



Disabled  
People's  
Organisations  
Australia

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## **Submission to the Committee on the Rights of Persons with Disabilities**

List of issues [Australia] to be adopted during the 18th Session of  
the Committee on the Rights of Persons with Disabilities

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June 2017

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# About Disabled People's Organisations Australia (DPO Australia)

Disabled People's Organisations Australia (DPO Australia) is an alliance of four national, population specific and cross-disability Disabled People's Organisations (DPO's) in Australia. DPO Australia was founded by, and is comprised of: Women With Disabilities Australia (WWDA); First Peoples Disability Network Australia (FPDNA); People with Disability Australia (PWDA); and, National Ethnic Disability Alliance (NEDA). As DPOs, these four national organisations are self-determining organisations led by, controlled by, and constituted of, people with disability.<sup>1</sup>

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. DPO Australia is a recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

The four member organisations of DPO Australia have extensive experience working collaboratively with the machinery of the United Nations (UN), including human rights treaty monitoring bodies and UN special procedures. DPO Australia has coordinated and led Civil Society delegations to a range of UN processes, including treaty body reviews of Australia, the Commission on the Status of Women (CSW), and the CRPD Conference of States Parties (COSP). DPO Australia has hosted, conducted and sponsored a number of UN Side Events.

DPO Australia is regularly invited to participate in UN Expert Group Meetings (EGM), with recent examples being the EGM on the *Sexual and Reproductive Rights of Girls with Disability* (hosted by the Special Rapporteur on Disabilities during the 10<sup>th</sup> session of COSP), the EGM on *Advancing the Rights and Perspectives of Women and Girls with Disabilities in Development and Society* (hosted by UNDESA and ECLAC), and the EGM on 'Youth and Disability: Policies of Social Inclusion, Gender Equality, Non-Discrimination and Prevention of Sexual Violence' (UNFPA). Two of the DPO Australia member organisations, Women With Disabilities Australia (WWDA) and People with Disability Australia (PWDA), hold Special Consultative Status with the UN Economic and Social Council (ECOSOC).

This Submission is endorsed by:

Women with Disabilities Australia (WWDA)    Children and Young People with Disability Australia (CYDA)  
National Ethnic Disability Alliance (NEDA)    Australian Federation of Disability Organisations (AFDO)  
First People's Disability Network (FPDN)    Disability Advocacy Network Australia (DANA)  
People with Disability Australia (PWDA)    Australian Centre for Disability Law  
    Speech Pathology Australia  
    Organisation Intersex International Australia (OII)



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## Executive Summary

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Disabled People's Organisations Australia (DPO Australia) appreciates the opportunity to provide this brief submission to inform the Committee on the Rights of Persons with Disabilities' (the Committee) development of the List of Issues [Australia] to be adopted at the Committee's 18th session, in respect to Australia's compliance with the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) (the Convention).

Brief updates on Australia's compliance with the Convention and suggested review questions are structured under each article of the Convention in this submission. Where space permits, references are made to previous concluding observations made by the Committee and other UN treaty monitoring bodies. Extensive explanatory notes are provided at the end of this document.

In addition to this submission, DPO Australia looks forward to co-ordinating and developing the comprehensive Australian Civil Society Parallel Report to the Committee on the Rights of Persons with Disabilities which will be submitted in accordance with the Guidelines on Periodic Reporting (CRPD/C/3) prior to the Committee's formal review of Australia's compliance with implementation of the Convention on the Rights of Persons with Disabilities.

# Background Information and Proposed Questions for Lists of Issues

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## General principles and obligations (Arts. 1 and 4)

Australia has not fully incorporated the CRPD into Australian domestic law and there remains no comprehensive legal framework for the protection of human rights.<sup>2</sup> Australia's implementation of CRPD obligations are set out in the *National Disability Strategy 2010-2020* (NDS)<sup>3</sup> however the NDS<sup>4</sup> lacks actions and measurable outcomes to address systemic human rights violations.<sup>5</sup> The NDS does not reflect engagement with relevant treaty body reviews of Australia.<sup>6</sup> Relevant recommendations from these reviews are not incorporated into concrete actions within the NDS.

There has been no progress to repeal Australia's Interpretative Declarations on CRPD Articles 12, 17 and 18.<sup>7</sup>

Australia has failed to effectively involve people with disability and their organisations at all stages of implementation and monitoring of the CRPD.<sup>8</sup> The number and diversity of, and the resources provided to Australian Government funded DPO's and organisations representing people with disability has been reduced since the last reporting period.

## Proposed Questions for List of Issues (Arts. 1 and 4)

Please indicate whether the State Party intends to repeal its Interpretative Declarations on CRPD Articles 12, 17 and 18. If not, please explain why it does not intend to do so.

Please advise on progress to implement the 'Redfern Statement',<sup>9</sup> particularly the six priorities to address disability<sup>10</sup> for Aboriginal and Torres Strait Islander people.

Please provide detailed budgetary information on the number of national Disabled People's Organisations (DPO's) and Disability Representative Organisations funded by the Australian Government. Include information on security and sustainability of funding, including funding to:

- a. engage with and support the direct participation of people with disability, including children and young people with disability in all aspects of CRPD implementation and monitoring;
- b. develop leadership opportunities and promote participation of people with disability across all areas of political, social, economic and cultural life;
- c. participate in all measures to address and prevent violence against people with disability, particularly women and girls with disability;
- d. attend and participate in relevant international forums to advance the human rights of people with disability.

Please update on reforms to the National Disability Advocacy Program (NDAP).<sup>11</sup> Include detail on how all people with disability will have access to timely and appropriate individual advocacy support.

## **Equality and non-discrimination (Art. 5)**

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Australia has failed to establish a comprehensive, judicially enforceable Human Rights Act<sup>12</sup> that incorporates Australia's obligations under the Convention.<sup>13</sup> Legislation does not protect against systemic and intersectional discrimination. The *Disability Discrimination Act 1992 (Cth)* includes exemptions that undermine its effectiveness.<sup>14</sup>

### **Proposed Questions for List of Issues (Art. 5)**

Please advise on progress toward establishing a judicially enforceable Human Rights Act or similar legal instrument that incorporates obligations under the Convention and related human rights instruments.

Please elaborate on legal remedies and redress available and utilised in regard to disability discrimination, including in relation to exemptions under the *Disability Discrimination Act 1992 (Cth)*.

Please elaborate on measures to eliminate multiple and intersectional discrimination. Include particular data on people with disability who are: Aboriginal and Torres Strait Islander; women and girls; from culturally and linguistically diverse backgrounds; LGBTI;<sup>15</sup> humanitarian entrants and asylum seekers.<sup>16</sup>

## **Women with disabilities (Art. 6)**

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Violence against women and girls with disability in Australia<sup>17</sup> is an urgent and unaddressed issue.<sup>18</sup> Despite recommendations of the Committee and other UN mechanisms,<sup>19</sup> gendered violence prevention discourse, legislation, policies and services in Australia predominantly focus on addressing 'domestic and 'family' violence and sexual assault.<sup>20</sup> The *National Plan to Reduce Violence Against Women and their Children 2010-2022*,<sup>21</sup> is designed to prevent violence against women. However, many forms of violence<sup>22</sup> perpetrated against women and girls with disability and the settings where such violence occurs,<sup>23</sup> remain outside the scope of the *National Plan*.<sup>24</sup>

### **Proposed Questions for List of Issues (Art. 6)**

Please update the Committee on legislative, administrative and other measures employed to eliminate all forms of violence against women and girls with disability, including forced treatment, forced sterilisation, forced contraception, and restrictive practices.

Please advise on specific measures taken to ensure equity of access to effective, integrated violence services and systems. Include detail on women with disability who are: Aboriginal and Torres Strait Islander; culturally and linguistically diverse; LGBTI; living in institutional and other care and service settings, including prisons.<sup>25</sup>

Please explain why the *National Framework for the Primary Prevention of Violence against Women and Their Children in Australia*,<sup>26</sup> specifically excludes violence against women with disability in institutional, residential and other care settings.<sup>27</sup>

Please update the Committee on progress toward undertaking a national accessibility audit of crisis accommodation services in Australia.

## Children with disabilities (Art. 7)

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Australia lacks a comprehensive framework that proactively promotes and protects the rights of children,<sup>28</sup> including the specific rights of all children with disability.<sup>29</sup> Current frameworks<sup>30</sup> do not articulate how the rights of children with disability should be implemented and monitored, and the principle of the 'best interests of the child' is applied inconsistently across Australian jurisdictions.<sup>31</sup> Australia lacks a comprehensive data collection mechanism for children and young people with disability.<sup>32</sup>

While the establishment of a National Children's Commissioner<sup>33</sup> in 2013 was welcomed, no substantive work has been completed to date that describes, investigates, promotes or specifically protects the rights of children with disability.<sup>34</sup>

Several Senate Inquiries<sup>35</sup> related to children have taken place or are currently underway in Australia, including two Royal Commissions.<sup>36</sup> The Australian Government has ruled out a Royal Commission into violence against people with disability,<sup>37</sup> including children.<sup>38</sup>

### Proposed Questions for List of Issues (Art. 7)

Please advise on progress to increase promotion and protection of the rights of children and young people with disability in legislative and other frameworks that apply to children and young people. Include detail on children and young people with disability who are: Aboriginal and Torres Strait Islander; culturally and linguistically diverse; LGBTI; humanitarian entrants and asylum seekers.

Please elaborate on progress toward a nationally consistent approach to the collection of disaggregated<sup>39</sup> data on all children and young people, including children with disability.

Please provide a detailed update on findings, outcomes and progress toward implementing recommendations from the recent and ongoing Senate Inquiries<sup>40</sup> and Royal Commissions,<sup>41</sup> with a particular focus on children with disability.

## Awareness-raising (Art. 8)

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There remains no national targeted strategy to raise awareness of the rights of people with disability. Several initiatives have been de-funded since the last reporting period.<sup>42</sup> The *National Disability Strategy (NDS) Second Implementation Plan (2015–2018)*<sup>43</sup> was released two years late in December 2016, and prioritises 'Communication activities' as one of four areas for 'increased national effort'.<sup>44</sup> However, the NDS is not adequately resourced, and to date there is no evidence of action on the development of 'communication activities'.

### Proposed Questions for List of Issues (Art. 8)

Please provide information on measures undertaken to raise awareness about the rights of people with disability. Include information on outcomes, monitoring and evaluation.

Please explain how people with disability are directly involved in the design, implementation, monitoring and evaluation of awareness-raising campaigns and strategies.

Please provide current information on the implementation of the *NDS Second Implementation Plan 2015-2018*, including the priority area of 'Communication activities'.



## **Accessibility (Art. 9)**

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The *National Disability Strategy 2010-2020 (NDS)* remains the primary policy framework designed to increase equality of access for people with disability.<sup>45</sup> While there has been critical reform under the NDS, most notably with the implementation of the *National Disability Insurance Scheme (NDIS)*,<sup>46</sup> the NDS is not being driven consistently across government jurisdictions nor does it have the investment or concrete measures needed to deliver on its policy outcome areas.<sup>47</sup>

### **Proposed Questions for List of Issues (Art. 9)**

Please update the Committee on findings, outcomes and progress toward implementing recommendations to date from the *'Senate Inquiry into Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities'*.<sup>48</sup>

Please advise on measures to increase and promote compliance with the National Standards for Disability Services 2013 (Cth);<sup>49</sup> Disability Standards for Accessible Public Transport 2002 (Cth);<sup>50</sup> and the Disability (Access to Premises – Buildings) Standards 2010 (Cth)<sup>51</sup> federally and in each State and Territory jurisdiction.

Please inform the Committee on measures to monitor and implement all accessibility measures in the Convention, including adoption of national principles and standards for communication access.

## **Right to life (Art. 10)**

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Australian domestic law does not recognise or guarantee a right to life.

The rate of premature and avoidable deaths of people with disability in care settings is alarmingly high. A recent study<sup>52</sup> reviewed the deaths of 73 people with disability who died in care<sup>53</sup> in Queensland between 2009 and 2014. The Review found that more than half of all deaths in care reviewed were determined to be unexpected and over half of all deaths were considered potentially avoidable.<sup>54</sup>

### **Proposed Questions for List of Issues (Art. 10)**

Please provide information and disaggregated data on federal, State and Territory rates and incidence of premature and avoidable deaths of people with disability in all forms of residential and other care settings.

Please elaborate on human rights based education and training provided to health professionals and other service providers in respect to people with disabilities' right to life.

## **Situations of risk and humanitarian emergencies (Art. 11)**

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Australia does not have nationally consistent emergency management standards that ensure access and participation of people with disability, or that ensure access to disability-specific and disability-responsive supports during emergencies.<sup>55</sup>

### **Proposed Questions for List of Issues (Art. 11)**

Please advise on progress toward implementation of nationally consistent emergency management standards that ensure equal access and participation of people with disability across all phases of mainstream disaster management planning, operations and recovery, including disability-specific and responsive supports before, during and after emergency events.

## **Equal recognition before the law (Art. 12)**

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A number of Australian laws, policies and practices deny or diminish recognition of people with disability as equal persons before the law, and the right to the assumption of legal capacity.<sup>56</sup>

In November 2014, the Australian Law Reform Commission (ALRC)<sup>57</sup> tabled in Parliament the Final Report<sup>58</sup> of its Inquiry into barriers to equal recognition before the law and legal capacity for people with a disability.<sup>59</sup> The Inquiry was limited,<sup>60</sup> including by Australia's Interpretative Declaration to CRPD Article 12. The Australian Government is yet to respond to the Report, stating only that the recommendations "are currently under consideration by the Government".<sup>61</sup>

### **Proposed Questions for List of Issues (Art. 12)**

Please provide detailed information on all measures to ensure that people with disability are entitled to protection under the law on an equal basis with others.

