Women With Disabilities Australia (WWDA)

Response to the Australian Government’s Discussion Paper ‘Developing a National Disability Strategy for Australia’

December 2008
Winner, Australian Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women’s Safety Award 2008
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“Human Rights are universal principles, but, inspiring as those principles are, none implement themselves. Good governance, effective institutions, adequate material resources and international support are usually what make the difference between noble aspirations and effective realization.”

UN Secretary-General, Kofi Annan, 2003
Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>FaHCSIA</td>
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<td>ICCPR</td>
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<td>NDS</td>
<td>National Disability Strategy</td>
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1. About Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally in that it operates as a national disability organisation; a national women’s organisation; and a national human rights organisation. WWDA represents more than 2 million disabled women in Australia. WWDA is inclusive and does not discriminate against any disability. The aim of WWDA is to be a national voice for the needs and rights of women with disabilities and a national force to improve the lives and life chances of women with disabilities. WWDA addresses disability within a social model, which identifies the barriers and restrictions facing women with disabilities as the focus for reform. More information about WWDA can be found at the organisation’s extensive website at: www.wwda.org.au

2. Background

In the lead up to the Federal election in November 2007, the Australian Labor Party (ALP) communicated to the public its plans for promoting the rights of people with disabilities (see Appendix 1). The element of the ALP’s National Platform for Action, entitled Australians with Disabilities: Closing the Access Gap (ALP 2007:219) included (in part) the need for a national approach to disability policy and co-operative strategic planning between governments.

The need for a national approach to disability policy had also been clearly articulated in the final report of the 2006/07 Senate Inquiry into the Funding and Operation of the Commonwealth State/Territory Disability Agreement (CSTDA)1, conducted by the Standing Committee on Community Affairs:

While the CSTDA should remain the basis for the delivery of disability services, the Committee does not consider that it is an adequate national strategic policy document. In order to ensure a coordinated national approach to improving the delivery of disability services, to ensure that people with disability services access the services they require throughout their lives, to address interface issues within the disability sector and to ensure that future need for services is adequately addressed, a renewed national strategic approach is required. The Committee considers that a national disability strategy would reaffirm our commitment to equity and inclusiveness in Australian society for people with disability (Commonwealth of Australia 2007).

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1 The Commonwealth State/Territory Disability Agreement (CSTDA) is a five-year binding agreement between the Commonwealth, State and Territory Governments outlining the roles and responsibilities in relation to disability services for each jurisdiction. The CSTDA is a key direction setting document and is comprised of a Multilateral and Bilateral Agreement. The Multilateral Agreement provides the national framework for disability services and enables funds to be contributed by the Commonwealth and the State. It also defines services eligible for funding under the agreement and outlines the requirements for the collection and publication of disability related data (CSTDA National Minimum Data Set) and other accountability requirements. The Bilateral Agreement provides for actions between the Commonwealth and individual States and Territories on strategic disability issues and enables negotiation regarding the transfer of services between one level of government to another.
The Committee recommended that:

in the life of the next CSTDA, signatories agree to develop a National Disability Strategy which would function as a high level strategic policy document, designed to address the complexity of needs of people with disability and their carers in all aspects of their lives (Commonwealth of Australia 2007).

In November 2008, the Australian Government released for consultation its Discussion Paper ‘Developing a National Disability Strategy for Australia’. The paper was prepared to inform people about the Australian Government’s plans to improve support and remove barriers for people with disability, their families and carers, and to ask for ideas about how this can be best achieved.

This Submission is WWDA’s response to the Discussion Paper ‘Developing a National Disability Strategy for Australia’.

3. The Context and Framework for a National Disability Strategy

Women With Disabilities Australia (WWDA) is of the view that the Convention on the Rights of People with Disabilities (CRPD) is the logical framework for Australia’s National Disability Strategy (NDS) and that such a Strategy is a key element of the Convention’s implementation at the domestic level.

The CRPD was adopted by the United Nations General Assembly in December 2006, opened for signature on March 30, 2007, and entered into force in May 2008. This historic treaty represented the culmination of decades of activism by people with disabilities determined to take their rightful place in society as rights holders and subjects of law, with full participation in formulating and implementing plans and policies affecting them. The CRPD clearly embodies the paradigm shift from a charity based model to a human rights based model of disability (UN 2008, McClain-Nhlapo 2007, Mohammed Al Rawahi 2007).

Australia ratified the CRPD on July 18, 2008, making Australia one of the first Western countries to do so. Australia’s Attorney-General Hon Robert McClelland said that ratifying the CRPD “clearly demonstrates the Rudd Government’s international commitment to ensuring people with disability are treated equally and not as second-class citizens” (McClelland 2008). The Convention entered into force for Australia on 16 August 2008, the 30th day after ratification.

The CRPD spells out in considerable detail, the rights of persons with disabilities under international law and by its composition also serves as a code of implementation for governments. It contains over thirty substantive articles, together with other articles which establish monitoring mechanisms at both the national and international levels. It spans a wide range of real-life issues in considerable detail, including accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, equality and non-discrimination. Women and children with disabilities have a prominent place in the Convention, both recognised as distinct
constituencies requiring specific attention due to the particular vulnerabilities they face. There are several recurring themes throughout the Convention. One is inclusiveness in the community, which is a critical element. A second theme, closely related to the first, is the imperative to change attitudes and abolish stereotyping. A third theme is accessibility (MacKay 2007).

The CRPD is a practically focused convention, because it was so closely informed by the experiences of persons with disabilities worldwide. In its development, people with disabilities clearly articulated the challenges, barriers and requirements of disabled persons in their interaction with society at large, and it is those areas on which the Convention focuses (MacKay 2007).

The CRPD provides a clear context and logical framework for the development and implementation of Australia’s National Disability Strategy. It sets out a comprehensive map for the way forward and provides an authoritative model for governments to use in shaping national laws and policies in the areas of disability (Veneman 2007, Arbour 2007).

