Fighting Domestic Violence - Australia

2. Introduction: framework guiding domestic violence law

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# 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes, there are both criminal and civil legal remedies for domestic violence victims under both federal and state laws.

# 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

No. Australia does not have a federal bill of rights. Instead, protections for human rights may be found in the Constitution of Australia and in legislation passed by the Parliament of Australia or state or territory parliaments. Historically, Australia does not identify human rights within its federal laws. However, human rights are legislated for in two of six states and in one of two territories.

**Victoria: Charter of Human Rights and Responsibilities Act 2006 (Victoria) (“Charter”)**

The Charter protects 20 civil and political rights as well as cultural rights that must be considered by public authorities. A key human right is the right to equality, which is upheld by the Equal Opportunity Act 2010 (Victoria).

The Parliament of Victoria passed the Charter in 2006, affirming the importance of building respect for human rights across the community in Victoria. The Charter enshrines civil, political and cultural rights into Victorian law. Any limitation on these rights must be reasonable, necessary, justified and proportionate.

The rights set out in the Charter reflect fundamental values of freedom, equality, respect and dignity. These values are important for the well-being of Victorians and their ability to live a dignified life where they are treated fairly and they can make genuine choices. Victorian public authorities are accountable in how they consider the Charter in their decision-making and the work they do.

The Charter does not identify domestic violence as a human right.

**Queensland: Human Rights Act 2019 (Queensland)**

Queensland’s Human Rights Act 2019 (Queensland) protects 23 rights, including civil and political rights, access to education and health services, cultural rights and more.

**Australian Capital Territory: Human Rights Act 2004 (Australian Capital Territory)**

The Human Rights Act 2004 (Australian Capital Territory) promotes civil and political rights, cultural rights and the right to education.

# 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

No.

# 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

N/A

# 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

It does not appear that it is envisioned that Australia will sign the Istanbul Convention, given that it is a convention of the Council of Europe.

# 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

Yes, Australia ratified the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) on 8 July 1983, subject to the following reservations:

**Maternity leave:** The government of Australia states that maternity leave with pay is provided in respect of most women employed by the commonwealth government and the governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the state of New South Wales and elsewhere to women employed under federal and some state industrial awards. Social security benefits subject to income tests are available to women who are sole parents. The government of Australia advises that it is not at present in a position to take the measures required by Article 11 (2) to introduce maternity leave with pay or with comparable social benefits throughout Australia. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the commonwealth and the constituent states. The implementation of the treaty throughout Australia will be effected by the commonwealth state and territory authorities with regard to their respective constitutional powers and arrangements concerning their exercise.

**Defense force policy:** The government of Australia advises that it does not accept the application of the CEDAW insofar as it would require the alteration of defense force policy, which excludes women from combat duties. However, this reservation was withdrawn on 14 December 2018.

In 2009, Australia signed the Optional Protocol to the CEDAW (“**Optional Protocol**”). The Optional Protocol allows individuals to communicate with the CEDAW Committee about a violation of rights protected under the CEDAW. The Optional Protocol also enables the CEDAW Committee to investigate claims of serious or systematic violations of the CEDAW through an inquiry. The CEDAW Committee monitors the progress made by the countries, which have ratified or acceded to the convention, in implementing the CEDAW.

Australia has developed many mechanisms for implementing the rights enshrined within the CEDAW. The Sex Discrimination Act 1984 (commonwealth) is one of the most important mechanisms.

The Sex Discrimination Act 1984 (commonwealth) is federal legislation that prohibits sex discrimination. The act was passed in 1984 and it gives effect to many of the obligations under the CEDAW. All states and territories also have anti-discrimination laws that prohibit sex discrimination. These include the following:

South Australia: Equal Opportunity Act 1984

New South Wales: Anti-Discrimination Act 1977

Victoria: Equal Opportunity Act 1995

Western Australia: Equal Opportunity Act 1984

Queensland: Anti-Discrimination Act 1991

Australian Capital Territory: Discrimination Act 1991

Northern Territory: Anti-Discrimination Act 1992

Tasmania: Sex Discrimination Act 1994

# 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

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