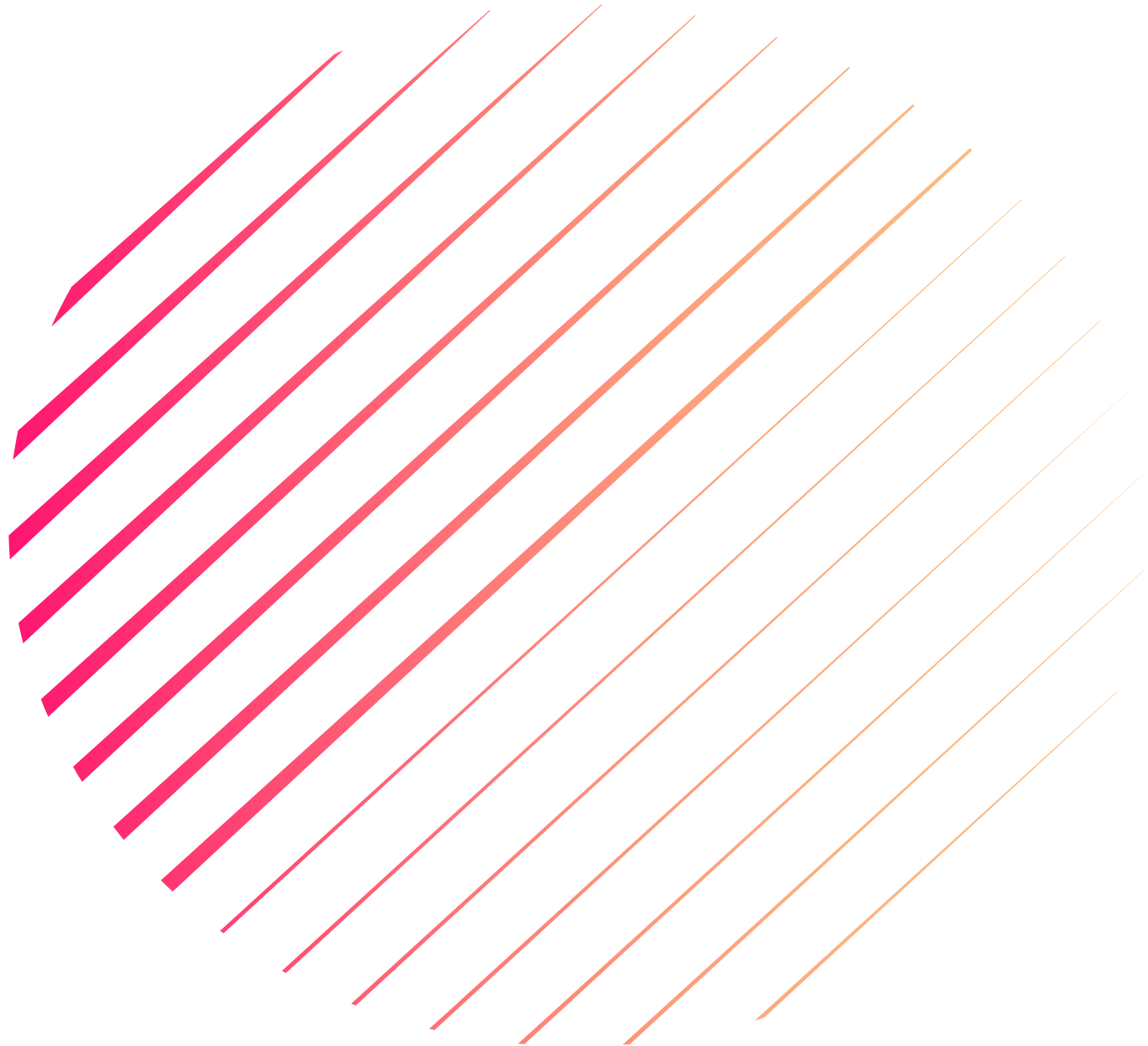


# Gender Responsive Legislation: What Will it take? A Roundtable Discussion



Wednesday  
23 February 2022



***Contents***

Gender Responsive Legislation: What Will it take? A Roundtable Discussion..... 1

Introduction..... 3

Problems and Challenges ..... 3

I Situating the Round Table ..... 3

II What are the Problems? Context, case studies and individual experiences ..... 5

