



File No: GE15/88

**RE: QUESTIONNAIRE – “NON-DISCRIMINATION AND EQUALITY WITH REGARD TO THE RIGHT TO HEALTH AND SAFETY”**

The Permanent Mission of Australia to the United Nations and other international organisations in Geneva hereby presents the Australian Government’s response to the UN Working Group on the issue of discrimination against women in law and practice and its questionnaire on how laws and practices discriminate against women with regard to the right to health and safety.

Australia has a federal constitutional system in which powers are shared between federal institutions and the six states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania), and three self-governing territories (the Australian Capital Territory, the Northern Territory and the Territory of Norfolk Island). Further information about Australia’s political structure is available in part B of the common core document.

The responses provided here relate to the federal responsibilities in this area. Further information would require extensive consultation with state and territories around the different approached in different jurisdictions. Where we are unable to answer questions due to Australia’s federal system, this is noted by N/A.

**I. Prevention of sex discrimination in the enjoyment of the right to health and safety**

**A. Health**

**1. Does your country have regulations (in the Constitution, legislation or in other legal codes) that guarantee:**

N/A

**2. Are medical services related to women’s sexual and reproductive life and/or violence against women covered by universal health coverage?**

Yes ( X ) No ( )

**If yes, what kind of medical services are free of charge?**

The universal public health insurance scheme Medicare provides free or subsidised health care services for all Australian residents and certain categories of visitors to Australia.

The major elements of Medicare relevant to free service provision are:

- (a) Free treatment for public patients receiving public hospital services through the National Healthcare Agreements with the States and Territories. This includes all admitted programs, hospital in the home programs, all emergency department services and non-admitted services, such as specialist outpatient clinics.

Examples of admitted programs include the management of birth, treatment of illness or injury, performance of surgery and/or performance of diagnostic or therapeutic procedures. Non-admitted services may include the treatment and care of sexual and reproductive health conditions and antenatal and postnatal care. A variety of maternity care models may be offered for women. These include team midwifery arrangements, family birthing centres (with as little intervention as possible), and shared care between hospital and a local doctor or midwife affiliated with the hospital.

- (b) The payment of rebates to patients receiving professional services out of hospital on a private basis. Rebates are claimable for clinically relevant services listed in the Medical Benefits Schedule (MBS), rendered by an appropriate health practitioner. Over 5,700 items are listed in the MBS covering a broad range of services that are generally accepted by the relevant profession as necessary for the appropriate treatment of the patient. Some of these address sexual and reproductive health and physical and mental health issues arising from violence against women.

Medicare subsidises payments for services provided by midwives, general practitioners, obstetricians, gynaecologists, psychiatrists and other specialist medical practitioners, as well as certain allied health professionals, such as clinical psychologists. Diagnostic and therapeutic services are also funded.

The amount of the rebate is directly related to a Government-assigned fee for each MBS service. In general, the Medicare rebate for out of hospital services is 85% of the MBS fee, with the exception of general practitioner services, which receive a rebate of 100% of the MBS fee.

Health care providers are not bound by the MBS Fee. However, they can choose to accept the Medicare rebate as full payment for the service and 'bulk-bill' the Government directly. This means the service is free of charge for the patient. The MBS includes incentive payments for general practitioners to bulk bill Commonwealth Concession Card holders and children under 16 years of age. For the March 2015 quarter, over 80% of general practitioner services were provided free of charge to the patient.

For many Australians, the first point of contact with the health system is a general practitioner. A woman's consultation with a general practitioner could cover many issues, including contraception, pregnancy, cervical cancer prevention, advice and testing for sexually transmitted diseases and mental health issues arising from violence. The general practitioner will refer the patient for specialist treatment as needed, either to a public hospital or a private specialist.

In addition to Medicare, the Australian Government and state and territory governments fund and deliver a range of free or low-cost community health services. Relevant examples include:

- family planning organisations that deliver clinical services such as cancer prevention through pap smears and vaccinations, contraception and family planning services, and sexually transmitted infection diagnosis and treatment;
- specialist sexual health clinics for priority groups, e.g. sex workers;
- Free mammograms every two years for women aged 50-74 years. Women aged 40-49 years and 75 years or over are also eligible but do not receive an invitation to attend;
- Pap smear tests every two years for women aged 18-69 years; depending on the practice attended these may be free but are otherwise partly covered by a government rebate. In 2017 these tests will be replaced with HPV testing every five years – costs of participation is expected to remain about the same.
- Free HPV vaccinations for girls aged 12-13 years

**Are women's rights to health, including sexual and reproductive health, autonomy and health insurance, applied also to girls under 18?**

Yes ( X ) No ( )

There is no Commonwealth legislation explicitly enshrining the right to the enjoyment of the highest attainable standard of physical and mental health. A number of Commonwealth laws support the right to health. The *Health Insurance Act 1973* provides rebates for professional services listed in the MBS. The *National Health Act 1953* makes provision for pharmaceutical, sickness and hospital benefits and of medical and dental services. This legislative framework provides access to free or subsidised treatment by doctors for out of hospital services and access to free public hospital services for public patients.

