



Women
With
Disabilities
Australia
(WWDA)

WWDA **2** POSITION STATEMENT THE RIGHT TO DECISION-MAKING

Women and girls with disability must be afforded their full decision-making rights and opportunities in all aspects of their lives



PUBLISHING INFORMATION

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Disclaimer

Aboriginal and Torres Strait islander peoples are respectfully advised that this publication may include images of people who are deceased.

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- 🏆 **Winner**
National Human Rights Award 2001
- 🏆 **Winner**
National Violence Prevention Award 1999
- 🏆 **Winner**
Tasmanian Women's Safety Award 2008
- 🏆 **Nominee**
French Republic's Human Rights Prize 2003
- 🏆 **Nominee**
UN Millennium Peace Prize for Women 2000
- 🏆 **Certificate of Merit**
Australian Crime & Violence Prevention Awards 2008

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1 WWDA POSITION ON THE RIGHT TO DECISION-MAKING

- ▶ WWDA believes the right to decision-making is fundamental to the realisation of agency, autonomy and self-determination.
- ▶ WWDA believes women and girls with disability must be afforded their full decision-making rights and opportunities in all aspects of their lives.
- ▶ WWDA believes women and girls with disability have the right to receive all necessary supports to make meaningful and informed decisions. Support must respect the human rights, autonomy, will and preferences of women and girls with disability and should never amount to substitute decision-making.
- ▶ WWDA believes accurate and accessible information is a prerequisite for the provision of active, free and informed consent and meaningful decision-making of women and girls with disability in all matters.
- ▶ WWDA believes the widespread denial of the right of women and girls with disability to make decisions is continuing unabated due to paternalistic attitudes, problematic stereotypes, deep-rooted inequality and extreme forms of discrimination against women and girls with disability.

Recommendations

1. WWDA calls on the Australian Government to adopt and promote all necessary measures for the development, advancement and empowerment of women and girls with disability by recognising them as distinct rights holders, providing channels for voice and agency, raising self-confidence, and increasing their power and authority to make decisions in all areas of their lives.
2. WWDA calls on the Australian Government to abolish substitute decision-making regimes and mechanisms that deny women and girls with disability the opportunity to make their own decisions or recognise their legal capacity and which discriminate in purpose or effect against women and girls with disability.
3. WWDA calls on the Australian Government to ensure decision-making, including supported decision-making, participation and capacity building of women and girls with disability are integral to all policy and programmatic efforts relevant to women and girls with disability.
4. WWDA calls on the Australian Government to commission and fund a comprehensive assessment of the situation of women and girls with disability, in order to establish a baseline of disaggregated data and information against which compliance with the UN treaties (to which Australia is a party) and national policy frameworks can be measured and monitored.
5. WWDA calls on the Australian Government to provide long-term support, including core support and resources for capacity building, to human rights based organisations constituted by, of and for women and girls with disability.
6. WWDA calls on the Australian Government to ensure that all government departments and agencies at all levels, provide accurate and accessible information concerning issues relevant to women and girls with disability which can support women and girls with disability to make informed decisions and choices.
7. WWDA calls on the Australian Government to immediately withdraw its Interpretative Declarations on CRPD Article 12 [Equal recognition before the law], Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].



**WWDA BELIEVES THE RIGHT TO DECISION-MAKING IS
FUNDAMENTAL TO THE REALISATION OF AGENCY,
AUTONOMY AND SELF-DETERMINATION**

2 INTRODUCTION

The ability to make decisions, big and small, about every aspect of our lives and what we do is a fundamental human right. The decisions and choices that we make enable us to express our views, our personalities, our desires, our preferences, as well as our thoughts on what is important to us in life. The outcomes of our choices and decisions can be good and bad, and it is these outcomes that help us to learn and gain experience, confidence, and knowledge. Being able to make our own decisions also allows us to participate in our communities and broader society.¹

Too often however, women and girls with disability are not allowed or supported to make their own decisions and choices, ranging from small choices about what to eat and what to wear, to the more important life choices, like where to live, with whom and whether or not to have a partner and/or children.

