



WOMEN  
WITH  
DISABILITIES  
AUSTRALIA  
(WWDA)

## **Women With Disabilities Australia (WWDA)**

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Submission to the Productivity Commission  
National Disability Agreement Review

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WWDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national disabled people's organisations (DPO's) in Australia.

<http://dpoa.org.au>

1. Women With Disabilities Australia (WWDA)<sup>1</sup> thanks the Productivity Commission for the opportunity to contribute this brief submission in response to the Commission's *National Disability Agreement Review - Issues Paper*.
2. WWDA is the national, non-government Disabled People's Organisation (DPO) for women and girls with all types of disability in Australia. WWDA operates as a transnational human rights organisation and is run by women with disability, for women and girls with disability. WWDA also works with partners and allies<sup>2</sup> who share our commitment. WWDA's work is grounded in a human rights framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Representing more than two million disabled women and girls in Australia, WWDA is nationally and internationally recognised for its leadership in advancing the human rights of women and girls with disability. Strengthening the promotion and protection of the rights of women and girls with disability is the foundation of WWDA's work.<sup>3</sup>
3. This brief Submission to the Productivity Commission's *National Disability Agreement Review*, does not endeavour to respond to all the issues and questions detailed in the Productivity Commission's *Issues Paper* for this important *Review of the National Disability Agreement*. Rather, this Submission from WWDA aims to highlight some key issue areas and themes for consideration by the Productivity Commission for the purposes of the Review. In addition, WWDA would welcome the opportunity to provide more specific information through a key stakeholder interview, as well as through further consultation opportunities as they arise.
4. Australia is a party to seven core international human rights treaties, all of which create obligations to promote the rights of people with disability. This includes obligations to prevent and address violations of the rights of people with disability. The seven treaties are:
  - Convention on the Rights of Persons with Disabilities ([2008] ATS 12);
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([1989] ATS 21);
  - International Covenant on Civil and Political Rights ([1980] ATS 23);
  - International Covenant on Economic, Social and Cultural Rights ([1976] ATS 5);
  - Convention on the Rights of the Child ([1991] ATS 4);
  - Convention on the Elimination of All Forms of Discrimination Against Women ([1983] ATS 9);
  - International Convention on the Elimination of All Forms of Racial Discrimination ([1975] ATS 40).
5. Together, these seven international human rights treaties provide a comprehensive framework to delineate the respective obligations and responsibilities of governments and other duty-bearers to create a holistic framework of rights promotion and rights protection (including redress for rights violations) for people with disability.<sup>4</sup> 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 domestic laws and policies.

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<sup>1</sup> WWDA works at regional, state/territory, national and international levels; services a direct and fast growing individual membership; undertakes substantial evidence-based research; implements projects at national and international levels; undertakes systemic advocacy; and, provides extensive policy advice and expertise to a wide and growing range of stakeholders, including at all levels of government, non-government, researchers, industry groups, United Nations machinery, and more. For detailed information about WWDA, go to: <http://wwda.org.au/>

<sup>2</sup> WWDA works as a member organisation of Disabled People's Organisations Australia (DPO Australia), an alliance of four national disabled people's organisations (DPO's) in Australia. 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 interest, purpose and strategic priority. The four member organisations of DPO Australia are: Women with Disabilities Australia (WWDA); People with Disability Australia (PWDA); the National Ethnic Disability Alliance (NEDA); and, the First People's Disability Network Australia (FPDN). See: <http://dpoa.org.au/> WWDA also works in collaboration with national and state/territory organisations across a wide range of sectors.

<sup>3</sup> For more information please see *WWDA Strategic Plan 2017 – 2021* available at <http://wwda.org.au/about/stratplan/>

<sup>4</sup> 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: A/HRC/22/53 Juan E. Mendez, para, 62.

6. In this context, WWDA is of the view that any new *National Disability Agreement (NDA)* should be **framed and embedded within a holistic human rights framework**, which places the rights of people with disability at the forefront, and recognises that all people with disability have agency in their own right. This is consistent with more contemporary understandings of people with disability as holders of full and equal human rights, including the right to self-determination and self-representation, and also consistent with the principle of maximising choice and control for all people with disability in Australia.

