



Submission

Department of Social Services (DSS)

Submission on the Draft Terms of Reference for the Royal
Commission into Violence, Abuse, Exploitation and Neglect of
People with Disability

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Publishing Information

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DPO Australia acknowledges the traditional owners of the lands on which this publication was produced. We acknowledge Aboriginal and Torres Strait Islander people's deep spiritual connection to this land. We extend our respects to community members and Elders past, present and becoming.

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Disabled People's Organisations Australia (DPO Australia) is an alliance of four national Disabled People's Organisations (DPO's) in Australia. See: <http://dpoa.org.au>

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1. About Disabled People's Organisations Australia (DPO Australia)

- 1.1. Disabled People's Organisations Australia (DPO Australia) is an alliance of four national Disabled People's Organisations (DPOs) in Australia. Disabled People's Organisations (DPOs) are organisations that are self-determining organisations led by, controlled by, and constituted of, people with disability.¹
- 1.2. The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities.
- 1.3. DPO Australia is made up of four national population specific and cross-disability DPOs that have been funded by the Australian Government to represent the views of people with disability and provide advice to Government/s and other stakeholders.
- 1.4. The four DPO Australia members are:

[Women With Disabilities Australia \(WWDA\)](#) is the national cross-disability DPO for women and girls with all types of disabilities in Australia. It operates as a transnational human rights organisation and is run by women with disabilities, for women with disabilities. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

[First Peoples Disability Network Australia \(FPDN\)](#) is the national cross-disability DPO representing Aboriginal and Torres Strait Islander people with disability and their families. FPDN utilises a range of strategies in its representative role, including through the provision of high-level advice to governments, and educating the government and non-government sectors about how to meet the unmet needs of Aboriginal and Torres Strait Islander people with disability.

[People with Disability Australia \(PWDA\)](#) is the national cross disability rights and advocacy organisation run by and for people with disability. Working within a human rights framework, PWDA represents the interests of people with all kinds of disability. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability.

[National Ethnic Disability Alliance \(NEDA\)](#) is the national peak organisation representing the rights and interests of people from Culturally and Linguistically Diverse (CALD/NESB) people with disability, their families and carers throughout Australia. NEDA advocates at the federal level so that CALD/NESB people with disability can participate fully in all aspects of social, economic, political and cultural life.

2. Introduction and Context

2.1. DPO Australia welcomes the Australian Government's commitment to establishing a *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability* (the Royal Commission). Based on the experiences of the individual members of each of our organisations and through our long history of supporting people with disability, we have been calling for a Royal Commission on all forms of violence against people with disability, in all settings and contexts, for many years. Our calls have been echoed by several of the monitoring bodies of the international human rights treaties to which Australia is a party.²

2.2. Our calls for this Royal Commission stem from the horrific rates of violence, abuse, exploitation and neglect perpetrated against us. DPO Australia has recently [compiled](#) available data on violence, abuse, exploitation and neglect of people with disability in Australia. We note the serious gaps in this data and the need for the Royal Commission to address these gaps. The limited data currently available³ shows the abhorrent and catastrophic rates of all forms of violence against us, yet we acknowledge that this is just the "tip of the iceberg". For example:

- Eighteen per cent (18%) of people with disability report being victims of physical or threatened violence compared to 10% of people without disability.⁴
- People with intellectual disability are twice as likely to suffer a potentially avoidable death compared to the general population.⁵
- Compared to their peers, women with disability experience significantly higher levels of all forms of violence more intensely and frequently and are subjected to such violence by a greater number of perpetrators.⁶ Their experiences of violence last over a longer period of time, and more severe injuries result from the violence.⁷
- Indigenous Australians are twice as likely as non-Indigenous Australians to be living with disability.⁸ There is essentially no data in Australia on the incidence and prevalence of violence against Aboriginal and Torres Strait Islander people with disability. However, violence against Aboriginal and Torres Strait Islander people is approximately 10 times higher than against non-Aboriginal and Torres Strait Islander people.⁹
- More than one third of people held in detention have been diagnosed with psychosocial disability which has been directly attributed to the harsh conditions, the protracted periods of closed detention, sexual and other forms of violence, overcrowding, inadequate health care, and fear for and about the future.¹⁰
- Violence and abuse perpetrated against children and young people with disability in schools, educational and child care settings, including out-of-home care,¹¹ is a widespread, unaddressed problem in Australia.¹² Restraint, seclusion, segregation, sexual violence and abuse, withdrawal of food and drink, bullying and harassment are commonplace yet are often downplayed and justified as 'behaviour management' and/or 'behaviour modification' practices.¹³

- 2.3. These facts, incomplete though they are, begin to paint a damning picture of our widespread victimisation. With this in mind, DPO Australia is committed to ensuring the Royal Commission is as thorough and successful as possible.
- 2.4. DPO Australia welcomes the draft Terms of Reference (TOR) released by the Department of Social Services (DSS) as an opportunity to ensure this once in a generation inquiry has the best possible basis for success. It is critical that the Royal Commission is centred on and grounded in the voices of those of us who have experienced violence, abuse, exploitation and neglect, including those of us who have acquired our disability as a result of violence. The Royal Commission must also recognise and do justice to those who have not survived.
- 2.5. The draft Terms of Reference (TOR's) provide a sound start for this Royal Commission. DPO Australia particularly welcomes and strongly endorses the following aspects of the draft TOR:
- The presence of specific reference to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD);
 - The inclusion of “all forms of violence, abuse, exploitation and neglect of people with disability, whatever the setting or context”;
 - Recognition of intersectionality;
 - Recognition of our varying access requirements;
 - The importance of all public communication by the Commission being available in a full range of accessible formats.
- 2.6. There are, however, some crucial issues missing from the draft TOR that must be included in order for the Royal Commission to live up to its potential as a driver of justice, healing and meaningful change for people with disability. These include:
- Centrality of the experience of people with disability
 - Structural and systemic issues
 - Research
 - Redress and reparation
 - Self, individual and systemic advocacy
 - Investigation units
 - Potential definitions
- 2.7. DPO Australia also proposes some wording amendments and additions to the existing TOR's that we believe would strengthen and clarify the intent and scope of the Royal Commission.

3. Suggested Amendments to Current Draft TOR's

- 3.1. Australia is a signatory to seven core international human rights treaties,¹⁴ all of which create obligations to promote equality, denounce discrimination against people with disability; people from culturally and linguistically diverse backgrounds; people from Aboriginal and Torres Strait Islander backgrounds; children; and against women. As a party to these treaties, Australia has chosen to be bound by the treaty requirements, and has an international legal obligation to implement the treaty provisions through its laws and policies. Together, the seven international human rights treaties to which Australia is a party – along with their Optional Protocols,¹⁵ General Comments¹⁶ and recommendations adopted by the bodies monitoring their implementation - provide the framework to delineate the obligations and responsibilities of governments and other duty-bearers to comprehensively promote the human rights of people with disability, including their right to freedom from all forms of violence, abuse, exploitation and neglect. In addition to these seven international human rights treaties, in 2009, Australia also formally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*¹⁷ - an international human rights instrument that sets a standard for the protection of Indigenous rights.
- 3.2. Critically, implementation of these treaties is not mutually exclusive. They are expected to be viewed and implemented as complementary mechanisms through which to create a holistic framework of rights protection and response for all people with disability experiencing, or at risk of experiencing, violence, abuse, exploitation and neglect.¹⁸
- 3.3. In this context DPO Australia **recommends** that the following paragraph in the draft TOR be amended from:

AND Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of exploitation, violence and abuse under the Convention on the Rights of Persons with Disabilities.