Please elaborate on measures taken to ensure that all persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Give particular attention to measures that ensure the equal right of persons with disability to: maintain their physical and mental integrity; fully participate as citizens; control their own financial affairs; make a legally binding will; vote; and, independently make advance care directives.

Please update the Committee on measures taken to establish a nationally consistent '*Supported Decision-Making Framework*' that promotes, prioritises and supports people with disability to exercise their legal capacity.

Please update the Committee on progress toward implementing recommendations from the Australian Law Reform Commission (ALRC) 2014 review into barriers to equal recognition before the law.

## **Access to justice (Art. 13)**

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People with disability engaging in the justice system face significant barriers,<sup>62</sup> with many finding access to justice difficult, hostile and ineffectual. As a result, they are often left without legal redress.<sup>63</sup>

People with disability, particularly Aboriginal and Torres Strait Islander peoples<sup>64</sup> with disability, remain over-represented across the adult and youth justice systems.<sup>65</sup> At the Universal Periodic Review (2016) Australia made a voluntary commitment to improve the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment.<sup>66</sup>

### **Proposed Questions for List of Issues (Art. 13)**

Please describe measures to address over-representation of people with disability in the justice system as complainants, litigants, defendants, victims and witnesses, including details of disability, gender, and culturally-specific support and diversionary programs. Include information on the adoption and implementation of Justice Reinvestment programs.

Please describe how many people with disability are incarcerated in prisons across Australia. Include specific data on Aboriginal and Torres Strait Islander people with disability. Elaborate on supports provided to people with disability while incarcerated and what supports are put in place when people with disability transition out of prison.

## **Proposed Questions for List of Issues (Art. 13) (Cont.)**

Please detail how Australian Governments conceptualise and apply a ‘trauma informed approach’ to supporting Aboriginal and Torres Strait Islander people with disability in engagement with the criminal justice system. Advise on all measures to address the adverse life trajectory of many young Aboriginal and Torres Strait Islander people with disability that often results in incarceration in juvenile detention.

Please inform the Committee of measures to increase legal representation, advice and support<sup>67</sup> for all people with disability, including children and young people involved in youth justice system.

Please provide information on the number of accused persons with disability who have been declared unfit to stand trial or unfit to be found guilty since last review. Include detailed information on progress to improve the way the criminal justice system treats people with cognitive and/or psychosocial disability who are determined as unfit to plead or found not guilty by reason of mental impairment.

## **Liberty and security of the person (Art. 14)**

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People with disability experience many forms of deprivation of liberty and security without lawful authority<sup>68</sup> and face higher rates of deprivation of their liberty<sup>69</sup> than the general population.<sup>70</sup> There remain significant issues with legislative, policy and practice frameworks,<sup>71</sup> that result in the arbitrary detention of people with disability, disproportionately experienced by Aboriginal and Torres Strait Islander people with disability.<sup>72</sup>

## **Proposed Questions for List of Issues (Art. 14)**

Please update the Committee on measures taken to end the unwarranted use of prisons for the management of persons with disability without conviction, including Aboriginal and Torres Strait Islander persons with disability, and women with disability.

Please update the Committee on findings, and progress toward implementing, all recommendations from the ‘*Senate Inquiry into Indefinite detention of people with cognitive and psychiatric impairment in Australia*’.<sup>73</sup>

Please provide disaggregated data on the number of persons with disability since last review who have been subject to medical interventions under substitute decision-making regimes; subject to medical interventions without their free, independent and informed consent.

Please advise on progress toward repealing legislation that allows for the deprivation of liberty on the basis of disability; repealing provisions that authorise involuntary internment linked to an apparent or diagnosed disability, including in mental health facilities and in the community under the imposition of an involuntary Community Treatment Order (CTO).

## **Freedom from torture and cruel, inhuman or degrading treatment or punishment (Art. 15)**

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Of great concern in Australia is the high number of people with disability,<sup>74</sup> including children with disability, administered psychotropic medication, psychotropic polypharmacy,<sup>75</sup> physical restraint and seclusion under the guise of 'behaviour management' policies and practice.<sup>76</sup>

The use of forced psychiatric treatments on people with mental health impairment or psychosocial disability has increased sharply in recent years.<sup>77</sup>

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*<sup>78</sup> has significant limitations<sup>79</sup> and permits States and Territories to authorise the use of restrictive practices of people with disability in disability service settings.

### **Proposed Questions for List of Issues (Art. 15)**

Please advise on all measures taken in law and practice to ensure that people with disability – including children with disability, are not subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>80</sup>

Please update the Committee on measures taken to establish a national independent preventative mechanism to monitor places of detention, education, work and care, where people with disability live and/or access services.

Please provide information on measures taken to implement the recommendations from the 2014 review of Australia's compliance with CAT.<sup>81</sup>

## **Freedom from Exploitation, violence and abuse (Art. 16)**

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In 2015 the Australian Senate<sup>82</sup> conducted a national Inquiry into *Violence, abuse and neglect against people with disability in institutional and residential settings*.<sup>83</sup> The Inquiry found that violence and abuse against people with disability<sup>84</sup> is an 'epidemic' in Australia - not limited to 'institutional settings' but so prolific and systemic that a Royal Commission<sup>85</sup> is urgently warranted.<sup>86</sup> In March 2017, the Australian Government provided its response<sup>87</sup> to the Report of the Senate Inquiry, ruling out the need for a Royal Commission, arguing that the NDIS Quality and Safeguards Framework<sup>88</sup> and Commission<sup>89</sup> will "protect the rights of people with disability".<sup>90</sup> The NDIS Quality and Safeguards Commission will oversee safeguards for 460,000 NDIS participants at full scheme in 2020,<sup>91</sup> which equates to less than 10% of the Australian population of people with disability.

In May 2017 more than 120 Australian academics signed an open letter urging the Prime Minister to establish a Royal Commission into Violence against People with Disability.<sup>92</sup> In May 2017, a Civil Society Statement<sup>93</sup> co-ordinated by DPO Australia, and endorsed by 163 CSO's and almost 400 individuals was issued to Prime Minister demanding a Royal Commission into Violence and Abuse against People with Disability.<sup>94</sup>

### **Proposed Questions for List of Issues (Art. 16)**

Concerned by the overwhelming evidence of prolific and systemic violence against people with disability in Australia, please indicate if the government will establish a *National Independent Inquiry into Violence and Abuse Against People with Disability*.<sup>95</sup> Please indicate if such an inquiry will have specific and broad powers to compel witnesses, undertake a comprehensive investigation of all forms of violence and refer matters to law enforcement agencies.

## **Proposed Questions for List of Issues (Art. 16) (Cont.)**

Please advise on progress toward implementing all recommendations from the *'Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings'*.

Please describe all measures to protect, investigate, prosecute and enforce findings related to all forms of violence experienced by people with disability, including those who are not NDIS participants.<sup>96</sup>

Please advise on measures taken to review and update the *National Framework for Protecting Australia's Children 2009-2020*<sup>97</sup> to ensure a comprehensive approach to preventing and responding to all forms of violence against children with disability.

## **Integrity of the person (Art. 17)**

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Forced sterilisation of people with disability, particularly women and girls with disability, is an ongoing practice that remains legal and sanctioned by Governments in Australia.<sup>98</sup> Since 2005, UN human rights treaty bodies, UN special procedures and international medical bodies<sup>99</sup> have recommended Australia enact national legislation prohibiting forced sterilisation. Australia's response<sup>100</sup> to these recommendations retains the focus on regulation and non-binding guidelines rather than prohibition. Australian Governments remain of the view that it is an acceptable practice to sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party.<sup>101</sup>

Forced contraception of people with disability through the use of menstrual suppressant drugs<sup>102</sup> is a widespread, current practice in Australia. It particularly affects girls and women with disability and is rarely, if ever, subject to independent monitoring or review.<sup>103</sup>

## **Proposed Questions for List of Issues (Art. 17)**

Please inform the Committee why the State Party has failed to legislate against forced sterilisation.

Please elaborate on measures taken to protect the physical and mental integrity of persons with disability on an equal basis with others, in particular regarding medical or other treatment without the prior, free, full and informed consent of the person, including the use of menstrual suppressant drugs.

## **Liberty of movement and nationality (Art. 18)**

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The Interpretative Declaration on Article 18 preserves Australia's current legislative and administrative approach to processing visa applications.<sup>104</sup> The *Disability Discrimination Act 1992* (Cth) provides an exemption for certain provisions within the *Migration Act 1958* (Cth), and subordinate legislation under this Act, and for the actions required by this legislation. This includes the health requirement contained in Migration Act. Almost all visa applicants must satisfy the health requirement in order to be granted a visa,<sup>105</sup> which has been found to indirectly discriminate against people with disability.<sup>106</sup>

## **Proposed Questions for List of Issues (Art. 18)**

Please provide disaggregated information on the number of people with disability who have been denied immigration visas for reasons related to disability since 2013.

Please update the Committee on measures taken to improve consistency, transparency and administrative fairness for migrants and asylum seekers with disability applying for an Australian visa, and in particular, compliance with obligations under the Convention, including measures taken to amend the health criterion in the *Migration Regulations 1994* (Cth).

## **Living independently and being included in the community (Art. 19)**

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People with disability in Australia are restricted in their right to live independently and be included in the community, including the right to choose freely where and with whom they live. Many are forced to live in institutions, residential, and aged care facilities,<sup>107</sup> in order to receive social and personal care supports. The NDIS is a critical investment in enabling eligible participants<sup>108</sup> to choose the supports they need to realise their right to live independently<sup>109</sup> and be included in the community. A recent interim review by the Productivity Commission into the NDIS costs, found that “*the speed of the NDIS rollout has put the scheme’s success and financial sustainability at risk*”.<sup>110</sup> In addition, the success of the NDIS is dependent on parallel success in the other five policy areas of the *National Disability Strategy 2010-2020* (NDS)<sup>111</sup> and an urgent need to develop the disability supports market.<sup>112</sup>

Access to appropriate, available, accessible and affordable housing remains a major issue for people with disability in Australia,<sup>113</sup> becoming increasingly more evident with the roll out of the NDIS.<sup>114</sup>

### **Proposed Questions for List of Issues (Art. 19)**

Please provide a detailed update on the implementation of the National Disability Insurance Scheme (NDIS). Please include a response to the recommendations of the *Productivity Commission’s Interim Report on National Disability Insurance Scheme (NDIS) Costs*.

Please update the Committee on measures taken to develop a National Framework for the closure of institutions and residential care facilities where people with disability reside.

Please provide current disaggregated information on the number of people with disability living in all forms of institutional settings, including aged-care facilities, congregate care facilities and supported accommodation facilities.

## **Personal mobility (Art. 20)**

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The rollout of the *National Disability Insurance Scheme* (NDIS) is making improvements for many current NDIS participants to obtain mobility and accessibility supports. However, the June 2016 interim review by the Productivity Commission has identified a number of key risks to the success and sustainability of the NDIS beyond the rollout, including for eg: what are ‘reasonable and necessary’ supports, changes to NDIS rules, market readiness, and State and Territory Government responsibility for disability care and mainstream services.<sup>115</sup>

### **Proposed Questions for List of Issues (Art. 20)**

Please inform the Committee of measures to ensure nationally consistent, equitable and adequately funded mobility and accessibility supports for:

- a. people with disability who are participants in the NDIS;
- b. people with disability who are not eligible to access NDIS funded supports.

## **Freedom of expression and opinion, and access to information (Art. 21)**

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Many people with disability are unable to enjoy freedom of expression and opinion, and equitable access to information.<sup>116</sup>

Australia does not recognise Australian Sign Language (Auslan) as Australia's official sign language nor does it guarantee the legal recognition of Deaf peoples' rights to use Auslan.

### **Proposed Questions for List of Issues (Art. 21)**

Please advise on progress toward recognising Australian Sign Language (Auslan) as Australia's official sign language and further, the legal recognition of Deaf peoples' rights to use Auslan.

Please elaborate on measures taken to:

- a. develop and implement standards for accessibility of all information and communication, including in languages of choice and for consultation processes and public events;
- b. provide all communications in accessible formats, including audio description, Braille, Plain English, and captioning;
- c. adequately resource the development, promotion and use of accessible formats in the Government and Non-Government sector, and in particular, adequate funding to DPOs to develop and publish work in fully accessible formats.

## **Respect for privacy (Art. 22)**

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The *Privacy Act 1988* (Cth),<sup>117</sup> the *Freedom of Information Act 1982* (Cth),<sup>118</sup> the *Australian Information Commissioner Act 2010* (Cth),<sup>119</sup> and the *National Disability Insurance Scheme Act 2013* (Cth)<sup>120</sup> are the primary legislative instruments that deal with matters relating to privacy of all people living in Australia, including people with disability.<sup>121</sup> An NDIS 'Code of Conduct'<sup>122</sup> is currently being developed as part of the *NDIS Quality and Safeguards Framework*,<sup>123</sup> and will require workers and providers delivering NDIS supports to comply with 9 core obligations, including to 'Respect the privacy of people with disability'.

### **Proposed Questions for List of Issues (Art. 22)**

Please elaborate on safeguarding measures that protect the right to privacy of all people with disability, including participants in the NDIS.

Please provide detail on measures to ensure that people with disability are provided with accessible information and education in regard to privacy rights.

## **Respect for home and the family (Art. 23)**

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A parent with a disability in Australia is up to ten times more likely than other parents to have a child removed from their care.<sup>124</sup> Children are removed from their parents on the basis of parental disability rather than evidence of neglect or abuse.<sup>125</sup> The Australian Council of Human Rights Agencies (ACHRA) has identified discrimination against parents with disability as an urgent human rights matter, and called on the Australian Government to take urgent action on the issue.<sup>126</sup>

People with disability in Australia continue to experience, and be at risk of, gross violations of their sexual and reproductive rights.<sup>127</sup> Women with disability continue to experience significant discrimination in accessing assisted reproductive technologies.<sup>128</sup>

### **Proposed Questions for List of Issues (Art. 23)**

Please provide detail on measures to end discrimination and provide redress to people with disability who are parents who have had their child removed from their care on the basis of, or related to, disability. Please provide detailed and disaggregated data on situations in which children have been removed.

