime Minister and the Minister for Women. This office works across government agencies to support domestic gender-inclusive policies and programmes as well as international engagements in relation to gender equality issues (such as Commission on the Status of Women and periodic CEDAW reports). The Office for Women also provides monetary support to three issue-based and two sector-based National Women's Alliances, which are peak bodies for civil society and women's organisations, providing policy inputs and reports.

The three issues-based alliances are economic Security4Women (eS4W), Equality Rights Alliance (ERA), Australian Women Against Violence Alliance (AWAVA) and the two sector-based alliances are National Rural Women's Coalition (NRWC) and National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA).

Intergovernmental work on gender issues is supported by the Council of Australian Governments (COAG), whose members include the Prime Minister (as Chair), State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association. The COAG promotes policy reforms that are of national significance, specifically when co-ordinated action is required by Federal and State governments. Two other institutional mechanisms which specifically moderate the legislative and policy frameworks aimed at achieving gender equality are, the Workplace Gender Equality Agency (WGEA) and the Sex Discrimination Commissioner. WGEA, is a statutory agency created by the WGE Act and tasked with ensuring that the private and public sector comply with the provisions of the act. The Sex Discrimination Commissioner is one of seven Commissioners of Australian Human Rights Commission. The Commissioner's statutory responsibilities include, human rights education, resolving discrimination and human rights complaints, ensuring human rights compliance and policy and legislative development.

However, the power of this machinery, particularly the Office of Women and COAG, to push for a transformational gender agenda was significantly diminished over the last decade. Maddison and Partridge (2007) suggest that the women's machinery was the strongest during the Hawke Government (ALP, 1983-1991) due to its location within the Department of Prime Minister and Cabinet. With the backing of a cabinet level minister, this women's portfolio established requirements for gender auditing of cabinet submissions, undertook gender budget analyses and sought the presence of feminists at senior levels the public service (Eisenstein, 1996). Equally important Sawer (2007) argues, that the women's movement saw the women's machinery "as an avenue to promote social justice and the election of governments with a reform agenda" (as cited in Sharp & Broomhill, 2013, p.8)

Sawer and Rimmer (2014) neatly summarise the waxing and waning of the powers of this machinery under the conservative Coalition leadership of John Howard (1996-2007), the Labor governments of Rudd-Gillard and subsequent Coalition governments under Tony Abbott (2013-2015) and now Malcolm Turnbull (2015-onwards). An overall disinclination to discuss women's policy during election campaigns and the decommissioning of key intergovernmental bodies - such as the Ministerial Conference on the Status of Women (1991-2011), COAG's Select Council on Women's Issues (2011-2013) and the Standing Committee on Women's Advisers – indicates a lack of national consensus on progressing a gender agenda (Sawer & Rimmer, 2014). Without the Select Council on Women's Issues, which had oversight over implementation of the National Plan, it is unclear how this nation wide effort will be coordinated. The COAG Advisory Panel on Reducing Violence against Women and their Children, which was set up in 2015 has a restricted remit with no focus on implementation. Its role is to develop a model law framework for Domestic Violence Orders; informing a national information sharing system to support the proposed model law framework; developing national perpetrator accountability standards; and creating a national campaign to change community attitudes to violence.

The weakening of institutional mechanisms is a consequence of deliberate strategies to silence the voices of feminists within the public service and shrink the women's non-government sector. Under the Howard Coalition government, the Public Service Act 1999 required all public servants to be apolitical, actively discouraging the expression of independent political views or critical comments on government policy. Feminism, seen as a political ideology by many, was thus effectively silenced and with it ceased the use of gender analysis tools such as the Women's Budget Statements which were often critical of

government policies. The women's non-government sector was not spared either. The Coalition government of Howard, often withheld and refused funding to women's organisations that engaged in advocacy, thereby curtailing the remit of their activities to service delivery (Sawer & Rimmer, 2014). In fact, in a reversal of sorts, the government provided selective funding to organisations such as the Lone Father's Association, which aligned with the Coalition's conservative views on women at the cost of supporting more progressive women's organisations like the National Council for Single Mothers and their Children (Sawer, 2002). While the Gillard Labor government legislated the Not-For-Profit Sector Freedom to Advocate Act (2013) to prevent future restrictions on the advocacy functions of civil society organisations, the subsequent Coalition's governments closure of the Government's Charities and Non-For-Profit Commission in the name of reducing red tape, makes it "unclear whether the advocacy functions of organisations, in receipt of government funding will continue to be protected" (Sawer & Rimmer, 2014, p.14)