7. In the Australian disability policy and service landscape, the *Convention on the Rights of Persons with Disabilities* (CRPD) is regarded as the main international human rights treaty to advance the rights of people with disability in Australia. For example the objects of the *National Disability Insurance Scheme (NDIS) Act 2013*,<sup>5</sup> amongst other things, are to ‘give effect to Australia’s obligations under the *Convention on the Rights of Persons with Disabilities*’. The *National Disability Strategy 2010-2020* (NDS) sets out the national policy framework to guide all Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The Strategy states:

*The Strategy will play an important role in protecting, promoting and fulfilling the human rights of people with disability. It will help ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers. It will contribute to Australia’s reporting responsibilities under the Convention.*<sup>6</sup>

8. At Australia’s 2013 inaugural Review of Australia’s implementation and compliance with the CRPD, by the United Nations *Committee on the Rights of Persons with Disabilities*, the Australian Government delegation – in its opening address to the Committee, stated in part that:

*“Australia places great importance on meeting our obligations under the Convention....The foundation of Australia’s work to advance disability rights is the National Disability Strategy, which has been agreed to by all nine governments in Australia. The Strategy guides public policy across all levels of government and aims to improve design and delivery of mainstream, as well as disability specific, services and programs..... In practice, there are nine governments which share responsibility for implementing the Convention.....We must endeavour to consistently evaluate existing measures, to ensure they are still appropriate and relevant to achieving our goal to advance the rights of persons with disabilities.”<sup>7</sup>*

9. And, in its Closing Statement<sup>8</sup> to the *Committee on the Rights of Persons with Disabilities* at the conclusion of the Review, the Australian Government delegation stated, in part:

*“The Convention underpins much of Australia’s work to advance disability rights.....We recognise that **women**, children and Indigenous Australians with disabilities may face multiple intersecting disadvantage. The Australian Government is taking steps to ensure the **specific needs of these vulnerable groups** are considered during the development and implementation of relevant policies and programs.” [emphasis added].*

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<sup>5</sup> See: *National Disability Insurance Scheme Act 2013* Part 2: 3 (1)(a);

<sup>6</sup> *National Disability Strategy 2010-2020*, page 9.

<sup>7</sup> See In: Frohmader, C. (2013) Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia. Available online at: [http://wwda.org.au/wp-content/uploads/2013/12/WWDA\\_CRPD\\_Review\\_Australia\\_ReportOct13.pdf](http://wwda.org.au/wp-content/uploads/2013/12/WWDA_CRPD_Review_Australia_ReportOct13.pdf)

<sup>8</sup> Ibid.

10. These commitments are yet to be fully realised in the context of Australian domestic disability legislation, policies, agreements, and frameworks – including the *National Disability Agreement (NDA)* and the *National Disability Strategy (NDS)*.
11. Australia has not fully incorporated the CRPD into Australian domestic law and there remains no comprehensive legal framework for the protection of human rights. Whilst Australia’s domestic law contains a number of pieces of legislation that protect *certain* human rights, particularly the right to non-discrimination, they do not cover all rights provided for in the CRPD.
12. Although Australia’s implementation of CRPD obligations are set out in the *National Disability Strategy 2010-2020 (NDS)*, the NDS, has not been, and is not, being driven consistently across government jurisdictions. For example, the second NDS implementation Plan *Driving Action 2015-2018*,<sup>9</sup> was only released in December 2016, *halfway* through the implementation period 2015-2018, and focuses on actions already underway. NDS progress reports<sup>10</sup> often only *describe* these actions rather than *evaluate* outcomes for people with disability.
13. There is a lack of investment in implementation, monitoring and evaluation across the NDS policy outcome areas. Critically, the NDS lacks actions and measurable outcomes to address systemic human rights violations.<sup>11</sup> In addition, the NDS is siloed within the Australian Department of Social Services (DSS) as a disability policy responsibility only. This means there is little authority to leverage change across other Australian Government departments, or across State and Territory jurisdictions. Disabled People’s Organisations (DPOs) have therefore, consistently called on successive Australian Governments to establish a high-level executive mechanism within the Department of Prime Minister and Cabinet. Such a mechanism would hold strategic operational responsibility for the NDS and have the capacity to leverage reform across Commonwealth agencies and across States and Territories.<sup>12</sup> Securing high level and cross government involvement and coordination is critical to ensuring that disability does not continue to be conceived of as only being the responsibility of specialist areas of government dealing with specific disability service issues.<sup>13</sup>
14. A significant area of reform under the NDS has been the implementation of the *National Disability Insurance Scheme (NDIS)*, a universal scheme that funds ‘reasonable and necessary’ supports for Australians with permanent and significant disability, and which is currently being rolled out across Australia. However, the significant and perhaps ‘tunnel vision’ focus and emphasis by governments on the NDIS has resulted in much less action on other serious human rights issues experienced by people with disability, including for example: systemic violations of rights in health, employment, education, violence, denial of legal capacity, indefinite detention, and forced treatments.<sup>14</sup> There is a

