



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

WWDA **4** POSITION STATEMENT SEXUAL AND REPRODUCTIVE RIGHTS

Women and girls with disability have the right to make free and informed choices about their bodies, sexual health, reproductive health, intimate and emotional relationships, and parenting



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 SEXUAL AND REPRODUCTIVE RIGHTS

- ▶ WWDA believes women and girls with disability have the right to make free and informed choices about their bodies, sexual health, reproductive health, intimate and emotional relationships, and parenting.
- ▶ WWDA believes that recognising sexual and reproductive rights encompasses the basic right of all couples and individuals to found and maintain a family, including the right to decide freely and responsibly the number, spacing and timing of their children and to have access to the information and means to do so.
- ▶ WWDA believes women and girls with disability have the right to sexual pleasure, expression, association, equity, privacy, freedom, autonomy and self-determination.
- ▶ WWDA believes that forced sterilisation, forced abortion, and forced contraception constitute egregious forms of sexual violence against women and girls with disability and are a violation of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.
- ▶ WWDA believes the denial of sexual and reproductive rights for women and girls with disability, especially sterilisation and the forced removal of children on the basis of a mother's disability, constitute egregious violations of fundamental human rights.
- ▶ WWDA is unequivocal in its position of actively opposing sterilisation of any child, with and without disability and with or without court authorisation, unless the procedure is required, or is a by-product of, a medical life-saving emergency.
- ▶ WWDA is unequivocal in its position of actively opposing sterilisation of any woman without her free and informed consent, unless the procedure is required, or is a by-product of, a medical life-saving emergency.
- ▶ WWDA believes the widespread denial of sexual and reproductive rights and removal of children from mothers with disability is continuing unabated due to deep-rooted inequality and extreme forms of discrimination against women and girls with disability.

Recommendations

1. WWDA calls on the Australian Government to exercise its executive powers under the Constitution to authorise national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior, fully informed and free consent.
2. WWDA specifically calls on the Law, Crime and Community Safety Council (LCCSC) to work with the Council of Australian Governments (COAG) as a matter of urgency to enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior fully informed and free consent.
3. WWDA calls on the Australian Government to prioritise, as a matter of urgency and in consultation with women with disability and their representative organisations, the development of accessible and appropriate information resources and materials on the sexual and reproductive rights of women and girls with disability – for women with disability themselves; frontline workers and other professionals; family, support persons, advocates and friends; and the broader community.
4. WWDA calls on the Australian Government, in consultation with women with disability and their representative organisations, to develop a national strategy to improve access for women and girls with disability to mainstream sexual and reproductive health care on an equal basis with others.

Recommendations (Cont.)

5. WWDA calls on the Australian Government, in consultation with people with disability and their representative organisations, to develop a national strategy to improve access to, and implementation of comprehensive, equitable, accessible, and disability-inclusive sexual and reproductive health education and information, with a particular focus on improving the access to such information for women and girls with disability, regardless of the setting in which they work, live or study.
6. WWDA calls on the Australian Government, through the Council of Australian Governments (COAG), to commission a national inquiry into the legal, policy and social support environment that gives rise to the removal of babies and children from parents with disability, at a rate at 10 times higher than non-disabled parents.
7. WWDA calls on the Australian Government to establish a nationally consistent supported decision-making framework that strongly and positively promotes and supports people with disability to effectively assert and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms, including the right of women and girls with disability to make free, informed and responsible choices about their bodies, sexual health, reproductive health, intimate and emotional relationships, and parenting.
8. WWDA calls on the Australian Government to immediately revise the *National Disability Insurance Scheme (NDIS) (Supports for Participants) Rules 2013* and related implementation frameworks and strategies to ensure explicit provisions for NDIS participants to access funded supports that enable them to realise their rights to sexual health information, sexual pleasure, expression, association, freedom, autonomy and self-determination.
9. WWDA calls on the Council of Australian Governments (COAG) to ensure that future Implementation Plans of the *National Disability Strategy (NDS) 2010-2020*, include as a priority, the development of specific, gendered, targeted measures to urgently address the sexual and reproductive rights violations experienced by people with disability, particularly women and girls with disability.
10. 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.
11. 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.
12. WWDA calls on the Australian Government to immediately withdraw its Interpretive Declarations on the Convention on the Rights of People With Disabilities including Article 12 [Equal recognition before the law], Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].



**RECOGNISING SEXUAL AND
REPRODUCTIVE RIGHTS
ENCOMPASSES THE BASIC RIGHT
OF ALL COUPLES AND
INDIVIDUALS TO FOUND AND
MAINTAIN A FAMILY, INCLUDING
THE RIGHT TO DECIDE FREELY AND
RESPONSIBLY THE NUMBER,
SPACING AND TIMING OF THEIR
CHILDREN AND TO HAVE ACCESS
TO THE INFORMATION AND MEANS
TO DO SO**

2 INTRODUCTION

Sexual and reproductive rights are fundamental human rights.¹ They include the right to dignity, equality, autonomy and self-determination – the right of everyone to make free and informed decisions about, and have full control over - their body, sexuality, health, relationships, and if, when and with whom to partner, marry and have children, without any form of discrimination, stigma, coercion or violence. This includes the right of everyone to enjoy and express their sexuality, be free from interference in making personal decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. It also includes the right to be free from all forms of violence, abuse, exploitation and neglect.²

Sexual rights guarantee that everyone has access to the conditions that allow fulfilment and expression of their sexualities, free from any coercion, discrimination or violence and within a context respectful of dignity. Sexuality is a central aspect of being human. It encompasses many dimensions that may or may not be experienced or expressed. Sexuality is an evolving concept that encompasses sexual activity, gender identities, sexual orientation, pleasure, eroticism, intimacy and reproduction.³ Sexuality is experienced and expressed in many ways, including through relationships, attitudes, values, behaviours, practices, beliefs, thoughts, fantasies, and desires. Although sexual and reproductive rights are often inter-related, many expressions of sexuality are non-reproductive and therefore the specificity of sexual rights needs to be understood in its own right, and not automatically subsumed under reproductive rights and reproductive health.⁴

Regardless of country or context, 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.⁵

Women and girls with disability are subject to widespread discrimination, systemic prejudice, paternalistic and ableist attitudes that denigrate, devalue, oppress and limit their potential and rights.⁶ These deep-rooted discriminatory attitudes and practices, which pervade many of our state institutions, continue to result in multiple and extreme violations of the sexual and reproductive rights of women and girls with disability, including through state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.⁷ These egregious forms of sexual violence – perpetrated largely against women and girls with disability, and which qualify as torture or inhuman treatment,⁸ have no place in a civilized world.

It is largely through the actions of women with disability themselves – locally, nationally and globally - that this history and culture of exclusion and inaction is being challenged, and women with disability are demanding and reclaiming their sexual and reproductive rights and freedoms. 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 Sexual and Reproductive Rights, WWDA outlines key evidence concerning ongoing violations of the sexual and reproductive rights of Australian women and girls with disability. We highlight specific human rights obligations to ensure that the sexual and reproductive rights of all women and girls with disability are realised.

Twelve recommendations are made in regard to improving the fulfilment of sexual and reproductive rights of women and girls with disability on an equal basis with others.