Despite persistent and systemic exclusion from social and civic life, women and girls with disability have engaged, and continue to engage in new and innovative forms of social, cultural, political and economic participation, working for change across local, national and global domains.²

It is largely through the actions of women with disability themselves – locally, nationally and globally - that this history and culture of exclusion is being challenged. Women with disability argue that one of the best ways to challenge oppressive practices, cultures and structures is to come together with other women with disability – to share experiences, to gain strength from one another and to work together on issues that affect them. Through organisations like WWDA – run *by* and *for* women and girls with disability - women with disability are afforded a mechanism to become actively and genuinely involved in organising for their rights – defining their issues, making decisions about factors that affect their lives, participating in the formulation and implementation of policies, programs and services and, taking individual and collective action to claim and advance their human rights and freedoms.

In this Position Statement on the Right to Decision-Making, WWDA outlines key evidence concerning the exclusion of women and girls with disability from decision-making processes. We highlight specific human rights obligations to ensure that the decision-making rights of women and girls with disability are realised.

Seven recommendations are made in regard to improving the fulfilment of women and girls with disabilities' right to decision-making on an equal basis with others.

3 THE EVIDENCE

Self Determination

- ▶ The fundamental freedom to make one's own choices and to control one's own life is enshrined in a range of international human rights instruments, including the *International Covenant on Civil and Political Rights*³ to which Australia has been a party since 1980.⁴
- ▶ Women and girls with disability continue to be denied the right to participate in, and remain largely excluded from, decision-making, participation and advocacy processes, about issues that affect their lives and those of their families, communities and nations. Too often, they have their views ignored or disregarded in favour of 'experts', 'professionals', parents, guardians, and carers, as well as representatives of organisations not controlled and constituted by women with disability themselves.⁵
- ▶ Women and girls with disability, and particularly women and girls with intellectual disability continue to be denied their basic rights to make fully independent or supported choices about their own lives, bodies and goals.⁶
- ▶ Women and girls with disability are frequently excluded from participating in decisions that affect their lives on a daily basis, including as active agents in their own sexual and reproductive rights and sexual and reproductive health care.⁷
- ▶ Widespread discrimination, systemic prejudice, paternalistic and ableist attitudes that denigrate, devalue, oppress and limit, continue to impact negatively on women and girls with disability in Australia and across the global context.⁸
- ▶ The denial of the right to meaningful decision-making and participation has led to many women and girls with disability being denied a number of other rights, including the right to vote, marry, have or adopt children, develop social and intimate relationships, realise their sexual and reproductive rights, access education, live their lives free from violence, and, fulfil their basic rights to liberty of the person and freedom of movement.⁹
- ▶ Women and girls who live in institutional environments, including residential group homes and other forms of supported accommodation facilities, often have limited opportunities for meaningful decision-making, and are at high risk of being coerced.¹⁰
- ▶ Women and girls who have lived the majority of their lives in institutional or semi-institutional environments may have had limited opportunities to articulate their needs, preferences and wishes, and may be fearful about disagreeing with decisions made by others on their behalf due to prior and ongoing experiences of sexual and other forms of violence and abuse.¹¹
- ▶ Women and girls with communication impairments and/or little or no speech may also be denied or have restricted opportunities to make decisions and articulate their needs preferences and wishes.¹²
- ▶ Self-determination and access to meaningful decision-making for women with disability is regularly limited and undermined by familial, institutional and professional gatekeepers, including service providers, care/support staff and family members.¹³
- ▶ Many women and girls with disability are not afforded the right to make their own decisions because others determine that they 'lack capacity' to do so. Such judgements often lead to substitute decision-making processes whereby others decide on a woman or girl's behalf what is in her 'best interests'. This is particularly the case for women and girls with intellectual disability – where the diagnosis of intellectual disability is assumed to equate with a lack of capacity to make decisions.¹⁴

Self Determination (Cont.)