Please advise as to how the State Party intends to address violations of sexual and reproductive rights of people with disability and people with intersex characteristics, including denial of rights to sexual and reproductive autonomy, self-determination and sexual expression.

Please elaborate on how and whether Australia's universal health system provides equal and non-discriminatory access to assisted reproductive services for people with disability, including people determined to be socially infertile, single people and same-sex couples, on the same basis as others.

## **Education (Art. 24)**

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The current education system is failing to address the rights of students with disability.<sup>129</sup> Despite available data showing that 90.2% of students with disability attend regular or mainstream schools, only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.<sup>130</sup>

Students with disability routinely experience discrimination, lack of resources and supports, inadequately trained teachers, a lack of expertise and a deeply entrenched systemic culture of low expectations.<sup>131</sup> The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing.<sup>132</sup>

### **Proposed Questions for List of Issues (Art. 24)**

Please update the Committee on progress toward reform of policy and practice across the education system to ensure the rights of students with disability to inclusive education are upheld.

Please provide details on all measures taken to ensure the *Disability Standards in Education (2005)*<sup>133</sup> are assisting people with disability to achieve the objectives set out in the DDA in a legal context, particularly in relation to feedback received regarding the case law involving the Standards, raised in the Government reviews of same.

Please provide disaggregated data on the participation, completion rates, restraint and seclusion of students with disability across all levels of education and training. Have these rates increased or decreased since last review?



## **Health (Art. 25)**

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People with disability in Australia<sup>134</sup> continue to experience a wide range of barriers<sup>135</sup> and discriminatory practices<sup>136</sup> that prevent them from realising their right to health.<sup>137</sup> They experience direct human rights violations that result in ill-health,<sup>138</sup> experience significant disadvantage in the social determinants necessary for health;<sup>139</sup> and are largely absent in the health promotion agenda.<sup>140</sup> Despite the introduction of the NDIS, people with disability have a significantly high level of unmet need for services and support<sup>141</sup> to enable them to maintain optimal levels of health.

### **Proposed Questions for List of Issues (Art. 25)**

Please advise on all measures adopted to ensure that all people with disability, have access on an equal basis with others to affordable, accessible, quality and culturally-sensitive health services, including assistive and adaptive technology, in private and public settings, including in the areas of sexual and reproductive health and mental health and psychosocial support.

Please elaborate on legislative and other measures adopted to ensure that all health services and treatments, of whatever nature, particularly sexual and reproductive health services, are provided to people with disability on the basis of their prior, free and informed consent.

Please advise on measures to ensure that health services, early identification and intervention programs, are available and appropriate to prevent and minimise the emergence of secondary disability and un-diagnosed health conditions. Include detail on people with disability who are: Aboriginal and Torres Strait Islander; women, culturally and linguistically diverse; LGBTI; children, humanitarian entrants, asylum seekers, persons with intellectual disability and persons with psychosocial disability.

## **Access to Habilitation and Rehabilitation (Art. 26)**

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The implementation of the NDIS is changing significantly how people with disability access services. There remain concerns regarding funding and sustainability.<sup>142</sup> DPO Australia and others have expressed concern at the politicisation of NDIS funding within the federal budget cycle, including linking continued NDIS funding to cuts in welfare spending.<sup>143</sup>

### **Proposed Questions for List of Issues (Art. 26)**

Please advise on all measures taken to ensure that habilitation and rehabilitation services and programs for people with disability are designed and implemented to enable them to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. Please advise on the extent to which these services and programs are affordable, accessible, integrate age, gender and culturally sensitive perspectives and include appropriate assistive and adaptive technologies.

## Right to work (Art. 27)

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In Australia, people with disability are nearly twice as likely to be unemployed as people without disability.<sup>144</sup> Compared with other OECD<sup>145</sup> countries, Australia has one of the lowest employment participation rates for people with a disability.<sup>146</sup>

Complaints about discrimination in employment make up a significant proportion of disability discrimination complaints.<sup>147</sup> Segregated employment of people with disability through Australian Disability Enterprises (ADE's), continues in Australia. *The Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015*<sup>148</sup> delivered a one-off payment of \$100 or more in certain circumstances to eligible ADE employees with an intellectual disability who met a range of criteria and whose wages were assessed and paid using the BSWAT between 2004 and 2014.

### Proposed Questions for List of Issues (Art. 27)

Please update the Committee on findings and progress toward implementing recommendations from the 'Willing to Work' Inquiry.<sup>149</sup>

Please provide detail on progress toward increasing employment participation of people with disability, specifically women with disability; and, Aboriginal and Torres Strait Islander people with disability. Elaborate on measures taken to identify and address the underlying structural barriers to workforce participation.

Please update the Committee on:

- a. the status of BSWAT;
- b. measures to ensure the rights of persons in supported employment are remunerated on an equal basis as others;
- c. measures to end segregated employment of people with disability, including steps taken to close Australian Disability Enterprises (ADE's).
- d. the number and places for 'sheltered workshops' or similar segregated employment settings for persons with disability. Has the number increased or decreased since the last review?
- e. progress on the development of a National Disability Employment Framework.

## Adequate standard of living and social protection (Art. 28)

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Forty-five per cent of people with a disability in Australia live in or near relative poverty, more than double the OECD average of 22%,<sup>150</sup> and more 2.5 times the rate of poverty experienced in the general population.<sup>151</sup> Income, welfare and taxation systems in Australia do not recognise the significant costs of disability that people with disability incur throughout their lifetime.<sup>152</sup> Since the last reporting period, homelessness has increased, housing affordability has worsened, and there continues to be a social housing shortage and policies.<sup>153</sup> Family violence is now the most common cause of homelessness in Australia.<sup>154</sup>

### Proposed Questions for List of Issues (Art. 28)

Please update the Committee on steps taken to implement the ILO Social Protection Floors Recommendation, 2012 (No. 202).<sup>155</sup>

Please provide detailed information on the eligibility criteria for social security benefits, particularly the DSP. Please elaborate on how the base rate of income support for the DSP, Newstart and the Youth Allowance take into account the access issues, barriers and prevailing labour market conditions that prevent job opportunities, as well as the cost of disability supports.

Please advise on steps taken to repeal the *Newly Arrived Resident's Waiting Period* (NARWP) of 10 years for access to the DSP for migrants with disability.<sup>156</sup>

## **Participation in political and public life (Art. 29)**

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Participation of people with disability<sup>157</sup> as citizens is at the basis of the recognition of their dignity.<sup>158</sup> However, widespread discrimination, systemic prejudice, paternalistic and ableist attitudes that denigrate, devalue, oppress and limit, continue to impact negatively on the participatory rights of people with disability in Australia.<sup>159</sup>

### **Proposed Questions for List of Issues (Art. 29)**

Please detail measures taken to ensure the right of all people with disability to vote in all electoral processes.

Please advise on all measures, including affirmative action measures, to promote the meaningful participation of all persons with disability, particularly of women and children with disability, Aboriginal and Torres Strait Islander peoples with disability; and culturally and linguistically diverse peoples with disability, in decision-making processes in public affairs, at international, national, regional and local levels.

Please detail what support, including financial resources, is provided by the State Party to people with disability for the establishment and maintenance of organisations to represent their rights and interests at local, regional, national and international levels.

## **Participation in cultural life, recreation, leisure and sport (Art. 30)**

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Many people with disability in Australia remain excluded from full and equal participation in cultural life, recreation, leisure and sport.<sup>160</sup> The NDIS *Information, Linkages and Capacity Building* (ILC) program<sup>161</sup> offers a critical mechanism to promote genuine community inclusion for people with disability.

### **Proposed Questions for List of Issues (Art. 30)**

Please advise on all measures taken to ensure equitable access to cultural life, recreation, leisure, and sport of people with disability, including through the use and promotion of ICT's.

Please provide detail on the NDIS ILC program. Please advise whether the ILC budget will be increased to the full scheme amount for each year during transition and maintained at full-scheme amount until the 2023 review of NDIS costs.<sup>162</sup>

## **Statistics and data collection (Art. 31)**

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There are no nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD. Australia is yet to commission and fund a comprehensive assessment of the situation of women and girls with disability,<sup>163</sup> and a comprehensive assessment of the situation of children and young people with disability.<sup>164</sup> The lack of nationally consistent disaggregated data<sup>165</sup> raises serious concerns about the ability of Australia to comply with the CRPD and monitor and evaluate the implementation of the National Disability Strategy (NDS).

### **Proposed Questions for List of Issues (Art. 31)**

Please advise on progress to develop nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD.

Please inform the Committee on steps being taken to commission and fund a comprehensive assessment of the situation of:

- a. women and girls with disability;
- b. children and young people with disability, including those who are Aboriginal and Torres Strait Islander; culturally and linguistically diverse; LGBTI; humanitarian entrants; asylum seekers; living in out-of-home care<sup>166</sup> settings;
- c. the prevalence of disability amongst Aboriginal and Torres Strait Islander communities, including detailed analysis of the prevalence of particular types of disability.

## **International cooperation (Art. 32)**

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In 2013 the Australian Government abolished the Australian Agency for International Development (AusAid). Foreign aid is now delivered through the Department of Foreign Affairs and Trade.<sup>167</sup> At the Universal Periodic Review (2016) Australia made a voluntary commitment<sup>168</sup> to advancing the *2030 Agenda for Sustainable Development*,<sup>169</sup> to its *Development for All: 2015-2020 Strategy*,<sup>170</sup> and its international *Indigenous Peoples Strategy 2015-2019*.<sup>171</sup>

### **Proposed Questions for List of Issues (Art. 32)**

Please advise on measures taken to ensure that disability is mainstreamed into national plans to implement and monitor the *2030 Agenda for Sustainable Development*.<sup>172</sup> Please provide detail about how the Australian Government supports Australian DPO's to promote the leadership of people with disability in disability inclusive development.

## **National Implementation and Monitoring (Art. 33)**

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The Department of Social Services (DSS) and the Attorney-General's Department (AGD) have been designated as the 'joint focal point' within the Australian Government to coordinate implementation of the CRPD.<sup>173</sup> DPO's and representative organisations of people with disability have long called for a 'National Office of Disability' to be established within the Department of Prime Minister and Cabinet.<sup>174</sup>

At the Universal Periodic Review (2016) Australia made a voluntary commitment to designate a standing national mechanism to strengthen its overall engagement with United Nations human rights reporting.<sup>175</sup>

### **Proposed Questions for List of Issues (Art. 33)**

Please elaborate on progress made to establish an independent mechanism in compliance with article 33(2).

Please advise how DPO's and representative organisations of people with disability are resourced and supported to participate in all aspects of CRPD implementation and monitoring.

# Explanatory Notes

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## Disabled People's Organisations Australia (DPO Australia)

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

## General principles and obligations (arts. 1 and 4)

- <sup>2</sup> While Australia's domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they do not cover all rights provided for in the CRPD.
- <sup>3</sup> The *National Disability Strategy 2010-2020* (NDS) is a ten-year Strategy, endorsed by the Council of Australian Governments (COAG), that sets out the national policy framework to guide all Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The NDS sets out goals and objectives under six areas of mainstream and disability-specific public policy. The six areas are: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and well-being. The NDS is being delivered in three phases through the following implementation plans: '*Laying the Groundwork*' (2011-2014) set the foundation for each State and Territory Government to have its own disability plan to improve outcomes through mainstream policies, programs, services and infrastructure. '*Driving Action*' (2015-2018) outlines new priority actions as well as ongoing commitments to consolidate actions that are driving improved outcomes and identify where more effort is needed. '*Measuring Progress*' (2019-2022) will identify new and emerging outcomes to be implemented in order to ensure the objectives of the NDS are met. For information on the NDS, its implementation plans, and progress reports to COAG, see: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>
- <sup>4</sup> A significant area of reform under the NDS has been the implementation of the *National Disability Insurance Scheme* (NDIS), a universal scheme that funds 'reasonable and necessary' supports for Australians with permanent and significant disability, and which is currently being rolled out across Australia. However, the significant focus on the NDIS has resulted in less action on other human rights issues, including for example: systemic violations of rights in health, employment, education, violence, and forced treatments. There is a considerable lack of investment, concerted actions and evaluation for the NDS to drive reform. The second NDS implementation Plan *Driving Action 2015-2018*, focuses on actions already underway, and NDS progress reports often only describe actions rather than evaluate outcomes for people with disability. See: Sands, T., (2017) *Disabled People's Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People's Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>. See also: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017), available at: <http://dpoa.org.au/icescr-review-2017>. See also: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>
- <sup>5</sup> Sands, T., (2017) *Disabled People's Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People's Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>
- <sup>6</sup> Eg: CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CAT/C/AUS/CO/4-5; A/HRC/31/14.
- <sup>7</sup> These Interpretative Declarations are hindering Australia's ability to comply with the CRPD and are being used as a justification to deny people with disability their human rights. For example, the *Final Report of the Senate Inquiry into Involuntary Sterilization of People with Disabilities in Australia* used Australia's Interpretative Declaration to Articles 12 and 17 of the CRPD to reject the consistent recommendation from international human rights treaty bodies, UN special procedures, human rights advocates, disability advocates, and women with disability, that the Australian Government 'adopt national uniform legislation prohibiting the use of sterilization of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.'
- <sup>8</sup> Sands, T. (2017), *Disabled People's Organisations Australia (DPO Australia) Submission to the 2017/2018 Federal Budget*. Available at [http://dpoa.org.au/wp-content/uploads/2017/04/DPOA\\_20172018Budget\\_Submission\\_FINAL.docx](http://dpoa.org.au/wp-content/uploads/2017/04/DPOA_20172018Budget_Submission_FINAL.docx).