<sup>9</sup> Department of Social Services, 2010-2020 *National Disability Strategy – Second Implementation Plan, Driving Action 2015-2018*, <https://www.dss.gov.au/disability-and-carers/programs-services/government-international/national-disability-strategy-second-implementation-plan>

<sup>10</sup> Department of Social Services, *Progress Report to the Council of Australian Governments 2014*, <https://www.dss.gov.au/disability-and-carers/programmes-services/government-international/progress-report-to-the-council-of-australian-governments-2014> ; See also: [https://www.dss.gov.au/sites/default/files/documents/01\\_2013/nds\\_first\\_year\\_final\\_-\\_20\\_12\\_12\\_2.pdf](https://www.dss.gov.au/sites/default/files/documents/01_2013/nds_first_year_final_-_20_12_12_2.pdf)

<sup>11</sup> See for eg: Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS)* to build inclusive and accessible communities, Disabled People’s Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/> . See also: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017), available at: <http://dpoa.org.au/icescr-review-2017> See also: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>

<sup>12</sup> See: Disabled People’s Organisation’s Australia (2017). *Submission to the Committee on the Rights of Persons with Disabilities List of issues [Australia] to be adopted during the 18th Session of the Committee on the Rights of Persons with Disabilities*. Prepared by Women with Disabilities Australia (WWDA) on behalf of DPO Australia. Sydney: Disabled People’s Organisations Australia (DPO Australia), Available at: [http://wwda.org.au/wp-content/uploads/2017/06/DPOA\\_Sub\\_LOI\\_CRPD.pdf](http://wwda.org.au/wp-content/uploads/2017/06/DPOA_Sub_LOI_CRPD.pdf) See also: Sands, T. (2017), Disabled People’s Organisations Australia (DPO Australia) *Submission to the 2017/2018 Federal Budget*. Available at [http://dpoa.org.au/wp-content/uploads/2017/04/DPOA\\_20172018Budget\\_Submission\\_FINAL.docx](http://dpoa.org.au/wp-content/uploads/2017/04/DPOA_20172018Budget_Submission_FINAL.docx)

<sup>13</sup> Frohmader, C. (2014) *‘Gender Blind, Gender Neutral’: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1, Available at: [http://wwda.org.au/wp-content/uploads/2013/12/WWDA\\_Sub\\_NDS\\_Review2014.pdf](http://wwda.org.au/wp-content/uploads/2013/12/WWDA_Sub_NDS_Review2014.pdf)

<sup>14</sup> Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS)* to build inclusive and

considerable lack of investment, resourcing, concerted actions and evaluation for the NDS to drive reform to promote and protect the full range of rights of people with disability in Australia.

15. In addition, the NDS does not reflect engagement with, nor demonstrate any respect for relevant treaty body reviews of Australia.<sup>15</sup> Relevant recommendations stemming from these treaty body reviews of Australia are not incorporated into concrete actions within the NDS and its Implementation Plans. In relation to the CRPD, for example, Australia still maintains its Interpretative Declarations<sup>16</sup> 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*]. These Interpretative Declarations, which include allowing for substituted decision-making and compulsory medical treatment, have been found to be hindering Australia's ability to comply with the CRPD and are being used as a justification to deny people with disability their human rights.<sup>17</sup> Following the Review of Australia's implementation and compliance with the CRPD in 2013<sup>18</sup>, the United Nations *Committee on the Rights of Persons with Disabilities* recommended that:

*“the State party to incorporate all rights under the Convention into domestic law and to review the interpretative declarations on art.12, 17 and 18 in order to withdraw them.”*

16. These recommendations have not been enacted.
17. In its 2017 Review of Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*, the *Committee on Economic, Social and Cultural Rights*, expressed its concern about the slow progress of the implementation of the *National Disability Strategy* (NDS), its lack of resources and weak accountability and implementation mechanisms. The Committee subsequently recommended that:

*“the State party ensure full implementation of the National Disability Strategy by focusing on all the six areas covered and allocating the necessary resources. The Committee also recommends that the State party strengthen the accountability mechanisms to ensure that persons with disabilities fully enjoy their economic, social and cultural rights.”*<sup>19</sup>

18. In March 2017, the Disability Reform Council (DRC) of the Council of Australian Governments (COAG) reaffirmed its commitment *“to drive progress under the National Disability Strategy 2010-2020”*, and to address additional focus areas within the NDS – mental health, health and the criminal justice

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accessible communities, Disabled People's Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>

<sup>15</sup> See for eg: CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CAT/C/AUS/CO/4-5; A/HRC/31/14.