There are organisations, underpinned by legislation, that exist to protect health consumer rights in Australia. These include, but are not limited to:

- Australian Human Rights Commission;
- Private Health Insurance Ombudsman
- Australian Competition and Consumer Commission; and
- state and territory government health care complaints commissioner/ombudsman.

The relevant legislation for the Australian Human Rights Commission includes: *Australian Human Rights Commission Act 1986*; *Sex Discrimination Act 1984*; and the *Age Discrimination Act 2004*. The Commission does not have the power to enforce decisions, or to make binding recommendations about a complaint. It will investigate the circumstances of the complaint made by an individual and will attempt to assist the parties to reach a conciliated agreement. If conciliation is unsuccessful, the complainant can take the matter to a court if the complaint relates to sex or age discrimination in the provision of goods, services and Commonwealth laws and programs.

The role of the Private Health Insurance Ombudsman is to protect the rights of private health insurance consumers. Under the *Private Health Insurance Act 2007*, the Ombudsman may mediate disputes and refer the complainant to the Australian Competition and Consumer Commission (ACCC) or any other appropriate body. The ACCC operates under the

*Competition and Consumer Act 2010* which provides the ACCC with a range of enforcement remedies, including court-based outcomes and court enforceable undertakings.

The state and territory law regarding health care complaints includes: *ACT Human Rights Commission 2005*; *NSW Health Care Complaints Act 1993*; *Northern Territory Health and Community Services Complaints Act*; *Queensland Health Ombudsman Act 2013*; *South Australia Health and Community Services Complaints Act 2004*; *Tasmania Health Complaints Act 1995*; *Victoria Health Services (Conciliation and Review) Act 1987*; and the *Western Australia Health and Disability Services (Complaints) Act 1995*. The powers of the health care complaints commissioners generally include investigating and attempting to conciliate complaints through to the referral of health practitioners to independent tribunals or registration boards. Some health care complaints commissioners have the power to make orders to prohibit providers from providing health services.

The Australian Charter of Healthcare Rights specifies the key rights of patients and consumers when seeking or receiving healthcare services. The Charter was developed by the Australian Commission on Safety and Quality in Healthcare in consultation with the health sector, government and health consumer groups, and adopted by federal and state Health Ministers in July 2008. The rights cover the areas of access, safety, respect, communication, participation, privacy and consent.

The ability to consent to a medical service contributes to the autonomy of the young person. The age at which a person becomes an ‘adult’ in Australia is 18 years. Consent for the medical treatment of patients less than 18 years is generally provided by parents. However, the ‘mature minor’ principle has been confirmed in Australian common law, such that patients less than 18 years may be able to give informed consent if they have the capacity to understand the information and the implications of the procedure to which they are consenting. Young people aged 16 years and above in South Australia (*Consent to Medical Treatment and Palliative Care Act 1995*) can consent to their own treatment without undergoing a mature minor assessment.

A Medicare card is required to claim a Medicare rebate. Young people can get their own Medicare card at age 15 years and their parents will not have access to their Medicare records. If a young person is on their parents Medicare card, and they are 14 years or older, Medicare will not give information about the medical treatment to the parent without the young person’s consent, but the parents will still be able to see the young person visited a doctor.

**3. Are there any provisions which restrict women’s access to health services? In particular which:**

( NO ) require the consent of a male relative/husband for a married woman’s medical examination or treatment or access to contraceptives or abortion,

( YES ) require parental consent in case of adolescents’ access to contraceptives or abortion;

There is no minimum age for the purchase of contraception such as condoms and spermicides at a pharmacy or for seeking medical advice about contraception without parental consent. Certain medical contraceptives, such as the Pill, require a prescription. As a medical

treatment, the health practitioner must be satisfied that the young person understands the advice and that it is in the best interests of the young person to receive a prescription without parental consent (see discussion of informed consent under Question Two).