In stressing the importance of a human rights based model, WWDA is also of the view that, where relevant, the NDS should be consistent with and reflect the following international human rights instruments:

- Bangkok Declaration on National Action Planning and Disability-Inclusive Development (2005)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998)
- Principles for the protection of persons with mental illness and the improvement of mental health care (1991)
- Vocational Rehabilitation and Employment (Disabled Persons) Convention C159 (1983)
- Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (1989)
- World Programme of Action concerning Disabled Persons (1982)
- Declaration on the Rights of Disabled Persons (1975)
- Declaration on the Rights of Mentally Retarded Persons (1971)
4. Key Elements of a National Disability Strategy

Lasting improvements in human rights ultimately depend on the government and people of a particular country deciding to take concrete action to bring about positive change (OHCHR 2002). The Australian NDS should therefore be visionary, engaging and dynamic. It should mobilise governments, policy makers, communities and individuals around an agenda of inclusion. It should be an integral part of all facets of policymaking (Gallegos 2006). In addition to being a direction setting document, the NDS should be educational, raising awareness of the CRPD and the human rights approach to disability policy. The educational aspect of the NDS is crucial, given that human rights education is a fundamental instrument through which a culture of human rights can be developed. Such a culture can change underlying attitudes, strengthen respect for human rights norms and form the basis for the observance of human rights in the long term (OHCHR 2002, Barker 2001).

4.1. The Purpose & Mission

The fundamental purpose of the NDS should be to improve the promotion and protection of human rights of people with disabilities in Australia. It should provide guidance to governments, non-governmental organizations (NGOs), professional groups, educators, advocates and other members of civil society regarding the tasks that need to be accomplished to ensure that the human rights of people with disabilities are effectively observed and realised (OHCHR 2002, WWDA 2004).

A National Disability Strategy (NDS) should, in its introductory section, include statements about the broad purposes and conceptual issues of the Strategy. Such statements should emphasise the importance of Australia’s commitment to the Convention on the Rights of People with Disabilities (CRPD) and other relevant international human rights treaties and instruments to which Australia is a signatory, both as a source of inspiration and as specific guidance for action. Such considered statements constitute a useful orientation to those implementing the Strategy as well as providing guidance to the general public (OHCHR 2002). Given that a National Disability Strategy should be a public document, it is vital that the introductory sections make clear its purpose. Inherent in this is the need to make it explicit that Australian Governments will commit to a rights based approach to disability through actively implementing the CRPD.

WWDA is of the view that the National Disability Strategy must as a priority, clearly and deliberately be for and about, people with disabilities. Whilst WWDA respects and acknowledges the important role of carers and families in the lives of many people with disabilities, we would argue that there is an urgent need to separate disability policy and disability support from family carer policy and support in order to increase the autonomy of people with disabilities and challenge the stereotype of people with disabilities as burdens of care. We are of the view that if people with disabilities are given appropriate, adequate support and resources which enable them to participate fully in an inclusive society, the needs of the family/carer lose potency. WWDA also makes the point that, in the case of women with disabilities, the ‘family’ can in fact be the site of oppression, particularly in situations of domestic violence. The high level of dependency which women with disabilities have on
others is well documented as a factor which increases their risk of violence (see WWDA 2007b). The imbalance of power and control built into care-giving relationships can support overt and subtle violence against women with disabilities by those closest to them. Often these relationships play out in environments isolated from any significant formal or informal scrutiny (WWDA 2007b).

In this context, it is imperative that the NDS focuses on persons with disabilities as individuals in their own right, and this includes ensuring that their protection, safety, and human rights are safeguarded.

4.2. Acknowledging the Past

As a priority, the NDS should include a statement that acknowledges the damage that has been done to people with disabilities by past policies, practices and strategies of exclusion, incarceration, denial of difference, and barriers which have rendered people with disabilities invisible. It is not possible to truly move forward without an understanding of the depth and seriousness of past and current abuse and discrimination of people with disabilities in Australia, including for example:

- abuse and violence against people with disabilities in institutions, including starvation, beatings, sexual abuse, inappropriate medication and other forms of degrading treatment;
- loss of life, including deaths in care/custody and police shootings;
- forced sterilisation of disabled women and girls;
- violence against women with disabilities;
- denial of sexuality, reproductive and parenting rights;
- segregation and incarceration of disabled people in asylums and institutions;
- financial hardship and poverty;
- removal of children from parents with disabilities;
- selective abortion;
- pre-natal screening and diagnostic technologies to eliminate disability;
- denial of education and employment.

Such policies and practices have left legacies of personal pain and distress that continue to reverberate in the disability community today. The NDS must acknowledge this fact, and in doing so, publicly commit Australian society to moving forward in a way that:

- guarantees that people with disabilities are treated with dignity and respect;
- allows us to speak our history, and,
- recognises fully our place in society.

4.3. The Current Situation

For Australia to move forward towards better observance of the human rights of people with disabilities, it is important to know where it stands at present. An accurate and frank assessment of pressing human rights problems is essential to identifying solutions (OHCHR 2002). The NDS should therefore contain an overview of the current situation of people with disabilities in Australia. This should include statistics and disaggregated data, including for race, gender and other criteria
(where such indicators and information are not available, the National Disability Strategy should include plans to collect such data). An overview of the current human rights situation of people with disabilities should also include where relevant, conclusions by United Nations treaty bodies and special rapporteurs, along with information drawn from existing sectoral reports and/or reports by NGOs (OHCHR 2002).

4.4. The Vision

The NDS should contain a vision – a ‘statement of ambition’ that articulates its ideal. The Vision of the NDS should reflect the intent of the CRPD, for example:

An Australian society which promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and which promotes respect for their inherent dignity.

or

An inclusive Australian society whereby people with disabilities enjoy full and effective participation on an equal basis with others.