<sup>16</sup> Australia's *'Interpretative Declarations'* to the CRPD are as follows: *CRPD Article 12*: "Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards; *CRPD Article 17*: Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards; *CRPD Article 18*: Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria."

<sup>17</sup> For example, the *Final Report of the Senate Inquiry into Involuntary Sterilization of People with Disabilities in Australia*, used Australia's Interpretative Declaration to Articles 12 and 17 of the CRPD to reject the consistent recommendation from international human rights treaty bodies, UN special procedures, human rights advocates, disability advocates, and women with disability, that the Australian Government *'adopt national uniform legislation prohibiting the use of sterilization of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent'*. See:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Involuntary\\_Sterilisation/First\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/First_Report)

<sup>18</sup> See: CRPD/C/AUS/CO/1;

<sup>19</sup> See: E/C.12/AUS/CO/5

system – “to ensure that these systems are effectively supporting all people with a disability in Australia”.<sup>20</sup> However, it is difficult to comprehend how the NDS, and these ‘additional focus areas’ can be effectively implemented, monitored and evaluated when Australia persists with the Interpretative Declarations to the CRPD, which allow for violations of the human rights of people with disability – including across these ‘additional focus areas’.

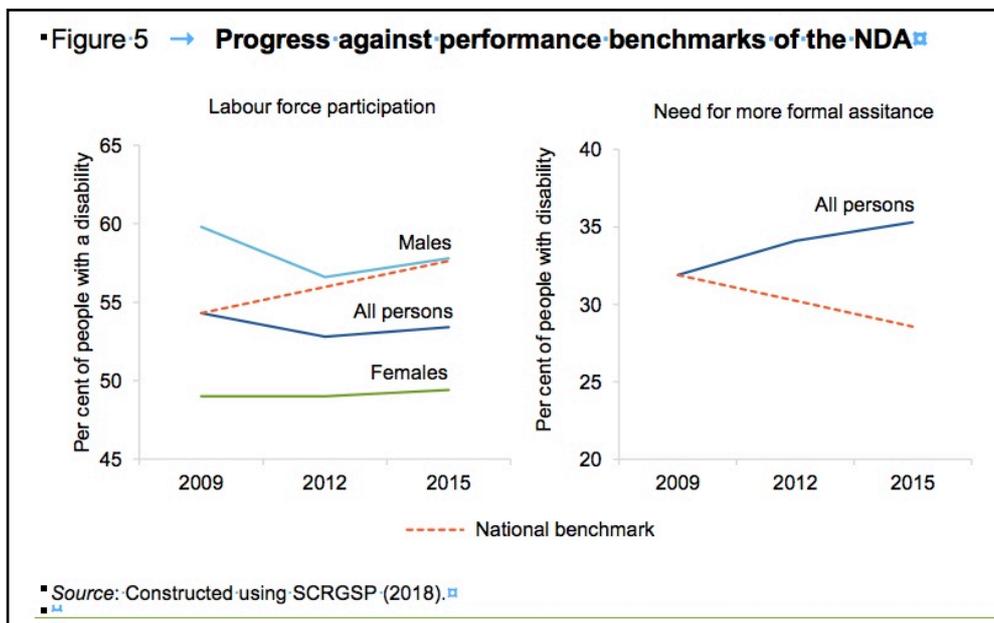
19. The *National Disability Agreement* (NDA) is a **critical** mechanism for Governments to meet their obligations under the core international human rights treaties to which Australia is a party, all of which create obligations to promote the rights of people with disability, particularly the *Convention on the Rights of Disabilities* (CRPD).
20. In this context, the overall **purpose** of the NDA should therefore be articulated in human rights language, which is critical to shift the prevailing stereotypes of, and attitudes towards, people with disability as burdens of care and/or service recipients.
21. The principle of the equal rights of men and women forms the core of the human rights vision of the *Charter of the United Nations*, which states that human rights and fundamental freedoms should be available to all human beings ‘without discrimination on the basis of race, sex, language or religion’. The *Universal Declaration of Human Rights*, and all subsequent major international human rights instruments, contain the fundamental principle of equality between men and women. The seven international human rights treaties to which Australia is a party, all create obligations to promote gender equality and denounce discrimination against women, including women and girls with disability.<sup>21</sup>
22. The CRPD is clear on gender equality. The CRPD recognises gender as one of the most important categories of social organisation. It expressly states the need to incorporate a gender perspective in all efforts to promote the human rights of people with disability, meaning that the rights of women with disability must be addressed when interpreting and implementing every article of the Convention. It prioritises women and girls with disability as a group warranting specific attention and additional measures. It obliges Governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms. It clarifies the need to ensure that national policies, frameworks and strategies make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and that such policies and frameworks include focused, gender-specific measures to ensure that women and girls with disabilities experience full and effective enjoyment of their human rights.
23. Australian society remains permeated by gender differences and gender inequalities. There is no country in which the outcomes of public policy are equal for men and women, and this is even more stark in the case of men with disability and women with disability. The *Issues Paper* for the *Productivity Commission’s National Disability Agreement Review*,<sup>22</sup> provides a clear example of this, in Figure 5, in relation to labour force participation of men with disability and women with disability:

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<sup>20</sup> COAG Disability Reform Council, *Communique 3 March 2017*, available at: <https://www.dss.gov.au/disability-and-carers/programs-services/government-international/disability-reform-council/communique-3-march-2017>

<sup>21</sup> Frohmader, C. (2014) ‘Gender Blind, Gender Neutral’: *The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. OpCit.

<sup>22</sup> <https://www.pc.gov.au/inquiries/current/disability-agreement/issues>



24. In the Australian policy and service context, people with disability are often treated as asexual, genderless human beings. Australian disability related policies, programs and services consistently fail to apply an appropriate gender lens, and gender related policies, programs and services consistently fail to apply an appropriate disability lens. In reality, most policy, program and service development proceeds as though there are a common set of issues - and that men and women, girls and boys, experience disability in the same way.<sup>23</sup>
25. However, it is well known that women and girls with disability experience multiple and intersecting forms of discrimination and disadvantage, which creates and perpetuates systemic inequality between disabled men and women including clear patterns of disabled women’s inferior access to resources and opportunities. In practice this means that disabled women have far fewer opportunities, lower status and less power and influence than men and boys with disability, and far less chance of realising substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Research has shown that there is limited awareness in the community about the needs, rights and experiences of women and girls with disability and negative stereotypes remain, which often translates into systemic and widespread exclusion of disabled women and girls from both specialist disability and mainstream services, social and economic opportunities and participation in community life.
26. It is therefore critical that national agreements such as the *National Disability Agreement* (NDA) and policy frameworks such as the *National Disability Strategy* (NDS) – **do not remain gender-neutral**, as this neutrality can unintentionally create and perpetuate the consequences of gender-based discrimination.
27. The *National Disability Agreement* (NDA) is not, and never has been gendered. Although the NDA has included Indigenous Australians, those from culturally and linguistically diverse backgrounds, and those living in regional, rural and remote communities as population cohorts that require specific strategies across all NDA “policy and reform directions”, women with disability have always been excluded. Previous reforms under the NDA have been directed at ‘*creating a disability services system that is effective, efficient and equitable.*’ It is inherently difficult however, to conceptualise how a

<sup>23</sup> Frohmader, C. (2014) ‘Gender Blind, Gender Neutral’: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities. OpCit.

disability services and support system can be designed to be 'equitable' if one of the most important components of measuring equity of outcomes of public policy (gender equality) is completely absent.