- <sup>9</sup> The *Redfern Statement* was released on 9 June 2016 by a large collective of Aboriginal and Torres Strait Islander Peak Organisations and allies as an “urgent call for a more just approach to Aboriginal and Torres Strait Islander Affairs”. The statement lays out six key priority areas and recommendations, underpinned by the principles of participation and self-determination. The six priority areas are: Meaningful engagement; Health; Justice Preventing violence (women and children); Early childhood; Disability. See: *The Redfern Statement 2016: Aboriginal and Torres Strait Islander Peak Organisations Unite*; accessed online at: <http://nationalcongress.com.au/about-us/redfern-statement>
- <sup>10</sup> The six urgent priority areas for action to ‘address disability for Aboriginal and Torres Strait Islander people’ in the *Redfern Statement* are: 1) Work to address intersectional discrimination; 2) Equitable access to the National Disability Insurance Scheme (NDIS) by Aboriginal and Torres Strait Islander people; 3) Establish disability access targets as part of the Closing the Gap framework and the NDIS Quality Assurance and Outcomes framework; 4) Invest in research and development to build an evidence-base of data; 5) Address the imprisonment rates of Aboriginal and Torres Strait Islander people with a cognitive or psychosocial disability; 6) Fund training and community leadership initiatives. See: *The Redfern Statement 2016*; OpCit.
- <sup>11</sup> The *National Disability Advocacy Program (NDAP)* provides people with disability with access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation. For more information see: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>

### Equality and non-discrimination (art. 5)

- <sup>12</sup> See for example: *Concluding observations of the Committee on the Elimination of Discrimination against Women [Australia]* (2010) at para. 25 “The Committee further urges the State party to give due consideration, with a view to further protecting women’s human rights, to the adoption of a Human Rights Act encompassing the full range of civil, cultural, economic, political and social rights.” UN Doc. No. CEDAW/C/AUS/CO/7.
- <sup>13</sup> In the absence of a federal charter of rights or human rights act, there are significant gaps in the protection of human rights for people with disability. UPR Disability Coordination Group, ‘*National Disability Strategy and implementation of the CRPD*’, Factsheet for Australia’s Universal Periodic Review 2015 (November 2015), Australian Cross Disability Alliance.
- <sup>14</sup> The rights of people with disability to non-discrimination are limited in six key areas: (a) failure to address intersectional discrimination;(b) ineffective complaints process; (c) lack of protection for systemic discrimination;(d) a lack of protection against vilification; (e) exemption clauses that allow discrimination on grounds of disability in migration, insurance and infectious diseases, pensions and allowances and combat and peacekeeping duties; and (f) a lack of community legal education outreach regarding individuals’ rights and protections under the DDA, in particular the lack of outreach to Aboriginal and Torres Strait Islanders communities and people with disability from non-English speaking backgrounds. See: Disability Rights Now, *Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (2012) available at: <http://www.pwd.org.au/issues/crpd-civil-society-shadow-report-group.html>
- <sup>15</sup> Lesbian, gay, bisexual; people who are transgender; people who have an intersex variation (LGBTI).
- <sup>16</sup> As per CRPD/C/AUS/Q/1 at para’s B.6, and B.7.

### Women with disabilities (art. 6)

- <sup>17</sup> 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. See: Australian Bureau of Statistics (2011) *Disability, Australia, 2009*, Cat. No. 4446.0. Accessed online July 2014 at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4446.0>
- <sup>18</sup> Women With Disabilities Australia (WWDA) (2016), *National Forum for Women and Girls with Disability: Proceedings and Outcomes Report*. WWDA, Hobart, Tasmania. November 2016. ISBN: 978-0-9775305-4-0. Available at: <http://wwda.org.au/report-wwda-national-forum-for-women-and-girls-with-disability-proceedings-and-outcomes> See also: Women With Disabilities Australia (WWDA) ‘*WWDA Position Statement 1: The Right to Freedom From All Forms of Violence*’. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9. Available at: [http://wwda.org.au/wp-content/uploads/2016/10/Position\\_Statement\\_1\\_-\\_Violence\\_FINAL\\_WEB.pdf](http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_1_-_Violence_FINAL_WEB.pdf)
- <sup>19</sup> See for eg: CAT/C/SR.1284; CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CEDAW/C/AUL/CO/5; CCPR/C/AUS/CO/5; E/C.12/AUS/CO/4; CAT/C/AUS/5; CAT/C/AUS/Q/5; CRC/C/AUS/CO/4; A/HRC/17/10; A/HRC/22/53; CRC/C/15/Add.268.
- <sup>20</sup> ‘Domestic’ and ‘family’ violence in Australia is typically and narrowly understood as intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners. For example: the *National Plan to Reduce Violence against Women and their Children 2010-2022* focuses only on sexual assault and

domestic/family violence in the context of intimate partner violence. The Plan is only linked to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), despite the fact that prevention of violence against women and girls with disability is equally a key obligation relating to civil and political rights; economic, social and cultural rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination. The UN Committee on Economic, Social and Cultural Rights (CESCR) has recommended that the *National Plan to Reduce Violence against Women and their Children 2010-2022* be fully operationalised in a comprehensive human rights framework (See: UN Doc. E/C.12/AUS/CO/4). Australia's primary national service response to address and prevent violence against women is through its 1800RESPECT service (<https://www.1800respect.org.au>), which was established in 2010 under the National Plan, to provide a 24-hour, 7 day a week confidential telephone and online counselling, information and referral service to anyone whose life has been impacted by sexual assault, domestic or family violence. A national project undertaken by Women With Disabilities Australia (WWDA) in 2016, found that as a support program for women with disability experiencing or at risk of experiencing violence, there are significant limitations with all aspects of the 1800RESPECT Service (see: Women With Disabilities Australia (WWDA) (August 2016) *'Improving Service Responses for Women with Disability Experiencing Violence'*; Final Report. ISBN: 978-0-9585268-5-2. Available at: [http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT\\_Report\\_FINAL.pdf](http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT_Report_FINAL.pdf)). A key limitation of the 1800RESPECT service is the fact that it is focused on 'domestic' and 'family' violence and sexual assault in the context of intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners. One of the key recommendations stemming from WWDA's National Project, included the urgent need for the Australian Government to ensure that the 1800RESPECT Service is broadened in scope to focus on, target, include, address and respond to, all forms of violence against all women - regardless of the setting/place in which it occurs, and regardless of who perpetrates it. The Australian Government is yet to respond to the 43 recommendations stemming from WWDA's Report.

<sup>21</sup> Council of Australian Governments (2011) *National Plan to Reduce Violence against Women and their Children 2010-2022*, Canberra. Accessed online at: <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>

<sup>22</sup> For example: sexual and reproductive rights violations; restrictive practices; forced treatment; seclusion and restraint; deprivation of liberty.

<sup>23</sup> For example: in institutional, residential and other formal care settings, service settings, out-of-home care, prisons.

<sup>24</sup> The exclusion and neglect of women and girls with disability in the *National Plan to Reduce Violence Against Women and their Children 2010-2022* has been identified in a number of reviews and inquiries at both national and international levels. For example, the report from the *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, released in November 2015, recommended that the Australian Government amend the *National Plan* to ensure that women with disability are afforded the full range of rights protections that are available to women without disability. The recommendation also specified that the *National Plan* must be updated to include institutional and disability accommodation settings, and that in order to give effect to the National Plan, there must be increased funding to support women with disability escaping domestic violence. See the Final Report of the *'Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings'* at:

[http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report) See also: Women With Disabilities Australia (WWDA) (August 2016) *'Improving Service Responses for Women with Disability Experiencing Violence'*, OpCit.

<sup>25</sup> For eg: Between 2000 and 2016, the total number of women in prison increased by around 226% from 1,368 to 3,095 women. Aboriginal and Torres Strait Islander women are the fastest growing prison cohort in Australia, increasing by 345% between 2000 and 2016, from 308 to 1062 women. Compared with the general population, women in prison are more likely to have experienced sexual assault and domestic and family violence and have high rates of mental illness and disability. Women in prison are routinely re-traumatised by practices such as mandatory strip searches and isolation in response to self-harm. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit; See also: Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings'*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available at: <http://wwda.org.au/papers/subs/subs2011/>

<sup>26</sup> *'Change the Story' - the National Framework for the Primary Prevention of Violence against Women and Their Children in Australia*; Available online at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>

<sup>27</sup> See Footnote Number iii at page 19 of *'Change the Story' - the National Framework for the Primary Prevention of Violence against Women and Their Children in Australia*. Available at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>



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## Children with disabilities (art. 7)

- <sup>28</sup> See for eg: UNICEF Australia and the National Children's and Youth Law Centre (NCYLC) (May 2016) *Australian Child Rights Taskforce CRC25 Australian Child Rights Progress Report: A report on 25 years of the UN Convention on the Rights of the Child in Australia*; Published by the Australian Child Rights Taskforce; accessed online at: <https://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>. See also: Browne, R. (10 June 2016), *Australian governments have failed children: UNICEF report*; Sydney Morning Herald, accessed online at: <http://www.smh.com.au/business/the-economy/australian-governments-have-failed-children-unicef-report-20160608-gpemvm.html>
- <sup>29</sup> Including the particular rights and issues concerning Aboriginal and Torres Strait Islander children and young people with disability, culturally and linguistically diverse children and young people with disability; children and young people with disability who are LGBTI; and, children and young people with disability who are humanitarian entrants or asylum seekers, among others.
- <sup>30</sup> Child-related policy frameworks are essentially silent on disability. Where disability receives cursory attention, if at all, it appears to be framed through a lens of risk, often focused on reducing incidence of disability. There is also a lack of consideration of the complex forms of violence that children and young people with disability experience. See for eg: *National Framework for Protecting Australia's Children (2010-2020)*, available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>; *Healthy, Safe and Thriving: National Strategic Framework for Child and Youth Health (2015)*, available at: <http://www.coaghealthcouncil.gov.au/Portals/0/Healthy%20Safe%20and%20Thriving%20-%20National%20Strategic%20Framework%20for%20Child%20and%20Youth%20Health.pdf>; The *National Plan to Reduce Violence Against Women and Their Children (2010-2022)* and related action plans available at: <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>
- <sup>31</sup> See: *Disability Rights Now, Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities (2012)* available at: <http://www.pwd.org.au/issues/crpd-civil-society-shadow-report-group.html>
- <sup>32</sup> Including for example, disaggregated data in regard to the enjoyment of their human rights, educational outcomes, health outcomes, and experiences of violence. See: Children and Young People with Disability Australia (June 2016) *Submission to the Productivity Commission Issues Paper National Education Evidence Base*, accessed online at: [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0013/200704/sub066-education-evidence.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0013/200704/sub066-education-evidence.pdf). See also: *Disability Rights Now (2012)* OpCit.
- <sup>33</sup> For information on the National Children's Commissioner, see: <https://www.humanrights.gov.au/about/commissioners/ms-megan-mitchell-national-childrens-commissioner>
- <sup>34</sup> Although Children's Commissioners are also established under legislation in each Australian State and Territory, the functions and legal powers of the Commissioners vary between jurisdictions. For details of Australian State and Territory based children and young persons' Commissioners, see: <https://aifs.gov.au/cfca/publications/childrens-commissioners-and-guardians>.
- <sup>35</sup> Senate Education and Employment References Committee (2016) *Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support*; Available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/students\\_with\\_disability](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability) See also: Senate Community Affairs References Committee (2015) *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*; Available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect)
- <sup>36</sup> *Royal Commission into Institutional Responses to Child Sexual Abuse*. Available at: <http://www.childabuseroyalcommission.gov.au>; *Royal Commission into the Protection and Detention of Children in the Northern Territory*. Available at: <https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>. See also: Royal Commission into Institutional Responses to Child Sexual Abuse (May 2017) *Report of Case Study No 41: Institutional responses to allegations of the sexual abuse of children with disability*; accessed online at: <http://www.childabuseroyalcommission.gov.au/case-study/27150f40-1e84-4b27-9f8b-c25fc162a561/case-study-41>
- <sup>37</sup> See information provided in this document under *Article 16* for more detailed information on the urgent need for a Royal Commission into violence against people with disability.
- <sup>38</sup> Children with disability are three to four times more likely to experience violence and abuse (including sexual violence) than their peers. See: Women With Disabilities Australia (WWDA) '*WWDA Position Statement 1: The Right to Freedom From All Forms of Violence*'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9. Available at: [http://wwda.org.au/wp-content/uploads/2016/10/Position\\_Statement\\_1\\_-\\_Violence\\_FINAL\\_WEB.pdf](http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_1_-_Violence_FINAL_WEB.pdf) See also: Robinson, S. (2013) *Enabling & Protecting: Proactive Approaches to Addressing the Abuse and Neglect of*

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*Children and Young People with Disability*. Children With Disability Australia, Melbourne. Accessed online at: <http://www.cyda.org.au/enabling-and-protecting>

<sup>39</sup> Where disaggregated is mentioned throughout this submission, we generally mean disaggregation by age, gender, disability, location, and ethnicity.

<sup>40</sup> Specifically the Senate Inquiry into ‘*Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support*’, and the Senate Inquiry into ‘*Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*’.

<sup>41</sup> Specifically, the *Royal Commission into Institutional Responses to Child Sexual Abuse*; and the *Royal Commission into the Protection and Detention of Children in the Northern Territory*.