III Solutions and Proposals..... 8

Strategies ..... 8

Proposal for a National Gender Equality Act..... 9

## Introduction

*On 23 February 2022, a group of gender equality specialists came together to discuss how the law could be more effective in advancing women's rights in Australia. This inter-disciplinary network comprised of specialists with a diverse range of expertise, including taxation, international law, criminal law, economics, policy and media engagement. Experts met at the Faculty of Law at the University Technology Sydney for a one-day roundtable discussion.*

*The discussion aimed to engage in a form of 'collective sense-making' in response to a simple question: if we know what it takes to achieve gender equality, why does Australia remain such a gender unequal nation? We sought to concretely identify the main problems and challenges of feminist law making in Australia, as well as to flesh out the broad solutions and our concrete proposals in response to these problems. The result of the discussions is an academic and policy framework designed to help broaden the debate around feminist law making and to outline the work that needs to be done in Australia. This report contains a summary of the network's roundtable discussion and its key conclusions. It concludes with a proposal that seeks to add to and stimulate debate among existing feminist and women's rights circles.*

## Problems and Challenges

### I Situating the Roundtable

The roundtable discussion was framed by four overarching current-day issues:

1. The first issue highlighted was the “**struggle with sameness.**” That is, a notable body of literature on gender responsive legislation and on laws to advance gender equality centre around the same set of gendered problems. These limitations of a narrow approach to ‘what matters for women’ is exacerbated by restricted, and at times competing resources among a number of different actors. This includes among civil society organisations and media outlets that necessarily have to, or choose to, focus their attention on a select set of gendered topics. The government of the day may or may not be willing to respond to particular gendered concerns and the limited nature of the debate may unintentional facilitate the government being selective over which issues get aired.

What has emerged is a tendency to reproduce the same solutions in terms of how we advance women's rights via the law. The existing scholarship is replete with examples that focus on such issues as gender-based violence, parental leave, childcare funding schemes and workplace inequality. From these issues, we have seen the emergence of particular solutions to advance gender equality. Arguably, the often-repeated nature of these solutions begs a dual question: “**Are these the answers and if so, why are they not working to advance gender equality in Australia?**”

2. The second issue, and the one that opened the roundtable, was “**what is the role of law in facilitating the achievement of gender equality?**” It is evident that women and other groups marginalized on the basis of gender-based harms have some immediate needs of the law. Safety and access to justice are two obvious examples. Yet, as the network acknowledged “[we] can’t always leap to law.” Thus, beyond the more ‘immediate’ sense of law’s role in advancing safety and security, what is the role of law in helping achieving gender equality and for a greater diversity of Australian women?
3. The third issue discussed was, if law does have a role in helping women, then “**is it actually possible to write laws specifically for women?**” If so, why do Australian legislators shy away from this possibility of gender-responsive laws *specifically for women*? The network contrasted Australia with other nations around the world where women-specific laws can be more readily identified, such as laws that are solely focused on ‘domestic violence against women’. Notably, what may be considered solutions in some countries, such as gender equality quotas for parliament, are too often dismissed in an Australian context. Why is it assumed that gender-based laws are not considered appropriate by some for the Australian legal system?

---

*“Why do Australian legislators appear to shy away from the possibility of enacting gender-based laws specifically for women?”*

---

4. Today’s definitions of gender equality are starkly different from the past and a binary understanding of gender equality is outdated and non-representative. That is, “**who are we talking about when we talk about ‘women?’**” The network noted the importance of better incorporating queer and non-binary perspectives into gender equality agendas.

Moreover, this discussion led to a further conversation about the complex and complicated nature of addressing intersectional inequality in law. The network noted that while law and law-makers seek neat and easy solutions, the reality is that for law to better embrace a diversity of identities, law making will necessarily need to be ‘messy’ and complex and that we needed to find comfort with this.