3 THE EVIDENCE

Forced Sterilisation, Forced Abortion and Forced Contraception

- ▶ The right to live free from all forms of violence and the right to full enjoyment of sexual rights and reproductive rights are consistently identified by women and girls with disability in Australia as the most urgent and unaddressed human rights issues they face.⁹
- ▶ There is growing recognition at the international level that medical interventions of an invasive and irreversible nature, absent a therapeutic purpose, constitute torture or ill-treatment when administered without the prior, free and informed consent of the person concerned.¹⁰
- ▶ The practices of forced sterilisation, forced abortion and forced contraception of women and girls with disability continue to occur in Australia¹¹ and are practices that remain legal and sanctioned by Australian governments.
- ▶ Women and girls with disability in Australia are at particular risk of forced and coerced sterilisation performed under the auspices of legitimate medical care or the consent of others in their name.¹² Sterilisation is often claimed by medical, health and/or legal professionals as being a 'necessary treatment' in the so-called 'best interest' of the woman/girl concerned.
- ▶ Forced and coerced sterilisation¹³ of women and girls with disability is a practice that violates multiple human rights treaties and instruments.¹⁴ It is an act of violence,¹⁵ a form of social control, and a clear and documented violation of the right to be free from torture and ill-treatment.¹⁶ Perpetrators¹⁷ are seldom held accountable and women and girls with disability who have experienced this egregious form of violence are rarely able to obtain any form of redress or justice.¹⁸
- ▶ Forced sterilisation permanently robs women of their reproductive capacity, violates their physical integrity and bodily autonomy,¹⁹ and leads to profound and long-term physical and psychological effects, including: psychological pain, suffering, lifelong grief and trauma, extreme social isolation, family discord or breakdown, fear of medical professionals, social stigma, and shame.²⁰
- ▶ The long-term consequences of forced and coerced sterilisation practices commonly used on women and girls with disability remain under-researched. There are very few research studies, including longitudinal studies that investigate the physical, psychological, sexual and other social impacts of these procedures for women and girls with disability.
- ▶ Forced contraception, recognised as a form of torture and ill-treatment,²¹ is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse.²² These practices are rarely, if ever, subject to independent monitoring or review.²³
- ▶ Women and girls with disability are more likely than their non-disabled peers to be prescribed long-acting, injectable contraceptives and are far less likely to be prescribed oral contraceptives. In addition, women with disability are much less likely to be involved in choice and decision-making around the type of contraception they use.²⁴ In the case of women with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.²⁵

Forced Sterilisation, Forced Abortion and Forced Contraception (Cont.)

- ▶ The use of menstrual suppressant drugs on girls and women with intellectual and/or cognitive impairment, particularly those in institutional and other closed settings, is widespread in Australia.²⁶
- ▶ Forced and coerced abortions are reported by women with disability in Australia. Prejudicial assumptions about the parenting capabilities of women with disability, particularly those with intellectual disability, and the misplaced assumption that there will be a risk that a child may be born with disability, puts significant pressure on women with disability to undergo abortions.²⁷
- ▶ The monitoring bodies of the core international human rights treaties²⁸ have all found that forced sterilisation, forced abortion and forced contraception breach multiple provisions of the respective human rights treaties.²⁹

Freedom of Sexual Expression and Self-Determination

- ▶ Women and girls with disability self-identify according to a range of sex, sexuality and gender identifications,³⁰ but are often denied their fundamental right to express and explore these identities in ways that are meaningful to them. Their 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.³¹
- ▶ Women and girls with disability who are also people of colour or members of minority groups or indigenous peoples, or who are gay, lesbian, transgender, non-binary, gender diverse or intersex or who live in poverty, or who are incarcerated in institutions, are subject to denial of their sexual and reproductive rights and particularised forms of violence and discrimination.³²
- ▶ Women and girls with disability express desires for romantic, sexual and intimate relationships but report limited opportunities and difficulty negotiating relationships, often due to lack of support and paternalistic attitudes.³³
- ▶ A central tenet to sexual and reproductive rights is individual choice – the right of all women to make informed choices about their bodies without bias and coercion.³⁴ However, 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 health care.³⁵
- ▶ Prejudicial attitudes, values and stereotypes about the reproductive capacity of women with disability influence decisions taken about their sexual and reproductive rights. When these negative attitudes are combined with authority and power, they are a potent combination.³⁶
- ▶ 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.³⁷ Their decisions are routinely substituted by third parties, including families, guardians, legal representatives, and service providers.³⁸
- ▶ 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.³⁹ In practice, the best interests approach most often serves the interests of families, guardians and carers.⁴⁰
- ▶ Attitudes toward women and girls with disabilities’ expression of their sexualities remain restrictive and laws against sexual exploitation are often interpreted as a prohibition of consensual relationships.⁴¹
- ▶ Health workers can be complicit in denying women and girls with disability their sexual and reproductive rights, and in perpetuating myths and negative stereotypes about women with disability.⁴² Many health workers lack knowledge of disability, hold inaccurate perceptions about women and girls with disability, and have a tendency to view women and girls with disability solely through the lens of their impairments.⁴³

Parenting and the Forced Removal of Children

- ▶ Women with disability the world over are discouraged or denied the opportunity, to bear and raise children.⁴⁴
- ▶ They have been, and continue to be perceived as not having a sexuality, dependent, recipients of care rather than mutual care-givers, and incapable of looking after children. Conversely, women with intellectual disability in particular are often regarded as overly sexual, creating a fear of profligacy.⁴⁵ These perceptions, although very different, result in women with disability being denied the right to reproductive autonomy and self-determination.⁴⁶
- ▶ Women with disability considering having and/or raising a child are often subjected to the skeptical beliefs of family members, health workers, and even complete strangers, regarding their ability to care for a child.⁴⁷
- ▶ In Australia, children of people with disability are subject to removal from their parents by authorities at a rate up to ten times higher than other parents.⁴⁸ In many circumstances children are removed pre-emptively solely on the basis of the parents disability (most often the mother), despite there being no evidence of any neglect, abuse and/or parental incompetence.⁴⁹
- ▶ Women with intellectual disability who are parents, are scrutinised by health and welfare workers and held to higher standards than those that are applied to non-disabled women who are parents. The evidence used to judge potential for parental inadequacy is often based on unfair and invalid assessment procedures that are often carried out in unsupportive environments.⁵⁰
- ▶ Mothers with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity as other women to be effective parents.⁵¹
- ▶ Evidence demonstrates that parents with disability are no more likely to maltreat or neglect children than non-disabled parents.⁵²
- ▶ Women with disability have been coerced to have hysterectomies after they have given birth to one or more children, who have usually been taken from their care; or as a condition of having access to their child who has been taken from their care.⁵³
- ▶ Women with disability experience extensive discrimination in the justice system. A common impact of violence perpetrated against women with disability (particularly domestic and family violence) is the removal of their children by authorities on the basis of parental disability.⁵⁴ Women with disability remain in abusive relationships and fail to report the violence due to the likelihood of losing their children.⁵⁵
- ▶ For some women with disability, parenthood is simply not an option if social and financial supports are not available. Women with disability have reported undergoing termination of much wanted pregnancies solely on the grounds of lack of such supports.⁵⁶
- ▶ The lack of appropriate, affordable, and available adapted or purpose-built equipment to support women with disability in their parenting, especially of babies and young children, is a recurring theme from mothers with disability in Australia.⁵⁷
- ▶ Women with disability experience significant discrimination in accessing assisted reproductive technologies (such as in-vitro fertilisation (IVF) and assisted insemination). Many women with disability - particularly single women with disability and women with disability in same-sex relationships - report being deemed by fertility consultants/clinics as ineligible for assisted reproductive services.⁵⁸ Australia's universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed 'medically infertile', but for women who are deemed not to be 'medically infertile' (such as single women and lesbian couples), then no Medicare rebate is available.
- ▶ In 2013, the Australian Council of Human Rights Agencies (ACHRA) identified discrimination against 'potential and actual parents with disability' as one of three of the most urgent human rights matters in Australia. ACHRA called on the Australian Governments to take national leadership and action on the issue, including better support for parents with disability as "an immediate priority given the discriminatory impact of negative presumptions".⁵⁹

Access to Information, Education and Services

- ▶ There is a lack of accessible and appropriate information and education resources about the full range of sexual and reproductive rights of women and girls with disability - for women with disability themselves, the service sector, and the broader community.⁶⁰ This includes the right to seek, receive and impart information and ideas concerning sexual and reproductive rights in an accessible format. 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.⁶¹
- ▶ For many women and girls with disability, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education opportunities are limited.⁶²
- ▶ Sex education for women and girls with disability is wholly inadequate, often focused exclusively on reproductive health and taught from a heterosexual perspective.⁶³
- ▶ Women and girls with disability are largely excluded and ignored in sexual and reproductive rights and health policy, service and program development, including the development of information, education and training resources.⁶⁴
- ▶ Discrimination experienced by women and girls with disability is evident in their access to and use of sexual and reproductive health services and programs. For many, the services and programs they require to realise their sexual and reproductive rights are simply not available to them. Where services and programs are available, women and girls with disability are often inadequately served due to a wide range of economic, social, cultural and physical barriers that impede or preclude their access, including for example: inaccessible venues; lack of transport; lack of appropriate equipment; non-inclusive and inflexible service policies and programs; lack of skilled workers; and, pervasive stereotypes and assumptions that women with disability do not have a sexuality.⁶⁵
- ▶ Support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth, parenting, assisted reproduction, and menopause are often inappropriate, absent or inaccessible.⁶⁶ Breast and cervical cancer screening services are often not readily available or accessible to women with disability, yet a disproportionate number of deaths from breast and cervical cancer occur among women with disability.⁶⁷
- ▶ Services and programs for women and girls with disability experiencing, or at risk of experiencing violence is a further area where women with disability experience exclusion and often when a woman with a disability is seen by a health care worker, the worker fails to perform screening for possible violence based on prejudicial and stereotypical attitudes about disability.