- ▶ Girls with disability are often denied or limited in expressing their views in line with their evolving capacities, and are perceived as 'fixed' in their capacities to understand or participate in decision-making affecting their lives.¹⁵
- ▶ Substitute decision-making and best interests approaches have been thoroughly criticised as fundamentally contravening the *Convention on the Rights of Persons with Disabilities* and as intrinsically value-laden.¹⁶ In practice, the best interests approach most often serves the interests of guardians and carers.¹⁷

Decision-Making and Sexual and Reproductive Rights

- ▶ The denial of the right to decision-making and participation opportunities for women and girls with disability is clearly evident in the area of sexual and reproductive rights. No group has ever been as severely restricted, or negatively treated, in respect of their sexual and reproductive rights, as women and girls with disability.¹⁸
- ▶ Women and girls with disability experience, and are at risk of multiple violations of their sexual and reproductive rights, through practices such as forced and/or coerced sterilisation, forced contraception and/or limited or no contraceptive choices, a focus on menstrual and sexual suppression, poorly managed pregnancy and birth, forced or coerced abortion, termination of parental rights, denial of/forced marriage, and other forms of torture and violence, including gender-based violence. They also experience systemic exclusion from sexual and reproductive health care services, violence prevention services, and information and education.¹⁹
- ▶ Women and girls with disabilities' sexuality, gender identity and expressions are often heavily policed, denied or restricted - either directly or indirectly - by those in their lives, through attitudes or structural barriers.²⁰ Sex education for women and girls with disability is wholly inadequate, often focused exclusively on reproductive health and taught from a heterosexual perspective.²¹

Decision-Making and Access to Information

- ▶ The ability and the right to make one's own decisions and choices and to full and effective participation is dependent on access to accurate, accessible and appropriate information.²² Yet many women and girls with disability are denied the right to seek, receive and impart information about decisions affecting their lives.
- ▶ For many women and girls with disability, access to information about their legal and human rights is limited, particularly for women and girls with intellectual disability, and for those who are incarcerated, hospitalised, and who live in other institutional or semi-institutional residential environments.²³
- ▶ Restricted and limited access to information and opportunities for education about decision-making and rights, combined with prejudicial social attitudes and systemic discrimination, reproduce social and gendered inequality, and contribute to women and girls with disability experiencing, and at risk of violations of their human rights.²⁴
- ▶ Information concerning issues relevant to women and girls with disability is rarely available in timely, comprehensive, and accessible ways. Governments and service providers rarely provide information in the full range of accessible formats, such as in sign language, Braille, large print, audio, Easy English, plain and/or non-technical language, captioned video, in languages other than English, or through the provision of accessible and usable web sites.²⁵

The Status of Women and Girls with Disability in Australia

- ▶ Over two-million women and girls with disability live in Australia (approximately 20% of the population of women), including approximately 100,000 girls with disability aged 0-14 and two-million women with disability aged 15 and older.²⁶
- ▶ The right to live free from all forms of violence and abuse is consistently identified by women and girls with disability in Australia as the most urgent and unaddressed human rights issue they face.²⁷ 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.²⁸ Their experiences of violence last over a longer period of time, they experience more severe injuries as a result of the violence²⁹ and they have considerably fewer pathways to safety.³⁰
- ▶ Women and girls with disability are more likely than men and boys with disability (and other women and men) to face medical interventions to control their fertility, and experience significantly more restrictions, negative treatment, and particularly egregious violations of their sexual and reproductive rights. They experience, and are more exposed to practices which qualify as torture or inhuman or degrading treatment,³¹ including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.³²
- ▶ Compared to others in the population, they are more likely to be isolated and segregated within the range of settings in which they reside, are incarcerated, or receive support services;³³ are subjected to multiple forms and varying degrees of 'deprivation of liberty' and are more likely to be subjected to unregulated or under-regulated restrictive interventions and practices,³⁴ often imposed as a means of coercion, discipline, convenience, or retaliation by others.³⁵ Indigenous women with disability are at risk of being detained indefinitely, often without conviction, in prisons and in forensic psychiatric units throughout Australia enduring periods of indefinite detention that in some cases exceed years.³⁶
- ▶ Women with disability in Australia have less power and fewer resources than other women and men. They are much more likely to live in poverty than people in the general population; have to work harder to secure their livelihoods; have less control over income and assets, and have little economic security.³⁷ They are much more likely to be unemployed than other women and men with disability; less likely to be in the paid workforce;³⁸ have lower incomes from employment; are more likely to experience gender and disability biases in labour markets; and are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment.³⁹
- ▶ Compared to men with disability and other women, disabled women experience substantial housing vulnerability, are more likely to experience and face homelessness, and are much more likely to be affected by the lack of affordable housing.⁴⁰ They are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,⁴¹ are at higher risk of separation/divorce than men with disability and often experience difficulty maintaining custody of their children post-separation/divorce.⁴² Mothers with disability are up to ten times more likely than other parents to have a child removed from their care by authorities on the basis of the mother's disability, rather than any evidence of child neglect.⁴³
- ▶ Like many women, disabled women share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, and caring for children and relatives. Women with disability are much less likely to receive service support than other women and men with disability, across all service types and sectors.⁴⁴