### **Awareness-raising (art. 8)**

<sup>42</sup> ‘Ramp Up’, a portal on the ABC website specifically dedicated to disability issues, was de-commissioned in late 2014. See archived site at: <http://www.abc.net.au/rampup/>

<sup>43</sup> Department of Social Services (DSS) *National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018*. Accessed online at: [https://www.dss.gov.au/sites/default/files/documents/10\\_2016/final\\_-\\_nds\\_second\\_implementation\\_plan\\_-\\_pdf\\_final\\_for\\_web.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2016/final_-_nds_second_implementation_plan_-_pdf_final_for_web.pdf)

<sup>44</sup> The four ‘priority areas’ of the *National Disability Strategy Second Implementation Plan (2015–2018)* are: 1) NDIS transition to full scheme; 2) improving employment outcomes for people with disability 3) improving outcomes for Aboriginal and Torres Strait Islander people with disability; 4) communication activities to promote the intent of the strategy throughout the community. It also prioritises the development of an ‘Australian Government Action Plan’ to drive implementation of the NDS across Commonwealth portfolios between 2015 and 2018. See: Department of Social Services (DSS) *National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018*. Accessed online at: [https://www.dss.gov.au/sites/default/files/documents/10\\_2016/final\\_-\\_nds\\_second\\_implementation\\_plan\\_-\\_pdf\\_final\\_for\\_web.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2016/final_-_nds_second_implementation_plan_-_pdf_final_for_web.pdf)

### **Accessibility (art. 9)**

<sup>45</sup> The *National Disability Strategy 2010-2020* (NDS), its national implementation plans, and progress reports to the Council of Australian Governments (COAG) can be accessed online at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>

<sup>46</sup> The *National Disability Insurance Scheme (NDIS)* is ‘a new way of providing reasonable and necessary, person-centred supports for Australians with a permanent and significant disability to enable them to live an ordinary life.’ See: <https://www.ndis.gov.au/>

<sup>47</sup> T. Sands (2017). OpCit.

<sup>48</sup> Senate Community Affairs References Committee, *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*. See:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AccessibleCommunities](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AccessibleCommunities)

<sup>49</sup> *National Standards for Disability Services 2013 (Cth)*. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>

<sup>50</sup> *Disability Standards for Accessible Public Transport 2002 (Cth)*. Available at: <https://www.legislation.gov.au/Details/F2005B01059>.

<sup>51</sup> *Disability (Access to Premises – Buildings) Standards 2010 (Cth)*. Available at: <https://www.legislation.gov.au/Details/F2011C00214>.

### **Right to life (art. 10)**

<sup>52</sup> Office of the Public Advocate (February 2016) *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*. Accessed online at: <http://www.justice.qld.gov.au/public-advocate/activities/past/deaths-of-people-with-disability-in-care>

<sup>53</sup> At the time of their death, most people (89%) were living in either disability supported accommodation operated by a non-government organisation (53%), or the government-operated Accommodation Support and Respite Services (AS&RS) (36%). Only eleven percent (11%) were living in a level three accredited residential service. Office of the Public Advocate (February 2016) OpCit.

<sup>54</sup> Moreover, between 2009 and 2014, there was only one inquest into a death in care of a person with disability in Queensland, out of 73 cases. Office of the Public Advocate (February 2016) OpCit.

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## Situations of risk and humanitarian emergencies (art. 11)

<sup>55</sup> See: *Disability Rights Now* (2012) OpCit.

## Equal recognition before the law (art. 12)

<sup>56</sup> Including guardianship, estate management and mental health laws regulate the area of legal capacity, financial management and substitute decision-making in Australia. These laws differ between States and Territories resulting in inconsistency, and primarily focus on a person's capability to perform particular actions as opposed to looking at how a person can be supported to perform those tasks themselves. Whilst Australia does not have a plenary guardianship system these laws all breach, are inconsistent with, or fail to fulfil obligations under the Convention on the Rights of Persons with Disabilities (CRPD). Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia's Universal Periodic Review 2015: Fact Sheet on Equality before the law and supported decision-making*.

<sup>57</sup> For information on the Australian Law Reform Commission (ALRC), see: <http://www.alrc.gov.au/>

<sup>58</sup> Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws: Final Report* (ALRC Report 124); available online at: <https://www.alrc.gov.au/news-media/equality-capacity-and-disability-alrc-report>

<sup>59</sup> The Inquiry Report made 55 recommendations for reform aimed at providing people with disability equal recognition before the law.

<sup>60</sup> The ALRC Inquiry was limited to Commonwealth legislation. It did not directly address the State and Territory financial management, guardianship and mental health laws but only had regard to how Commonwealth laws and legal frameworks interact with State and Territory laws in the areas under review. It did not provide a comprehensive review of the laws that clearly are the most fundamental ways in which people with disability have their legal capacity denied or diminished in Australia. Substantive compliance with article 12 will be difficult to assess without a thorough analysis of financial management, guardianship and mental health laws at the State and Territory levels. Consequently, the impact of the review is limited in so far as the examination of these laws is excluded. Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia's Universal Periodic Review 2015: Fact Sheet on Equality before the law and supported decision-making*.

<sup>61</sup> See page 14 of the *Australian Government Response to the Senate Community Affairs References Committee report*; accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response)

## Access to justice (art. 13)

<sup>62</sup> People with disability are often not provided with the supports, adjustments and accommodations they require to engage effectively in all processes of the justice system, including to access protections, to begin or defend criminal matters, or to participate in criminal justice processes. Negative assumptions and attitudes, coupled with a lack of support services and programs and minimal provision of adjustments, often means that people with disability are viewed as not credible, not capable of giving evidence, make legal decisions or unable to participate in legal proceedings. The inability to access effective justice compounds the disadvantage and discrimination experienced by people with disability. This results in many people with disability being left without protection and at risk of ongoing violence, or more likely to be jailed and destined to have repeated contact with the criminal justice system. See for eg: *Disability Rights Now* (2012) OpCit.; Australian Human Rights Commission (2014) *Equal Before the Law: Towards Disability Justice Strategies*; accessed online at: <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>;

<sup>63</sup> See: *Disability Rights Now* (2012) OpCit.

<sup>64</sup> Since 2004 there has been a 95 per cent increase in the number of Aboriginal and Torres Strait Islander people in custody. In 1991 the time of the *Royal Commission into Aboriginal Deaths in Custody*, Aboriginal and Torres Strait Islander people were 7 times more likely to be in prison, that figure in 2016 is now 13 times more likely. See: *The Redfern Statement 2016: Aboriginal and Torres Strait Islander Peak Organisations Unite*; accessed online at: <http://nationalcongress.com.au/about-us/redfern-statement/>

<sup>65</sup> See for eg: Frohmader, C. and Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available online at: <http://wwda.org.au/papers/subs/subs2011/>

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- <sup>66</sup> At the *Universal Period Review [Australia] 2016*, the Australian Government gave a voluntary commitment to “improving the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment.” As part of this, the Government committed to “a national effort to analyse existing data and develop best practice resources for our jurisdictions.” See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 141].
- <sup>67</sup> For example, through the use of independent advocates, communication supports (including communication facilitators, speech language therapists), assistive devices and technologies.

#### **Liberty and security of the person (art. 14)**

- <sup>68</sup> This includes confinement to residential and other facilities, restriction on movement within residential and other facilities, as well as practices such as seclusion and exclusionary timeout within these facilities. See: Frohmader, C. and Sands, T. (2015) OpCit.
- <sup>69</sup> In June 2013, the Senate Legal and Constitutional Affairs References Committee, released the Report from its Senate Inquiry into ‘*Value of a justice reinvestment approach to criminal justice in Australia*’. It found that people with disability (particularly persons with psychosocial disability; cognitive impairment, intellectual disability; fetal alcohol spectrum disorders, acquired brain injury; hearing impairment; communication and language impairments) are significantly over-represented in Australian prisons. The Committee expressed its deep concern that people with disability are being “sent to prison because there are no other options available for courts to consider.” The Inquiry Report made 9 recommendations, including the need for the Commonwealth adopt a leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments. See: Senate Legal and Constitutional Affairs References Committee (June 2013) *Value of a justice reinvestment approach to criminal justice in Australia*; accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index) In addition, at its 2017 meeting, the Australian Council of Human Rights Authorities (ACHRA), specifically called on all Australian Governments to “take measures to reverse the increasingly disproportionate number of Aboriginal and Torres Strait Islander people placed in detention, and to adopt evidence-based preventative programs such as Justice Reinvestment.” See: Australian Council of Human Rights Authorities (ACHRA) *Communiqué* (28 April 2017), accessed online at: <https://www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1557-australian-council-of-human-rights-authorities-communique-28-april-2017>
- <sup>70</sup> For eg: Aboriginal and Torres Strait Islander people with disability are almost 14 times more likely to be imprisoned than the rest of the population. Of the significant numbers of people with disability in the criminal justice system, there are people being detained past the cessation of the supervision or custody order, for indefinite periods. Anecdotally, it appears that there are at least 100 people detained across Australia without conviction in prisons and psychiatric units under mental impairment legislation; and that at least 50 people from this group would be Aboriginal and Torres Strait Islander people with disability. See for eg: Bevan, N., and Sands, T., (2016) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*, Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available at: <http://dpoa.org.au/acda-submission-to-senate-inquiry-into-indefinite-detention-of-people-with-cognitive-and-psychiatric-impairment-in-australia/> See also: Senate Community Affairs References Committee (2016) *Indefinite detention of people with cognitive and psychiatric impairment in Australia*; accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/IndefiniteDetention45/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report)
- <sup>71</sup> For eg: Specific guardianship legislation exists in each jurisdiction in Australia. However, legislation in some Australian jurisdictions gives minimal guidance to tribunals in making determinations about restrictions to a person’s autonomy. All jurisdictions in Australia have mental health laws which govern the treatment of persons with psychosocial disability. However, there is no uniformity in mental health legislation across Australia, and in many respects they breach, are inconsistent with or fail to fulfil obligations under CRPD. As a result, mental health laws do not adequately protect the right to liberty and security of people with psychosocial disability. See: *Disability Rights Now* (2012) OpCit.
- <sup>72</sup> See for eg: Bevan, N., and Sands, T., (2016), OpCit. See also: *Disability Rights Now* (2012) OpCit.
- <sup>73</sup> Senate Community Affairs References Committee (2016) *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/IndefiniteDetention45/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report)

#### **Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)**

- <sup>74</sup> Particularly people with disability living and or receiving services in in institutional and other care settings, including schools.

- <sup>75</sup> 'Polypharmacy' is often defined as 'five or more medications taken in a 24 hour period'. See: <https://www.doctorportal.com.au/mjainsight/2012/1/polypharmacy-and-its-risks-rise/> For a discussion on Psychotropic polypharmacy in people with disability, see: Victorian Department of Human Services (2010) *Disability, mental health and medication: Implications for practice and policy*. A report prepared for the Office of the Senior Practitioner by: Dr Stuart Thomas, Kaisha Corkery-Lavender, Dr Michael Daffern, Dr Danny Sullivan; Centre for Forensic Behavioural Science, School of Psychology & Psychiatry, Monash University, Australia. Accessed at: [http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0007/666763/osp\\_senior\\_disability\\_mental\\_health\\_medication\\_implications\\_for\\_practice\\_policy\\_1010.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0007/666763/osp_senior_disability_mental_health_medication_implications_for_practice_policy_1010.pdf).
- <sup>76</sup> For eg: In Victoria, chemical restraint is the most common form of restrictive intervention used by disability service providers, with 'psychotropic' pharmaceuticals being the most common chemical restraint. See: <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/277-restrictive-interventions-in-victorias-disability-sector-issues-for-discussion-and-reform-1?path=> See also: See: 'Open letter calls for royal commission into treatment of people with disabilities', [Online video] Lateline, ABC TV, 17 May 2017, accessed at: <http://www.abc.net.au/lateline/content/2016/s4670932.htm> See also: Victorian Department of Human Services (2010), OpCit., See also: *Disability Rights Now* (2012) OpCit.
- <sup>77</sup> For eg: Electroconvulsive Therapy (ECT) performed on involuntary patients indicates that in Australia, women are three times more likely than men to be subject to the practice, across all age cohorts. See: Frohmader, C., & Sands, T. (2015) OpCit.
- <sup>78</sup> The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* was adopted by all governments in 2014. See: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>
- <sup>79</sup> For example, the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* focuses more on when and how to use restrictive practices rather than seeking to prevent their use, or looking at the environmental factors that may be causing an individual to behave in a way which introduces restraint as an option. The Framework is not premised on changing services, systems and environments as the starting point for changing individual behaviour, but remains focused on changing the person themselves. Secondly, the Framework is only intended to apply to disability services. In addition, not all people with disability will receive support through the *National Disability Insurance Scheme* (NDIS), and people with disability in Australia experience restrictive practices in numerous environments including schools, mental health facilities, within prisons and hospitals. Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia's Universal Periodic Review 2015: Fact Sheet on Restrictive Practices*.
- <sup>80</sup> Including but not limited to: involuntary or forced institutionalisation, the use of seclusion or physical, chemical or mechanical restraints, involuntary or forced treatment, forced sterilisation and chemical castration, or any other non-consensual medical treatment or measures, including corporal punishment, electro-convulsive therapy, and involuntary or excessive drug treatment.
- <sup>81</sup> See: UN Doc. No. CAT/C/AUS/CO/4-5.

### **Freedom from Exploitation, violence and abuse (art. 16)**

- <sup>82</sup> The Senate is one of the two houses of the Australian Federal Parliament. It consists of 76 senators, twelve from each of the six states and two from each of the mainland territories. It shares the power to make laws with the other House of the Parliament, the House of Representatives. The Senate delegates a range of tasks to its committees. As committee proceedings are flexible, they are able to meet in a variety of places, receive written submissions and hear evidence on specified matters. Numerous inquiries can be held at the same time, so many different issues can be examined and reported back to the Senate. Committees provide an opportunity for organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process. See: [http://www.aph.gov.au/About\\_Parliament/Senate](http://www.aph.gov.au/About_Parliament/Senate)
- <sup>83</sup> In January 2015, a coalition of peak disability advocacy groups renewed the campaign for a '*National inquiry into violence against people with disability in institutional and residential settings*' by writing to the then Prime Minister. The letter was endorsed by over 95 state and territory based disability and other organisations from around Australia (available at: <http://wwda.org.au/issues/viol/viol2011>) and supported by over 11,000 signatories to a petition calling for an inquiry (See: <https://www.change.org/p/tony-abbott-to-urgently-launch-a-national-inquiry-into-violence-neglect-and-abuse-against-people-with-disability-in-residential-and-institutional-settings>). In response, a group of Senators referred the matter on 11 February 2015 to the Senate Community Affairs References Committee. The *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings* was conducted during 2015 and the final Report was published on 25 November 2016 (available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)).