The weakness of institutional mechanisms is exacerbated by the glacial pace of change in the proportion of female elected parliamentarians. For instance, there was a paltry 16% increase in the proportion of female elected parliamentarians in twenty years from 13% in 1993 to 29% in 2014 (McCann & Wilson, 2014). The situation is no better in the most recent 2016 elections, as the winning Coalition government will have only 13 women MPs out a total of 76 in the House of Representatives (Lower House; total seats 150). Because of the 27 women in the opposition party (67 seats, ALP) the overall women's representation in the new parliament now stands at 26.6%, albeit still below the recommended 33% international benchmark (Bongiorno, 2016). For the winning Coalition this represents a 3% drop in women's representation from the 2013 election, and for the opposition a 4% gain since the last election (Bongiorno, 2016). It is hardly surprising that the Inter-Parliamentary Union which ranks 193 countries on the basis of number of women in the lower house, places Australia 56th (Inter-Parliamentary Union, 2016).

In addition to low parliamentary representation, women are more likely to hold parliamentary secretary positions than lead ministries. In 115 years only one woman was appointed as the Governor General, only one elected as Prime Minister and only two have served as Speaker in the House of Representatives (McCann & Wilson, 2014). Under Prime Minister Julia Gillard (ALP 2010-2013) a record nine women held ministerial positions with five of them in the cabinet. There was a dramatic drop to just one woman in cabinet and four women in the outer ministry when the Coalition took control with Tony Abbott as Prime Minister (2013-2015). Prime minister Malcolm Turnbull's cabinet reshuffle in 2015 saw numbers of women in cabinet jump up to six, which included Australia's first female defence minister, Julie Bishop.

The ALP's record with female representation in parliament is attributed to quotas introduced in 1994 ensuring that women would be preselected for 35% of winnable seats at all parliamentary elections by 2002. The commitment to increasing female ALP parliamentarians was reiterated at the 2015 ALP National Conference, where a unanimous resolution was adopted, committing the ALP to having women comprise 50% of Labour parliamentarians by 2025 (Sawer, 2015). The role played by civil society organisations like EMILY's List Australia, established in 1996 by ALP women members, cannot be ignored. With the slogan "When women support women, women win," its sole purpose is to ensure that more progressive ALP women are elected. Since its establishment 164 ALP women Members of Parliament have received financial, political and personal support to win their elections (Arnold & Kovac, 2014). In contrast, the Coalition has not articulated affirmative action policy, leaving it up to local branches to nominate more women candidates (Owens, 2016)

The Aboriginal and Torres Strait Islander peoples' representation in the Australian parliament is abysmal. Only 3 Aboriginal and Torres Strait Islander people have ever been elected and only one of them in the House of Representatives. The 2016 Federal election set a record of sorts with 13 Aboriginal and Torres Strait Islander candidates contesting the elections, eight of whom were women (Liddle, 2016) and for the first time Linda Burney (ALP) an Aboriginal woman was elected to the House of Representatives. Poor representation can be attributed to both the lack of temporary special measures like quotas (for women and Aboriginal and Torres Strait Islander peoples) as well as deeply entrenched sexism and racism. The resistance to temporary special measures like quotas stems from a misconceived notion that such measures go against a merit-based system – the Australian cultural motif of a "fair go" for all Australians. Arguments that a meritocracy assumes as level playing field and does not recognise structural barriers to equality has failed to register on the national psyche.

Such views, Sawer argues, reflect "sexist misrepresentation of women in public life" (2013, p. 106). Nowhere is this more evident than in the comments made against Julia Gillard prior to and during her Prime Ministership. For instance, former Liberal senator, Bill Heffernan openly questioned her ability to lead a country, given that she was "deliberately barren" (cited in Harrison, 2007, para. 1). He is not alone in his view that "one of the great understandings in a community is family and the relationship between mum, dad and a bucket of nappies" (cited in McGuirk, 2007, para. 4). This stereotyping of women as carers worked against Julia Gillard. An unnamed ALP member of parliament, explaining the issue of her leadership challenge against former Prime Minister Kevin Rudd, had this to say: "Change is never pretty. There is always blood on the floor, but having a woman do it – that offends the natural order of things. There is the idea that women should not seize power" (cited in Summers, 2012, para. 9). A female cabinet minister succinctly captures the double standards women leaders face – "You literally cannot win. You are criticised if you dedicate yourself to your career and don't have children. Or if you do have them, you're told you are neglecting your family. Or, when you spend time with them, that you are not doing your job properly" (cited in Summers, 2012, para. 20).