In regard to pregnancy termination, some state and territory government legislation requires the consent of parents or the involvement of a parent in counselling where the patient is under 16 years old.

Northern Territory	<i>Medical Services Act</i> (section 11)
Western Australia	<i>Health Act 1911</i> (section 334)

(YES ) allow medical practitioners to refuse provision of a legal medical service on grounds of conscientious objection

The Medical Board of Australia registers medical practitioners and develops standards, codes and guidelines for the medical profession. The ‘Good Medical Practice: A Code of Conduct for Doctors in Australia’ (March 2014) states that doctors should be aware of their right to not provide or directly participate in treatments to which they conscientiously object, informing their patients and, if relevant, colleagues, of their objection, and not using their objection to impede access to treatments that are legal.

Several state and territory laws allow a doctor to conscientiously object to performing or providing advice about an abortion and some impose obligations on the doctor with the conscientious objection.

Tasmania	<i>Reproductive Health (Access to Terminations) Act 2013</i>
Victoria	<i>Victorian Abortion Law Reform Act 2008</i>
Western Australia	<i>Health Act 1911</i>
Northern Territory	<i>Medical Services Act</i>

(YES) prohibit certain medical services, or require that they be authorized by a physician, even where no medical procedure is required; in particular:

These questions have been answered with regard to women’s autonomous control over their reproductive preferences, that is, the medical service can be provided ‘on request’ and the consent of the woman provides the legal authority for the doctor to provide the service. Separate to this consideration is Australia’s regulatory framework to ensure the clinical relevance and safety of medical services, medicines and devices supplied to Australians. Services listed in the MBS must be rendered according to the provisions of the relevant Commonwealth and state and territory laws. Medical practitioners must ensure that the medicines and medical devices they use have been supplied in strict accordance with the provisions of the *Therapeutic Goods Act 1989* and any relevant state and territory laws.

(NO) IUDs (intrauterine devices) or hormonal contraceptives

(NO) Emergency contraceptives, including the morning-after pill,

Note: Mifepristone (RU486) is not available in Australia for this indication.

(NO) Sterilization on request (please also include information regarding whether non-therapeutically indicated sterilization is allowed for men);

A man may seek advice from a general practitioner or family planning clinic on non-therapeutic sterilization and can be referred to a provider of the service, e.g. private health clinic, private urologist or public hospital. There are two sterilization procedures for males listed in the MBS, one for a procedure performed by a general practitioner and the other for a procedure performed by a specialist.

(YES) Early abortion (in first trimester of pregnancy) at the pregnant woman's request

Lawful termination of a pregnancy is prescribed by the states and territories, and each jurisdiction's legislation sets out the circumstances in which abortion is lawful and unlawful. In summary, Queensland, New South Wales, South Australia and the Northern Territory require a doctor to agree that the woman's physical and/or mental health is endangered by pregnancy. In New South Wales, economic and social factors may also be taken into account and in South Australia and the Northern Territory, serious foetal abnormality may also be taken into account.

Queensland	<i>Queensland Criminal Code 1899</i> (as amended) and its common law interpretation
New South Wales	<i>NSW Crimes Act 1900</i> (as amended) and its common law interpretation
South Australia	<a href="#"><u><i>Criminal Law Consolidation Act 1935</i></u></a> (as amended)
Northern Territory	<i>Medical Services Act</i>

(YES) Medically assisted reproduction (e.g., in vitro fertilization)

The legislation regulating assisted reproductive technology (ART) in Victoria, South Australia and Western Australia all require that the interest and welfare of children to be born with the assistance of reproductive technology be taken into consideration in making a decision to provide treatment. States and territories without specific ART legislation rely on the Reproductive Technology Accreditation Committee accreditation scheme which sets standards for practice and requires compliance with the [National Health and Medical Research Council's 'Ethical Guidelines](#) on the use of ART in clinical practice and research'. The Guidelines state that clinical decisions must

respect, primarily, the interests and welfare of the persons who may be born, as well as the long-term health and psychosocial welfare of all participants.

Victoria	<i>Assisted Reproductive Treatment Act 2008</i>
South Australia	<i>Assisted Reproductive Treatment Act 1988</i>
Western Australia	<i>Human Reproductive Technology Act 1991</i>

**4. Are the following acts criminalized?**

*N/A*

***B. Safety***

**5. Does your country have regulations (in the constitution, legislation or in other legal codes) that guarantee:**

*N/A*

**6. Are the following acts criminalized?**

*N/A*

**7. Are there any provision in criminal law that treat women and men unequally with regard to:**

*N/A*

**II. Diagnosing and counteracting possible sex discrimination in practice in the area of health and safety**

***A. Health***

**8. Are there legal obligations to provide health education in school?**

*N/A*

**9. Are there any statistical data disaggregated by age and/or sex (collected over the last 5 years) regarding :**

(YES) maternal morbidity, including obstetric fistula

Source: AIHW 2014. National Drug Strategy Household Survey detailed report: 2013. Drug statistics series no. 28. Cat. no. PHE 183. Canberra: AIHW.