Violence and Abuse

- ▶ 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.⁶⁸ Their experiences of violence last over a longer period of time, more severe injuries result from the violence,⁶⁹ and they have considerably fewer pathways to safety.⁷⁰
- ▶ More than 70% of women with disability have been victims of violent sexual encounters at some time in their lives.⁷¹
- ▶ 90% of women with intellectual disability have been subjected to sexual abuse. More than two-thirds (68%) have been sexually abused before they turn 18 years of age.⁷²
- ▶ More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.⁷³

Violence and Abuse (Cont.)

- ▶ Twenty per cent (20%) of women with disability have a history of unwanted sex compared to 8.2% of women without disability.⁷⁴ The rate of sexual victimisation of women with disability ranges from four to 10 times higher than for other women.⁷⁵
- ▶ Women with disability are 40% more likely to be the victims of domestic violence than women without disability.⁷⁶ In Australia, three women are hospitalised every week with a brain injury as a direct result of domestic violence.⁷⁷
- ▶ Girls with disability are three to four times more likely to experience violence and abuse (including sexual violence) than their peers and often experience multiple and ongoing episodes.⁷⁸ Many do not have the language or tools to communicate the abuse.⁷⁹
- ▶ Aboriginal women are 35 times more likely to suffer family violence and 80 times more likely to sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Aboriginal women.⁸⁰ 60% of Aboriginal and Torres Strait Islander women who experience physical violence have a disability or long-term health condition.⁸¹
- ▶ The impact and effects of violence for women and girls with disability are profound, long-term and wide-ranging - with the impact over time of different types of violence and of multiple episodes found to be cumulative.⁸²
- ▶ The multiple forms of violence women and girls with disability experience, and are at risk of, are excluded from national and state/territory policy and service responses designed to address violence against women.⁸³

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.⁸⁴
- ▶ 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.⁸⁵ They experience, and are more exposed to practices which qualify as torture or inhuman or degrading treatment,⁸⁶ including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.⁸⁷
- ▶ 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;⁸⁸ 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,⁸⁹ often imposed as a means of coercion, discipline, convenience, or retaliation by others.⁹⁰ 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.⁹¹
- ▶ 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.⁹² They are much more likely to be unemployed than other women and men with disability; less likely to be in the paid workforce;⁹³ 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.⁹⁴

The Status of Women and Girls with Disability in Australia (Cont.)

- ▶ 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.⁹⁵ They are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,⁹⁶ are at higher risk of separation/divorce than men with disability and often experience difficulty maintaining custody of their children post-separation/divorce.⁹⁷
- ▶ 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.⁹⁸



**WOMEN AND GIRLS WITH DISABILITY ARE LARGELY
EXCLUDED AND IGNORED IN SEXUAL AND REPRODUCTIVE
RIGHTS AND HEALTH POLICY, SERVICE AND PROGRAM
DEVELOPMENT, INCLUDING THE DEVELOPMENT OF
INFORMATION, EDUCATION AND TRAINING RESOURCES**

4 INTERNATIONAL HUMAN RIGHTS OBLIGATIONS: SEXUAL AND REPRODUCTIVE RIGHTS

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,⁹⁹ General Comments¹⁰⁰ 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 sexual and reproductive rights.

Critically, implementation of these treaties is not mutually exclusive. They are expected to be viewed and implemented as complementary mechanisms through which to create a holistic framework of rights protection and response for all women and girls with disability.¹⁰¹

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 the sexual and reproductive rights of women and girls with disability.

Convention on the Rights of Persons with Disabilities (CRPD)

The *Convention on the Rights of Persons with Disabilities (CRPD)*¹⁰² 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.¹⁰³ 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.¹⁰⁴

The CRPD contains several provisions regarding sexual and reproductive rights. In addition, effective and meaningful participation of people with disability is at the core of the CRPD.¹⁰⁵ It addresses participation as a *crosscutting* issue, meaning that ‘participation’ is embedded within all articles. The CRPD makes it clear that people with disability are the key interlocutors in its implementation and monitoring and full and effective participation must be afforded to all persons with disability on all matters affecting them.¹⁰⁶

Preamble

Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices, [...]

Article 3 - General principles

The principles of the present Convention shall be:

- ▶ Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- ▶ Non-discrimination;
- ▶ Equality between men and women;
- ▶ Full and effective participation and inclusion in society;

Article 4 - General Obligations

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; [...]

Article 5 - General Obligations

States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

Convention on the Rights of Persons with Disabilities (CRPD) (Cont.)

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 7 - Children with disabilities

States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Article 12 - Equal recognition 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.

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 - Freedom from exploitation, violence and abuse

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education [...]

Article 17 - Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 21 - Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, [...],

Convention on the Rights of Persons with Disabilities (CRPD) (Cont.)

Article 22 - Respect for privacy

No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication [...].

Article 23 – Respect for home and family

States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: [...].

- ▶ The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- ▶ The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
- ▶ Persons with disabilities, including children, retain their fertility on an equal basis with others.

States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

States Parties shall ensure that children with disabilities have equal rights with respect to family life [...]. States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

States Parties shall ensure that a child shall not be separated from his or her parents against their will [...]. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

Article 23 – Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- ▶ Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; [...]
- ▶ Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- ▶ Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

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)¹⁰⁷ in 1983, Australia became obliged to protect all women and girls from discrimination and ensure the achievement of equality between men and women. CEDAW requires States to take action to ensure that women are afforded broad equality in, inter alia, education, employment and access to health care. The Convention specifically provides for a proper understanding of maternity as a social function, access to family planning information, and the elimination of discrimination against women in marriage and family relations.¹⁰⁸ The importance of women's participation in decision-making at all levels underpins the Convention. CEDAW specifically requires States Parties to take additional, special measures for women subjected to multiple forms of discrimination, including women and girls with disability.¹⁰⁹

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- ▶ To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- ▶ To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- ▶ To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- ▶ [...]

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 5

States Parties shall take all appropriate measures:

- ▶ To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

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

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education [...]:

- ▶ Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 12

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

[...] States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 16

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- ▶ The same right to enter into marriage;
- ▶ The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- ▶ The same rights and responsibilities during marriage and at its dissolution;
- ▶ The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- ▶ The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- ▶ The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

International Covenant on Civil and Political Rights (ICCPR)

The *International Covenant on Civil and Political Rights* (ICCPR)¹¹⁰ 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. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality.

Article 1

All peoples have the right of self-determination [...].

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 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

Everyone has the right to liberty and security of person.

Article 16

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

Article 17

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence [...].

Article 23

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The right of men and women of marriageable age to marry and to found a family shall be recognized.

No marriage shall be entered into without the free and full consent of the intending spouses.

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground [...].