The experience of discrimination at the intersection of race and gender has serious impacts on access to political power. The vitriolic hate mail that Nova Peris (the first Aboriginal and Torres Strait Islander woman to be elected to the Senate) received during her term is a clear illustration of this. A letter received by Senator Peris reads "she needed to be 'put back where you rightfully belong, crawling on all fours out in the deserts of central Australia, pissed out of your mind and scavenging for food'" (cited in Obrien, 2016). When Senator Peris was nominated to contest for the Senate on an ALP ticket, it was perceived as a tokenistic gesture, despite her credentials as a treaty ambassador for the former Aboriginal and Torres Strait Islander Commission and her personal foundation work supporting young women in the Northern Territory's Aboriginal communities. These deeply entrenched racist and sexist constructions of women's supposed roles directly impact the achievement of substantive equality in the political sphere.

The arguments for expanding diverse womens' equal political participation is premised on the notion of greater gender inclusive policies and therefore positive outcomes for women (Schwindt-Bayer, 2005). However, some scholars assert that even a small number of women representatives are able to significantly influence legislative agendas since it is not the quantity but rather quality, i.e., substantive gender equality that matters (Ayata & Tiitiincii, 2008). A case in point is the election of independent candidate Pauline Hanson to the Senate in the 2016 Federal elections. Known for her disparaging comments on Aboriginal and Torres Strait Islander communities, pro-life, same-sex marriage and Islam. She is also supportive of men's rights groups, which specifically seek the dismantling of family courts in favour of

peer-based tribunals in joint-custody decisions (Borrello, 2016). The slim majority with which the Coalition has returned to power would necessitate negotiations with independents such as Hanson, which at best would stall or at worst reverse the progress towards gender (and other types of) equality.

To achieve substantive equality, Australia needs a significant cultural shift that affords greater value to representation from Aboriginal and Torres Strait Islander women, women with disabilities, women from culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender, intersex and queer peoples. Seismic change is needed in how women leaders and women in general are perceived. Family-friendly parliaments can serve as an incentive for women to consider entering politics. The recent changes to parliament rules, following an incident where a sitting MP was asked to express more breast milk so that it would not interfere with her parliamentary duties (Ireland, 2016), are welcome reforms that point to a greater acknowledgement of women's diverse roles. Campaigns like Our Watch, which challenge common sexist beliefs are a step in the right direction and need to infiltrate mainstream media and attitudes. The broad-based support for quotas from both conservative and progressive women politicians suggests that such mechanisms are essential is women are the access political power. The challenge to address Aboriginal and Torres Strait Islander representation requires not just a system of reserved seats but reforms to the electoral system along the lines of what was established in New Zealand. Since 1993, laws in New Zealand have changed to proportionate representation. That is, the number of Maori voters on the electoral roll determines the number of Maori seats.

ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN

The chapter thus far has laid out, legal/policy frameworks and institutional mechanisms available in Australia and their remit in achieving substantive gender equality. An important part of the discussion, which needs special attention, is related to the concerns of Aboriginal and Torres Strait Islander peoples, especially women. Whilst other women (refugee and asylum seekers, culturally and linguistically diverse women and women with disabilities) require similar focus, it is beyond the scope of this chapter to tackle them in detail. The discrimination faced by Aboriginal and Torres Strait Islander peoples is a function of violent colonisation by the British, leaving them enslaved, disposed of sacred lands and separated from families and communities (Buxton-Namisnyk, 2014). This discrimination has continued from 1788, to the Northern Territory Emergency Response (also known as NT Intervention) in 2007 and the most recent abhorrent treatment of Aboriginal and Torres Strait Islanders children in juvenile detention which made the news headlines in 2016. During the NT Intervention, for example, the Coalition led government suspended the Race Discrimination Act in order to wield its power to enforce particular bans on a group of people (73 Aboriginal communities) based solely on race (Coghlan, 2012, p. 123). The ongoing disempowerment of Aboriginal and Torres Strait Islander peoples is linked to entrenched disadvantages – unemployment, poverty, welfare dependency, mental and physical health concerns and powerlessness (Coram, 2008; Cripps, 2010).