## **II What are the Problems? Context, case studies and individual experiences**

The roundtable continued with attempts to identify the key problems of feminist law making. The group identified a wide array of problems. The key problems – which have been thematically grouped – include:

---

- **We face challenges when assessing whether legislation is gender responsive** - It is often difficult to identify what will be the impact or effect of legislation including legislation that is seemingly gender-responsive. As a member of the network noted - *“We don’t have a causal nexus where we can show a bright shiny line where legislation has done x or y. To track some of the positive or negative consequences. The problem is - we don’t actually know the impact of legislation which is labelled as gender responsive or even the impact of ‘gender neutral’ legislation.”*
- **We need more gender-disaggregated data, especially when data collecting agencies are absent** - Increasingly, there is a lack of funding for data collection (e.g. there has been an evident reduction in funding for an already under-funded Australian Bureau of Statistics which has implications for the accessibility and availability of gender-disaggregated data). Priorities and methods have changed when it comes to data collection (e.g. the August 2021 Census did not include a question to identify trans or non-binary people so the latest Census data cannot be meaningfully used when thinking about what issues affect different groups). The network noted that government bodies are increasingly turning to academics to obtain and provide relevant data, even though data collection is the responsibility of government. Detailed data and research reports are released by such government bodies too rarely.
- **What is the problem and who decides this?** The network noted that “all legislation is intended to respond to a particular regulatory problem. In order to do this, it is necessary to determine what is the problem in the first place.” Yet there is often disagreement and uncertainty about what are the core problems affecting women. Moreover, how the problem is defined depends too often on who sits at the ‘debate table’. For instance, coastal hazards and the need for stronger impact assessments may be more pressing for some women, depending on their geographic location.
- **Australia does not have a national gender equality strategy.**<sup>1</sup> The absence of a national gender equality strategy means that Australia is lacking robust measures of accountability for gender equality among the various arms of government. To some extent, the absence of such a strategy means that it has become (too) easy for various government agencies that lack commitment to this goal to avoid accountability.

A key component of a national gender equality strategy is data collection... for gender equality, including the collection of gender-disaggregated data, let alone data disaggregated on multiple lines, needed to enact gender-responsive policies in the first place. Also, because Australia does not have a national equality strategy this

---

<sup>1</sup> See Marian Sawer, ‘Gender equality: Policy goals, policy design and policy outcomes’ (forthcoming).

means that it is difficult to decide what gender problems actually need to be addressed and moreover, once there is a legislative response, whether the legislation has achieved certain targets. This absence of a National Gender Equality Law persists, despite global good practice in Europe,<sup>2</sup> emerging practice from the US.<sup>3</sup> and legislation in Victoria<sup>4</sup> from which Australia (nationally) can learn. Importantly, the Committee that oversees the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifically recommended that Australia introduce such a national gender equality policy in its 2018 concluding observations:

*The Committee recommends that the State party, in line with the Committee's general recommendation No. 28, adopt a comprehensive national gender equality policy with performance indicators to address the structural factors resulting in inequalities between men and women and ensure that the Office for Women has a strong mandate and sufficient human and financial resources to coordinate and monitor the implementation of that policy throughout the territory of the State party.*<sup>5</sup>

---

*“This absence of a National Gender Equality Law persists, despite global good practice in Europe and emerging practice from the U.S and legislation in Victoria from which Australia (nationally) can learn...”*

- **Draft laws are not assessed for CEDAW-compliance and there is no standing Gender Committee in parliament to achieve appropriate legislative scrutiny.** At present, pre- and post-legislative scrutiny to assess the potential and actual impact of laws on women's lives is entirely inadequate. The Australian Law Reform Commission has the potential to drive forward the gender-responsive legislative agenda if it is mandated to do so. We would recommend that advocacy for gender-responsive laws and policies call for such a gender-perspective to be brought to bear in the legislative drafting process. Again, there is global

---

<sup>2</sup> European Commission, *Gender Equality Strategy 2020-2025* (Webpage) <[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy\\_en#:~:text=Gender%20Equality%20Strategy%202020%2D2025,-The%20EU%20Gender&text=The%20goal%20is%20a%20Union,and%20lead%20our%20European%20society](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en#:~:text=Gender%20Equality%20Strategy%202020%2D2025,-The%20EU%20Gender&text=The%20goal%20is%20a%20Union,and%20lead%20our%20European%20society)>.