28. The omission of gender from the NDA has had, and continues to have, significant flow on effects and ramifications. For example, the *National Disability Strategy* (NDS), including its National Implementation Plans, its State/Territory implementation plans, its mechanisms and trend indicators for monitoring, review and evaluation, along with its High Level Reports to COAG – have been and remain, completely un-gendered. They do not enable the capacity or imperative to address, monitor or evaluate the gender dimensions of any element of the NDS. There is no evidence that the principle of gender equality (a key principle underpinning both the CRPD and the NDS itself) has been, or will be '*incorporated into policies and programs affecting people with disability, their families and carers,*' as agreed by all nine Australian Governments when formally endorsing the NDS in 2011. There has been no imperative for the NDS to be gendered, or for specialist disability services (and mainstream services) to collect gender-disaggregated data, because the NDA is itself, silent on gender. It is clear that the *National Disability Agreement* (NDA) and the *National Disability Strategy* (NDS), have to date, had little effect on improving the human rights of women and girls with disability in Australia.
29. The collection of gender statistics, gender disaggregated data and specific information on the situation of women and girls with disability, is a clear and specific obligation under the CRPD and other international human rights treaties to which Australia is a party. The Productivity Commission's *Issues Paper for the Review of the National Disability Agreement*, identifies that, in its Progress Reports to COAG, the NDS reports against its six broad outcome areas utilising data that is sourced from the '*Report on Government Services*' (RoGS)<sup>24</sup> and the Australian Bureau of Statistics (ABS). The main sources of ABS data come from:
- the ABS Survey of Disability, Ageing and Carers (SDAC), which collects information on the level of support needs of people with disability
  - the Australian Institute for Health and Welfare Disability Service National Minimum Dataset (DSNMDS), which collects information on government provided or funded services for people with a disability.
30. However, the RoGS and the ABS data is scant in relation to the provision of meaningful gender-disaggregated data. This is extremely problematic, as omitting 'gender' from an analysis of government support and services for people with disability can potentially result in a misleading analyses of issues, inaccurate assessments of likely policy outcomes; and has significant implications for the development and resourcing of future government disability policy, programs and service delivery.
31. For many years now, WWDA has requested successive Governments to consider improving the collection of data and specific information on the situation of women and girls with disability – including through the RoGS process and **all** relevant national data sources, including for example, the ABS *Personal Safety Survey* (PSS),<sup>25</sup> and the *General Social Survey* (GSS),<sup>26</sup> and the newly established NDIS Quality and Safeguards Commission.<sup>27</sup>

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<sup>24</sup> <https://www.pc.gov.au/research/ongoing/report-on-government-services>

<sup>25</sup> The *Personal Safety Survey* (PSS) is the key national data source regarding violence in Australia. It was first conducted in 2005 and again in 2012. The survey collects information about the nature and extent of violence experienced by men and women since the age of 15. It also collects detailed information about men's and women's experience of current and previous partner violence, lifetime experience of stalking, physical and sexual abuse before the age of 15 and general feelings of safety. See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

<sup>26</sup> The *General Social Survey* (GSS) was conducted in 2014 with Australians aged 15 years and over. The main purpose of the survey was to provide an understanding of the multi-dimensional nature of relative advantage and disadvantage across the population. See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0>

<sup>27</sup> The NDIS Quality and Safeguards Commission is a new independent agency established to improve the quality and safety of NDIS supports and services. See: <https://www.ndiscommission.gov.au/>

32. For example, both the PSS and GSS systematically exclude people with disability living in institutional settings (i.e. not in a private home), and those who live in remote areas, where Aboriginal and Torres Strait Islander people with disability are over-represented.<sup>28</sup> Neither the PSS or GSS data collection methods involve inclusive research practices. The PSS is performed by an interviewer and a specific requirement of the survey is that all interviews are conducted alone in a private setting. Interpreters and support persons are excluded, and where a respondent requires the assistance of another person to communicate with the interviewer, the interview is not conducted.<sup>29</sup> These methodological restrictions mean that both the PSS and GSS miss a very significant proportion of people with disability.
33. In its 2013 review of Australia's compliance with the CRPD, the *Committee on the Rights of Persons with Disabilities* expressed its regret that "that there is little data about the specific situation of women and girls with disabilities....." The Committee recommended that Australia develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations contained in the Convention, and that all data be disaggregated, including by gender.
34. In addition, for more than a decade, several of the international human rights treaty monitoring bodies have strongly recommended that the Australian Government commission and fund a **comprehensive assessment** of the situation of women and girls with disability.<sup>30</sup> In its 2013 review of Australia's compliance with the CRPD, the *Committee on the Rights of Persons with Disabilities* also recommended that the Australian Government undertake a comprehensive assessment of the situation of children and young people with disability.<sup>31</sup>
35. These recommendations have, to date, been ignored by successive Australian Governments, despite significant and consistent advocacy from Australian DPO's. The lack of nationally consistent disaggregated data raises serious concerns about the ability of Australia to comply with the CRPD and monitor and evaluate the *National Disability Agreement (NDA)* and implementation of the *National Disability Strategy (NDS)*.
36. This lack of recognition by successive Australian Governments, of the urgent and compelling need to commission and fund a comprehensive assessment of the situation of girls and women with disability (in order to establish a baseline of disaggregated data against which future progress towards compliance with the UN treaties (to which Australia is a party) can be measured and monitored) is yet a further reason why a **new, gendered, human rights based NDA is critical**.
37. The current objectives, outcomes and outputs of the NDA appear outdated and limited and do not reflect contemporary understandings of people with disability as holders of full and equal human rights. For example, whilst 'economic participation' and 'independent living' are obviously critically important for people with disability, the lives of disabled people are not just solely about getting a job and living independently.
38. It is concerning that the objectives, outcomes and outputs, performance benchmarks, indicators etc of the current NDA do not at any level, address or incorporate the right of people with disability to live their lives free from all forms of violence and abuse.