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

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR),¹¹¹ 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.¹¹² The Covenant recognises sexual and reproductive health as an integral component of the right to health.¹¹³ The ICESCR also calls for special protection for mothers and children,¹¹⁴ including the right to protection and support in relation to motherhood, pregnancy, sexuality, and bodily integrity.¹¹⁵

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 10

The States Parties to the present Covenant recognize that:

- ▶ The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children [...]
- ▶ Special protection should be accorded to mothers during a reasonable period before and after childbirth
- ▶ Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions [...]

Article 12

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 13

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms [...].



**WOMEN AND GIRLS WITH DISABILITY HAVE THE RIGHT TO SEXUAL
PLEASURE, EXPRESSION, ASSOCIATION, EQUITY, PRIVACY, FREEDOM,
AUTONOMY AND SELF-DETERMINATION**

Convention on the Rights of the Child (CRC)

The *Convention on the Rights of the Child* (CRC)¹¹⁶ was ratified by Australia in 1990.¹¹⁷ 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 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.¹¹⁸ The right of all children to be heard and taken seriously constitutes one of the fundamental values of the CRC. It is the right of every child, without exception.¹¹⁹

Article 2

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 9

States Parties shall ensure that a child shall not be separated from his or her parents against their will [...]

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 16

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence [...]

Article 18

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities [...]

Convention on the Rights of the Child (CRC) (Cont.)

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child [...]

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.

States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Recognizing the special needs of a disabled child, assistance [...] shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 24

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

States Parties shall take appropriate measures:

- ▶ To ensure the provision of necessary medical assistance and health care to all children [...]
- ▶ To ensure appropriate pre-natal and post-natal health care for mothers;
- ▶ To develop preventive health care, guidance for parents and family planning education and services.

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 37

States Parties shall ensure that:

- ▶ No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Convention on the Rights of the Child (CRC) (Cont.)

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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)¹²⁰ was ratified by Australia in 1975.¹²¹ 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).¹²²

Article 2

[...] 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;
- ▶ Other civil rights [...]:
 - ▶ The right to marriage and choice of spouse;
 - ▶ The right to freedom of opinion and expression;
 - ▶ The right to public health, medical care, social security and social services;
 - ▶ The right to education and training;
 - ▶ [...]

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)¹²³ 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.¹²⁴ 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 recognised 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.¹²⁵

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.

Article 2

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

Article 4

Each State Party shall ensure that all acts of torture are offences under its criminal law. [...]

Article 14

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. [...]

Article 16

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. [...]

Declaration on the Rights of Indigenous Peoples (DRIP)

The United Nations *Declaration on the Rights of Indigenous Peoples* (DRIP)¹²⁶ 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 7

Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

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.

States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.



LOCALLY, NATIONALLY AND GLOBALLY [...] WOMEN WITH DISABILITY ARE DEMANDING AND RECLAIMING THEIR SEXUAL AND REPRODUCTIVE RIGHTS AND FREEDOMS

5 INTERNATIONAL HUMAN RIGHTS COMPLIANCE: SEXUAL AND REPRODUCTIVE RIGHTS

International human rights treaties have mechanisms to ensure that States parties protect human rights not only in words but also in practice.¹²⁷ 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 the sexual and reproductive 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]¹²⁸ following its September 2013 review of Australia's compliance with the Convention on the Rights of Persons with Disabilities (CRPD). The Committee made a number of specific and urgent recommendations to the Australian Government in relation to women and girls with disability.

Re-iterating that involuntary sterilisation of women and girls with disability is an egregious form of violence that constitutes torture, the Committee emphasised its “deep concern” at its ongoing practice in Australia including the “failure” of Australia to implement previous treaty body and mandate recommendations regarding sterilisation of children and adults with disabilities.¹²⁹ 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.

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 [...]”.

The Committee expressed its “deep concern” at the ongoing high rates of violence perpetrated against women and girls with disability in Australia including the exclusion of women and girls with disability from gender-based violence prevention policies, programs and services. The Committee made a series of recommendations in this area, including a priority recommendation that the Australian Government act urgently to ‘address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disability in institutional settings’.

The CRPD Committee expressed its regret at the lack of data and information about women and with disability in Australia, including indigenous women and girls with disability. 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 by age, gender, type of disability, place of residence and cultural background. Specifically, the Committee recommended that the Australian Government “*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 the Convention can be measured*”.

The CRPD Committee has consistently expressed concern at the lack of attention paid to implementation of Article 6 [Women with disabilities] by States Parties to the CRPD.¹³⁰ In providing interpretation of Article 6, the Committee has clarified that implementation of the provisions of the Article, requires that States parties go beyond refraining from discriminatory actions, to adopting measures aimed at the development, advancement and empowerment of women and girls with disability. The Committee has identified three critical areas of concern with respect to the protection of the human rights of women and girls with disability: all forms of violence; sexual and reproductive health and rights; and discrimination. The Committee has consistently highlighted the lack of decision-making and participatory rights of women and girls with disability in the context of these three critical areas. In addition, the Committee has identified that whilst sexual and reproductive rights violations (such as forced sterilisation and forced abortion) is often identified in CRPD review processes, the sexual rights, needs and freedoms of women with disability - is an area that receives little attention in State parties and civil society reports.¹³¹

The CRPD Committee, in its *General Comment on Women with Disabilities*,¹³² has provided strong evidence based commentary and recommendations on the issue of sexual and reproductive rights. The Committee has provided clear guidance to States that certain sexual and reproductive rights violations may be considered as torture, and/or cruel, inhuman, degrading treatment or punishment and breach a number of international human rights treaties. Among these are forced, coerced and otherwise involuntary sterilisation or pregnancy; as well as any other medical procedure or intervention performed without free and informed consent, including those related to contraception and abortion; invasive and irreversible surgical practices including, female genital mutilation or surgery or treatment performed on intersex children without their informed consent; sexual violence (including rape); the administration of chemical restraints (through practices such as menstrual suppression).

The Committee has further clarified that women with disability have the right to choose the number and spacing of their children, as well as the right to have control over and decide freely and responsibly on all matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Through its *General Comment on Women with Disabilities* the Committee has emphasised that all women with disability must be able to exercise their legal capacity by taking their own decisions, with support when desired with regard to medical and/or therapeutic treatment, including decisions on: retaining their fertility, reproductive autonomy, their right to choose the number and spacing of children, and the right to establish relationships. Restricting or removing legal capacity can facilitate forced interventions, such as: sterilisation, abortion, contraception, female genital mutilation, or surgery, or treatment performed on intersex children without their informed consent and forced detention in institutions. The Committee has re-iterated that 'forced contraception and sterilisation can result in sexual violence without the consequence of pregnancy, especially for women with psychosocial or intellectual disabilities and those in psychiatric or other institutions or custody.'

The Committee has also highlighted the need for States to pay significant attention to the right to accessible and appropriate information and education resources about the full range of sexual and reproductive rights of women and girls with disability - for women with disability themselves, the service sector, including teachers, health workers, police officers, judges, other public officials, as well as the broader community. The right to information includes the right to seek, receive and impart information and ideas concerning sexual and reproductive rights in an accessible format.

In addressing sexual and reproductive rights in its *General Comment on Women with Disabilities*, the CRPD Committee draws attention to the legal discrimination women and girls with disability experience as a result of harmful gender and/or disability stereotypes such as incapacity and inability to parent. This discrimination leads to and results in over-representation of mothers with disability in child protection proceedings and the loss of contact and custody of their children who are subject to adoption proceedings and/or are placed in institutions.