<sup>3</sup> The White House Briefing Room, *Fact Sheet: National Strategy on Gender Equity and Equality* (Webpage, 22 October 2021) <<https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/22/fact-sheet-national-strategy-on-gender-equity-and-equality/>>.

<sup>4</sup> See Commission for Gender Equality in the Public Sector, *About the Gender Equality Act 2020* (Webpage) <<https://www.genderequalitycommission.vic.gov.au/about-gender-equality-act-2020>>.<sup>5</sup> Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) 5.

<sup>5</sup> Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) 5.

practice from which Australia can learn. Examples include Canada's Standing Committee on the Status of Women<sup>6</sup> or the Committee on Women's Rights and Gender Equality (FEMM) of the European Parliament and their gender mainstreaming reviews whereby individuals on different standing committees are responsive for liaising with the FEMM.<sup>7</sup>

- **We need a “place-based” gender-equality response** There exist only international frameworks – such as CEDAW – which legislation can be measured against but such frameworks are not specific to the challenges present in the Australian context. The group discussed the importance of ‘place based’ policies if one thinks of such issues as climate change or safety in urban spaces. The network noted, “It is often said that legislation cannot necessarily be working for one place and not for others, in one jurisdiction and not for another. But the only decent policy is ‘place based.’ You can make a policy for a town or city but you cannot do it wholesale.”
- **Market forces are shaping societal practice** - Government intervention in issues such as taxation and childcare are required to remove inequalities. However, there remains an evident fear of mandating practice. The language of ‘choice’ and ‘autonomy’ leaves the system under-regulated and women suffering the consequences due to imbalances in negotiation power, women's inferior economic position, and the dominance of prevailing social norms that perpetuate traditional gender roles within households and the workforce. As a result, too many issues that should be regulated by law are left to the market to decide. In regard to early childhood education, for example, women and children are often cast in Australia as ‘consumers’ who have a ‘choice’ in childcare providers. However, such language allows the market to decide *which* women get to access childcare: “Choice framing limits what the law can do because it permits other normative frames to dominate

---

*“Choice language is used to shut down policy options, options that would create or push gender-responsive outcomes.”*

---

the result. This idea we keep coming up against is ‘choice’ is critical. Choice language is used to shut down policy options, options that would create or push gender-responsive outcomes.”

---

<sup>6</sup> House of Commons Canada, *Standing Committee on the Status of Women* (Webpage) <<https://www.ourcommons.ca/Committees/en/FEWO>>.

<sup>7</sup> Women of the European People's Party, *FEMM Committee* (Webpage) <<http://www.eppwomen.eu/femm-committee/#:~:text=The%20Committee%20on%20Women's%20Rights,Women's%20rights%20and%20gender%20equality>>.

- **Intersectionality.** For which group of women does the law work? The network noted, **“When we’re thinking of women, who are we thinking about?”** Too often, law is designed to be coherent ‘for all’. Yet, we know that policies can be designed to differentiate between different rights holders. Can law similarly be diverse? Where enacting policies, intersectionality is used as an excuse to avoid enacting laws or policies for any one group, lest it exclude another group. The recognition of diversity makes policies more complex but it is increasingly acknowledged that more nuanced policies to accommodate difference are needed to ensure that diversity is not a barrier to engage with government and access government services. Lessons from policy design beg the question of whether we need to think differently about enacting laws that are both coherent but address the needs of different groups.
- **The labelling of certain issues as ‘women’s issues’ is holding us back. Yet the call for a gender perspective across a diversity of issues must be matched by an acknowledgement that women carry the greater burden of disadvantage when it comes to particular issues.** There has been a notable narrowing in what are named as ‘women’s’ or ‘feminist’ issues. Aged care, for example, is often not considered a feminist issue but childcare is typically framed as a ‘women’s issue’. This is despite the fact that both aged and child care involve women doing disproportionate amounts of unpaid care work and involve sectors where women dominate paid labour. This is a problem because with older women, on average, having a higher life expectancy than men, women too are most affected by the quality of aged care in Australia. This example begs the question, in whose interest is it to label one issue a women’s issue and another not? Another example which was raised in discussion was the National Disability Insurance Scheme and the fact that Administrative Appeals Tribunal in NSW often justifies cutting NDIS support packages on the basis that participants are already receiving informal care and such care is largely provided by women.<sup>8</sup>