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- <sup>84</sup> The *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, found that violence and abuse against people with disability is an 'epidemic' in Australia and particularly affects women and girls with disability.
- <sup>85</sup> A *Royal Commission* is an inquiry initiated by the executive arm of a state or federal government, to examine and report on issues of public importance or concern. The legal power to establish a Royal Commission is exercised by the Governor General on behalf of the Crown (or the Governor of a State in the case of state Royal Commission), acting on the advice of Government ministers. The Australian Parliament has made a law confirming this power (Royal Commissions Act 1902 (Cth)) and regulating, to some limited degree, how Commonwealth Royal Commissions are to be conducted. See: <http://commissionwatch.com.au/what-is-a-royal-commission/>
- <sup>86</sup> The critical need for a '*Royal Commission into Violence against People with Disability*' was the headline and key recommendation from the Senate Inquiry into '*Violence, abuse and neglect against people with disability in institutional and residential settings*'. See the Senate Committee's Final Report at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)
- <sup>87</sup> Australian Government response to the Senate Community Affairs References Committee report; accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response)
- <sup>88</sup> The *NDIS Quality and Safeguards Framework* is 'A framework of nationally consistent measures and requirements to minimise the risk of harm to people with disability and to ensure high quality support through the NDIS.' For more information on the NDIS Quality and Safeguards Framework, go to: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework>
- <sup>89</sup> The *National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission* (the Commission) is 'a new, independent Commonwealth body responsible for implementing the Commonwealth functions of registration; complaints and reportable incidents; and oversight of behaviour support under the Framework. Taken from: Australian Department of Social Services (DSS) (May 2017) at: <https://engage.dss.gov.au/ndis-code-of-conduct-consultation/ndis-code-of-conduct-consultation-discussion-paper/>
- <sup>90</sup> Australian Government response to the Senate Community Affairs References Committee report; accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response)
- <sup>91</sup> See: '*Guaranteeing the NDIS and providing stronger support for people with disability*', Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability> See also: <http://theconversation.com/understanding-the-ndis-many-eligible-people-with-disabilities-are-likely-to-miss-out-61016>
- <sup>92</sup> See: <https://disabilityroyalcommissionnow.wordpress.com/2017/04/05/open-letter/>
- <sup>93</sup> The Civil Society Statement calling for a Royal Commission is available at: <http://dpoa.org.au/civil-society-statement-rc/>
- <sup>94</sup> See also: <http://www.abc.net.au/news/2017-06-09/royal-commission-into-abuse-of-people-with-disability/8602508>  
See also: <https://probonoaustralia.com.au/news/2017/06/civil-society-backs-calls-royal-commission-disability-violence>
- <sup>95</sup> A *National Independent Inquiry* (often referred to in Australia as a 'Royal Commission') *into Violence and Abuse Against People with Disability* (including people with disability in all forms of institutional and residential settings) is the only mechanism that can provide a comprehensive, independent, and just response to all forms of violence and abuse against people with disability. A *Royal Commission into Violence and Abuse of People with Disability* will have legal powers to:
- enable people with disability to tell their story and give evidence in a safe and supported way, without fear of retribution or reprisal;
  - compel witnesses and representatives of service systems to appear and be cross-examined under oath;
  - thoroughly examine forms of violence that are specific to people with disability, which have been ignored in most other inquiries;
  - shed light on and respond to the incidence and prevalence of all forms of violence perpetrated against people with disability, including the range of settings in which such violence occurs;
  - refer criminal allegations to the police and hold perpetrators and systems to account;
  - interrogate legislative and service system responses to violence and abuse against people with disability;
  - provide resourcing to enable the full and meaningful participation of people with disability, including those in institutional settings;
  - travel to capital cities, regional centres and towns to hear evidence and pursue open processes;
  - commission research and inform policy development;
  - make recommendations on legal reform, policies, systems and practices to create a safer future for all people with disability;
  - ensure justice for victims through the provision of redress.
- See: *Civil Society Statement to the Australian Government Calling for a Royal Commission into Violence, Abuse and Neglect of People with Disability* (7th June 2017). Available at: <http://dpoa.org.au/civil-society-statement-rc/>

<sup>96</sup> Currently, there are over 60,000 NDIS participants. This number is expected to grow to about 460,000 participants when the NDIS is fully implemented from 2020. The *NDIS Quality and Safeguards Commission* will oversee safeguards for 460,000 NDIS participants at full scheme. See: 'Guaranteeing the NDIS and providing stronger support for people with disability', Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability>

<sup>97</sup> Council of Australian Governments (2009) 'Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2010', Commonwealth of Australia. Available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>

### Integrity of the person (art. 17)

<sup>98</sup> People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013.

<sup>99</sup> CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*, available at: <http://wwda.org.au/wp-content/uploads/2013/12/FIGOGuidelines2011.pdf> See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilization: Press Release*, 5 September 2011, available at: <http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/>

<sup>100</sup> Australian Government, Australian Government response to the Senate Community Affairs References Committee Reports (May 2015), accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Involuntary\\_Sterilisation/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Government_Response)

<sup>101</sup> Frohmader, C. (2014) *Fact Sheet: Sterilization*, OpCit. Community Affairs References Committee, *Involuntary or coerced sterilization of people with disabilities in Australia*. July 2013, Available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_ctte/involuntary\\_sterilization/first\\_report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilization/first_report/index.htm)

<sup>102</sup> Including long-acting, injectable contraceptives.

<sup>103</sup> Forced contraception particularly affects girls and women with disability, and 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. It is a practice widely used in group homes and other forms of institutional settings, and is often justified as a way of reducing the 'burden' on staff/carers who have to 'deal with' managing menstruation of disabled women and girls. In the case of persons 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. See for eg: Frohmader, C. (2013). *'Dehumanized: The Forced Sterilisation of Women and Girls with Disabilities in Australia'*. Women With Disabilities Australia (WWDA), Rosny Park, Australia., ISBN 978-0-9876035-0-0. Available via: <http://wwda.org.au/papers/subs/subs2011/> See also: See also: Women With Disabilities Australia (WWDA) *'WWDA Position Statement 4: Sexual and Reproductive Rights'*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8; available at: [http://wwda.org.au/wp-content/uploads/2016/10/Position\\_Statement\\_4\\_-\\_Sexual\\_and\\_Reproductive\\_Rights\\_FINAL\\_WEB.pdf](http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_4_-_Sexual_and_Reproductive_Rights_FINAL_WEB.pdf)

### Liberty of movement and nationality (art. 18)

<sup>104</sup> In particular, the *Migration Act 1958 (Cth)* and the *Migration Regulations 1994 (Cth)* control the entry and stay in Australia, of non-citizens and prescribe the selection criteria and processes for all visa applications.

<sup>105</sup> Permanent entry into Australia requires a visa holder and their families to satisfy a 'health criterion'. The health criterion requires that the visa applicant be 'free of disease or condition' which would cost a significant amount, or prevent access to health care for Australian citizens. The provisions indirectly discriminate against people with a disability. For example, submissions to the *Joint Standing Committee on Migration's 2010 Inquiry into the treatment of Migration Treatment of Disability* (Enabling Australia) stated that the health criteria is discriminatory in that it sets 'standards of health requirement which the disabled do not or cannot meet'. See: Australian House of Representatives, Joint Standing Committee on Migration (2010), *Enabling Australia: Inquiry into the Migration Treatment of Disability*. Accessed online at: [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mig/disability/](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/disability/)

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[report.htm](#) See also: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit.

<sup>106</sup> Migration law and processes treat people with disability solely as a cost, and devalue the important economic and social contributions that migrants and refugees with disability and their families might make to Australia. See: National Ethnic Disability Alliance (NEDA) (2009) *No Right to Discriminate; Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability*. Accessed online at: [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mig/disability/subs.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/disability/subs.htm)

### **Living independently and being included in the community (art. 19)**

<sup>107</sup> For eg: In June 2015, there were 6,252 young people in nursing homes around Australia, comprising of 555 young people aged 0-49 years and 5,697 aged 50-64 years. See: Senate Community Affairs References Committee (2015) *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*. Accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Young\\_people\\_in\\_aged\\_care/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Young_people_in_aged_care/Report)

<sup>108</sup> As at May 2017, there were approximately 60,000 NDIS participants. This number is expected to grow to about 460,000 participants when the NDIS is fully implemented from 2020. See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position>. See also: 'Guaranteeing the NDIS and providing stronger support for people with disability', Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability>

<sup>109</sup> It is estimated that 35,000 to 55,000 NDIS participants will not have their housing needs met in the first decade of the Scheme. See: *Joint Standing Committee on the National Disability Insurance Scheme (May 2016), Accommodation for people with disabilities and the NDIS*. Accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/JNDIS-44th/NDIS\\_accommodation/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/JNDIS-44th/NDIS_accommodation/Report)

<sup>110</sup> According to the Productivity Commission's interim review, "the speed of the NDIS rollout, as specified in *Bilateral Agreements between governments, has put the scheme's success and financial sustainability at risk. It has resulted in the NDIA focusing too much on meeting participant intake estimates and not enough on planning processes, supporting infrastructure and market development.*" See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position>

<sup>111</sup> For example, without accessible and inclusive transport, employment, education, health services, housing, communications and information access, rights protection and access to justice, a person with disability will not be able to fully benefit from an NDIS funded package; they may have specialist disability supports but they will still have barriers to accessing all areas of community life. The significant focus on the NDIS has resulted in far less investment and action on the five other NDS policy outcome areas. This is despite a number of issues and actions relevant to these areas being consistently raised by DPOs and disability advocacy organisations, including through UN review processes, submissions to government and parliamentary inquiries, as well as submissions specific to implementation of the NDS. See: Sands, T., (2017) *Disabled People's Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People's Organisations Australia; available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>

<sup>112</sup> According to the Productivity Commission's interim review, "A significant challenge is the need to develop the disability supports market, so that there are enough providers and workers to meet the increased demand for services from scheme participants. Without a sufficient supply of disability supports, the NDIS cannot function as intended. And all governments need to work together to better manage the integration of the NDIS and other services." See: Productivity Commission (June 2017), OpCit, (p52).

<sup>113</sup> The majority of public and social housing in Australia is inaccessible to people with disability. In addition, waiting lists for public and social housing is extremely long, with currently more than 200,000 people on waiting lists across the country. Many people with disability are forced to live in inappropriate and inaccessible public and social housing with little chance of being moved to housing that suits their needs. Others are forced to live in clusters of accessible public and social housing, which results in further isolation and segregation from the rest of the community. Many people with disability do not have an adequate standard of living to be able to rent on the private market or to buy their own homes. See: *Disability Rights Now* (2012) OpCit.



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<sup>114</sup> Eg: the Joint Standing Committee on the NDIS recommended greater regulation to ensure all new housing is compliant with an updated Building Code of Australia. See: *Joint Standing Committee on the National Disability Insurance Scheme* (May 2016), OpCit.

### **Personal mobility (art. 20)**

<sup>115</sup> See: Productivity Commission (June 2017), *National Disability Insurance Scheme (NDIS) Costs*. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position> See also: Perkins, M. (June 18 2017) Woman with disabilities scores landmark win over NDIS; *The Age Newspaper*, June 18, 2017; accessed online at: <http://www.theage.com.au/victoria/woman-with-disabilities-scores-landmark-win-over-ndis-20170615-gwrz7c>

### **Freedom of expression and opinion, and access to information (art. 21)**

<sup>116</sup> Just some of the factors that restrict the ability of people with disability to access information and express their opinion include for eg: a) inaccessible information - including information not being provided in the format or language of choice, or there being a delay or significant cost involved in attaining information in the appropriate format or language; b) insufficient government action to promote business and media adoption of accessible formats and languages; and, c) lack of funding, provision or acknowledgement of the need for communication aids and techniques - such as augmentative communication aids required by some people with disability to provide their opinions, to access information and to participate in consultations. See *Disability Rights Now* (2012) OpCit.