The CRPD Committee, through *General Comment 3 on Article 6 [Women with Disabilities]*, has urged States Parties to take all necessary measures to respect, protect and fulfil the sexual and reproductive rights of women and girls with disability, through, for example:

- ▶ Repealing discriminatory laws, policies and practices that prevent women with disability from enjoying all the rights of the Convention; outlawing gender and disability-based discrimination and its intersectional forms; criminalising sexual violence against girls and women with disability; prohibiting all forms of forced sterilisation, forced abortion and non-consensual birth control; prohibiting all forms of forced gender and/or disability related medical treatment and taking all appropriate legislative steps to protect women with disability against discrimination.
- ▶ Collecting and analysing data on the situation of women with disability in all areas relevant to them in consultation with organisations of women with disabilities with a view to guiding policy planning for the implementation of article 6 [...]
- ▶ Adopting affirmative action measures for the development, advancement and empowerment of women with disability, in consultation with organisations of women with disabilities, aiming to immediately address inequalities and to ensure that women with disability have equality of opportunity with others. Such measures should be adopted particularly regarding access to justice, the elimination of violence, respect for home and the family, sexual health and reproductive rights, health, education, employment, and social protection. States parties should ensure that public and private services and facilities used by women with disability are fully accessible in compliance with article 9 and in line with General comment on article 9, and that public and private service providers are trained and educated to provide appropriate attention, support and assistance to women with disabilities, on applicable human rights standards, and on identifying and combating discriminatory norms and values; the adoption of effective measures to provide women with disabilities access to the support they may require to exercise their legal capacity, in line with General comment on article 12, to give their free and informed consent and to take decisions about their own lives
- ▶ Supporting and promoting the creation of organizations and networks of women with disabilities and the promotion and support for women with disability to take leadership roles in public decision-making bodies at all levels;
- ▶ Ensuring that women with disability as well as the views and opinions of girls with disability, through their representative organizations, are included in the design, implementation and monitoring of all programmes which have an impact on their lives [...]
- ▶ Promoting specific research on the situation of women with disabilities, in particular research on the impediments to the development, advancement and empowerment of women with disabilities, in all areas related to them; [...]

In its *General Comment No. 1: Equal recognition before the law*,¹³³ published in 2014, the CRPD Committee provides definitive direction to States on their obligations under Article 12 of the CRPD. The General Comment confirms that worldwide, women with disability are subjected to high rates of forced sterilisation, and are often denied control of their reproductive rights and health and decision-making, the assumption being that they are not capable of consenting to sex. The General Comment reaffirms that a person's status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) can never be grounds for denying legal capacity or any of the rights provided for in CRPD Article 12, and re-iterates that the legal capacity of women with disability must be recognised on an equal basis with others.

Through *General Comment No.1*, the CRPD Committee identifies 'legal capacity' and 'mental capacity' as two distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency). Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors.

CRPD *General Comment No.1* further clarifies that support in decision-making cannot be used as justification for limiting other fundamental rights of persons with disability, especially the right to marry, or establish a civil partnership, and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty.

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

At its 34th session¹³⁴ in 2006 and its 46th session¹³⁵ in 2010, the Committee on the Elimination of Discrimination against Women (CEDAW) made strong recommendations regarding the need for urgent action by Australian governments in relation to women and girls with disability, including in relation to access to health services, sexual and reproductive rights, and the right to freedom from all forms of violence, which the Committee deemed particularly urgent.

Recognising forced sterilisation of women and girls with disability as a gross violation of the right to freedom from violence, and from torture and ill-treatment, in both its 2006 and 2010 Reviews, the Committee 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 disability in the absence of their fully informed and free consent. The Committee noted with concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.¹³⁶

The Committee has urged Australia to develop the necessary infrastructure to ensure that all women and girls with disability have access to all health and related services (including sexual and reproductive health services and violence response and prevention services).

In both the 2006 and 2010 reviews of Australia, the CEDAW Committee expressed its deep concern about the pervasive and high levels of violence experienced by women and girls with disability, as well as the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, services and support, and the lack of targeted measures to prevent and address all forms of violence perpetrated against women and girls with disability. The Committee called on Australian Governments to take urgent measures to address violence and abuse experienced by women and girls with disability, and has recommended that Australia address, as a matter of priority, violence and abuse experienced by women and girls with disability living in institutions or supported accommodation.

The CEDAW Committee has also recommended that the Australian Government create public awareness of all forms of violence against women as an infringement of women's human rights, and that public officials, especially law enforcement officials, the judiciary, health-care providers and social services workers, are fully sensitised to all forms of violence against all women.

More than 25 years ago, the CEDAW Committee expressed its concern at the neglect of women and girls with disability by States parties to the Convention. In an effort to provide more direct guidance to States regarding their obligations to women and girls with disability under CEDAW, the Committee developed a General Recommendation on Women with Disabilities,¹³⁷ which articulated the obligation of States parties to provide information on women and girls with disability in their periodic reports, and on measures taken to "deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

The CEDAW Committee has consistently expressed its ‘regret’ at the lack of information on women with disability, including disaggregated data and analyses, provided by the Australian Government when reporting on the implementation of the Convention. The need for disaggregated data and information on women and girls with disability, as well as the need for significant investment and urgent measures – to advance the rights of women and girls with disability including through the adoption of temporary special measures in the form of compulsory targets and quotas - has been a consistent recommendation of the CEDAW Committee. The Committee has recommended that the Australian Government undertake a comprehensive assessment of the situation of women with disability in Australia.

Committee on Economic, Social and Cultural Rights

At its 42nd session¹³⁸ in 2009, the Committee on Economic, Social and Cultural Rights reviewed Australia’s compliance under the CESC. 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. It further noted with concern the increasing incidence and prevalence of violence against women in Australia. It recommended an increase in shelters and support services for the victims, and further recommended that the Australian Government ensure the 12 year *National Plan to Reduce Violence Against Women and Their Children*, be developed to fully incorporate human rights principles.

The CESC Committee has been consistently clear that violations of women’s sexual and reproductive rights, including violence against women, are forms of discrimination that inhibit the ability to enjoy economic, social and cultural rights, on a basis of equality.¹³⁹ It has clarified that the realisation of sexual and reproductive rights is an integral component of the right to health. In its *General Comment No. 14*,¹⁴⁰ the Committee has provided authoritative guidance to States on the right to health, detailing that it includes measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, prenatal and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information. Moreover, it notes that women’s right to health requires the removal of all barriers interfering with access to sexual and reproductive health services, education and information. It also confirms that States are obliged to prevent third parties from coercing women to undergo harmful practices, e.g. forced sterilisation; and to take measures to protect ‘marginalized groups’ from gender-based violence.

The CESC Committee has provided authoritative guidance for States regarding people with disability and economic, social and cultural rights.¹⁴¹ In its *General Comment 5 [Persons with Disabilities]*, published more than two decades ago, the CESC Committee expressly stated that the obligation of States parties to the Covenant in the case of people with disability is to give preferential treatment to people with disability in order to achieve the objectives of their full participation and equality. The Committee clarified that additional resources must be made available for this purpose and that a wide range of tailored, gendered and targeted measures are required.¹⁴²

For well over twenty years, the CESC Committee has urged States parties to address – as a priority - the situation of women and girls with disability. It has explicitly stated that realisation of the right to health, as articulated in Articles 10 and 12 of the Covenant, requires that women with disability must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. The Committee has been unequivocal that “*both the sterilisation of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of Article 10 of the Covenant*”.¹⁴³

In early 2016, concerned at the grave violations of the sexual and reproductive rights of people continuing throughout the world – particularly those perpetrated against women and girls, persons with disability, and lesbian, gay, bisexual, transgender and intersex persons (LGBTI) – the CESCR Committee released a comprehensive *General Comment on the Right to Sexual and Reproductive Health*.¹⁴⁴ This definitive guidance document details the obligations of States regarding sexual and reproductive health rights, and clearly articulates the requirement of States to give specific attention and extra measures to women and girls and persons with disability. The core obligations of States regarding sexual and reproductive health are detailed, including:

- ▶ An obligation to repeal, eliminate laws, policies and practices that criminalise, obstruct or undermine an individual's or a particular group's access to health facilities, services, goods and information;
- ▶ An obligation to ensure all have access to comprehensive education and information that is non-discriminatory, evidence-based and takes into account the evolving capacities of children and adolescents;
- ▶ An obligation to ensure universal access to quality sexual and reproductive health care, including maternal health care, contraceptive information and services, safe abortion care; prevention, diagnosis and treatment of infertility, reproductive cancers, sexually transmitted infections and HIV/AIDS;
- ▶ An obligation to enact and enforce the legal prohibition of harmful practices and gender-based violence – including forced sterilisation, forced abortion and female genital mutilation.