4.5. The Principles

The NDS should include a statement of principles which affirm the shared values on which the NDS is based. The principles should be drawn from the CRPD, which are:

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility of environments and to information;;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

In reinforcing the importance of Aboriginal reconciliation and building on the National Apology to Australia's Indigenous Peoples (Rudd 2008), WWDA recommends that the following principle be included in the NDS:
- Respect for indigenous identity and culture
4.6. Priority Groups & Issues

The CRPD incorporates both civil and political rights, and economic, social and cultural rights which are traditionally, subject to different standards of compliance. Civil and political rights are ‘immediately realisable,’ which means that States Parties have an immediate obligation to promote, protect and fulfil these rights. Social, economic and cultural rights are subject to the standard of ‘progressive realisation’, meaning that States Parties are not required to immediately fully comply with the requirements of the right, provided they are working towards the realisation of the right as quickly and effectively as possible, using the maximum resources at their disposal (Queensland Advocacy Incorporated 2008, UN 2007).

As a key element of the CRPD implementation, the NDS will need to consider which human rights areas and issues are prioritised within the Strategy. Most national plans and/or strategies dealing with addressing human rights, accord priority to the needs of vulnerable groups as well as thematic issues of major concern (OHCHR 2002). In this context, WWDA is of the view that the following groups and thematic issues warrant inclusion as priorities in the NDS.

4.6.1. Women

Core International Human Rights Treaties:
[CRPD: 1-31] [CEDAW: 1-16, Gen Rec 18] [ICESCR: 2, 3, 6, 7, 10-13, 15]
[ICCPR: 3, 7, 14, 23, 24, 25, 26]

There are more than 2 million women with disabilities in Australia and they continue to be one of the most excluded, neglected and isolated groups in our society, experiencing widespread and serious violations of their human rights, as well as failures to promote and fulfil their rights. They remain largely invisible and voiceless, ignored by national policies and laws, even though they face multiple forms of discrimination, structural poverty and social exclusion (UNFPA 2005, UN 2002). Their issues and needs are often overlooked within services and programs. They remain marginal to social movements designed to advance the position of women, and the position of people with disabilities. Negative stereotypes from both a gender and disability perspective compound the exclusion of women with disabilities from support services, social and economic opportunities and participation in community life (Meekosha 2000; Frohmader 2002). This deep-rooted exclusion experienced by women with disabilities is further neglected because little information is available on its extent or impact.

Women with disabilities are less likely to be in paid work than other women, men with disabilities or the population as a whole. They are less likely than their male counterparts to receive adequate vocational rehabilitation or gain entry to labour market programs. Women with disabilities earn less than disabled men, are in the lowest income earning bracket, yet pay the highest level of their gross income on housing, and spend more of their income on medical care and health related expenses.
Women with disabilities are substantially over represented in public housing, are more likely to be institutionalised than their male counterparts and are often forced to live in situations in which they experience, or are at risk of experiencing, violence, abuse and neglect. Women with disabilities are less likely than non-disabled women to receive appropriate health services. Girls and women with disabilities are more likely to be unlawfully sterilised than their male counterparts. Women with disabilities are assaulted, raped and abused at a rate of at least two times greater than non-disabled women.

The Convention on the Rights of People with Disabilities (CRPD), acknowledging the impact of multiple discriminations caused by the intersection of gender and disability, prioritises women with disabilities as a group warranting specific attention and calls on States Parties to take positive action and measures to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms (CRPD Article 6).

The need for National Disability Action Plans to direct special attention to women and girls with disabilities is also clearly articulated in the Bangkok Declaration on National Action Planning and Disability-Inclusive Development (UN 2005). The importance of gender equality and the empowerment of women as an effective way to combat poverty is a key resolution of the United Nations Millennium Declaration (UN 2000).

Women with disabilities are identified as a priority group within the Biwako Millennium Framework (2002) which calls on governments to implement specific measures to promote the full participation of women with disabilities in mainstream development.

General Recommendation 18 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls on States Parties to take special measures to address the needs of women with disabilities. The lack of attention given to Australian women with disabilities has been highlighted by the Committee on the Elimination of All forms of Discrimination Against Women (CEDAW) as an area requiring specific attention by the Australian Government (CEDAW Concluding Comments February 2006:3,5).

4.6.2. Indigenous Peoples

**Core International Human Rights Treaties:**
[CRPD: Preamble] [ICESCR: 1-15] [ICCPR: 1-3, 6, 7, 9, 10, 14, 16, 17, 20, 22-26] [ICERD: 1-7] [CEDAW: Preamble] [CAT: 11, 16]

Indigenous peoples in Australia experience higher rates of disability and long-term health conditions and hospitalisation than do non-Indigenous peoples. In 2006, 4% of Indigenous peoples were identified as needing assistance with core activities (self-care, mobility or communication) some or all of the time. After taking account of age differences between the Indigenous and non-Indigenous populations, the level of need for assistance among Indigenous people overall was almost twice as high as that among non-Indigenous people (AIHW 2008).
The burden of disease suffered by Indigenous Australians is estimated to be two-and-a-half times greater than the burden of disease in the total Australian population. Long-term health conditions responsible for much of the ill-health experienced by Indigenous people include circulatory diseases, diabetes, respiratory diseases, musculoskeletal conditions, kidney disease, and eye and ear problems. For most of these conditions, Indigenous Australians experience an earlier onset of disease than other Australians (AIHW 2008).

Life expectancy for Indigenous Australians is 59 years for males and 65 years for females, compared with 77 years for all males and 82 years for all females, a difference of around 17 years (AIHW 2008, Human Rights and Equal Opportunity Commission 2008).

Australia has not ratified the *Indigenous and Tribal Peoples Convention, 1989 (No.169)*. This Convention outlines the rights of indigenous and tribal peoples and the duties of ratifying States toward them. The Convention takes the approach that the cultures and institutions of indigenous and tribal peoples must be respected, and presumes their right to continued existence within their national societies, to establish their own institutions and to determine the path of their own development.