To read:

AND Australia has international obligations to take **all** appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of **violence, abuse, exploitation and neglect under the international human rights treaties to which it is a party**, particularly the Convention on the Rights of Persons with Disabilities.

- 3.4. DPO Australia also **recommends** that the following paragraph be added to the opening statements of the TOR:

AND Australia has undertaken international obligations to ensure that measures taken to protect people with disability from all forms of **violence, abuse, exploitation and neglect** include measures for the prevention, identification, reporting, referral,

investigation, treatment, follow up of and redress for **violence, abuse, exploitation and neglect perpetrated against people with disability.**

3.5. DPO Australia **recommends** that the following paragraph in the draft TOR be amended from:

AND it is important that best practice is identified to inform future decision making on what all Australian Governments and others can do to prevent and respond to violence, abuse, neglect and exploitation of people with disability.

To read:

AND it is important that best practice is identified to inform future decision making on what all Australian Governments and others can do to **identify**, prevent and respond to **violence, abuse, exploitation and neglect** of people with disability, **including holding perpetrators to account and providing justice to victims.**

3.6. In addition, DPO Australia **recommends** that, consistent with the human rights treaties to which Australia is a party, and reflecting the title of the Royal Commission, consistent terminology be used throughout the TOR, that is: **“violence, abuse, exploitation and neglect”**.

3.7. DPO Australia **recommends** that the draft TOR b) be amended from:

- b) what governments, institutions and the community should do to achieve best practice to encourage reporting and effective responses to violence, abuse, neglect and exploitation of people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to such conduct;

To read:

- b) what governments, institutions and the community should do to achieve best practice to encourage reporting and effective responses to **violence, abuse, exploitation and neglect** of people with disability, including addressing failures in, and impediments to, **identifying**, reporting, investigating and responding to such conduct;

3.8. DPO Australia **recommends** that draft TOR g) be amended from:

- g) that people with disability have specific needs, priorities and perspectives based on their personal circumstances, including their age, sex, gender, sexual orientation, intersex status or race, acknowledging the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability;

To read:

- g) that people with disability have specific needs, priorities and perspectives based on their personal circumstances, including their age, sex, gender, **gender identity**,

sexual orientation, intersex **variation**, **ethnicity** or race, **socio-economic status**, or **geographical location**; acknowledging the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability;

3.9. DPO Australia **recommends** that draft TOR i) be amended from:

- i) examples of good practice and innovative models of preventing and/or responding to violence, abuse, neglect and exploitation of people with disability;

To read:

- i) examples of good practice and innovative models of **identifying**, preventing and/or responding to **violence, abuse, exploitation and neglect** of people with disability;

3.10. DPO Australia **recommends** that draft TOR k) be amended from:

- k) the need to establish accessible and appropriate arrangements for people with disability, and their families, carers and others, to engage with the Royal Commission, and to provide evidence and information to you about their experiences;

To read:

- k) the need to establish accessible, **inclusive** and appropriate arrangements for people with disability, their families, carers and others, **including their representative organisations**, to engage with the Royal Commission, and to provide evidence and information to you about their experiences;

4. Key Issues missing from the current draft TOR

4.1. Centrality of the experiences of people with disability

- 4.1.1. Effective and meaningful participation is at the core of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD). The Convention addresses participation as a crosscutting issue, meaning that ‘participation’ is embedded within all articles. The CRPD makes it clear that people with disability are the key interlocutors in its implementation and monitoring and full and effective participation must be afforded to all persons with disability on all matters affecting them.¹⁹
- 4.1.2. In keeping with Australia’s obligations under the CRPD, the Royal Commission must be driven by the experiences of those of us who have experienced violence, abuse, exploitation and neglect. This should be the first task of the Commission – to hear from us about our experiences. Doing so will enable the Commission to undertake all other aspects of the Commission through this lens. DPO Australia notes that the opening of the Letters Patent from the *Royal Commission into Institutional Responses to Child Sexual Abuse* stated:

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

- 4.1.3. The Terms of Reference for the *Royal Commission into Institutional Responses to Child Sexual Abuse* later directed the Commissioners to:

have regard to... (e) the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs.