THE RIGHT TO LIVE FREE FROM ALL FORMS OF VIOLENCE AND ABUSE IS CONSISTENTLY IDENTIFIED BY WOMEN AND GIRLS WITH DISABILITY IN AUSTRALIA AS THE MOST URGENT AND UNADDRESSED HUMAN RIGHTS ISSUE THEY FACE

4 INTERNATIONAL HUMAN RIGHTS OBLIGATIONS: DECISION-MAKING

Australia is a signatory to seven core international human rights treaties, 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; 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,⁴⁵ General Comments⁴⁶ 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 women and girls with disability, including their right to decision-making at all levels. The seven core international human rights treaties to which Australia is a party, are:

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

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* - an international human rights instrument that sets a standard for the protection of Indigenous rights.

Included in this section is a non-exhaustive list of excerpts from key articles from the relevant human rights instruments to which Australia is a party and which concern decision-making rights.

Convention on the Rights of Persons with Disabilities (CRPD)

The *Convention on the Rights of Persons with Disabilities (CRPD)*⁴⁷ was ratified by Australia on 17 July 2008. Its fundamental purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disability, and to promote respect for their inherent dignity. The CRPD recognises gender as one of the most important categories of social organisation and at Article 6 [Women with Disabilities] recognises the pervasive marginalisation and discrimination experienced by women and girls with disability. Obligations under CRPD Article 6 are of *immediate* nature.⁴⁸

The legal nature of Article 6 is crosscutting which means that every article of the CRPD has to be understood, viewed, implemented and evaluated from the perspective of advancing the human rights of all women and girls with disability – regardless of where they live, work or play. Because Article 6 is a “cross-cutting” article it means that when governments are developing or implementing laws, policies, programs, or services for women, for people with disability, or for the whole community, they must ALWAYS take extra actions to make sure women and girls with disability are included and can fully enjoy their rights. They must also ALWAYS consult with women and girls with disability and their organisations about the best ways to implement every article of the CRPD.⁴⁹

Article 3 - General principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;

Article 6 - Women with disabilities

States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 12 - Equal recognition before the law

States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Article 19 - Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community

Article 26 - Habilitation and rehabilitation

States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

By ratifying the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*⁵⁰ in 1983, Australia became obliged to protect all women and girls from discrimination and ensure the achievement of equality between men and women. CEDAW further requires States Parties to take additional, special measures for women subjected to multiple forms of discrimination, including women and girls with disability.⁵¹

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights [...]

Article 15

States Parties shall accord to women equality with men before the law.

States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.