Conspicuous by their absence in all the discussions surrounding race discrimination in Australia are Aboriginal and Torres Strait Islander women. The legal, policy and institutional frameworks operate in silos prioritising particular dimensions of identity– race, gender, disability, sexuality and religion. Lost in the gaps are those with multiple and intersecting identities and their specific experiences of discrimination. A case in point is the

intersectional experience of discrimination faced by Aboriginal and Torres Strait Islander women in the judicial system. Over the last decade aboriginal women's incarceration rates have shown a sharp increase. Approximately 2% of the Australian female population identify as being Aboriginal or Torres Strait Islander but they comprise one third of the female prison population (ABS, 2013b). The entrenched racist stereotype of all Aboriginal and Torres Strait Islander as violent, has resulted in women being placed in maximum security prisons for crimes such as non-payment of fines, shop-lifting, and welfare fraud, most of which do no warrant imprisonment (Baldry, 2013). Many Aboriginal and Torres Strait Islander women in prison are themselves victims of physical and sexual abuse (Baldry & Sotiri, 2009).

During her term as Rapporteur of the United Nations Permanent Forum on Indigenous Issues, Professor Megan Davis highlighted significant issues faced by Aboriginal and Torres Strait Islander women in accessing justice. Of significance are, the lack of knowledge about civics, law, government services and programs, insufficient services such as legal aid to deal with civil matters and inadequate access to legal representation. These individual and institutional level issues are compounded by cultural barriers such as accusations of "disloyalty" when Aboriginal and Torres Strait Islander women speak about the violence they face at the hands of Aboriginal and Torres Strait Islander men (Davis, 2012, p.2). The lack of economic independence results in many Aboriginal and Torres Strait Islander women being reluctant to report crimes committed against them for fear of becoming destitute. Commenting on women's vulnerability, Professor Davis notes the "impunity of perpetrators on the basis of this "breadwinner" argument — that perpetrators should avoid punishment because they are the primary income earner or subsistence provider in a family or community — an argument that is embedded in both formal and informal justice mechanisms" (Davis, 2012, p.2).

The Rosie Anne Fulton case of 2012 is an example of how the pursuit of intersectional equality based on gender, race and disability is being derailed. This case involves the holding of a young Aboriginal woman in a Northern Territory prison without trial or conviction for 22 months after being charged with a minor driving offence. She was found unfit to plea, despite having foetal alcohol syndrome, a background of life-threatening neglect, and the mental development of a child. Judicial practices that deny a fair trial based on disability undermine women's access to justice, liberty, security, equality and non-discrimination (Minkowitz, 2014). The Aboriginal Disability Justice Campaign suggests that at least thirty-eight Aboriginal and Torres Strait Islander people with cognitive impairment are in indefinite detention in the Northern Territory alone (Aboriginal Disability Justice Campaign, 2016). The case highlights that the current legal, institutional and policy frameworks in Australia are ill equipped to address inequality in its intersectional dimensions and the need for therapeutic alternatives by Aboriginal and Torres Strait Islander Women.

CONCLUSION

In this chapter, we have considered the extent to which the CEDAW definition of gender equality exists in Australian through an examination of legal, policy and institutional frameworks using illustrations from domains of social life, specifically, labor force participation, protection from gendered violence and political participation. We find that gender equality has remained a formal concept with limited impact on the gendering that

occurs between women and men in everyday interactions. Our analysis, particularly drawing on the experience of Aboriginal and Torres Strait Islander women highlights the woeful inadequacy of mechanisms to address multiple and intersecting forms of discrimination faced by Australian women. We argue that the pursuit of gender equality is dependent on the government of the day and its priorities; the presence of "femocrats" within women's policy units; and vocal and visible non-government actors.

We contend that equity goals will not have affect unless the mechanisms to achieve these goals are properly resourced, inclusive, meaningful, long-term and community-lead. For instance, to counter the disproportionate burden of paid and unpaid work on women, structural and cultural shifts in work and care arrangements are required, specifically those that encourage men in unpaid roles and diminish gender based wage gap across industries and occupations. To increase protection from gendered violence, instead of austerity cuts, increased funding of specialist women's organisations that advocate and undertake prevention and response efforts is required. We conclude that achievement of gender equality is intertwined with how as a nation Australia addresses the negative social attitudes towards different classes, disabilities, cultures and sexualities. And without a properly funded ecosystem, Australia will move further from, rather closer to, the attainment of gender equality.