- 4.1.4. Therefore DPO Australia **recommends** that the opening of the Letters Patent for the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*, make the following statements:

AND it is important that people with disability who have experienced violence, abuse, exploitation and/or neglect can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

- 4.1.5. DPO Australia further **recommends** that a term of reference be included in the Letters Patent, to read:

We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

the experiences of people with disability directly or indirectly affected by all forms of violence, abuse, exploitation and neglect in all settings and contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised and/or will have significant support and/or access requirements.

4.2. Structural and Systemic Issues

- 4.2.1. A key task of this Royal Commission must be to interrogate, not only how to identify and prevent violence, abuse, exploitation and neglect against people with disability but what *causes* it in the first place. Little is known about the causes of violence against us, and while this situation remains, it will be difficult to determine how to prevent violence, abuse, exploitation and neglect against people with disability. Despite this, the draft TOR do not include the enablers of violence or the structural and systemic issues that give rise to violence, abuse, exploitation and neglect against people with disability, unlike in the *Royal Commission into Institutional Responses to Child Sexual Abuse*.
- 4.2.2. The United Nations ‘*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*’²⁰ clearly articulates the right of victims and their representatives to seek and obtain information on the causes leading to their victimisation and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.
- 4.2.3. In this context, DPO Australia **recommends** that the following term be included:

We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

the need to focus your inquiry and recommendations on systemic and structural issues including the enablers of violence, abuse, exploitation and neglect, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

4.3. Redress and Reparation

- 4.3.1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law,²¹ includes, inter alia, the duty to:
- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
 - (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
 - (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and;
 - (d) Provide effective remedies to victims, including reparation.

- 4.3.2. Under international human rights law, ‘victims’ are recognised as persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation. Additionally, a person is considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.²²
- 4.3.3. Reflecting Australia’s obligations under the international human rights treaties to which Australia is a party, and the United Nations *‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’*²³, remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s²⁴ right to the following as provided for under international law:
- (a) Equal and effective access to justice;
 - (b) Adequate, effective and prompt reparation for harm suffered;
 - (c) Access to relevant information concerning violations and reparation mechanisms.
- 4.3.4. In accordance with the international human rights treaties to which Australia is a party, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁵

In this context, DPO Australia **recommends** that the following term be included:

We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

what institutions, governments and others should do to address, or alleviate the impact of, past and future violence, abuse, exploitation and neglect of people with disability, including, in particular, in ensuring redress and reparation, including access to justice and reparation for harm suffered, processes for referral for investigation and prosecution and support services.

4.4. Research

- 4.4.1. DPO Australia supports inclusive, participatory, community human rights based research, where the voices of people with disability are central to the research question, the research process and the research outcomes. This means that people with disability must be driving the research, leading the research and central to the research outcomes.²⁶ This ensures that our voices are clearly heard and that our citizenship is rightfully respected. Participation of people with disability as equal citizens is central to the recognition of our dignity.²⁷ This Royal Commission must ensure that appropriate

research is developed and undertaken during the course of the Royal Commission so that evidence and data is collected and used appropriately, that measures are developed to prevent any future potential violence, abuse, exploitation and neglect and that there is a clear and accurate record of the outcomes of the Royal Commission.

4.4.2. As a ratified signatory to the United Nations *Convention of the Rights of Persons with Disabilities* (CRPD) the Commonwealth has a responsibility to uphold the Convention with particular regard to the following Articles:

- Article 14 of the CRPD states that States parties must ensure effective access to justice for people with disability on an equal basis with others.
- Article 21 of the CRPD states that people with disability can exercise the right to freedom of expression, opinion and access to information.
- Article 29 of the CRPD states the right of people with disability to participate in political and public life.
- Article 31 of the CRPD makes clear that States parties must undertake to collect information, including research data to enable the formulation and implementation of policies that give effect to the CRPD. In addition, that information collected be disaggregated in order to assist with assessment of the implementation of the CRPD.