Committee on the Rights of the Child

The Committee on the Rights of the Child reviewed Australia's compliance under the CRC in 2005 and again in 2012.¹⁴⁶ On both occasions, it raised serious and grave concerns at the egregious violations of the sexual and reproductive rights of girls and women with disability, particularly in relation to the ongoing practice in Australia of forced sterilisation. The CRC Committee confirmed that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disability 'is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities'. The Committee urged Australia to enact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability. The Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disability. This echoed and re-iterated the recommendation to the Australian Government in 2005 by the CRC Committee, whereby it urged Australia to '*prohibit the sterilization of children, with or without disabilities....*'.¹⁴⁷ In seeking to provide clarification on sterilisation of children with disability for the international community, in 2007 the CRC Committee clearly articulated that States parties to the CRC are expected to prohibit by law the non-therapeutic sterilisation of children with disability.¹⁴⁸

In its 2012 Review, the CRC Committee also expressed its "grave concern" at the situation of violence against children, including girls and adolescents with disability, and urged the Australian Government to prioritise the elimination of all forms of violence against children, paying particular attention to gender.

The CRC Committee has provided authoritative guidance to States in relation to the concept of "best interest of the child", a concept which has been widely abused by Governments and other State authorities worldwide to justify extreme violations of the sexual and reproductive health and rights of girls with disability. In its *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration* (released in 2013),¹⁴⁹ the Committee has confirmed and re-iterated that the ultimate purpose of the child's best interests is to ensure the full and effective enjoyment of the rights recognised in the Convention and the holistic development of the child. The Committee further emphasises that the principle of the 'best interests of the child' can never be used to justify practices (such as forced sterilisation) which conflict with the child's human dignity, right to physical integrity, and right to freedom from all forms of violence.¹⁵⁰

Recognising that the potential of adolescents is widely compromised by the failure to recognise or invest in the measures needed to enable them to enjoy their human rights, the CRC Committee is developing a *General Comment on the implementation of the rights of the child during adolescence*.¹⁵¹ The General Comment is

being framed to provide guidance to States on the measures necessary to ensure the realisation of the rights of children during adolescence, and highlights the importance of a human rights-based approach: recognition and respect for their dignity and agency; empowerment, citizenship and active participation in their own lives; promotion of optimum health, well-being and development; and commitment to the rights of every adolescent without discrimination. The General Comment does not seek to define adolescence, but does focus on the period of childhood from 10 -17 (until the 18th birthday) in order to facilitate consistency in data collection.¹⁵²

The Draft of this General Comment emphasises the widespread prejudice, social isolation and discrimination faced by children and adolescents with disability. It recognises that adolescents with disability are almost universally excluded from the activities that facilitate the transition to adulthood. They are widely denied access to sexual and reproductive health information and services, and can be subject to forced sterilisation or contraception, in direct violation of the CRPD and which can amount to torture or ill-treatment. Children and adolescents with disability also experience a disproportionate level of physical and sexual violence and are widely denied access to justice. The Draft General Comment subsequently calls on States parties to introduce measures to facilitate effective transitions from adolescence to adulthood, as well as to remove the barriers, consistent with the recommendations in General Comment 9, and promote the full inclusion of adolescents with disability, in accordance with Article 23.

Human Rights Committee

Australia's compliance with the International Covenant on Civil and Political Rights (ICCPR) was reviewed during the 95th session¹⁵³ 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.

In March 2016, Australia submitted its Sixth Periodic Report to the United Nations Human Rights Committee on Australia's compliance with the ICCPR. It was required to submit its response to the List of Issues Prior to Reporting (LOIPR),¹⁵⁴ (adopted by the Human Rights Committee at its 106th session) and is scheduled to appear for review by the Human Rights Committee in July 2017. Under the heading of '*Violence Against Women*', the LOIPR for Australia contains specific questions relating to a women and girls with disability, to which the Australian Government is expected to respond.¹⁵⁵ Specifically, the Human Rights Committee, in its LOIPR, states:

Please provide information on whether sterilisation of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilisations.

In the light of the Committee's previous recommendations^[156] please provide updated information on the legislative, administrative and other measures taken towards the elimination of all forms of violence against women, especially perpetrated against indigenous women and women with disabilities. Additionally, please provide updated information on the availability and adequacy of legal and social services for women victims of domestic violence and sexual assault, especially in rural and remote areas.

In its *General Comment No. 28: Equality of rights between men and women*,¹⁵⁷ the Human Rights Committee has clarified that forced abortion and sterilisation, and other forms of violence against women constitute violations of Article 7 of the ICCPR.

In relation to practices such as forced contraception and forced menstrual suppression, the Human Rights Committee has also clarified that Article 7 of the Covenant expressly prohibits medical or scientific experimentation without the free consent of the person concerned, and that States are obliged to provide 'special protection' in the case of persons not capable of giving valid consent, including those in institutional settings.¹⁵⁸

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.¹⁵⁹ The Committee was unequivocal in its determination of forced sterilisation as a form of torture, and expressly re-iterated the recommendation of several other treaty monitoring bodies that Australia "enact uniform national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied".

The Committee emphasised that the Australian Government must ensure that all allegations of sexual abuse, regardless of the time of their commission, are promptly, impartially, thoroughly and effectively investigated, perpetrators are brought to justice and, if found responsible, are punished. In addition, the Committee re-iterated the obligation of the Australian Government to ensure that victims obtain redress and fair and adequate compensation, including the means for as full rehabilitation as possible.

A further principal area of concern in relation to Australia's compliance with the CAT, related to violence against women, particularly violence against women with disability, and indigenous women. The Committee urged the Australian Government to "redouble its efforts" to address violence against women, particularly women with disability, and indigenous women, through a number of detailed measures. Importantly, the Committee emphasised the need for the Australian Government to take specific 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 Committee Against Torture has emphasised that gender is a key factor in implementation of the Convention.¹⁶⁰ The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.¹⁶¹

The Committee Against Torture has also clarified that there are forms of violence against women which clearly meet the definition of 'torture' as articulated in Article 1 of the Convention. These forms of violence include, but are not restricted to, forced sterilisation, rape and other forms of sexual violence, forced abortion, as well as denial of access to safe abortion to women who have become pregnant as a result of rape or whose welfare is at risk, domestic violence, female genital mutilation, human trafficking, forced marriage and other forms of violence against women, such as gender hate crime and violence committed in the name of 'honour' such as dowry-related violence.¹⁶²

Universal Periodic Review (UPR) - Human Rights Council

The Universal Periodic Review (UPR) is a process undertaken by the United Nations and involves the "peer" review of the human rights records of the 192 Member States once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The UPR is one of the key elements of the Human Rights Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of the UPR mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.¹⁶³

Australia has been reviewed under the UPR in 2011¹⁶⁴ and again in 2015.¹⁶⁵ The situations of women and girls with disability, Aboriginal and Torres Strait Islander women; women from culturally and linguistically diverse backgrounds, and women in immigration detention – have been identified by UN member States, as warranting significant and urgent action by Australian Governments. In the 2015 UPR, a total of 290 recommendations, endorsed by the UN Human Rights Council, were made to Australia by its UN member State peers, spanning a number of key thematic areas, including: women's rights, Indigenous Australians, disability rights, children and youth, and sexual orientation, gender identity and intersex rights.