### III Solutions and Proposals

The latter part of the workshop was dedicated to identifying feminist and non-feminist strategies to deliver change in the short and long-term in relation to some of the above-identified issues. Here we offer a concise summary, in the form of a list of strategies as well as a proposal for a National Gender Equality Act

#### Strategies

---

<sup>8</sup>Alyssa Venning et al, ‘Adjudicating reasonable and necessary funded supports in the National Disability Insurance Scheme: A critical review of the values and priorities indicated in the decisions of the Administrative Appeals Tribunal’ (2021) 80(1) *Australian Journal of Public* 97– 113.



- Get parliament to be gender equal: we need to “get the inside right to get the outside right.”
- How to bring in a diversity of allies including ‘blue chip allies’ who would be willing to advance the gender equality agenda.
- Frame messages in ways that can move the “moveable middle.” Messages should be circulated in the mainstream media and policy stories should be accompanied by personalised stories to ensure greater reach and relatability.
- Motivate with hope and purpose: our end goal is to ensure that everyone experiences the full flourishing that can be on offer for human life.
- Identify and dismantle all the pressure points that are impeding change. There is no one driver of inequality and it may be that multiple factors, together, are hindering progress; all such barriers must be the simultaneous subject of change.
- Collaborate across disciplines and synergise lines of thinking and practical actions – for example, gender-responsive legislation should be coupled with gender-responsive budgeting. Given the role of legislation as a mechanism for implementing economic policy, Gender Responsive Legislation should be coupled with Gender Responsive Budgeting as a way of operationalising the principle of gender equity across the parallel processes of lawmaking and policymaking.
- Offer willing leaders in politics ready-made, evidence-based solutions to drive forward change. The network acknowledged it was not practicable to have a goal like ‘we need gender responsive legislation’ or ‘we need legislation to change.’ Proposals should be framed instead, for example, around the amendment of specific sections of an Act or to enact a specific piece of legislation. The network suggested drawing on international examples of legislation and policy from the U.S. and Europe.
- Work with crisis opportunities and support individuals who are leading the cause. As feminist allies, we also need to recognise, value and acknowledge the heavy burden that many individual women have carried in recent times to push forward the visibility of the gender equality agenda.

## **Proposal: A National Gender Equality Act**

*We call for a National Gender Equality Act, in order to help foster a national ambition for a gender equal society. We call for pre- and post-legislative scrutiny to guarantee the enactment of gender-responsive legislation and its implementation, and the resources to do this. This heightened accountability could be achieved through a Gender Equality Standing Committee in Australian Parliament.*

---

*We also call for greater accountability from the public sector for the enactment, implementation and monitoring of those gender-responsive laws, including by the Australian Law Reform Commission. This will necessitate the systematic collection and dissemination of intersectional gender data by the public service, including the Australian Bureau of Statistics. Collectively, these initiatives would help Australia to meet our international women's rights obligations. When it comes to the design and enactment of a National Gender Equality Act, we have at hand global good practice and emerging practice, as well as the benefits being reaped from Victoria's Gender Equality Act 2020 (Vic) to learn from.*

*We do not attempt to speak for all individuals or groups of women but rather encourage existing gender equality consortiums, networks, collectives, community-based organisations, and other members of civil society to consider how a National Gender Equality Act may advance their priorities. Where relevant, we encourage you to incorporate this call for a National Gender Equality Act into your agendas for legislative change.”*

*Ramona Vijeyarasa  
Tina Huang  
Heather Douglas AM  
Jacqueline Mowbray  
Susan Harris Rimmer  
Leonora Risse  
Marian Sawer AO  
Miranda Stewart  
Commissioner Niki Vincent*

Contact: [Ramona.vijeyarasa@uts.edu.au](mailto:Ramona.vijeyarasa@uts.edu.au)