**4.6.3. Children**

**Core International Human Rights Treaties:**
[CRPD: 7, 24] [CRC: 1-41] [ICESCR: 10-13] [ICCPR: 6, 7, 14, 23, 24, 26] [CEDAW: 1-16]

Children with disabilities often experience barriers to the enjoyment of their basic human rights and to their inclusion in society. The abilities of these children are overlooked, their capacities are underestimated and their needs are given low priority. Yet, the barriers they face are more frequently as a result of the environment in which they live than as a result of their impairment (UNICEF 2007). The daily reality for many children with disabilities is that they are often condemned to a ‘poor start in life’ and deprived of opportunities to develop to their full potential and to participate in society. They are denied access to the same opportunities for early, primary and secondary education, or life-skills and vocational training, or both, that are available to other children. They either have no voice or their views are discounted. Although they are invariably more vulnerable to abuse and violence, their testimony is often ignored or dismissed. In this way, their isolation is perpetuated as they prepare for adult life (UNICEF 2007).

The inclusion of children with disabilities is a matter of social justice and an essential investment in the future of society. It is not based on charity or goodwill but is an integral element of the expression and realization of universal human rights (UNICEF 2007).

Building upon the *Convention of the Rights of the Child* (CRC), Article 7 of the CRPD affirms the fundamental rights of all children with disabilities to the entire range of human rights inherent to all children. Requirements for the best interests of the child and for the participation of the children themselves in decision-making are particularly important for children with disabilities, whose interests and voices are all too frequently overlooked and undervalued. Their right to appropriate
support in making their voices heard is emphasized in both Article 7 and Article 24 of the CRPD (UNICEF 2007).

4.6.4. Refugees & Asylum Seekers

Core International Human Rights Treaties:
[CRPD: Preamble, 14] [CAT: 2, 11, 16] [ICERD: 1, 5] [ICESCR: 6, 9, 11, 12] [ICCPR: 7, 9, 10, 26] [CRC: 22]

Long-term detention, by its nature, is widely recognised as having a seriously debilitating effect on the mental health of detainees. Specific health problems facing refugees can include: psychological disorders such as post traumatic stress disorder, anxiety, depression and psychosomatic disorders; poor oral health; delayed growth of children; or under recognised and under managed hypertension, diabetes. For refugees and humanitarian visa holders, these mental health issues may actually be compounded by experiences of immigration detention and uncertainty over their future in Australia (Balgi et al 2008, Sobhanian 2006). Recent Australian research has found that mental health of detainees deteriorates significantly during immigration detention, and numerous instances of self-harming behaviour have occurred, including among children (Balgi et al 2008).

Despite previous recommendations from the Committee against Torture and repeated calls by the Australian Human Rights and Equal Opportunity Commission and other human rights bodies, the Australian Government maintains a policy of indefinite mandatory detention of asylum-seekers (HRLRC 2008).

4.6.5. Prisoners

Core International Human Rights Treaties:
[CRPD: 12, 13, 15, 16, 25] [CAT: 11, 16] [ICESCR: 11, 12] [ICCPR: 7, 9, 10, 14]

It is estimated that approximately 5,000 out of the total Australian prison population of 25,000 suffer serious mental illness. This represents a rate between three and five times higher than in the general Australian community. There is both a causal and consequential link between imprisonment and mental illness. People with mental illness are more likely to be incarcerated, particularly having regard to the lack of support provided by the poorly resourced community mental health sector, and people in prison are more likely to develop mental health problems. Procedures for detecting and treating mental illness in the criminal justice system have been found to be inadequate in each and every Australian jurisdiction (Balgi et al 2008).

According to Balgi et al (2008) there is significant evidence that mental health care in Australian prisons is manifestly inadequate and may amount to a level of neglect that constitutes degrading treatment or punishment. The conditions under which seriously mentally ill people are kept is not conducive to well being and recovery and is rudimentary at best. Rarely are proper provisions made and mentally ill people detained are frequently denied treatment. In some cases, the response of the system to mental illness was not treatment but brutality or an increase in harshness or length of detention. The use of solitary confinement (or ‘segregation’) as a management tool for people
incarceration in Australian prisons is widespread, despite the fact that this may cause or significantly exacerbate symptoms of mental illness, such as paranoia (Balgi et al 2008).

Indigenous women prisoners are the fastest growing prison population, with their numbers increasing by 420 per cent in the decade to 2005. More than half of women in jail have been diagnosed with a mental illness and over 89 per cent of women prisoners are survivors of sexual assault. Women in prison are not able to access adequate care and services, and prison staff are unable to ensure proper treatment for women with mental health issues (Balgi et al 2008).

4.6.6. Forced Sterilisation

Core International Human Rights Treaties:
[CRPD: 5-7, 12-17, 22, 23, 25, 28] [ICESCR: 10, 12] [ICCPR: 7, 9, 14, 17, 23, 24, 26]
[CEDAW: 2, 3, 5, 12, 16, Gen Rec 18] [CRC: 2, 6, 12, 19, 23, 24, 37] [CAT: 2, 4, 14, 16]

Forced sterilisation refers to ‘surgical intervention resulting either directly or indirectly in the termination of an individual’s capacity to reproduce’ that is undertaken without the informed consent of the individual (Dowse & Frohmader 2001, WWDA 2007).

WWDA asserts that forced sterilisation is an act of unnecessary and dehumanising violence which denies a woman’s basic human right to bodily integrity and to bear children and which results in adverse life-long physical and mental health effects. Sterilisation of disabled women and girls is a form of social control in which a woman’s right to bodily integrity is denied often at the behest of parents and medical or other professionals, who deem this bodily violation ‘in her best interests’. Sterilisation, an irreversible medical procedure with lifelong physical, psychological and social consequences, is a gross violation of human rights if performed without consent (Dowse & Frohmader 2001, WWDA 2007).

In 2001, Women With Disabilities Australia (WWDA) completed a national research study into sterilisation and reproductive health of women and girls with disabilities. The resulting report ‘Moving Forward’ recommended the banning of all sterilisations of girls under the age of 18 years and the prohibition of sterilisation of adults in the absence of informed consent, except in circumstances where there is a serious threat to health or life. The report also outlined a program of reconciliation; co-ordinated legislative and policy development; information, support and service models; consent considerations; approaches to reproductive health care and education; and data collection (Dowse & Frohmader 2001). The Australian Government has to date failed to substantially address and respond to any of the report’s recommendations.