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549848>.

Overview

- Page 99- 102 analyses data on alcohol and drug use by pregnant women (where alcohol use in particular may lead to Fetal Alcohol Spectrum Disorder).

(YES) incidence of HIV/AIDS and sexually transmitted diseases

The Kirby Institute. HIV, viral hepatitis and sexually transmissible infections in Australia Annual Surveillance Report 2014. The Kirby Institute, UNSW, Sydney NSW 2052.

(YES) drug abuse

Source: AIHW 2015. Alcohol and other drug treatment services in Australia 2013–14. Drug treatment series no. 25. Cat. no. HSE 158. Canberra: AIHW.

a) [Alcohol and other drug treatment services in Australia 2013–14](#)

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551454>

Clients

- Page 7 – 8 analyses data on clients who have received treatment from publicly funded alcohol and other drug treatment agencies across Australia, by age and sex.

Drugs of concern

- Page 17 analyses data on drugs of concern by age.
- Page 20 analyses data on client demographics for cannabis use by age and sex.
- Page 24 analyses data on client demographics for amphetamines use by age and sex.
- Page 20 analyses data on client demographics for heroin use by age and sex.
- Page 29 analyses data on client demographics for nicotine use by age and sex.
- Page 31 analyses data on client demographics for benzodiazepines use by age and sex.

Treatment provided



- Page 34 analyses data on characteristics of clients and episodes by age and sex.
- Page 35 analyses data on referral to treatment by age.
- Page 38 – 39 analyses data on treatment types by age.
- Page 43 analyses data on counselling, and assessment by age and sex.
- Page 45 analyses data on withdrawal management, and support and case management by age and sex.
- Page 45 – 46 analyses data on information and education by age and sex.
- Page 46 analyses data on pharmacotherapy by age and sex.

b) [Alcohol and other drug treatment services in Australia 2013–14: state and territory summaries](#)

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551455>.

Australia

- Page 2 analyses data on clients receiving treatment in Australia by sex.

New South Wales

- Page 4 –5 analyses data on clients receiving treatment in New South Wales by sex.

Victoria

- Page 8 – 9 analyses data on clients receiving treatment in Victoria by sex.

Queensland

- Page 12 – 13 analyses data on clients receiving treatment in Queensland by sex.

Western Australia

- Page 16 – 17 analyses data on clients receiving treatment in Western Australia by sex.

South Australia

- Page 20 – 21 analyses data on clients receiving treatment in South Australia by sex.

Tasmania

- Page 24 – 25 analyses data on clients receiving treatment in Tasmania by sex.

Australian Capital Territory

- Page 28 – 29 analyses data on clients receiving treatment in the Australian Capital Territory by sex.

Northern Territory

- Page 32 – 33 analyses data on clients receiving treatment in the Northern Territory by sex.

Supplementary Tables

- The following supplementary tables also contain data relating to drug and alcohol treatment services by age and/or sex.

- SA Agency (episodes)
- SC Clients (national)
- SC Clients (imputed)
- SC Clients (states and territories)
- SD Drugs (episodes)
- SD Overview (episodes)
- SE State/territory (episodes)
- ST Treatment (episodes)
- These tables can be found online at: <http://www.aihw.gov.au/publication-detail/?id=60129551120&tab=3>.

Source: AIHW 2014. National Drug Strategy Household Survey detailed report: 2013. Drug statistics series no. 28. Cat. no. PHE 183. Canberra: AIHW.

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549848>.

#### Overview

- Page 9 provides an overview of trends by age and sex for alcohol and other drug use.

#### Smoking

- Page 20 analyses data on smoking by age and sex.
- Page 21 analyses data on smoking by age comparisons over time.
- Page 22 analyses data on smoking by age first smoked.

#### Illicit use of drugs

- Page 53 – 57 analyses illicit use of any drug by age and/or sex.
- Page 58 analyses cannabis use by age and/or sex.
- Page 59 analyses data on ecstasy use by age.
- Page 60 – 61 analyses data on meth/amphetamines use by age and/or sex.
- Page 63 analyses data on cocaine use by age.
- Page 65 analyses data on psychoactive substance use by age.