<sup>117</sup> The *Privacy Act 1988* (Privacy Act) is an Australian law which regulates the handling of personal information about individuals. Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable. The *Privacy Act* includes thirteen Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for the handling, holding, use, accessing and correction of personal information (including sensitive information). Accessed online at: <https://www.legislation.gov.au/Series/C2004A03712>

<sup>118</sup> The *Freedom of Information Act 1982* (FOI Act) is the legislative basis for open government in Australia and covers Australian Government ministers and most agencies. Individuals have rights under the FOI Act to request access to government documents. The FOI Act also requires agencies to publish specified categories of information, and allows them to proactively release other information. Accessed online at: <https://www.legislation.gov.au/Series/C2004A02562>

<sup>119</sup> The *Australian Information Commissioner Act 2010* (AIC Act) establishes the Office of the Australian Information Commissioner (OAIC). The AIC Act commenced on 1 November 2010. It provides for the appointment of the Australian Information Commissioner (Information Commissioner), the Privacy Commissioner and the Freedom of Information Commissioner (FOI Commissioner). The AIC Act sets out the three functions of the OAIC: a) freedom of information (FOI); b) privacy, and c) information policy. Accessed online at: <https://www.legislation.gov.au/Series/C2010A00052> See also: the Office of the Australian Information Commissioner (OAIC) at: <https://www.oaic.gov.au/>

<sup>120</sup> The *National Disability Insurance Scheme Act 2013* (NDIS Act) is the legislation which establishes: The National Disability Insurance Scheme, and The National Disability Insurance Scheme Launch Transition Agency (known as the National Disability Insurance Agency or NDIA). Accessed online at: <https://www.legislation.gov.au/Details/C2016C00934> The *NDIS Rules* are legislative instruments made under the NDIS Act. They set out more the more detailed operation of the NDIS. Accessed online at: <https://www.legislation.gov.au/Series/C2013A00020/Enables>

<sup>121</sup> In addition to the legislative instruments relating to privacy law, all Australian governments have disability services standards that are drawn from the *National Disability Services Standards*. Standard One (Rights) contains provisions relating to privacy. For more information see: Department of Social Services (DSS) '*National Standards for Disability Services*', accessed online at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>

<sup>122</sup> Accessed online at: <https://engage.dss.gov.au/ndis-code-of-conduct-consultation/ndis-code-of-conduct-consultation-discussion-paper/>

<sup>123</sup> For more information on the *NDIS Quality and Safeguards Framework*, go to: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework>

### **Respect for home and the family (art. 23)**

<sup>124</sup> This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*; accessed online at: <http://www.publicadvocate.vic.gov.au/research/302/>

- <sup>125</sup> For eg: Approximately one in six children in alternative or out of home care has a parent with disability. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit.
- <sup>126</sup> The Australian Council of Human Rights Authorities (ACHRA), comprises the State, Territory and Federal human rights and discrimination authorities. Over 4 years ago, ACHRA identified discrimination against 'potential and actual parents with disability' as one of three most urgent and pressing human rights issues in Australia today. The *Communiqué* from the ACHRA 2013 annual meeting stated: "Finally, having regard to evidence: (a) that parents with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity to be effective parents; (b) that there is a lack of systematic data collection and analysis; (c) that there is a lack of appropriate supports to potential and actual parents with disability, - ACHRA calls for better data collection and better research into negative presumptions being made about people with disabilities being able to effectively parent. ACHRA calls for better support for these parents to fulfil their parenting roles and has identified that this as a priority given the discriminatory impact of negative presumptions." See: Australian Council of Human Rights (ACHRA) *Communiqué* from Australian Council of Human Rights Agencies meeting, 18-19 March 2013. Wednesday, 20 March 2013. Accessed online at: <http://www.humanrightscommission.vic.gov.au/home/news-and-events/item/568-communicu%C3%A9-from-australian-council-of-human-rights-agencies-meeting-18-19-march-2013> There are few long-term and intensive parenting support programs for parents with disability, despite indications that these programs are very successful. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. See also: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*, accessed online at: <http://www.publicadvocate.vic.gov.au/research/302/>
- <sup>127</sup> People with disability in Australia continue to experience, and be at risk of, gross violations of their sexual and reproductive rights including denial of the right to sexual and reproductive autonomy and self-determination, and through practices such as forced sterilisation, forced abortion and forced contraception - often wrongfully justified by theories of incapacity and therapeutic necessity and often performed under the auspices of legitimate medical care or the consent of others in their name. See for eg: Women With Disabilities Australia (WWDA)(2016) '*WWDA Position Statement 4: Sexual and Reproductive Rights*'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8; available online at: <http://wwda.org.au/papers/toolkit/position-statements/> See also: Frohmader, C. and Sands, T. (2015) OpCit., See also: Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper*. Available at: [http://wwda.org.au/wp-content/uploads/2013/12/Sterilization\\_Disability\\_Briefing\\_Paper\\_October2011.pdf](http://wwda.org.au/wp-content/uploads/2013/12/Sterilization_Disability_Briefing_Paper_October2011.pdf). See also: International Federation of Gynaecology and Obstetrics (2011) *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>
- <sup>128</sup> Women with disability continue to experience significant discrimination in accessing assisted reproductive technologies, including for eg: in-vitro fertilisation (IVF), assisted insemination, surrogacy, Oocyte cryopreservation. Many women with disability are deemed by fertility clinics as ineligible for assisted reproductive services. Australia's universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed 'medically infertile', but not for women who are deemed to be 'socially infertile' (including single people and same-sex couples). See: Women With Disabilities Australia (2009): '*Parenting Issues for Women with Disabilities in Australia*' - *A Policy Paper* (May 2009). Available at: [www.wwda.org.au/wp-content/uploads/2013/12/parentingpolicypaper09.pdf](http://www.wwda.org.au/wp-content/uploads/2013/12/parentingpolicypaper09.pdf). See also: Fyfe, M. and Davies, J. (6 June 2015) *Motherhood on ice*; *Sydney Morning Herald Good Weekend Magazine*, accessed online at: <http://www.smh.com.au/good-weekend/motherhood-on-ice-20150603-ghfwga.html>. See also: Mather, A. (October 6, 2015) *Motherhood a precious gift many can't afford*; *The Mercury Newspaper*, accessed online at: <http://www.themercury.com.au/lifestyle/motherhood-a-precious-gift-many-cant-afford/news-story/7b61d21e522ab4e70631d611231518bf>

## Education (art. 24)

- <sup>129</sup> See for eg: Children with Disability Australia, *Belonging and Connection of School Students with Disability*; Prepared by Dr Sally Robinson & Julia Truscott; accessed online at: <http://www.cyda.org.au/belonging-and-connection> See also: Children with Disability Australia (August 2015) *Hear Our Voices: Submission to the Senate Inquiry into Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support*, accessed online at: <http://www.cyda.org.au/cdasubmissions#section5> See also: Centre for Applied Disability Research (CADR), *Children with disability in Australian schools: what does the research say?*, accessed online at: <http://www.cadr.org.au/lines-of-inquiry/children-with-disability-in-australian-schools-what-does-the-research-say>

- <sup>130</sup> Sands, T. (2017), *Disabled People's Organisations Australia (DPO Australia) Submission to the 2017/2018 Federal Budget*. Available at: [http://dpoa.org.au/wp-content/uploads/2017/04/DPOA\\_20172018Budget\\_Submission\\_FINAL.docx](http://dpoa.org.au/wp-content/uploads/2017/04/DPOA_20172018Budget_Submission_FINAL.docx).
- <sup>131</sup> See for eg: Children with Disability Australia (CDA) (2013) *Inclusion in education: Towards equality for students with disability*, Written by Dr Kathy Cologon for CDA, accessed online at: <http://www.cyda.org.au/inclusion-in-education> See also Centre for Applied Disability Research (CADR) OpCit. See: Australian schools failing children with disabilities, Senate report finds; ABC TV (15/01/2016), accessed online at: <http://www.abc.net.au/7.30/content/2015/s4389410.htm>;
- <sup>132</sup> The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) *Bullying and abuse of school students with disability at alarming levels; Media Release 9 August 2016*, accessed online at: <http://www.cyda.org.au/cyda-education-survey-2016>. See: Australian Broadcasting Corporation (ABC) (16 August 2016) *School investigated after claims boy with autism locked in 'cage'*, accessed online at: <http://www.abc.net.au/7.30/content/2016/s4520872.htm>. Australian Broadcasting Corporation (ABC) (31 August 2016) *School accused of leaving teen with autism outside on beanbag for whole term*, accessed online at: <http://www.abc.net.au/7.30/content/2016/s4530412.htm>. SkyNews (27 March 2017) *Teachers accused of abusing children: inquiry*, accessed online at: <http://www.skynews.com.au/news/national/nsw/2017/03/27/teachers-accused-of-abusing-children--inquiry.html>. The Canberra Times (11 August 2016) *Autism cage details emerge as United Nations investigates abuse of children*; accessed online at: <http://www.canberratimes.com.au/act-news/autism-cage-details-emerge-as-united-nations-investigates-abuse-of-children-20160809-gqo7m8.html>. The Courier-Mail (August 10, 2016), *New report highlights alarming treatment of children with disabilities in Queensland schools*, accessed online at: <http://www.couriermail.com.au/news/queensland/new-report-highlights-alarming-treatment-of-children-with-disabilities-in-queensland-schools/news-story/11657109f56ac9f0142de3c0af8014ee>
- The Senate Committee undertaking the *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, was "very distressed by the range of evidence provided which details cases of violence, abuse and neglect of children with disability, particularly within schools. The committee is disturbed by evidence of a lack of appropriate regulation, oversight and independent reporting and investigating mechanisms within the schools framework." The Committee further stated: "The committee was distressed to be presented with all too many harrowing accounts of small children suffering at the hands of the very people who should be educating them. It is hard to understand how strapping a child to furniture, or locking them alone in a room to scream themselves into exhaustion could be seen as a justifiable behavioural intervention. This is without doubt a national shame." Along with the headline recommendation from the Inquiry (calling for an urgent Royal Commission into violence and abuse of people with disability), the Final Report from the Inquiry made a number of specific recommendations relating to violence and abuse of children with disability in schools, including recommending the Australian Government work with state and territory governments to implement a national zero-tolerance approach to eliminate restrictive practice in all service delivery contexts (including schools) and that the of restrictive practice against children be eliminated as a national priority. See: Senate Community Affairs References Committee (November 2015) *'Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability'*; accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report) A further recent Senate Inquiry into *'Access to real learning: the impact of policy, funding and culture on students with disability'* made a series of recommendations relating to improving supports for students with disability in schools; including the need for the establishment of a national approach to end the bullying of students with disability. It also recommended that the Australian government work with states and territories to end restrictive practices in schools. See: Senate Education and Employment References Committee (2016) *Access to real learning: the impact of policy, funding and culture on students with disability*; accessed online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/students\\_with\\_disability/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report)
- <sup>133</sup> *Disability Standards in Education (2005)*. Available at <https://www.education.gov.au/disability-standards-education-2005>. Accessed 19 June 2017.

## Health (art. 25)

- <sup>134</sup> Particularly people with disability who are: Aboriginal and Torres Strait Islander; women, culturally and linguistically diverse; LGBTI; humanitarian entrants; asylum seekers; those with intellectual and cognitive impairments; and those living in institutional settings, including prisons.
- <sup>135</sup> The poor health of people with disability is due to a number of factors, such as the cost of health care, limited financial resources, barriers to health services, communication difficulties, the complexity of health problems,

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misconceptions as to the sexuality of people with disability, lack of adequately trained health professionals, a lack of multidisciplinary focus and specialist skill in the health care system and a lack of research into the health needs of people with disability. See: *Disability Rights Now* (2012), OpCit; Women With Disabilities Australia (May 2010): *Women With Disabilities and The Human Right to Health: A Policy Paper*; accessed online at: <http://wwda.org.au/wp-content/uploads/2013/12/WWDAPolicyPaper2010.pdf> See also: Lewis, A.K. and Small, J.E. (May 2017) Australian Association of Developmental Disability Position Statement: *The Importance of Physical and Mental Health for People with Intellectual Disabilities in the Criminal Justice System*; accessed online at: <http://aaddm.com.au/wp-content/uploads/AADDM-The-Importance-of-Physical-and-Mental-Health-for-People-with-Intellectual-Disability-in-the-Criminal-Justice-System.-2017.pdf>

<sup>136</sup> For eg: the Disability Discrimination Act 1992 (Cth) (DDA) has an exemption for insurance companies who may discriminate on the basis of disability so long as the discrimination is “reasonable”. People with disability are often therefore unable to obtain life insurance, income protection or disability protection insurance. See: *Disability Rights Now* (2012) OpCit.

<sup>137</sup> The ‘right to health’ is a fundamental right that encompasses both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom; the right to participate in decisions about one’s health; and the right to be free from interference, such as non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. Such entitlements encompass for example, the right to emergency medical services and to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including on sexual and reproductive health. See: Women With Disabilities Australia (May 2010) OpCit.

<sup>138</sup> Through state sanctioned practices such as forced medical treatments and interventions; deprivation of liberty; restrictive practices; denial of the right to legal capacity; as well as egregious forms of violence which people with disability (particularly women and girls) who experience multiple and intersecting forms of discrimination experience, including for eg: forced sterilisation, forced abortion, forced contraception; female genital mutilation; menstrual suppression; chemical and physical restraint; restrictive practices; forced institutionalisation; deprivation of liberty, including forced isolation and segregation; withholding of medications; denial of legal capacity; indefinite detention; forced marriage; sexual slavery. See: Women With Disabilities Australia (WWDA) (August 2016) *Improving Service Responses for Women with Disability Experiencing Violence*; Final Report. ISBN: 978-0-9585268-5-2. Available at: [http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT\\_Report\\_FINAL.pdf](http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT_Report_FINAL.pdf).

<sup>139</sup> For eg: The crisis in Aboriginal and Torres Strait Islander health in Australia is reflected in the life expectancy gap which remains at 10.6 years for men and 9.5 years for women. In 2010-12, life expectancy at birth was estimated to be 69.1 years for Aboriginal and Torres Strait Islander men (compared with 79.7 years) and 73.7 years for women (compared with 83.1 years for their non-Indigenous counterparts). See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. In addition, for people with intellectual disability, 42 percent of medical conditions go undiagnosed and life expectancy is reduced by up to 20 years. See: NSW Council for Intellectual Disability; Inclusion Australia & Australian Association of Developmental Disability Medicine (2015) *Position Statement On The Health Of People With Intellectual Disability*; accessed online at: <http://aaddm.com.au/wp-content/uploads/AADDM-CID-Health-Position-Statement.pdf>. Psychosocial disability is the leading cause of death for Australians under the age of 45 and the leading cause of disability in Australia, yet mental health services are significantly under-resourced and there are widespread access problems for people with psychosocial disability. See: *Disability Rights Now* (2012) OpCit; See also: Lewis, A.K. and Small, J.E. (May 2017) OpCit.

<sup>140</sup> Women With Disabilities Australia (May 2010) OpCit.

<sup>141</sup> According to the June 2017 Productivity Commission’s interim review into National Disability Insurance Scheme (NDIS) Costs, “about 700,000 Australians experience a severe mental illness in any one year. However, according to the NDIA, only around 64,000 people with psychosocial disability are expected to be eligible for individual packages in the NDIS. Clearly, there needs to be support for people with mental health illnesses outside of the scheme — a responsibility that remains (largely) with State and Territory Governments. However, governments have been withdrawing their funding for a number of mental health support programs in their jurisdictions and using this funding to offset part of their contribution to the NDIS. At this stage, it is unclear what supports will be available for people with a mental illness who do not meet the NDIS eligibility criteria and this should be clarified as a matter of urgency.” See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position> [p.33].