4.4.3. DPO Australia strongly **recommends** that all research must be overseen by a Research Advisory Panel which is constituted of people with disability, disabled scholars and leaders from within the disabled community. We note, that from an ethical perspective it would be inappropriate for service providers, their representative peak bodies and the National Disability Insurance Agency (NDIA) to be present on any research panel in regard to the Royal Commission as this would constitute a clear conflict of interest and would potentially taint any research developed.

4.4.4. The *Royal Commission into Institutional Responses to Child Sexual Abuse* established a program of research to answer some key questions and respond to gaps in the Australian and international evidence base. The *Royal Commission* commissioned and conducted research in three broad categories: a) descriptive research to establish necessary background information; b) primary research to fill critical evidence gaps; c) research that summarised existing findings about child sexual abuse in institutional contexts, as well as practices that successfully prevent or respond to it. The research agenda had eight themes: 1) Causes; 2) Prevention 3) Identification 4) Institutional responses 5) Government responses 6) Treatment and support needs 7) Institutions of interest, and 8) Ensuring a positive impact.

4.4.5. DPO Australia supports and endorses a similar approach for the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*.

4.4.6. In this context, DPO Australia **recommends** that the following term be included:

We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you, as you consider appropriate, having regard to the date by which you are required to submit your final report, to take (or refrain from taking) any action arising out of your consideration:

the need to establish an accessible, inclusive, participatory rights based Research Framework, whereby people with disability inform, direct and participate in any given research that pertains to and/or arises from any background and primary research, along with findings, evidence and outcomes of the Royal Commission.

4.5. Self, Individual, and Systemic Advocacy

4.5.1. Self, individual, and systemic advocacy will be crucial to the success of the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*. Many people with disability will require advocacy and decision making supports in order to be informed about, make decisions relating to, and engage in the Royal Commission. Disabled People’s Organisations (DPOs) – governed and run by, and constituted of people with disability, will have a critical role to play in the Royal Commission. DPOs have a rightful and vital place in assisting people with disability to engage in the Royal Commission, as well as directly informing and supporting the work of the Royal Commission.

4.5.2. In this context, DPO Australia **recommends** that the following term be included:

The need to ensure that people with disability are supported by their representative organisations and by self and individual advocacy services to access and engage in all aspects of the Royal Commission and its associated legal and support services, including being provided with culturally appropriate, accessible information, support to make decisions, support to request sufficient time and resources to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

4.5.3. It is essential that systemic advocacy is resourced to enable the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability* to explore themes, policy topics, lines of inquiry and test approaches through its public hearings, roundtables and discussion papers. DPO peak bodies and disability systemic advocacy organisations are best placed to provide this input to the Royal Commission. Human rights and systemic advocacy expertise from these organisations will be essential in the development of the Royal Commission’s findings and recommendations.

4.5.4. In this context, DPO Australia **recommends** that the following term be included:

The need to ensure that human rights and systemic advocacy issues pertaining to people with disability are supported by their representative organisations and by systemic advocacy organisations in all public inquiries of the Royal Commission.

4.6. Investigative Units

4.6.1. The *Royal Commission into Institutional Responses to Child Sexual Abuse* established an internal investigative unit within the Commission to ensure the timely referral and criminal investigation of allegations of child sexual abuse that came before the Commission, should victims seek such action.

4.6.2. DPO Australia **recommends** that a similar process and mechanism be established for the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*.

- 4.6.3. In this context, DPO Australia therefore **recommends** that the TOR include the provision for the establishment of investigative units:

We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

the need to establish investigation units to support your inquiry.