In its 2006 General Comment No. 9 on the Rights of Children with Disabilities, the UN Committee on the Rights of the Child expressed its deep concern about ‘the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities.’ The Committee emphasized that forced sterilization ‘seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects.’ The Committee urged States parties to ‘prohibit by law the sterilisation of children on grounds of disability.’ In considering
Australia’s report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: ‘prohibit the sterilisation of children, with or without disabilities’ (46 (e) CRC/C/15/Add.268, Oct 2005). Australian legislation still fails to prohibit forced sterilisation.

People with disabilities have the same human rights as people without disabilities. They have the right to bodily integrity, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a natural way, and the right to be parents (IDRS 2006).

WWDA therefore believes that the NDS include as a priority the requirement for the Australian Government to act under its external affairs power to legislate to prohibit non-therapeutic sterilisation of minors unless there is a serious threat to health or life, and to put in place adequate supports which will obviate the need for carers to request sterilisation as a means of menstruation management.

4.6.7. Violence

Core International Human Rights Treaties:
[CRPD: 6, 13, 15, 16, 17, 26, 28] [CEDAW: 3, 5, Gen Rec 18] [ICESCR: 3, 10-12] [ICCPR: 3, 7, 23]
[CRC: 3, 19, 27, 34]

Despite increasing recognition of, and attention to, gender based violence as the ‘most widespread human rights abuse in the world’ (Krug et al 2002, UNFPA 2005, Amnesty International 2006), violence against women and girls with disabilities continues in a culture of silence, denial and apathy (Raye 1999). Compared to non-disabled women, women with disabilities:

- experience violence at higher rates and more frequently;
- are at a significantly higher risk of violence;
- have considerably fewer pathways to safety;
- tend to be subjected to violence for significantly longer periods of time;
- experience violence that is more diverse in nature; and,
- experience violence at the hands of a greater number of perpetrators (WWDA 2007, Smith 2008).

Despite these facts, legislation, policy and services for women with disabilities experiencing, or at risk of experiencing violence, are limited at best and non-existent at worst (WWDA 2007). That the Australian Government’s current National Council on Violence lacks direct representation of women with disabilities is symptomatic of this exclusion.

Society attempts to respond to violence through the legal and judicial systems on the one hand and through service systems which provide protection, support, treatment and education on the other hand. Women with disabilities are not only marginalised and ignored in many of these responses, but paradoxically, can experience violence within and by the very systems and settings which should be affording them care, sanctuary and protection (WWDA 2007).
Current areas of legislation, policy and services which focus on the broader issue of violence against women, indicate a prevailing lack of awareness about the complexity of issues facing women with disabilities in relation to violence – a situation which perpetuates and legitimises not only the multiple forms of violence perpetrated against them, but also the failure of governments to recognise and take action on the issue (WWDA 2007).

4.6.8. Removal of Children from Parents with Disabilities

**Core International Human Rights Treaties:**

[CRPD: 5, 6, 7, 12, 13, 19, 23, 25] [CEDAW: 16, Gen Rec 18] [ICCPR: 14, 23, 24, 26] [CRC: 2, 5, 7, 9, 18, 25, 27] [ICESCR: 10]

Australian research has shown that parents with intellectual disabilities are disproportionately represented in child protection services and care proceedings (McConnell et al 2000; Swain et al 2002, Booth et al 2005, Young & Hawkins 2006). The research also shows a substantial over-representation of mothers with intellectual disabilities involved in care proceedings. International research shows high rates (40-60 per cent) of child removal from the family home when a parent has an intellectual disability (Booth & Booth 1996). Researchers have concluded that without a suitable environment, adequate legal representation and support to comprehend the court process, the parents’ voices are not heard. This results in discrimination based on their disabling conditions. The Court’s reliance on expert opinion further disadvantages these parents as they are assessed according to diagnosis rather than by their parenting performance. The absence of suitable support services results in more invasive actions than would otherwise be the case if services were available to assist parents in the community (McConnell et al 2000, Kroese et al 2002, Aunos & Feldman 2002, Woodhouse et al 2001, Newman et al 2005).

The lack of appropriate parenting support services in Australia has contributed to a disproportionate number of parents with intellectual disability having their children removed by child-protection services. General parenting support services, particularly those provided by state and territory child-protection authorities, often do not have the knowledge, skills and resources to provide appropriate services to parents with intellectual disability. Moreover, child protection workers commonly hold stereotypical views about the parenting capacity of people with intellectual disability (Balgi et al 2008).

It has been shown that being a parent and having an intellectual disability does not inevitably result in child neglect or child abuse - there is no clear relationship between parental competence and intelligence (Booth & Booth 1993; Sheerin 1998, Willems et al 2007). Intellectual disability does not cause parental inadequacy (Feldman 1994; Tymchuk 1990, 1992). Notwithstanding this, anecdotal evidence indicates that babies are removed from the care of mothers with intellectual disabilities. In a number of cases, it appears that the decision to remove a baby has even been made prior to the birth of the child.
4.6.9. Abuse in institutions

Core International Human Rights Treaties:
[CRPD: 6, 7, 15-17, 25, 26, 28] [CEDAW: 3, 5, Gen Rec 18] [ICESCR: 3, 11, 12] [ICCPR: 3, 7, 10]
[CRC: 3, 19, 27, 34, 37] [CAT: 11, 16]

People with disabilities living in institutions are clearly one of the most vulnerable groups in our society. Disabled people in institutions continue to live in appalling conditions and suffer ongoing abuse and degradation of their basic human rights. Institutional care for people with disabilities can include an array of living arrangements and related programs, such as group homes, hospitals, foster care, residential schools, day support programs, respite care settings, prisons and a host of other environments. Extensive and documented research of more than 30 years points to the fact that institutions and institutionalised living are in themselves, causal factors in the presence and perpetration of frequent and sustained forms of violence against persons who are devalued and vulnerable, and create a climate in which violence goes unreported (WWDA 2007b). Institutions have a long history of violence and it is clear that an entrenched culture of violence continues to exist in both public and private institutions today.

