

# Gender equality in a generation?

## Presentation by **Dr Ramona Vijeyarasa**

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### About the presentation

How do we make taxation fair for single-parent households? How do we ensure that planning decisions consider the different ways in which women use our communities? How can we ensure that glass ceiling is not a barrier to the corner office? How can we ensure that we do not forgo the talents women have to offer as leaders in politics? Ramona Vijeyarasa will demonstrate that we can help correct gender inequality, through the law, by courageously stepping away from neutrality and using the law to help transform decades of discrimination.

#### Dr Ramona Vijeyarasa

I would like to begin by acknowledging the traditional owners of the land on which we meet and to pay my respect to elders, past and present. I particularly want to acknowledge Indigenous women. At an International Women's Day event held in March of this year, Miranda Tapsell, the brilliant actress we probably best know for her role in The Sapphires, said "I am a woman, too". Her words remind us how seldom Indigenous women's stories are being told in national conversations about gender inequality.

The last few months have been a bit of a shake-up for gender inequality in this nation. Even for those who have paid less attention to issues of gender inequality in the past, I believe the news cycle in recent months really put gender equality front and centre.

In June 2020 allegations emerged that Justice Heydon, one of Australia's most powerful men, had harassed six female associates during his decade on the bench. After an independent inquiry, the High Court actually apologised to the six women. For many women like myself who have worked in the legal profession, where harassment was and remains frankly rampant, these accusations were, sadly, not altogether surprising.

Then, of course, came Brittany Higgins' brave allegations of an alleged rape within Parliament House, the very institution where our laws are made. For many Australian women and men, reading and watching in shock about these claims, the ground had been shaken. And things got worse when our own Attorney-General – the holder of one of the most important roles one could have in a legal career – was accused of an historical rape.

This may be a strange place to start my talk today. My goal coming here, after all, was to rebuild your faith in the law and legal systems rather than knock it down (or further down). Because, despite all this recent uproar, gender inequality is not a new problem in Australia, or overseas. And yet I believe it is time to look for new solutions or, at least, to revisit some old ones and see how they can work better - and to ask ourselves, "If we do this, is gender equality possible within a generation?"





Think about that for a moment. Gender equality within a generation. Who thinks that's an ambitious goal? Well, as the mother of two young girls under the age of 7, gender equality in a generation is a must. This is actually a tough target, nonetheless, given the World Economic Forum announced in its 2021 Global Gender Gap Report that at the current rate of progress, we are well over a century away from achieving parity in Australia - 135.6 years, to be precise.

Before we look at the law as a solution, in fact, it would probably be best to ask "How are we faring when it comes to gender equality?" Let's start with the global picture. Women are making progress.

In 1893, New Zealand became the first nation to offer women the right to vote. In 2015, women enjoy the right to vote in every nation of the world, with Saudi Arabia being the last to join as of December 2015.

In 1900, there were no female members in any national parliament. In 2013, according to the World Bank, the proportion of seats held by women is 21.77 percent, rapidly up from just under 13 percent in 1990. That's still a shockingly low figure: for every one woman parliamentarian, there are four men. (We'll come to Australia in a minute, but just to give you a sense of where we're at, 31.1 per cent of our House of Representatives are women – better than the global average, but still less than 1 in 3).

In 2017, the One Campaign estimated that more than 130 million girls worldwide fail to attend school every single day of the year. While this is 130 million too many, generally gender gaps in education have been closing. Women have even surpassed men in tertiary enrolment. Yet, COVID 19 shows how quickly progress can be lost. In 2020, an estimated 1.6 billion learners in 199 countries, including this one, were affected by school closures.

Women still lag behind men in labour force participation – 50.6 percent, as contrasted with 76.7 percent for males. Lower workplace participation is not just about its impact on the economy, it's importantly also about women's financial security – from the time we enter the workforce through to retirement.