4.7. Potential Definitions

- 4.7.1. **‘people with disability’** - refers to people with all kinds of impairment from birth or acquired through illness, accident or the ageing process. It includes cognitive impairment, as well as physical, sensory, intellectual, and psycho-social disability. It also includes all persons with disability, regardless of their circumstances, including their visa status.
- 4.7.2. **‘violence, abuse, exploitation and neglect’** - is broadly understood to include, but is not limited to: domestic, family and interpersonal violence; physical and sexual violence and abuse; psychological or emotional harm and abuse; constraints and restrictive practices; forced treatments and interventions; sexual and reproductive rights violations; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; structural and institutional forms of violence related to law, the state and culture (such as denial of legal capacity; indefinite detention; substitute decision-making systems); hate crimes; physical and emotional neglect; passive neglect; and wilful deprivation.
- 4.7.3. **‘all settings or contexts’** - is broadly understood to include, but is not limited to: residential institutions; boarding houses; group homes; workplaces; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out-of-home care; special schools; boarding schools; school buses; hospitals; juvenile justice facilities; disability services; aged care facilities; community settings and environments (including on the streets); private homes; public housing; immigration detention facilities; transport facilities; detention settings and services.

5. Endnotes

¹ Disabled People's Organisations (DPO's) are recognised around the world and in international human rights law as self-determining organisations led by, controlled by, and constituted of, people with disability. The 'will and preferences of people with disability' are at the top of the hierarchy in decision making of DPO's. Importantly, DPO's are organisations "of" people with disability, as opposed to organisations "for" people with disability. See for eg: United Nations General Assembly (12 January 2016) *Report of the Special Rapporteur on the rights of persons with disabilities*. Human Rights Council, Thirty-first session. UN Doc. No. A/HRC/31/62

² See for eg: E/C.12/AUS/5; E/C.12/AUS/CO/5; CRPD/C/AUS/QPR/2-3; CCPR/C/AUS/CO/6

³ See: <http://dpoa.org.au/violence-abuse-exploitation-neglect-people-disability-australia-available-data-march-2019/>

⁴ Council of Australian Governments (2011) *National Disability Strategy 2010-2020*, Commonwealth of Australia.

⁵ Worthington, E. (2017) *People with intellectual disabilities twice as likely to suffer preventable death, study finds*. Accessed online at: <https://www.abc.net.au/news/2017-02-08/study-finds-intellectually-disabled-two-times-preventable-death/8248772>

⁶ WWDA (2007) *Forgotten Sisters - A Global Review of Violence against Women with Disabilities*. WWDA Resource Manual on Violence Against Women With Disabilities. Hobart, Tasmania: Women With Disabilities Australia.

⁷ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper*. Hobart: Women with Disabilities Australia. Available online at: http://wwda.org.au/wp-content/uploads/2013/12/STV_Background_Paper_FINAL.pdf

⁸ Australian Institute of Health and Welfare 2017. *Australia's welfare 2017*. Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

⁹ Memmott, P., Stacy, R., Chambers, C. & C. Keys (2001) *Violence in Indigenous Communities*. Attorney-General's Department. Available at: <http://www.crimeprevention.gov.au/Publications/FamilyViolence/Documents/violenceindigenous.pdf>