Despite the fact that there have been many reports in Australia of neglect, mistreatment, discrimination and abuse of disabled children and adults in state-run institutions, there has been an alarming lack of action and resources to address the problem.

4.6.10. Over representation in the criminal justice system

Core International Human Rights Treaties:
[CRPD: 2, 5, 12, 13, 28] [ICESCR: 11, 12] [ICCPR: 9, 14, 16]

Disabled people continue to be significantly over-represented in police lock ups, courts and prisons. Research has found that people with an intellectual disability make up 12-13% of prison population, that is, approximately four times that of the general population (Disability Council of New South Wales, 2000; NSW Law Reform Commission 1996). Research has also found that 40% of woman inmates have a psychiatric disability (Disability Council of New South Wales, 2000). Available evidence suggests that people with disabilities, particularly people with cognitive disabilities are over-represented in the criminal justice system – as both victims of crime and as alleged offenders.

In its Review of the Disability Discrimination Act, the Productivity Commission recommended that the Attorney General should commission an Inquiry into access to justice for people with disabilities, with a particular focus on practical strategies for protecting their rights in the criminal justice system (Productivity Commission 2004).
4.6.10. Poverty

Core International Human Rights Treaties:
[CRPD: 6, 19, 20, 27, 28, 30] [ICESCR: 6, 7, 9, 11] [CEDAW: 3, 11, Gen Rec 18] [CRC: 23]

The World Bank has estimated that persons with disabilities account for up to one in five of the world’s poorest people. Poverty is both a cause and a consequence of disability. Correlates of poverty, such as inadequate medical care and unsafe environments, significantly contribute to the incidence and impact of disability, and complicate efforts for prevention and response (UNICEF 2007).

The fact that persons with disabilities are more likely to live in poverty is often the result of ignorance and neglect that is reinforced in Government and development policies and programmes that ignore, exclude, are not accessible to or do not support the rights of persons with disabilities to be included in the socio-economic life of the country (UN 2007).

The estimated impact of disability on the risk of poverty and actual hardship is shown to be very high (Saunders 2006). Recent Australian research (SPRC et al 2007) has found that where there is someone in a household with a disability, poverty rates are higher and hardship is more prevalent. In income terms the cost of disability is estimated to average around 29% of household income after taking into account the size of the household, rising to between 40 and 49% of income for those with a severe form of disability. Yet the economic impact of disability is only one dimension of the overall experience of disadvantage. This major research study found that people with a disability or restrictive medical condition are more likely to be experiencing deprivation, exclusion and marginalisation than non-disabled Australians who experience disadvantage. They are more likely to be worse off than other clients of community service organisations in relation to their access to programs. This includes access to a range of medical and associated services, adequate housing, safety and security, and community cultural and recreational activities. This is associated with lower levels of respect, acceptance and access to supportive relationships.

The Disability Support Pension is inadequate to support people with disabilities. The setting of income support payment rates for people with disabilities has failed to take account of the non-optional, extra costs associated with disability. In 2004, the Senate Inquiry into Poverty and Financial Hardship (Commonwealth of Australia 2004) found widespread poverty among people with disabilities, and recommended that a new welfare allowance be introduced to address the extra costs associated with disability, such as the need for professional carers, special education and employment support. The Inquiry Report acknowledged that increased income alone would not overcome the many barriers facing people with a disability, but needs to be accompanied by changes in the areas of employment, education, housing and accommodation assistance, transport and information (Saunders 2006).
4.6.11. Data collection & Research

Core International Human Rights Treaties:
[CRPD: 31] [CRC: 44] [CEDAW: 18, Gen Rec 18] [ICESCR: 17] [ICCPR: 40]

Consistent and accurate information on people with disabilities helps to make an ‘invisible’ population ‘visible’ by demonstrating the extent and, indeed, the normality of disability. Data on the types of impairment and the numbers of people with disabilities affected can inform service delivery and improve the provision of the appropriate aids and appliances. It also enables the monitoring of equality of opportunity and progress towards the achievement of economic, social, political and cultural rights. The most useful statistics are those disaggregated by gender, age, ethnic origin and urban/rural residence. It is important that figures are further disaggregated in relation to the extent of impairment, the numbers of people with disabilities living at home or placed in institutions, the number enrolled in regular education or special education systems, the numbers employed, and the numbers receiving benefits (UNICEF 2007).

Over the last decade, WWDA has found that one of the greatest difficulties in determining the needs and wishes of women with disabilities is the acute lack of available gender and disability specific data in Australia – at all levels of Government and for any issue.

Comprehensive research and data collection encompasses both quantitative and qualitative methodologies and in the Australian context, includes national, state/territory, regional, local and service levels. Of paramount importance, is the need for all aspects of research to include people with disabilities. This includes the funding and empowerment of organisations and groups of people with disabilities, to undertake their own research in order to include their own experiences of issues, and their recommended strategies to address these issues (Calderbank 2000, DAA 1997).

It must be emphasised that Article 31 of the CRPD (Statistics and Data Collection) is not solely concerned with the collection of demographic statistics on prevalence and types of disability or impairment, but also with data on the extent of compliance or otherwise with the requirements of the Convention. States Parties initial reports on CRPD implementation should therefore contain benchmarking data on initial levels of compliance of the CRPD, including strategies for measuring compliance in future (Asia Pacific Forum 2007).