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While in rich countries around the world around 70 percent of sexually active women aged fifteen to forty-nine practise some form of contraception, this is only 28 percent in Africa. Just imagine the effect this has on the lives of all the young girls facing unplanned pregnancies, and imagine what that means for their schooling, their university studies, or their working careers (not to mention the bigger question of the right of women and girls to control what happens to their own bodies).

Just to add a bit of lightness to the mood, it's not all doom and gloom. Mumbai has changed its traffic lights to be more inclusive and promote equality. I'll leave you to mull over what change you feel that might bring about.

So how does Australia fare? Well, in comparative terms, between 2006 and 2020 Australia fell on the World Economic Forum's Global Gender Gap index from 15th to 44th. Laos was at 43rd, Australia was at 44th.

Just a few weeks ago the World Economic Forum announced the 2021 data. Disappointingly, Australia had moved down from 44th to 50th, sandwiched between Suriname and Georgia (not the US state of Georgia, the country in central Asia). This is certainly not where Australia wants to be.

It may come as no surprise to some of you that we're behind the top four – Iceland, Norway, Finland, and New Zealand (which went up from 6th to 4th ). You may be surprised, though, to see that we're behind the Philippines at 17th, Albania at 25th, Burundi at 26th, and Zimbabwe at 47th

Many in the room, certainly, myself included, would prefer to be a woman in Australia than in many, if not all, of those higher-ranking countries.

According to the Organisation for Economic Cooperation and Development, Australia is the 10th richest country in the world, based on GDP per capita. Yet we ranked behind most of the top 30 richest countries in the world when it comes to gender equality. Effectively, Australia fares particularly badly when we are compared to countries with the same levels of development as our own.

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But this data begs bigger questions. How are we getting it so wrong? Where do our big problems lie? The lack of participation of women in politics, particularly, drives our rank down. Sadly, this may be a situation that will not change in a hurry, given how off-putting a career in politics for a woman may be at the moment.

A survey by YouGov and Plan International Australia has revealed that 73 percent of Australian women aged 18 to 21 do not believe that women in politics are treated equally to men. Almost eight in 10 women aged between 22 and 25 hold the same view – eight in ten of the women who make up the current and future potential of Australian women in politics.

How else are we getting it wrong? The Australian Bureau of Statistics reported in 2017 that one in five Australian women experience sexual violence after the age of 15 – that's two people for every table of 10 out there.

Meanwhile, the Workplace Gender Equality Agency have found that Australian women earn 21 per cent less than men. What that means, according to the Australian Human Rights Commission, is that Australian women have to work an extra 56 days a year to earn the same pay as men for doing the same work. Fifty-six extra days!

So what can we as a nation do about it? What can we ask of our leaders? I'm asking you to join with me, or at least bear with me, as I explore the law as an under-explored solution.

I'm an avid lover of the law — I made a barrister's briefcase out of cardboard for a year 6 library project — so I hardly need convincing that part of the solution to gender inequality can be found in the law. Yet with the law so often failing women, I'm hardly surprised at the number of sceptics out there who may need more convincing.

Maybe this story will help. Around 2 years ago — although it seems like much longer ago given our ongoing ban on international travel — I was in Jakarta meeting female leaders and activists. One activist, let's call her Melati, has been fighting for change in her country for decades.





With the relentless noise of Jakarta traffic streaming through her office window, Melati and I talked about Indonesian women's experiences of the law. Melati told me, "Indonesia's law on domestic violence is not working".

The law has a lower penalty if the woman who accuses a man of rape happens to be his wife. Worse still, many forms of violence that Indonesian women experience are simply not captured by the law.

Two in five Indonesian women — or just over 41 per cent — have experienced physical, sexual, economic or emotional violence in their lifetime, often with no redress. One in six had experienced such violence in just the last year. Let me say in passing (a point I will return to) that these statistics are not far from Australia's. Melati went on to complain to me that the law is too narrow to capture this violence.

What was particularly interesting, though, is that Melati then turned to me and said, "Ramona, you've worked in countries all around the world. Surely there are other places near us, like the Philippines, who have better laws?" She's right. Sometimes countries like the Indonesia need to be able to look to their neighbours for good practice.