States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]

International Covenant on Civil and Political Rights (ICCPR)

The *International Covenant on Civil and Political Rights (ICCPR)*⁵² ratified by Australia in 1980, commits its parties to respect the civil and political rights of individuals, including for example, the rights to self-determination; to liberty and security of person; to family; to privacy; and to freedom from torture and cruel, inhuman or degrading treatment. Articles 7, 17, and 24 of the ICCPR protect the rights of women from all forms of violence; and from violations of their sexual and reproductive rights; including their right to bodily integrity.⁵³

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,⁵⁴ ratified by Australia in 1975, provides the legal framework to protect and preserve the most basic economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.⁵⁵ The ICESCR also calls for special protection for mothers and children,⁵⁶ including the right to protection and support in relation to motherhood, pregnancy, sexuality, and bodily integrity.⁵⁷

Article 1

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Convention on the Rights of the Child (CRC)

The *Convention on the Rights of the Child (CRC)*⁵⁸ was ratified by Australia in 1990.⁵⁹ It sets out the specific ways that human rights apply to all children and young people up to the age of 18 years. Gender is a key factor in implementation of the Convention, which recognises that policies, programs and other measures should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence. The CRC specifically recognises that girls with disability are often more vulnerable to discrimination due to gender discrimination, and requires that States parties pay particular attention to girls with disability by taking the necessary measures, (and when needed extra measures), in order to ensure that they are well protected, have access to all services and are fully included in society.⁶⁰

Article 12

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 13

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information [...]

Article 23

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)⁶¹ was ratified by Australia in 1975.⁶² ICERD affirms the equality of all persons' civil, political, economic and social rights without any distinction regarding race, colour, descent, or national or ethnic origin. Implementation of, and compliance with ICERD requires States Parties to give particular attention to complex forms of disadvantage in which racial discrimination is mixed with other causes of discrimination (such as those based on age, sex and gender, religion, disability and low socio-economic status).⁶³

Article 5

[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction [...], to equality before the law, notably in the enjoyment of the following rights:

- ▶ The right to equal treatment before the tribunals and all other organs administering justice;
- ▶ The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- ▶ Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- ▶ Other civil rights [...]

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Australia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)⁶⁴ in 1989. CAT strictly prohibits torture of any kind, with torture defined as any act, physical or mental, whether at the instigation, consent or acquiescence of a public official, where severe pain or suffering was intentionally inflicted for a range of purposes including discrimination. Such acts are also prohibited if they meet the slightly lower standard of "cruel, inhuman or degrading" treatment or punishment.⁶⁵ The mandate has stated, that torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Deprivation of legal capacity, when a person's exercise of decision-making is taken away and given to others, is one such circumstance. The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the prior, free and informed consent of the person concerned.⁶⁶

Article 1

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Declaration on the Rights of Indigenous Peoples (DRIP)

The United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP)⁶⁷ was adopted by Australia on 3rd of April 2009. The Declaration is an international human rights instrument that sets a standard for the protection of Indigenous rights. In adopting the Declaration, the Australian Government signaled its agreement to implement the provisions of the instrument in order to protect the individual and collective rights of Indigenous peoples. UNDRIP addresses the most significant issues affecting indigenous peoples - their civil, political, social, economic and cultural rights. It also bears on their right to self-determination, spirituality, language, lands, territories, resources and free, prior and informed consent.

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 22

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.



**WOMEN AND GIRLS WITH DISABILITY HAVE THE RIGHT
TO RECEIVE ALL NECESSARY SUPPORTS TO MAKE
MEANINGFUL AND INFORMED DECISIONS**

5 INTERNATIONAL HUMAN RIGHTS COMPLIANCE: DECISION-MAKING

International human rights treaties have mechanisms to ensure that States parties protect human rights not only in words but also in practice.⁶⁸ For more than a decade, the United Nations treaty monitoring bodies have made strong recommendations to Australia in relation to improving the human rights of women and girls with disability, including a number that the UN and civil society organisations have considered urgent.

This section of the paper highlights a non-exhaustive sample of some of the key recommendations the United Nations treaty monitoring bodies and mandates have made to Australia in relation to improving decision-making rights of women and girls with disability.