4.6.12. Unmet need

Core International Human Rights Treaties:
[CRPD: 19, 25, 28, 30] [ICESCR: 11, 12] [CRC: 23, 24, 27] [CEDAW: 12, Gen Rec 18]

There is general acceptance in government circles and the wider community that there is a significant problem of unmet need with respect to the provision of support and assistance for people with disabilities. The 1998 ABS Survey of Disability, Ageing and Carers found some 24 000 people with a profound or severe disability who received no assistance at all. Further, more than 41 000 primary carers were found to be also receiving no support or assistance.
In 2002, the Australian Institute of Health and Welfare (AIHW) completed a major study into the unmet need issue (Unmet Need for Disability Services) and it found that, despite some additional funding being added via the Commonwealth/State Disability Agreement (CSDA) there were, in 2001:

- over 12,500 people still in need of accommodation and respite services;
- over 5,400 people needing employment support;
- over 8,200 places required for community access services;

**4.6.13. Capacity Building of Disability Organisations & Networks**

**Core International Human Rights Treaties:** [CRPD: 4, 6, 29, 33] [CEDAW: 7, Gen Rec 18]

In employing a human rights approach and framework to the National Disability Strategy (NDS), WWDA is of the view that the NDS must emphasise the need for governments to establish mechanisms and structures which enable people with disabilities to ‘do it for themselves’, and to act politically as agents in their own right. This includes the need to support and strengthen organizations, networks and groups run and controlled by people with disabilities (UN 2007) in the pursuit of their collective interests, as defined by them. It also includes the need to create an environment conducive to the effective functioning of such organizations and groups – particularly adequate and sustained resourcing.

In acknowledging the impact of multiple discriminations caused by the intersection of gender and disability, along with the need for positive action and measures to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms (CRPD Article 6), the NDS should also make clear provision for the establishment of NGOs of women with disabilities in each State and Territory.

The idea of supporting organisations run and controlled by people with disabilities is hardly new. The United Nations *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993) clearly articulated the need for States to ‘encourage and support economically the formation and strengthening of organisations of persons with disabilities’. Article 29 (Participation in political and public life) of the CRPD articulates the importance of forming and supporting organisations run and controlled by people with disabilities.

**4.6.14. Digital Inclusion**

**Core International Human Rights Treaties:**
[CRPD: 4, 9, 19-21, 30] [ICESCR: 15] [CRC: 23] [CEDAW: Gen Rec 18]

The CRPD is explicit in articulating the right of people with disabilities to be informed and to have equitable access to information and communication technologies (ICTs). This includes the need to recognize that a range of formats may be necessary to enable full access to information, that assistive equipment may also be needed, and that research and development of new ICT
technologies is also imperative to maintain an equitable level of access at affordable cost. WWDA would like the National Disability Strategy to specifically take into account and address the cost factor involved in provision of ICT access for people with disabilities.

In Australia, about 98% of the population have access to landline communication (ACMA 2004). In addition, the number of mobile phone services exceeds 21.26 million, or slightly greater than that of the population (ACMA 2007). At the same time, an estimated 73% of households have computers (ABS 2007), with 64% of households having internet access. This amounts to 5.1 million households. The majority (68%) of Australian households with internet access now use a broadband connection. In addition an increasing number of centres offer access to the internet at either ‘no cost’, ‘low cost’ or at commercial rates as in Internet Cafes.

The social implications of this high adoption rate of ICT technologies are that more and more information is only delivered online; goods and services are offered at discounted rates when purchased online; and landline communication can be bypassed in cost effective ways such as via Internet Protocol technologies such as Voice over Internet Protocol (VoIP).

Thus those people with disabilities who cannot access ICT without use of assistive equipment and technologies are at a distinct disadvantage. This is particularly discriminatory for mobile and broadband services, e.g. mobile phones suitable for use with speech readout programs as used by blind and vision impaired Australians need to have top-of-the-range memory capability, with the add-on Symbian software costing $500 or more. In addition, people who are blind or vision impaired who wish to use ‘Wayfinder Access’ Global Position System (GPS) technologies to vastly increase their independence, have to purchase a larger, more expensive data download plan than their non-disabled peers. Similarly people who are deaf and hearing impaired and wish to use Video over Internet Protocol technology for independent signed communication, have to purchase top of the range broadband speeds and high data download plans. These expenses are impossible to meet where the users with disabilities are on pension or low income.

The increase in the Telephone Allowance from $88 per household per annum to $132 per annum, for older Australians and people with disabilities with home internet access was a welcome marginal increase, but did not address the real costs of ICT which must be met by people with disabilities.

WWDA therefore endorses the instigation of a Communications Allowance as proposed by the Telecommunications Disability Communications Research (TEDICORE 2007) for eligible people with disabilities. This Allowance would be to cover the additional costs they involved in using ICT products and services. This would include purchase of mobile phones and appropriate software and service plans, and adequate broadband connection and service plans.
4.7. **The Goals, objectives, targets, indicators & timelines**

WWDA is of the view that the NDS goals and objectives/targets should be drawn from the Articles in the CRPD and reflect the NDS priority areas. The goals and objectives/targets should be expressed in such a way that demonstrates the level of change desired. Any objectives should be measurable and should allow for both quantitative and qualitative measurement approaches.

It may be the case that for many of the goals and objectives, baseline data is unavailable. In this case, there will be a need for this to be clearly expressed, along with the need for such data to be developed during the life of the Strategy. Where baseline data is available, it should be used to set specific targets to be achieved during the life of the NDS.

Wherever possible, specific activities proposed in the Strategy should also have specific time frames. Responsibility for implementation of the Strategy should be made clear, including those areas where collaboration between stakeholders is required.

4.8. **Monitoring**

Article 33 of the CRPD requires State Parties to designate one or more focal points and coordination mechanisms within government to facilitate and monitor national CRPD implementation. The importance of involving people with disabilities in the monitoring process is also clearly articulated in Article 33.

To fulfil the monitoring obligation, and to do justice to both the CRPD and the NDS, WWDA believes there is an urgent need to establish a National Office of Disability Policy within the Department of Prime Minister and Cabinet, overseen by a Commissioner for Disability Policy (or similar). WWDA has long advocated for the need to remove the responsibility for overseeing disability policy from the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaCHSIA), and re-locate it to the Department of Prime Minister & Cabinet (DPMC). An Office of Disability Policy located within DPMC would perform a strategic policy advisory and coordination function across government and report directly to the Prime Minister and the Deputy Prime Minister (who is also the Minister for Social Inclusion). Securing this high level and cross government involvement and coordination is critical to ensuring that disability does not continue to be conceived of as only being the responsibility of specialist areas of government dealing with specific disability service issues (Asia Pacific Forum 2007). Establishing an Office of Disability Policy would also facilitate the separation of disability policy and disability support from family carer policy and support. WWDA believes such a separation is urgently required in order to increase the autonomy of people with disability and challenge the stereotype of people with disabilities as burdens of care.