And for a kick in the butt. We're a competitive lot in Australia. Surely our ranking as 50th on gender equality must motivate change in this country? Melati's frustration with the law is real, but it's common to women's rights activists from across the world.

Before joining UTS, I spent a decade working in civil society abroad and have met with many, particularly poor women, for whom the law just does not work. Women living in the floating villages of Cambodia who showed a real consciousness of their reproductive rights but were trying to access their reproductive healthcare in unregulated hospitals, where two doctors services thousands. Women who are victims of domestic violence in the slums of Rio de Janeiro who certainly can't turn to the law or law enforcement for an answer. Young women in Liberia who were being forced into providing sex in exchange for higher grades, with no recourse to the law.





But this isn't a 'third world' problem. This is a global one, and very real to this Australia. It surprises me, in fact, how many gender experts in Australia separate and distinguish this nation from those other countries. I've even had legal experts say to me "Western democracies hardly have any discriminatory laws on the books — all of the problem lies with how law works in practice."

I'll come to practice right at the end. But first, I want to offer two examples of how the law plays out against women in Australia. I do this partly to show that we do have discriminatory laws on the books, and partly to remind us of the need to rethink how we legislate if we're actually going to do something about gender inequality.

The first example shows not only how the law can get it wrong but also how it can be incredibly slow in bringing about change. I'm going to talk a little about paid parental leave.

In Australia, unpaid maternity leave was introduced into some industrial awards in the 1970s. As a 1999 report from the then Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) said, "It's not a privilege to work while pregnant". That was the first national inquiry into pregnancy and potential pregnancy discrimination at work — in 1999.

Discrimination on the basis of pregnancy, and the inability to obtain paid maternity leave, were described in that report as significant factors contributing to Australian women and their partners deciding to not have children or deciding to limit the size of their families. That in itself is really telling: in its summary of findings the report spoke first of the impact that the lack of paid maternity leave had on family sizes in Australia, before discussing the basic rights of women to maternity leave in the first place.

Australia was WELL behind the times. Remember, here I'm talking about unpaid leave.

In Australia, we've been incredibly slow to provide women paid maternity leave. In 1970, the average number of paid weeks of leave among the countries that make up the Organisation for Economic Cooperation and Development - sometimes known as the 'club of rich countries', which

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includes Australia - was 17 weeks. In Australia, we only introduced 18 weeks of paid maternity leave in a law enacted in 2010.

In 1990, the average number of paid weeks of maternity leave across the OECD was 40 weeks. By 2018, the OECD reported an average of 51 weeks of paid leave, just under a year (and it's worth noting that this average is pulled up by Slovakia, Finland and Hungary, which offer 3 years of paid leave).

Putting aside the question of how many weeks of paid parental leave is enough, which is by no means insignificant, let's ask why the Australia's paid parental leave Act receives a less than perfect score, after we waited so long to get it.

This comes from the Gender Legislative Index, which I created at the University Technology Sydney, to rank and score laws from a gender perspective. You can see where we want to head – over here towards the dark green – but can also see how we're not all the way towards meeting our international standards.

And the reason why, in my view, lies with one key problem. The law defines the primary carer as 'mostly mothers'.

This is the stated goal of Australia's Paid Parental Leave Act from 2010:

- (1) The object of parental leave pay is to provide financial support to primary carers (mainly birth mothers) of newborn and newly adopted children, in order to:
- allow those carers to take time off work to care for the child after the child's birth or adoption; and
- enhance the health and development of birth mothers and children;
- encourage women to continue to participate in the workforce;
   and
- promote equality between men and women, and the balance between work and family life

In 2017, according to the Australian Institute of Family Studies, 95 per cent of primary carers were women. Only 1 in 20 men put their hand up to take





primary parental leave. The Workplace Gender Equality Agency reports a slight improvement. In 2019-2020, 6.5 per cent of men were primary carers, so 1 in 15.