## **Access to Habilitation and Rehabilitation (art. 26)**

<sup>142</sup> Productivity Commission (2017), *National Disability Insurance Scheme (NDIS) Costs*, Available at: <http://www.pc.gov.au/inquiries/current/ndis-costs/issues>.

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<sup>143</sup> DPO Australia (2017), *Submission to Inquiry into the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*, Available at [http://dpoa.org.au/wp-content/uploads/2017/03/DPOA\\_OmnibusSavingsChildCareBill\\_Letter\\_070317.docx](http://dpoa.org.au/wp-content/uploads/2017/03/DPOA_OmnibusSavingsChildCareBill_Letter_070317.docx).

## Right to work (art. 27)

<sup>144</sup> In Australia, the unemployment rate for people with disability is 10%, nearly twice the rate than for people without disability (5.3%). See: Australian Bureau of Statistics (ABS), 4433.0.55.006 - *Disability and Labour Force Participation*, 2012. See also: Australian Human Rights Commission (2016), *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, ISBN 978-1-921449-76-5. Available at:

[https://www.humanrights.gov.au/sites/default/files/document/publication/WTW\\_2016\\_Full\\_Report\\_AHRC\\_ac.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_AHRC_ac.pdf)

<sup>145</sup> The Organisation for Economic Co-operation and Development (OECD) was officially born on 30 September 1961. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. It works with governments to understand what drives economic, social and environmental change. It measures productivity and global flows of trade and investment. It analyses and compares data to predict future trends, and sets international standards on a wide range of things, from agriculture and tax to the safety of chemicals. The OECD has 35 Member countries that span the globe, from North and South America to Europe and Asia-Pacific. See: <http://www.oecd.org/>

<sup>146</sup> For eg: Compared with other OECD countries, Australia has one of the lowest employment participation rates for people with a disability (39.8% for people with a disability compared to 79.4% for people without a disability). Men with disability (51.3%) are much more likely to be employed than women with disability (44.4%). Women with disability 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. Working-age women with disability who are in the labour force, regardless of full-time or part-time status, are much more likely to be in lower paid jobs than men with disability. Women with disability have a much higher rate of part-time employment (56% of women with disability who are employed) than men with disability (22% of men with disabilities who are employed). Many young people with disability do not enter the labour force at all over the first seven post-school years (18% compared to 5% of those without a disability) and are more likely to experience long-term unemployment (13%) than those without a disability (7%). See for eg: Price Waterhouse Coopers (PWC) (2011) *Disability expectations: Investing in a better life, a stronger Australia*; accessed online at: <https://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>. See also: Australian Bureau of Statistics (ABS), 4433.0.55.006, OpCit. See also: Australian Bureau of Statistics (ABS), 4446.0 - *Disability, Australia*, 2009. See also: Australian Human Rights Commission (2016), OpCit., Frohmader, C. (2014) *'Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1, Available at: [http://wwda.org.au/wp-content/uploads/2013/12/WWDA\\_Sub\\_NDS\\_Review2014.pdf](http://wwda.org.au/wp-content/uploads/2013/12/WWDA_Sub_NDS_Review2014.pdf)

<sup>147</sup> Australian Human Rights Commission (2016), OpCit.

<sup>148</sup> The scheme was established by the Australian Government following the Federal Court finding in December 2012 that the BSWAT indirectly discriminated against two Australian Disability Enterprises (ADEs) employees with an intellectual disability. See: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/for-people-with-disability/bswat-payment-scheme/questions-and-answers-bswat-payment-scheme>

<sup>149</sup> Australian Human Rights Commission (2016), *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*; ISBN 978-1-921449-76-5. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/WTW\\_2016\\_Full\\_Report\\_AHRC\\_ac.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_AHRC_ac.pdf)

## Adequate standard of living and social protection (art. 28)

<sup>150</sup> Price Waterhouse Coopers (PWC) OpCit.

<sup>151</sup> Ibid.

<sup>152</sup> The *Disability Support Pension (DSP)* provides financial support to working age Australians who are permanently blind or have a permanent physical, intellectual or psychiatric impairment that prevents or limits their capacity to work (See: Australian National Audit Office (2016) *Qualifying for the Disability Support Pension*; accessed online March 2017 at: <https://www.anao.gov.au/work/performance-audit/qualifying-disability-support-pension>.) The Disability Support Pension (DSP) is inadequate to support people with disability and consequently leads to a lower standard of living, poverty, and the inability to realise other fundamental human rights. Changes to the DSP eligibility since 2013 have already left many people with disability struggling to survive on the Newstart or Youth Allowance, payments that are below the poverty line and in no way accounts for the additional costs associated with disability. The 2016 Budget measures subject a further 30,000 disability support pensioners a year for 3 years (90,000 people) to reviews that further threaten to plunge people with disability into poverty, homelessness and ill-health. Income support pensions

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have fallen significantly relative to average and minimum wages over the last two decades. See: *Australian Cross Disability Alliance (ACDA) (2016) Election Platform 2016: Building a Disability Inclusive Australia*; accessed online at: <http://dpoa.org.au/dpo-australia-election-platform>. See also: Australian Human Rights Commission (2016) OpCit.; Australian NGO Coalition Submission (2017) *Review of Australia Fifth Periodic Report under the International Covenant on Economic, Social and Cultural Rights*. Available online at: <http://dpoa.org.au/wp-content/uploads/2017/05/ICESCR-Final-Submission-May17.pdf>

<sup>153</sup> See: Australian NGO Coalition Submission (2017), OpCit.

<sup>154</sup> See: Australia's 2nd Universal Periodic Review, *Joint NGO Submission on behalf of Australian NGO Coalition*, March 2015, available at [http://www.naalc.org.au/cb\\_pages/files/Submissions/Final-UPR-Submission-for-website.pdf](http://www.naalc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf).

<sup>155</sup> The *ILO Social Protection Floors Recommendation, 2012 (No. 202)* provides guidance to member States in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of social protection accessible to all in need. See: [http://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS\\_205341/lang-en/index.htm](http://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang-en/index.htm)

<sup>156</sup> Generally, a person must be an Australian citizen or permanent resident residing in Australia to access support through the social security system. Most income support payments have a two-year waiting period, the newly arrived resident's waiting period (NARWP). The age and disability support pensions have a 10-year qualifying residence period. The 10 year qualifying residence period must include a period of five years continuous residence in Australia. The qualifying residence period begins from the date the person starts residing in Australia as a permanent visa holder. Time spent in Australia on a temporary visa is not counted towards the qualifying residence period. Being denied access to the basic financial support of the DSP strips migrants with disabilities' rights to independence, forcing them to be economically reliant on their families and wider community leaving them at an increased risk of poverty, homelessness and other social disadvantage. Newly arrived CALD people with disability have little knowledge about policies and service systems in Australia. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. See also: Department of Social Services (DSS) *Social Security Payments - Residence Criteria*; accessed online at: <https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria>

#### **Participation in political and public life (art. 29)**

<sup>157</sup> The lack of participatory rights of people with disability particularly affects women with disability, Aboriginal and Torres Strait Islander peoples with disability; culturally and linguistically diverse peoples with disability, LGBTI persons with disability, children and young people with disability, as well as people with disability living in institutional other care and service settings, including prisons.

<sup>158</sup> See: Women With Disabilities Australia (WWDA) (2016) '*WWDA Position Statement 3: The Right to Participation*'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-8-3, available online at: <http://wwda.org.au/papers/toolkit/position-statements/>

<sup>159</sup> For eg: The right of people with disability to vote independently and in secret in Federal, State and Territory and Local Government elections is not a reality for many people with disability in Australia. People with disability also experience discrimination or disqualification in other areas of civil life, including in relation to accessing or creating a bank account, holding public office, holding the office of a director or board member, obtaining a personal violence order, creating a legal will, performing jury duty, and, acting as a witness in a court proceeding. See: Women With Disabilities Australia (WWDA) (2016) '*WWDA Position Statement 3: The Right to Participation*', OpCit. See also: *Disability Rights Now* (2012) OpCit.

#### **Participation in cultural life, recreation, leisure and sport (art. 30)**

<sup>160</sup> See: *Disability Rights Now* (2012) OpCit.

<sup>161</sup> The ILC program is a key component of the NDIS and has been set up to provide information, linkages and referrals to people with disability, their families and carers, with the appropriate community and mainstream supports. The focus of ILC is on community inclusion. See: <https://www.ndis.gov.au/communities/ilc-home>

<sup>162</sup> ILC is still to be implemented and the funding for ILC will gradually increase over transition (from \$33 million in 2016-17 to \$131 million in 2019-20). According to the Productivity Commission (June 2017), "*the timing of ILC funding (starting with a small budget that increases over time) has prevented the NDIA investing in ILC activities and the rollout of initiatives that would allow the infrastructure of a national ILC framework.*" The Productivity Commission has recommended that: "*ILC funding should be increased to the full scheme amount for each year during the transition to allow for an accelerated national rollout of ILC activities. The effectiveness of the ILC program in improving the outcomes for people with disability and its impact on the sustainability of the NDIS should be reviewed as part of the 2023 review of NDIS costs when data on ILC activities is available.....The ILC budget should be maintained at a minimum of the full scheme amount each year until results from this review are available.*" See: Productivity Commission (June 2017) OpCit.

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### Statistics and Data Collection (art. 31)

<sup>163</sup> As recommended in the CRPD/C/AUS/CO/1 [para.54] and also recommended in CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5.

<sup>164</sup> As recommended in the CRPD/C/AUS/CO/1 [para.56]

<sup>165</sup> Including a comprehensive data collection mechanism for children and young people with disability. See Article 7 of this document.

<sup>166</sup> Out-of-home care is defined by the Australian Government as: Overnight care, including placement with relatives (other than parents) where the government makes a financial payment. It includes care of children in legal and voluntary placements (that is, children on and not on a legal order) but excludes placements solely funded by disability services, psychiatric services, youth justice facilities and overnight child care services. There are five main out-of-home care placement types: 1) Residential care – where placement is in a residential building with paid staff. 2) Family group homes – provide care to children in a departmentally or community sector agency provided home. These homes have live-in, non-salaried carers who are reimbursed and/or subsidised for the provision of care. 3) Home-based care – where placement is in the home of a carer who is reimbursed (or who has been offered but declined reimbursement) for expenses for the care of the child. This is broken down into three subcategories: (a) relative/kinship care – where the caregiver is a relative (other than parents), considered to be family or a close friend, or is a member of the child or young person’s community (in accordance with their culture) who is reimbursed (or who has been offered but declined reimbursement) by the State/Territory for the care of the child. For Aboriginal and Torres Strait Islander children, a kinship carer may be another Aboriginal and Torres Strait Islander person who is a member of their community, a compatible community or from the same language group; (b) foster care – where the care is authorised and carers are reimbursed (or were offered but declined reimbursement) by the state/territory and supported by an approved agency. There are varying degrees of reimbursement made to foster carers; (c) other – home-based care which does not fall into either of the above categories. 4) Independent living – including private board and lead tenant households. 5) Other – includes placements that do not fit into the above categories and unknown living arrangements. This includes boarding schools, hospitals, hotels/motels and defence force. See: Productivity Commission, *Report on Government Services 2015; Chapter 15: Volume F; Child protection*. Accessed online at: <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection>

### International cooperation (art. 32)

<sup>167</sup> *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit.

<sup>168</sup> At the Universal Period Review [Australia] 2016, the Australian Government gave a voluntary commitment to “supporting the protection and promotion of human rights through its foreign aid programme by promoting prosperity, reducing poverty and enhancing stability. The delegation welcomed the adoption of the 2030 Agenda for Sustainable Development and affirmed its commitment to advancing this agenda. The Government committed to applying its *Development for All: 2015-2020 strategy to strengthen disability-inclusive development and its international Indigenous Peoples Strategy 2015-2019 to advance the interests of indigenous peoples in Australia and around the world.*” See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 145].

<sup>169</sup> *2030 Agenda for Sustainable Development*. Accessed online at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

<sup>170</sup> *Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia’s aid program*. Accessed online at: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx>

<sup>171</sup> Department of Foreign Affairs and Trade (2105) *DFAT Indigenous Peoples Strategy 2015-2019: A framework for action*; Accessed online at: <http://dfat.gov.au/about-us/publications/Pages/dfat-indigenous-peoples-strategy-2015-2019.aspx>

<sup>172</sup> *2030 Agenda for Sustainable Development*. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

### National Implementation and Monitoring (art. 33)

<sup>173</sup> The Department of Social Services (DSS) and the Attorney-General’s Department (AGD) have been designated as the ‘joint focal point’ within the Australian Government to coordinate implementation of the CRPD. However, operational responsibility for implementation of the CRPD through the *National Disability Strategy 2010-2020* (NDS) rests with DSS, and appears to be confined to a disability policy responsibility. See: Sands, T., (2017), OpCit.

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- <sup>174</sup> For eg: DPO Australia, in its recent Submission to the ‘*Senate Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*’, strongly recommended that the Australian Government: “*Establish a high-level executive mechanism, such as a ‘National Office of Disability Policy Coordination’ within the Department of Prime Minister and Cabinet, to hold strategic operational responsibility for the NDS; and to leverage reform across Commonwealth agencies and in relation to the States and Territories. This mechanism must have built in human rights expertise, including in relation to Australia’s international human rights obligations to ensure that the recommendations from UN reviews are incorporated into concrete actions within the NDS.*” See: Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>
- <sup>175</sup> At the Universal Period Review [Australia] 2016, the Australian Government gave a voluntary commitment to “*work with the Australian Human Rights Commission, to develop a public and accessible process for monitoring progress against universal periodic review recommendations. This will include a periodic statement on progress against the recommendations on behalf of the Government. Australia will also designate a standing national mechanism to strengthen its overall engagement with United Nations human rights reporting.*” See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 146].