The Commonwealth Government has a responsibility to take a strong leadership role in facilitating the implementation of both the CRPD and the NDS – both of which should be an integral part of the Australian Governments broader social inclusion agenda (Gillard & Wong 2007).
The Australian Human Rights Commission (AHRC) and its Commissioners, are critical actors in the implementation and monitoring of the CRPD and the NDS. However, in order for ARHC to perform these roles, it must be allocated the resources and authority to do so. In its 2003 Review of the Disability Discrimination Act (DDA) the Productivity Commission found that budget cuts, lack of resources and lack of power to enforce compliance with DDA were major factors affecting the DDA’s effectiveness:

_The Human Rights and Equal Opportunity Commission needs sufficient resources to match its responsibilities if it is to undertake its functions effectively. Insufficient funding could undermine the overall effectiveness of the Disability Discrimination Act 1992._

(Finding 15.3: Productivity Commission 2004)

More recently, the Joint Standing Committee on Treaties (Parliament of the Commonwealth of Australia) recommended that the Australian Government: 'consider expanding the role of the Human Rights and Equal Opportunity Commissioner, to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol’ (Commonwealth of Australia, 2008).

The meaningful involvement of people with disabilities in implementation of both the CRPD and NDS is paramount. Inherent in this is the need to adequately fund, support and strengthen organizations, networks and groups run and controlled by people with disabilities. The Australian Government must commit resources to enable the disability sector to develop an NGO Shadow Report to the Committee on the Rights of Persons with Disabilities in 2010 (two years after the Convention has entered into force) and this should be reflected in the NDS.
5. Other Issues to Consider

5.1. Language

WWDA is of the view that the NDS should use terminologies and language that is consistent with the CRPD. In particular, WWDA advocates the adoption of the term ‘persons with disabilities’ as used throughout the CRPD, rather than ‘people with disabilities’ or the even less accurate term of ‘people with disability’.

WWDA also advocates the use of Plain English versions of the NDS, and that it be made available in alternative formats and in the 14 target languages used by the Department of Human Services in its Centrelink and Medicare services.

5.2. Relationship to other national strategies

Disability is not a family issue, neither is it a community services issue. The NDS needs to have mechanisms to permeate all departments and for the affects of this to flow to States/Territories and local governments. Access to adequate transport, to adaptable housing, to accessible workplaces and educational institutions will entail being able to fully implement and monitor the Disability Standard for Accessible Public Transport and the Disability Standard on Education. It means being able to proceed to the final endorsement and adoption of the (Draft) Disability Standards on Access to Premises, and the (Draft) Standards on Employment. The NDS needs to be a part of the consideration of all government departments.

Included in the NDS should be a mechanism to address the structure of the CSTDA. Inherent in this is a need to examine the validity of the rules which govern allocation of funds to different jurisdictions, and the subsequent labyrinth of eligibility criteria which restrict the access of people with disabilities to those allocations.

National policies, agreements and frameworks developed and/or re-developed as part of the Australian Government's social inclusion agenda must be informed by the NDS. Targets developed to reduce social exclusion must be established for people with disabilities as a population group and include gender specific targets. These targets should include recognised elements of social inclusion, such as: employment participation; education; income; access to services; and civic participation. Targets must be built into key performance indicators of all relevant government departments and agencies.
6. References


Australian Communications Media Authority (ACMA) (2007) ACMA Communications Report 2006-07
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Appendix

Australians with Disabilities: Closing the Access Gap

128. People with a disability in Australia have the same rights as other Australians and form an important part of our society where individual difference is valued.
129. Labor recognises that people with a disability and their families need confidence that their needs will be met now and into the future.
130. Labor is committed to policies and programs for people with a disability which:
   • recognise and promote the worth and dignity and improve the quality of life of people with a disability and encourage and support their participation in the community;
   • provide equitable access to services for people with a disability;
   • support cooperation between the Commonwealth, States and Territories to ensure strategic planning between governments;
   • provide a national approach to disability policy, focused on early intervention through mainstream programs where appropriate and through disability specific programs where necessary;
   • improve access to employment;
   • improve access to the full range of accommodation options, to transport and the built environment, to health, rehabilitation and community services, to recreational activities, information and to education and training;
   • improve community awareness and understanding of disability;
   • trial innovative approaches to assisting people with a disability to access the supports they need including aids and equipment;
   • make information about disability services more streamlined and accessible;
   • complete the implementation of the disability standards under the Disability Discrimination Act (DDA) including the Access to Premises Standard and the Disability Standards for Education;
   • strengthen advocacy services, user rights, complaints, and advisory mechanisms for people with disability;
   • provide equal access for people with disability to civil and political life; and
   • recognise the critical importance of carers and support them in providing essential care.

131. Labor recognises that achieving these goals will require investment in accessibility and universal design and appropriate long-term national planning together with the State and Territory governments, business, the community sector and the broader community. The adoption of universal accessibility will provide benefits for the whole population including older Australians and parents.
132. Labor recognises that people with a disability are more likely to be affected by poverty because of the additional costs of their participation. The non-optional costs of disability are a significant barrier to their participation in the community.
133. Labor recognises the need for the Commonwealth State/Territory Disability Agreement (CSTDA) to provide national leadership and coordination of services for people with a disability throughout Australia and will ensure that the CSTDA is developed in partnership with those who depend on it.
134. Through the CSTDA, Labor will adopt a national approach to disability policy that seeks to deliver consistency in the delivery of services.
135. Labor supports ongoing collaboration between government and people with a disability, their advocates, carers, service providers and key stakeholders to ensure the CSTDA operates efficiently and effectively.
136. Labor recognises the particular vulnerability of people, particularly women, with a disability, to domestic violence and will implement measures to address this.
137. Labor will consult with people with a disability on the implementation of the United Nations’ Convention on the Rights of People with Disability.