Men are not excluded in the law from receiving parental leave pay and can be the secondary claimant if they become the primary carer, but only after the primary carer has transferred it to them (PPLA pt. 2-1).

To make the situation worse, the income test is only applied to the mother's income. If the mother earns more than the income threshold, she is not entitled to paid leave so she has nothing to transfer to the father. They are left with no entitlement to paid parental leave, regardless of how low the father's income actually is.

Parliamentary Counsel draft our laws. After a Minister has tabled a motion for a bill, legal drafters sit behind the scenes turning the policy concept into legalese. You have to wonder what was on the minds of the men (and women maybe too) sitting at the drafting table when they decided to write into Australian law that primary carers would be "mostly mothers". Was that a much-debated provision, or did it naturally come to mind of the drafters when they put pen to paper?

Australia has also introduced its Dad and Partner Pay leave which provides dads and partners in same-sex relationships two's weeks paid leave. Not much. In 2020, the OECD average for 'dad pay' is 8.4 weeks. Dads here get 2 weeks. Yet this is still something, and those 2 weeks put us ahead of other countries such as the UK, which also offers 2 weeks but at a vastly reduced rate of pay.

But where does that leave us? It leaves us with 18 weeks of paid leave for the primary carer, 2 weeks of paid leave for dads and partners. So is it any wonder, really, that mothers are 95 per cent more likely to take leave when our laws frame parental leave this way?

Men in heterosexual couples are just not taking up parental leave. And this is where most people respond by saying "But this isn't a question of the law, this is just practice. It's about societal reform".

In practice, though, the law has played a part in defining social norms. It tells us who are our primary carers. This is probably one of the clearest

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examples of the law NOT playing its part in challenging the gendered cultural norms that shape what we do in this country. Yes, most primary carers will be mothers in the next year, but why did a legal norm have to tell us who will it be in the future? And what do those laws tell men who want to be primary carers while their partners return to work?

The law was amended last year to make Paid Parental leave a bit more flexible. More fathers may take leave. At the same time, tough, those amendments reduce the period of paid leave mothers can take from work, so whether or not those changes are good for gender equality remains to be seen.

Some in the academic world call for laws that make parental leave mandatory. And while that seems like it would be a legal revolution for Australia, it's worth mulling over.

In fact, it may be a global solution. Even in Europe, the picture of shared care between men and women is not a perfect one. Men around the world are not taking care leave. So what was the response? Well, in 2017 the European Commission put forward a proposal for a directive on work-life balance for parents and carers, in which it is suggested that member states adopt, among other things, a 10-day minimum for obligatory paternity leave. And even some of the poorest performers are moving in the right direction. Spain now offers four weeks: Ireland has gone from 0 to 2 weeks (at reduced pay)

If we in Australia are asking how to get this right, it's time to look beyond our borders, to global solutions.

International data on paid parental leave and shared care between men and women is very helpful. It shows that men will take up leave:

- where entitlements are generous
- when policies offer flexibility about when leave can be used
- when the law provides parental leave equally to men and women, and is not transferable between partners

This comes from the excellent Per Capita report, which I highly recommend for anyone interests in gender equality in this country.





Law reform in this direction could see Australian women returning to work at the same level, and for the same hours, as before becoming a parent, and the economic penalty on mothers vastly reduced. An Equity Economics study recommended the Australian federal government provide 12 months of paid parental leave to be equally shared between parents. Some of you may be thinking, wow, that would be expensive. But not only is it affordable, but it would make money for the nation – \$116 billion, to be precise or 2.9 per cent by 2050, and that's just from higher female workforce participation and productivity.

It's not just about trying to be Sweden, which many Australians would see as too far removed from our reality – it'st about what we can realistically do to reform our laws in a way that actually promotes gender equality.

I would add, however, that in Sweden, parents can expect <u>480</u> days leave, of which at least 60 are reserved for fathers and at least 60 for mothers. Furthermore, in the first two weeks after delivery, parents are entitled to take joint care of their newborn.