Committee on the Rights of Persons with Disabilities

In October 2013, the *Committee on the Rights of Persons with Disabilities* released its Concluding Observations [Australia]⁶⁹ following its September 2013 review of Australia's compliance with the Convention on the Rights of Persons with Disabilities (CRPD). The Committee made more than 27 major recommendations to the Australian Government around the Committee's principal areas of concern in relation to Australia's performance to date in complying with the CRPD. Whilst all of the Concluding Observations made by the Committee are applicable to women and girls with disability, the CRPD Committee made a number of specific and urgent recommendations to the Australian Government in relation to the human rights of women and girls with disability, including those relating to decision-making and legal capacity.

The Committee recommended that Australia take immediate steps to replace substitute decision-making with supported decision-making and provide a wide range of measures which respect the person's autonomy, will and preferences in full conformity with article 12 of the Convention. The Committee recommended Australia

[Repeal] all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community [...]

The Committee urged the Australian Government to adopt national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent. It expressed its "deep concern" at the "failure" of Australia to implement previous treaty body and mandate recommendations regarding sterilisation of children and adults with disabilities.⁷⁰

The Committee recommended that the Australian Government take immediate action to make sure that people with disability are given a free choice of where they want to live and with whom. The need to establish policies and programs to ensure the right of children with disability to express their views on all matters concerning them was a key recommendation from the Committee.

Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

At its 34th session⁷¹ in 2006 and its 46th session⁷² in 2010, the Committee on the Elimination of Discrimination against Women (CEDAW) made very strong recommendations regarding the need for urgent action by Australian governments in relation to women and girls with disability. In expressing concern at the lack of progress in relation to decision-making and leadership, the Committee recommended that Australia adopt urgent measures to ensure that women with disability are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets.

The Committee further recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent. The CEDAW Committee also noted with concern, the persistent inequality of women with disabilities' access to education, employment opportunities and health care services, as well as the pervasive and high incidence of violence, which they recommended the Australian Government address as a matter of urgency.

Committee on Economic, Social and Cultural Rights

At its 42nd session⁷³ in 2009, the Committee on Economic, Social and Cultural Rights reviewed Australia's compliance under the CESCR. The Committee expressed its regret that "insufficient measures have been taken by the State party to ensure an adequate standard of living for persons with disabilities," and recommended the Australian Government strengthen its efforts towards the adoption of concrete measures to enable persons with disabilities to fully enjoy the rights guaranteed by the Covenant. The Committee further recommended that the Australian Government provide human rights education and training on economic, social and cultural rights to students at all levels of education and all professions and sectors having a direct role in the promotion and protection of human rights.

Committee on the Rights of the Child

The Committee on the Rights of the Child reviewed Australia's compliance⁷⁴ under the CRC in 2005 and again in 2012.⁷⁵ On both occasions, the Committee expressed significant concern at the lack of fora and opportunities for children to express their views in matters affecting them. The Committee specifically noted the lack of participation and decision-making opportunities for children under the age of 15, Aboriginal and Torres Strait Islander children, and 'vulnerable' children. The Committee made strong recommendations in this area, including that the Australian Government "promote the meaningful and empowered participation of all children, at all levels of government and within the family, community, and schools, including within student council bodies – with particular attention to children in vulnerable situations."

In the 2012 review, the Committee noted, once again, its grave concern at the ongoing practice in Australia of sterilisation of women and girls disabilities, re-iterating that it is a form of violence and in breach of multiple Articles of the CRC. The Committee expressed its 'serious concern' that the absence of legislation prohibiting such sterilization is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities. The Committee re-iterated its long-standing recommendation to the Australian Government to enact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability.

Human Rights Committee

Australia's compliance with the International Covenant on Civil and Political Rights (ICCPR) was reviewed during the 95th session⁷⁶ of the Human Rights Committee in 2009. The Committee expressed its regret that the Australian Government had not provided sufficient and adequate information for the Review. However, despite the absence of adequate information, the Committee noted its ongoing concern that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights, and recommended that the Australian Government increase its efforts in this area.

The Committee expressed concern at the lack of adequate access to justice for marginalized and disadvantaged groups, and recommended the Australian Government take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people.