¹⁰ Ibid

¹¹ Out-of-home care is defined by the Australian Government as: Overnight care, including placement with relatives (other than parents) where the government makes a financial payment. It includes care of children in legal and voluntary placements (that is, children on and not on a legal order) but excludes placements solely funded by disability services, psychiatric services, youth justice facilities and overnight child care services. There are five main out-of-home care placement types: 1) Residential care – where placement is in a residential building with paid staff. 2) Family group homes – provide care to children in a departmentally or community sector agency provided home. These homes have live-in, non-salaried carers who are reimbursed and/or subsidised for the provision of care. 3) Home-based care – where placement is in the home of a carer who is reimbursed (or who has been offered but declined reimbursement) for expenses for the care of the child. This is broken down into three subcategories: (a) relative/kinship care – where the caregiver is a relative (other than parents), considered to be family or a close friend, or is a member of the child or young person's community (in accordance with their culture) who is reimbursed (or who has been offered but declined reimbursement) by the State/Territory for the care of the child. For Aboriginal and Torres Strait Islander children, a kinship carer may be another Aboriginal and Torres Strait Islander person who is a member of their community, a compatible community or from the same language group; (b) foster care – where the care is authorised and carers are reimbursed (or were offered but declined reimbursement) by the state/territory and supported by an approved agency. There are varying degrees of reimbursement made to foster carers; (c) other – home-based care which does not fall into either of the above categories. 4) Independent living – including private board and lead tenant households. 5) Other – includes placements that do not fit into the above categories and unknown living arrangements. This includes boarding schools, hospitals, hotels/motels and defence force. See: Productivity Commission, *Report on Government Services 2015*; Chapter 15, p.73.

¹² See for eg: <http://www.abc.net.au/news/2015-04-03/experts-slam-need-to-cage-boy-wth-autism-at-canberra-school/6369470>; See also: Robinson, S. (2013) *Enabling & Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*. Children With Disability Australia, Melbourne. Accessed online at: <http://www.cyda.org.au/enabling-and-protecting>

¹³ Robinson, S. (2013) OpCit.

¹⁴ Convention on the Elimination of All Forms of Racial Discrimination 1965 ([1975] ATS 40); International Covenant on Economic, Social and Cultural Rights 1966 ([1976] ATS 5); International Covenant on Civil and Political Rights 1966 ([1980] ATS 23); Convention on the Elimination of All Forms of Discrimination Against Women 1979 ([1983] ATS 9); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ([1989] ATS 21); Convention on the Rights of the Child 1989 ([1991] ATS 4); Convention on the Rights of Persons with Disabilities 2006 [2008, ATS 12].

¹⁵ Human rights treaties are often followed by "Optional Protocols" which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty. Optional protocols include an inquiry procedure, as well as a complaints procedure. An inquiry procedure enables the treaty body to conduct inquiries into serious and systematic abuses of human rights in countries that become States parties to the Optional Protocol. This allows widespread violations to be investigated where individuals or groups may be unable to make communications (for practical reasons or because of fear of reprisals), and is important where individual communications fail to reflect the systemic nature of widespread violations of human rights.

¹⁶ The Committees publish their interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work. These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions, such as the right to life or

the right to adequate food, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. See: <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

¹⁷ See: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁸ The UN Special Rapporteur on Torture has emphasised this: “it is necessary to highlight additional measures needed to prevent torture and ill-treatment against people with disabilities, by synthesizing standards and coordinating actions in line with the CRPD”. See: Juan E. Mendez, Special Rapporteur, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, UN Doc A/HRC/22/53 (1 February 2013), para. 62.

¹⁹ Women With Disabilities Australia (WWDA) ‘WWDA Position Statement 3: The Right to Participation’. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-8-3.

²⁰ United Nations General Assembly (2006) *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*; UN Doc. No A/RES/60/147.

²¹ Ibid.

²² Ibid.

²³ United Nations General Assembly (2006) *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*; UN Doc. No A/RES/60/147.

²⁴ Under the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, ‘victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.’ See: UN Doc No: A/RES/60/147; para. 10.

²⁵ Under the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, **Restitution** includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence where safe, restoration of employment and return of property. **Compensation** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. **Rehabilitation** should include medical and psychological care as well as legal and social services. **Satisfaction** should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. **Guarantees of non-repetition** should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law. See: United Nations General Assembly (2006) *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*; UN Doc. No A/RES/60/147.

²⁶ People With Disability Australia (PWDA) PWDA Research Protocols, 2017.

²⁷ Women With Disabilities Australia (WWDA) ‘WWDA Position Statement 3: The Right to Participation’. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-8-3