<sup>28</sup> The *National Aboriginal and Torres Strait Islander Social Survey (NATSISS)* also operates within these sampling parameters.

<sup>29</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Explanatory%20Notes12012?OpenDocument>

<sup>30</sup> As recommended in the CRPD/C/AUS/CO/1 [para.54] and also recommended in CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5.

<sup>31</sup> As recommended in the CRPD/C/AUS/CO/1 [para.56]

39. Evidence demonstrates that people with disability are at a far greater risk of experiencing violence, abuse, neglect and exploitation<sup>32</sup> than others in the population and this often goes un-recognised and un-addressed. Women and girls with disability are at far greater risk of violence, and children and young people with disability experience violence and abuse at approximately three times the rate of children without disability. For more than two decades, women and girls with disability in Australia have consistently identified violence as the most urgent and unaddressed human rights issue they face.<sup>33</sup> They have argued for national leadership and wide-ranging reforms in law, policy, programs and services to address the epidemic that is violence against them. Their calls for action have been echoed and affirmed by the international human rights treaty monitoring bodies and mechanisms since 2005.<sup>34</sup>
40. A Senate Inquiry into ‘*Violence, abuse and neglect against people with disability in institutional and residential settings*’ was conducted during 2015 and the Final Report was published on 25 November 2016.<sup>35</sup> The Senate Inquiry found that violence and abuse against people with disability is an ‘epidemic’ in Australia, and particularly affects women and girls with disability. It found that violence and abuse against people with disability is not limited to ‘institutional settings’ but is so prolific and systemic that a Royal Commission is urgently warranted.<sup>36</sup>
41. In March 2017, the Australian Government provided its response<sup>37</sup> to the Report of the Senate Inquiry, ruling out the need for a Royal Commission, arguing that the NDIS Quality and Safeguards Framework<sup>38</sup> and Commission<sup>39</sup> will “protect the rights of people with disability”.<sup>40</sup> The NDIS Quality and Safeguards Commission will oversee safeguards for 460,000 NDIS participants at full scheme in 2020,<sup>41</sup> which equates to less than 10% of the Australian population of people with disability.<sup>42</sup>
42. In May 2017 more than 120 Australian academics signed an open letter urging the Prime Minister to establish a Royal Commission into Violence against People with Disability.<sup>43</sup> In May 2017, a *Civil Society Statement*<sup>44</sup> co-ordinated by DPO Australia, and endorsed (in only a week) by 163 civil society organisations and almost 400 individuals, was issued to Prime Minister demanding a Royal Commission into Violence and Abuse against People with Disability.<sup>45</sup>

<sup>32</sup> ‘Violence, abuse, neglect and exploitation’ 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; forced treatments and interventions; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; physical and emotional neglect; passive neglect; and wilful deprivation. See:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)

<sup>33</sup> Women With Disabilities Australia (WWDA) (2016), *National Forum for Women and Girls with Disability: Proceedings and Outcomes Report*. WWDA, Hobart, Tasmania. November 2016. ISBN: 978-0-9775305-4-0. Available at: [http://wwda.org.au/wp-content/uploads/2016/01/PMC\\_WWDA\\_Report\\_National\\_Forum\\_Final.pdf](http://wwda.org.au/wp-content/uploads/2016/01/PMC_WWDA_Report_National_Forum_Final.pdf)