#### Misuse of pharmaceuticals

- Page 71 – 74 analyses data on current pharmaceutical misuse and trends by age and sex.

#### State and territory comparisons

- Page 77 – 81 analyses data on smoking; alcohol; and illicit use of drugs, by age and sex.

#### Supplementary tables

- The following supplementary data tables also contain data relating to drug use by age and/or sex.
  - Explanatory notes tables
  - Illicit drug tables
  - Misuse of pharmaceutical tables
  - Overview tables

- Policy and attitudes tables
- Specific population groups tables
- State and territory tables
- Tobacco smoking tables
- These tables can be found online at: <http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3>.

Source: AIHW 2015. National opioid pharmacotherapy statistics 2014. AIHW bulletin no. 128. Cat. no. AUS 190. Canberra: AIHW.

- This resource can be found at: <http://www.aihw.gov.au/publication-detail/?id=60129551121>.
- Pages 7 – 9 analyses data related to opioid pharmacotherapy treatment by age and sex.
- The following supplementary data tables also contain data relating to opioid pharmacotherapy treatment by age and/or sex.
  - NOPSAD 2014 supplementary data tables
- These table can be found online at: <http://www.aihw.gov.au/publication-detail/?id=60129551121&tab=3>.

Source: White, V., & Bariola, E. (2012). Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2011. Melbourne: The Cancer Council, Victoria.

- This resource can be found at: [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/\\$File/National%20Report\\_FINAL\\_ASSAD\\_7.12.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/$File/National%20Report_FINAL_ASSAD_7.12.pdf).

#### Executive Summary

- Page 1 – 4 analyses data on secondary school students' use of licit and illicit substances by age and/or sex.

#### Tobacco

- Page 15 – 35 contains data on tobacco use among secondary students by age and/or sex.

#### Over-the-counter and illicit substances

- Page 58 – 89 analyses data on the use of over-the counter and illicit substances among secondary students by age and/or sex.

#### Comparisons of substances used and lessons about use

- Page 90 – 94 analyses data on relative use of different substances, and lessons recalled about substance use, by age.

(YES) alcohol addiction

Source: AIHW 2015. Alcohol and other drug treatment services in Australia 2013–14. Drug treatment series no. 25. Cat. no. HSE 158. Canberra: AIHW.

a) [Alcohol and other drug treatment services in Australia 2013–14](#)

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551454>

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- Page 45 – 46 analyses data on information and education by age and sex.

b) [Alcohol and other drug treatment services in Australia 2013–14: state and territory summaries](#)

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551455>.

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### Australian Capital Territory

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### Supplementary Tables

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  - SA Agency (episodes)
  - SC Clients (national)
  - SC Clients (imputed)
  - SC Clients (states and territories)
  - SD Drugs (episodes)
  - SD Overview (episodes)
  - SE State/territory (episodes)
  - ST Treatment (episodes)
- These tables can be found online at: <http://www.aihw.gov.au/publication-detail/?id=60129551120&tab=3>.

Source: AIHW 2014. National Drug Strategy Household Survey detailed report: 2013. Drug statistics series no. 28. Cat. no. PHE 183. Canberra: AIHW.

- This resource can be found at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549848>.

### Overview

- Page 9 provides an overview of trends by age and sex for alcohol and other drug use.

### Alcohol use

- Page 34 analyses data on alcohol use by age and sex.
- Page 35 – 40 analyses data on alcohol risk by age and sex.
- Page 41 analyses data on first tried alcohol; what's consumed, where it's consumed and how it's sourced; and drinking reduction, by age and/or sex.
- Page 43 analyses data on health and harm by age and/or sex.

### State and territory comparisons

- Page 77 – 81 analyses data on smoking; alcohol; and illicit use of drugs, by age and sex.

### Supplementary tables

- The following supplementary data tables also contain data relating to drug use by age and/or sex.

- Alcohol tables
- Overview tables
- Policy and attitudes tables
- Specific population groups tables
- State and territory tables
- These tables can be found online at: <http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3>.

Source: White, V., & Bariola, E. (2012). Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2011. Melbourne: The Cancer Council, Victoria.

- This resource can be found at: [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/\\$File/National%20Report\\_FINALE\\_ASSAD\\_7.12.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/$File/National%20Report_FINALE_ASSAD_7.12.pdf).

#### Alcohol

- Page 36 – 57 analyses data on secondary school students' use of alcohol by age and/or sex.