I now want to offer you a completely different law to consider from a gender perspective – Australia's Modern Slavery Act. I offer this as a way of showing how we need to look at gender equality as a goal in any law we pass, which is a theme that underlies all of my work.

We often think about slavery like this. This is the cover of my 2015/2016 book, **Sex, Slavery and the Trafficked Woman: Myths and misconceptions about trafficking**.

My book has tried to dispel that myth. Slavery results too often when migration goes wrong, where workers are under-paid or not paid at all and forced to work in conditions vastly different from what was negotiated and agreed. It is where what often begins as a voluntary journey into work ends up into very involuntary conditions.

Exploitative labour is a highly gendered industry. In 2018, Australia introduced the Modern Slavery Act, a terrible name for a law that's really about eradicating exploitation of workers. And yet despite the obviously gendered nature of exploitation, our law is gender neutral.

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Let me give an example. The new laws affects garment sector organisations like ASOS, the Mighty Good Group, Outland Denim and Marks & Spencer that all have supply chains that all have registered businesses in Australia. Those businesses are now required to report on potential risks of exploitation in their supply chains. We know women dominate among workers in supply chains in the garment sector. We also know that men dominate other supply chains, including construction and the fishing industry.

Naturally, you would think, a gendered perspective to supply chain exploitation would be essential. However, the law is entirely gender blind.

- It does not call for gender-sensitive due diligence to actually find out how men and women experience labour exploitation in similar and dissimilar ways;
- It does not point to the greater vulnerabilities of certain groups, including women, to sexual harassment in workplaces, or exclusion from union leadership or representation;
- While it requires countries to report on risks of exploitation, it does not actually require companies to figure out who might be more at risk – men, women, people of a particular age. Without that data, we could be hiding the real picture. It does not require companies to disaggregate at all, by sex, race, age, income levels, country of origin etc.

So, we have laws like the paid parental leave act that reinforce gendered stereotypes and have to be changed, and we have laws like the Modern Slavery Act that ignore the relevance of gender altogether, when gender is in fact so obviously relevant to how we draft a law and implement it.

[Slide shows: How can the law work better for women?]

Well, this question motivated me to create the Gender Legislative Index in the first place. You will recall the evaluation I showed earlier of the Paid Parental Leave Act. Now 134 laws from 4 different countries — Australia, and in Asia, Indonesia, Sri Lanka and the Philippines — have been





evaluated in the same way (if you want to know why those three Asian countries were chosen, you will have to join me another day when I talk about my upcoming book, **The Woman President**).

Each law has been evaluated by at least two, but mostly commonly three and at times four human evaluators, but the tool also uses a machine learning algorithm to spit out a final score for a law.

But I do not want to go through the mechanics of the index in the time I have available. It is a public resource and you are free to comb through it in your own time.

People do often ask me, are there good laws for women? And yes, there are, and we have many in Australia.

Let me offer two examples.

Australia has introduced family laws that are trying to promote shared parenting between mums and dads are separation because we believe that is in the best interests of the child. We have laws that are trying, although too often and tragically unsuccessfully, to balance the value of shared caring with responding to situations where women and their children are at risk of violence after separation (Family Violence and Other Measures Act).

Another set of good reforms is in the area of taxation, where we rarely adopt a gender perspective, Australia's tax reforms have tried to eliminate dependent spouse tax exemptions which might otherwise encourage one spouse — often women — to reduce work hours and earn less. Eliminating the exemptions could mean more financial security for women and in turn more superannuation (Tax Laws Amendment (2012 Measures No. 1) Act)

So let me simply say we have good practice examples of what it takes to improve life for women in Australia.

In the time I have remaining, I want to talk about one particularly key aspect of the Gender Legislative Index. I've shared my views on why Australian laws need to be re-written to remove gender stereotypes. Australian laws should not be gender neutral when there are important differences between men and women that they need to take into account.





The gender legislative index goes further by offering the seven questions that I believe are key to the drafting of every law. These are the seven questions that an evaluator will ask when evaluating a law in the Gender Legislative Index. And it's not just me who believes in this. Those seven questions are based on international law, including the Convention on the Elimination of All Forms of Discrimination against Women, a human rights treaty which Australia signed up to back in 1983.