Committee Against Torture

The Committee Against Torture last reviewed Australia’s compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2014 at its 53rd session.⁷⁷ One of its principal areas of concern related to violence against women, particularly violence against women with disability, and indigenous women. The Committee made a series of strong recommendations in this area, including the need to “take measures to facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them.”

The over-representation of indigenous people in prisons, particularly women, was a further area of concern with the Committee recommending that the Australian Government “increase its efforts to address the overrepresentation of indigenous people in prisons, in particular its underlying causes.” The Committee made a number strong recommendations in relation to immigration detention and asylum seekers, noting that the mandatory detention “creates serious physical and mental pain and suffering”.

The Committee Against Torture addressed the issue of sterilization of children and adults with disabilities, and made a clear recommendation that the Australian Government “enact uniform national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied.”



FOR MORE THAN A DECADE, THE UNITED NATIONS TREATY MONITORING BODIES HAVE MADE STRONG RECOMMENDATIONS TO AUSTRALIA IN RELATION TO IMPROVING THE HUMAN RIGHTS OF WOMEN AND GIRLS WITH DISABILITY, INCLUDING A NUMBER THAT THE UN AND CIVIL SOCIETY ORGANISATIONS HAVE CONSIDERED URGENT, INCLUDING THE RIGHT TO DECISION-MAKING



6 RECOMMENDATIONS: THE RIGHT TO DECISION-MAKING

Mandated through Australia's international human rights obligations, and based on the evidence, voices, experiences, and expertise of women and girls with disability, WWDA offers the following key recommendations as critical to promoting the right to decision-making for all women and girls with disability.

1. WWDA calls on the Australian Government to adopt and promote all necessary measures for the development, advancement and empowerment of women and girls with disability by recognising them as distinct rights holders, providing channels for voice and agency, raising self-confidence, and increasing their power and authority to make decisions in all areas of their lives.
2. WWDA calls on the Australian Government to abolish substitute decision-making regimes and mechanisms that deny women and girls with disability the opportunity to make their own decisions or recognise their legal capacity and which discriminate in purpose or effect against women and girls with disability.
3. WWDA calls on the Australian Government to ensure decision-making, including supported decision-making, participation and capacity building of women and girls with disability are integral to all policy and programmatic efforts relevant to women and girls with disability.
4. WWDA calls on the Australian Government to commission and fund a comprehensive assessment of the situation of women and girls with disability, in order to establish a baseline of disaggregated data and information against which compliance with the UN treaties (to which Australia is a party) and national policy frameworks can be measured and monitored.
5. WWDA calls on the Australian Government to provide long-term support, including core support and resources for capacity building, to human rights based organisations constituted by, of and for women and girls with disability.
6. WWDA calls on the Australian Government to ensure that all government departments and agencies at all levels, provide accurate and accessible information concerning issues relevant to women and girls with disability which can support women and girls with disability to make informed decisions and choices.
7. WWDA calls on the Australian Government to immediately withdraw its Interpretative Declarations on CRPD Article 12 [Equal recognition before the law], Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].

7 SPEAKING OUT AND ACCESSING SUPPORT

If you, a child or another person is in immediate danger CALL 000.

If you are deaf, have a hearing or speech impairment, there are a number of ways to contact emergency services:

- ▶ **TTY** - dial 106
- ▶ **Internet relay** – and ask for Triple Zero (000)
- ▶ **Captioned relay** – and ask for Triple Zero (000)
- ▶ **SMS relay** – text 0423 677 767
- ▶ **Video relay** – login to Skype and contact one of the National Relay Service (NRS) contact names
- ▶ **Ordinary phone** - dial 1800 555 727 and ask for Triple Zero (000)

Call 1800RESPECT on 1800 737 732. This is the National Sexual Assault, Domestic Family Violence Counseling Service. These services are available for all women and are free.

Visit 1800RESPECT online at <http://www.1800respect.org.au>

Visit or contact a disability advocacy service in your area. <http://finder.dss.gov.au/disability/ndap/>

Speak with someone you trust or call an advocacy, violence or crisis service in your area.

8 ENDNOTES

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