<sup>34</sup> See for eg: CAT/C/SR.1284; CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CEDAW/C/AUL/CO/5; CCPR/C/AUS/CO/5; E/C.12/AUS/CO/4; CAT/C/AUS/5; CAT/C/AUS/Q/5; CRC/C/AUS/CO/4; A/HRC/17/10; A/HRC/22/53; CRC/C/15/Add.268

<sup>35</sup> See: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)

<sup>36</sup> The critical need for a ‘Royal Commission into Violence against People with Disability’ was the headline and key recommendation from the Senate Inquiry into ‘*Violence, abuse and neglect against people with disability in institutional and residential settings*’. See the Senate Committee’s Final Report at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)

<sup>37</sup> Australian Government response to the Senate Community Affairs References Committee report; accessed at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response)

<sup>38</sup> See: ‘*Guaranteeing the NDIS and providing stronger support for people with disability*’, Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability> See also:

<http://theconversation.com/understanding-the-ndis-many-eligible-people-with-disabilities-are-likely-to-miss-out-61016>

<sup>39</sup> <https://www.ndiscommission.gov.au/>

<sup>40</sup> *Australian Government Response to the Senate Community Affairs References Committee report*, OpCit.

<sup>41</sup> See: ‘*Guaranteeing the NDIS and providing stronger support for people with disability*’, OpCit.

<sup>42</sup> In addition, the Commission currently only covers NDIS participants in NSW and SA. It does not become operational in Vic, Tas, Qld, the ACT and the NT until July 2019, and in WA it will not become operational until July 2020.

<sup>43</sup> See: <https://disabilityroyalcommissionnow.wordpress.com/2017/04/05/open-letter/>

<sup>44</sup> The *Civil Society Statement* calling for a Royal Commission is available at: <http://dpoa.org.au/civil-society-statement-rc/>

<sup>45</sup> See: <http://www.abc.net.au/news/2017-06-09/royal-commission-into-abuse-of-people-with-disability/8602508> See also: <https://probonoaustralia.com.au/news/2017/06/civil-society-backs-calls-royal-commission-disability-violence>

43. In its 2017 Review of Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*, the *Committee on Economic, Social and Cultural Rights*, expressed its concern about the high levels of violence and abuse against persons with disabilities, especially those with intellectual disabilities and women with disabilities. The Committee subsequently recommended that:

*“the State party fully implement the recommendations put forward in the inquiry report by the Senate Community Affairs References Committee into violence, abuse and neglect against people with disability in institutional and residential settings (2015), including the creation of a **Royal Commission** to inquire into violence and abuse against people with disabilities.”<sup>46</sup>*

44. In this context, it is important that any new NDA, including its outcomes, outputs, performance benchmarks and indicators, incorporate clear measures to ensure Governments address the epidemic that is violence against people with disability, particularly women and girls with disability.
45. A **new, gendered, human rights based NDA** should drive and reflect contemporary understandings of people with disability as holders of full and equal human rights, with the right to self-determination and self-representation. The current NDA uses terminology such as ‘*people with disabilities and their carers*’ and/or ‘*people with disabilities, their families and carers*’. The use of terminology like this - whereby people with disability are *automatically* linked with ‘carers’ and ‘families’, - only serves to reinforce stereotypes of people with disability as being dependent and burdens of care, devoid of individual agency and capacity.
46. In this context, it is important to recognise that not all people with disability need or have ‘carers’, and not all people with disability need or have ‘families.’ Rather, people with disability come from a range of backgrounds, lifestyles, beliefs and communities. People with disability may be Aboriginal and Torres Strait Islander, or come from culturally and linguistically diverse communities. People with disability may have a faith, or not; be married, divorced, partnered, or single; gay, lesbian, bisexual, transgender or intersex; parents, guardians, carers, and friends. People with disability may or may not be in paid work, or they could be engaged in education and training. Each of these contexts can affect how, when, why, and in what form a person with disability accesses disability specialist services and supports – and mainstream services and supports. Individual contexts, values and histories must be acknowledged and respected.
47. A **new, gendered, human rights based NDA** should therefore ensure that its focus and emphasis is on ‘people with disability’ and their rights to self-determination, choice and control. This does not mean that an NDA has to exclude reference to friends, family, carers and others – but the rights of people with disability must be separated from the needs and rights of ‘carers, families, guardians and others.’

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<sup>46</sup> See: E/C.12/AUS/CO/5