The issue of forced sterilisation of girls and women with disability, was a major concern expressed by many of Australia's UN member State peers. Several countries participating in the peer review process, strongly recommended that the Australian Government 'adopt national legislation prohibiting the use of sterilisation of adults without their consent, and of children'. However, in its response to the 290 recommendations adopted by the Human Rights Council following the 2015 UPR of Australia, the Australian Government formally rejected the recommendations relating to prohibiting forced sterilisation, noting that the Australian Government "*will not further consider at this time*".¹⁶⁶

The issue of violence against women, particularly violence against women and girls with disability and violence against indigenous women, was another area that generated significant concern from Australia's UN member State peers, with many recommending that the Australian Government urgently implement concrete measures to address violence, exploitation and abuse experienced by women and girls with disability, particularly those in institutional settings.¹⁶⁷

Human Rights Council

In June 2016, the *UN Human Rights Council* adopted a key resolution to accelerate efforts to prevent and respond to violence against women and girls, including indigenous women and girls.¹⁶⁸ Outraged by the persistence and pervasiveness of all forms of violence against women and girls worldwide, the Human Rights Council urges States to pay particular attention to women who are subject to multiple and intersecting forms of discrimination, including women and girls with disability. The Council further urges States to ensure the promotion and protection of the human rights of all women and their sexual and reproductive health and reproductive rights, in accordance with the Programme of Action of the International Conference on Population and Development (ICPD), the Beijing Platform for Action and the outcome documents of their review conferences. The Council reminds States that human rights include the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination and violence.

At its thirty-second session in June 2016, the UN Human Rights Council adopted a key resolution¹⁶⁹ to advance the elimination of discrimination against women, particularly in the area of sexual and reproductive health and rights. The Resolution, agreed to by Australia, reaffirms that the human rights of women include a woman's right to have control over, and to decide freely and responsibly on, all matters related to her sexuality, including sexual and reproductive health, free of coercion, discrimination and violence, and that equal relationships between women and men in matter of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences. It urges States to take steps to ensure that laws, policies and practices respect women's equal right to decide autonomously in matters regarding their own lives and health, including their bodies, by repealing discriminatory laws relating third-party authorization for health information and services, and combating gender stereotypes and behaviours that discriminate against them. The Resolution explicitly impresses on States to take all appropriate measures to ensure equal access of women with disability to health services that are gender sensitive, including health-related rehabilitation. Additionally, the Resolution calls for States to:

- ▶ Pay specific attention and to take differentiated measures, including special protection and support services, when addressing multiple and intersecting forms of discrimination against women and girls;
- ▶ Monitor and prevent unlawful forced institutionalization and over medication, and to ensure non-discrimination in relation to women's mental health;
- ▶ Adopt effective measures and to enact laws and policies to prevent and eliminate all harmful practices;
- ▶ Ensure the promotion and protection of the human rights of all women and their sexual and reproductive health and reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and the outcome documents of their review conferences.

29th United Nations General Assembly Special Session on the Follow-up to the Programme of Action of the International Conference on Population and Development Beyond 2014

The *Programme of Action of the ICPD*, adopted in 1994, represented a remarkable consensus among 179 Governments (including Australia) that individual human rights and dignity, including the equal rights of women and girls and universal access to sexual and reproductive health and rights, are a necessary precondition for sustainable development.¹⁷⁰ A global operational review (*ICPD Beyond2014*) of the implementation of the *ICPD Programme of Action* was finalised in 2014, as part of the process for the development of the Sustainable Development Goals¹⁷¹ and the Post-15 Development Agenda. Following the Review, the UN General Assembly convened a Special Session on the follow-up to the Programme of Action of the International Conference on Population and Development (ICPD) beyond 2014 in New York, on 22 September 2014.¹⁷² This Special Session was attended by more than 146 UN Member States, and resulted in a set of global commitments, made at the highest political level, for the further implementation of the Programme of Action of the ICPD Beyond2014.¹⁷³

The set of global commitments agreed to by UN member States, including Australia, focus on key priority thematic areas in the context of sexual and reproductive rights including the centrality of human rights; women's empowerment and gender equality; the adolescent girl; non-discrimination; people with disability, Indigenous peoples, and adolescents and youth.

UN Special Procedures

The issue of sexual and reproductive rights has been the subject of specific global studies and thematic reports over several years from several of the United Nations Special Rapporteurs. The UN Special Rapporteurs constitute part of the UN 'Special Procedures',¹⁷⁴ appointed by the Human Rights Council. They serve in their personal capacities as independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.

In his report to the UN General Assembly in 2011, the *UN Special Rapporteur on the Right to Health*, Mr Anand Grover, examined criminal laws and other legal restrictions affecting the right to sexual and reproductive health. He specifically emphasised that the use of overt physical coercion by the State or non-State actors, such as in cases of forced sterilisation, forced abortion, forced contraception and forced pregnancy has long been recognised as an unjustifiable form of State-sanctioned coercion and a violation of the right to health. Similarly, where the criminal law is used as a tool by the State to regulate the conduct and decision-making of individuals in the context of the right to sexual and reproductive health the State coercively substitutes its will for that of the individual, which also constitutes a violation of the right to health.¹⁷⁵

In 2009, the *Special Rapporteur on the Right to Health* submitted to the UN General Assembly, his report on Informed Consent and the Right to Health. He stipulates that guaranteeing informed consent is fundamental to achieving the enjoyment of the right to health through practices, policies and research that are respectful of autonomy, self-determination and human dignity. The Special Rapporteur confirms that the existence of a disability is not a lawful justification for any deprivation of liberty, including denial of informed consent, and that States must provide people with disability equal recognition of legal capacity, care on the basis of informed consent, and protection against non-consensual experimentation; as well as prohibit exploitation and respect physical and mental integrity. States have an obligation to provide (on a permanent basis if necessary) any appropriate supports, including total support, for people with disability to exercise their legal capacity to the greatest possible extent.

In providing guidance to States on Informed Consent and the Right to Health, the Special Rapporteur also emphasises that policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including sterilisations, abortions, electro-convulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment.¹⁷⁶ In relation to access to information on sexual and reproductive health and rights, the

Special Rapporteur clarifies that States must ensure that information is fully available, acceptable, accessible and of good quality, and imparted and comprehended by means of supportive and protective measures such as counselling and involvement of community networks.¹⁷⁷

The *UN Special Rapporteur on Torture* [and other cruel, inhuman or degrading treatment or punishment], Juan E. Mendez, has provided substantial and detailed guidance to States in relation to sexual violence and reproductive rights violations.¹⁷⁸ His seminal thematic report to the UN General Assembly in 2013, which focused on torture and ill-treatment in health-care settings, sheds light on often undetected and/or unreported forms of abusive practices – including sexual and reproductive rights violations - that occur under the auspices of health-care policies, and emphasises how certain practices breach the prohibition on torture and ill-treatment. The Report identifies and details the scope of the State's obligation to regulate, control and supervise health-care practices with a view to preventing mistreatment under any pretext and the policies that promote these practices and existing protection gaps.

In order to demonstrate how abusive practices in health-care settings meet the definition of torture, the Report from the Special Rapporteur articulates key elements of the definition of torture and ill-treatment and examines its applicability to the abuses in health-care settings. Important guiding principles such as legal capacity, informed consent, and the doctrine of “medical necessity” as well as the concept of stigmatised identities provide useful guidance in understanding the breadth of the problem and the underlying causes that are paramount to most of these abusive practices. The mandate has emphasised the importance of ensuring that the torture and ill-treatment framework is applied in a gender-sensitive manner, and has identified reproductive decisions as a context in which women are particularly vulnerable.¹⁷⁹

The mandate has clearly established that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose or when aimed at correcting or alleviating a disability, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned.¹⁸⁰ This is particularly the case when intrusive and irreversible, non- consensual treatments are performed on people from marginalised groups, such as women and girls with disability, notwithstanding claims of good intentions or medical necessity. The mandate has held that the administration of non-consensual medication or forced sterilisation - often claimed as being a necessary treatment for the so-called ‘best interest’ of the person concerned - satisfies both intent and purpose required under the Article 1 of the Convention against Torture.¹⁸¹ The Special Rapporteur's 2013 Report re-iterates that fully respecting each person's legal capacity is a first step in the prevention of torture and ill-treatment. The Special Rapporteur clarifies that free and informed consent should be safeguarded on an equal basis for all individuals without any exception, through the legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. The Special Rapporteur has emphasised that States must repeal any law allowing intrusive and irreversible treatments when enforced or administered without the free and informed consent of the person concerned.