And while the grit and grime of New York city may seem very far away from us, failure to implement international law has a lot to do with why our laws are not working as well as they could for women in this country. Australia's Natasha Stott-Despoja very recently became the second-ever Australian woman to sit on the UN committee that monitors that treaty.

It's important to see these questions beyond the law, because these questions are really about how women live their lives and what discrimination or barriers they may be up against each day. This graphic might help.

And remember when asking these questions, it's not about saying that the law should not be asking the same about men. It's about going through the process of understanding how men and women in our society experience a law. It is about understanding what it is in that society that may have created years — or decades — of discrimination, and whether the law can correct that by being re-written differently. It is about acknowledging gender-specific barriers and opportunities and seeing if the law can level the playing field.

This is what our legal drafters need to ask.

- 1. Does the law guarantee women can access non-discriminatory and accessible,
- affordable, acceptable services?
   (So, for example, no discrimination based on age, sex, marital status, disability status or migrant status)
- 3. Does the law guarantee access to information and education on the topic, or require the provision of information and education on the issue?

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- 4. Does the law guarantee non-coerced and informed decision-making and, where relevant, protect women's confidentiality?
- 5. Does the law promote equal relations between men and women, or merely state that it aims to do this, like our PPLA?
- Does the law protect women from situations of vulnerability linked to their gender?
   Recent research about our domestic violence laws has shown how often indigenous women are falsely accused as perpetrators of violence at home.
- 7. Does the law guarantee accessible and effective remedies (i.e. access to justice)?
- 8. Does the law promote the comprehensive monitoring of the situation of women?
  We cannot possibly know if laws are working without this. We cannot possibly improve on where we are at if we do not know what that picture looks like.

Some of you who work with both male and female members of our community may be thinking, that's great, seven questions. How interesting. Law can be made to be gender-responsive? Who knew?

But I would love for you to find ways to take up those 7 questions in your community work. So here are just some ways. And you know your work better than me, so I'm sure you have many more innovative ways they can be applied.

Let me start with the obvious. We all need to join the rallying cry for legislation to be rethought with women in mind. Bills introduced in the Parliament are introduced by the people we vote for. In recent years, on average, about 200 bills have been introduced into the Parliament each year. Of these, roughly 95 per cent originated in the House of Representatives. Approximately 70 per cent of all bills introduced into the Parliament finally became Acts. It's time to ask more of the Members who represent us. We need them to play their part in making the legal system work better for women and not to be fearful in speaking out to correct decades of discrimination against women in this country.





These questions are also about rethinking mentality. They may help you reflect upon how you do what you do.

- 1. When organising community members to get together to discuss change in your community, do women have equal access to that space?
- 2. Of course, women and men are equally welcome. But when do you meet?
- 3. Is it after hours or in the evenings, when a woman may be more likely to say no due to caring responsibilities?
- 4. Are there spaces for kids to be left by women carers so they can actively participate?
- 5. Are there rooms or spaces for breastfeeding?
- 6. In your community programs, do you have enough data on the community members you work with?
- 7. Do you disaggregate to understand how you can best help different men and women, whether they are indigenous, migrant women, or living with disabilities?

So hopefully these seven questions may begin to help you reflect upon what you yourself can do.

Women in Australia have fought for equality for over 100 years. In the past few months, Australian women have proven how much they can fight. We've shaken up the system. It feels like change is in the air. But we cannot wait as the dust settles.

I've offered a solution that I genuinely believe will work. It requires an entire shift in mentality for anyone involved in lawmaking, but that's the kind of deep-seated shift that is needed – because I can confidently say that following the status quo won't create a big enough change or at a fast enough pace. At the current rate of progress, we risk having to wait another hundred years to get even close to equality in this country. I won't be around then, and neither will you. I'm sure we all want to be around to see equality - so the time has to be now. Thank you.

#### **ENDS**







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