In 2012, the *UN Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, tabled her report on violence against women with disability, to the UN General Assembly.¹⁸² She expressed her regret that throughout the world, women with disability continue to be treated as if they have no control, or should have no control, over their sexual and reproductive choices. She re-iterated that denying access to reproductive health care, or forcing women with disability to undergo procedures aimed at controlling their reproductive choices, are forms of violence against women.

Commission on the Status of Women (CSW)

The UN Commission on the Status of Women (CSW), established in 1946, is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. During the Commission's annual two-week session, representatives of UN Member States, civil society organisations and UN entities gather at UN headquarters in New York. They discuss progress and gaps in the implementation of the 1995 Beijing Declaration and Platform for Action, the key global policy document on gender equality, and the 23rd special session of the General Assembly held in 2000,¹⁸³ as well as emerging issues that affect gender equality and the empowerment of women. Member States agree on further actions to accelerate progress and promote women's enjoyment of their rights in political, economic and social fields. Member states agree to implement the outcomes and recommendations of each session.

In 2015, the 60th session of CSW focused on 'Women's empowerment and the link to sustainable development'. The Agreed Conclusions document from the session calls on States to Ensure the promotion and protection of the human rights of all women and their sexual and reproductive health, and reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development (ICPD), the Beijing Platform for Action and the outcome documents of their review conferences. It explicitly urges Governments to take all appropriate legislative, administrative, social, educational, employment and other measures to protect and promote the rights of all women and girls with disability, ensuring their full and effective participation and inclusion in society, and to address the multiple and intersecting forms of discrimination they face.

In 2013, the 57th session of CSW addressed the *Elimination and prevention of all forms of violence against women and girls*. The Agreed Conclusions document from the 57th session¹⁸⁴ make strong reference to the multiple forms of violence perpetrated against women and girls with disability, particularly in relation to sexual and reproductive rights violations.¹⁸⁵ The Agreed Conclusions call on States to condemn and take action against forced procedures or those conducted without informed consent, specifically, forced hysterectomy, forced cesarean section, forced sterilisation, forced abortion, and forced use of contraceptives, especially for women with disability.



**THE FUNDAMENTAL PURPOSE OF THE CONVENTION ON THE RIGHTS OF PERSONS
WITH DISABILITIES (CRPD) IS TO PROMOTE, PROTECT AND ENSURE THE FULL AND
EQUAL ENJOYMENT OF ALL HUMAN RIGHTS AND FREEDOMS BY ALL PERSONS
WITH DISABILITY, AND TO PROMOTE RESPECT FOR THEIR INHERENT DIGNITY**

6 RECOMMENDATIONS: SEXUAL AND REPRODUCTIVE RIGHTS

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 sexual and reproductive rights for all women and girls with disability.

1. WWDA calls on the Australian Government to exercise its executive powers under the Constitution to authorise national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior, fully informed and free consent.
2. WWDA specifically calls on the Law, Crime and Community Safety Council (LCCSC) to work with the Council of Australian Governments (COAG) as a matter of urgency to enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior fully informed and free consent.
3. WWDA calls on the Australian Government to prioritise, as a matter of urgency and in consultation with women with disability and their representative organisations, the development of accessible and appropriate information resources and materials on the sexual and reproductive rights of women and girls with disability – for women with disability themselves; frontline workers and other professionals; family, support persons, advocates and friends; and the broader community.
4. WWDA calls on the Australian Government, in consultation with women with disability and their representative organisations, to develop a national strategy to improve access for women and girls with disability to mainstream sexual and reproductive health care on an equal basis with others.
5. WWDA calls on the Australian Government, in consultation with people with disability and their representative organisations, to develop a national strategy to improve access to, and implementation of comprehensive, equitable, accessible, and disability-inclusive sexual and reproductive health education and information, with a particular focus on improving the access to such information for women and girls with disability, regardless of the setting in which they work, live or study.
6. WWDA calls on the Australian Government, through the Council of Australian Governments (COAG), to commission a national inquiry into the legal, policy and social support environment that gives rise to the removal of babies and children from parents with disability, at a rate at 10 times higher than non-disabled parents.
7. WWDA calls on the Australian Government to establish a nationally consistent supported decision-making framework that strongly and positively promotes and supports people with disability to effectively assert and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms, including the right of women and girls with disability to make free, informed and responsible choices about their bodies, sexual health, reproductive health, intimate and emotional relationships, and parenting.
8. WWDA calls on the Australian Government to immediately revise the *National Disability Insurance Scheme (NDIS) (Supports for Participants) Rules 2013* and related implementation frameworks and strategies to ensure explicit provisions for NDIS participants to access funded supports that enable them to realise their rights to sexual health information, sexual pleasure, expression, association, freedom, autonomy and self-determination.

RECOMMENDATIONS: SEXUAL AND REPRODUCTIVE RIGHTS (CONT.)

9. WWDA calls on the Council of Australian Governments (COAG) to ensure that future Implementation Plans of the *National Disability Strategy (NDS) 2010-2020*, include as a priority, the development of specific, gendered, targeted measures to urgently address the sexual and reproductive rights violations experienced by people with disability, particularly women and girls with disability.
10. 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.
11. 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.
12. WWDA calls on the Australian Government to immediately withdraw its Interpretive Declarations on the Convention on the Rights of People With Disabilities including 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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- 114 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities. UN Doc. No. E/1995/22. See Paras 19, 30, 31.
- 115 Convention on the Rights of the Child, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
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- 126 The international human rights treaties monitoring bodies are responsible for monitoring States parties' compliance with their legal obligations under the treaties. A key mechanism to monitor and analyse compliance is through periodic reviews of States parties under the treaties they have ratified. The Treaty Bodies issue Concluding Observations and Recommendations which provide authoritative interpretation of States parties' treaty obligations, summarise their assessment of progress and deficits in the implementation of the treaties and give recommendations for an improved realisation. For more information on the international human rights treaty monitoring bodies, go to: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>
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- 174 UN 'Special procedures' are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group composed of five members, one from each of the five United Nations regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group. The Special Rapporteurs, Independent Experts and members of the Working Groups are appointed by the Human Rights Council and serve in their personal capacities. They undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. They are not United Nations staff members and do not receive financial remuneration. The independent status of the mandate-holders is crucial for them to be able to fulfil their functions in all impartiality. A mandate-holder's tenure in a given function, whether it is a thematic or country mandate, is limited to a maximum of six years. The Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. See: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
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- 183 The General Assembly held its 23rd Special Session at UN Headquarters in New York from 5-10 June 2000. The Session, entitled "Women 2000: Gender equality, development and peace for the 21st century," was attended by a total of 2,003 government delegates, along with 2,043 NGO representatives from 1,036 organizations. Delegates negotiated and adopted an outcome document, "Review and appraisal of progress made in the implementation of the 12 critical areas of concern in the Beijing Platform for Action, and Further actions and initiatives for overcoming obstacles to the implementation of the Beijing Platform for Action." The special session reaffirmed the importance of gender mainstreaming in all areas and at all levels and the complementarity between mainstreaming and special activities targeting women. Certain areas were identified as requiring focussed attention, including sexual and reproductive rights, and prevention of all forms of violence. In all, 199 actions to be taken at the national and international levels by Governments, the United Nations system, international and regional organisations, including international financial institutions, the private sector, non-governmental organisations and other actors of civil society were agreed on. See UN Doc. No. A/RES/S-23/2 and UN Doc. No. A/RES/S-23/3
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- 185 The CSW57 Agreed Conclusions (57th session) make strong reference to the issue of violence against women and girls with disabilities, including, for example the need for governments to: a) take all appropriate legislative, administrative, social, educational and other measures to protect and promote the rights of women and girls with disabilities as they are more vulnerable to all forms of exploitation, violence and abuse, including in the workplace, educational institutions, the home, and other settings; b) take appropriate measures to ensure the human rights of and protect women and girls deprived of their liberty and/or under State custody or State care from all forms of violence, in particular sexual abuse; and, c) condemn and take action to prevent violence against women and girls in health care settings, including sexual harassment, humiliation and forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilisation, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, such as women with disabilities.



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

