



Women
With
Disabilities
Australia
(WWDA)



**ROYAL COMMISSION INTO VIOLENCE,
ABUSE, NEGLECT AND EXPLOITATION OF
PEOPLE WITH DISABILITY**



**WWDA RESPONSE TO
PROMOTING INCLUSION
ISSUES PAPER**

MARCH 2021

WOMEN WITH DISABILITIES AUSTRALIA



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Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2020
Nominee, National Disability Awards 2017
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

Honourable Ronald Sackville AO QC
Chair
Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Via Email: DRCenquiries@royalcommission.gov.au

24 March 2021

Dear Commissioners,

I write to you in my capacity as Executive Director of Women with Disabilities Australia (WWDA), for and on behalf of our members, in response to the Royal Commission's Issues Paper on '*Promoting Inclusion*.' As you may be aware, WWDA is the award winning, national Disabled People's Organisation (DPO) for women, girls, feminine identifying and non-binary people with all types of disability in Australia. WWDA uses the term 'women and girls with disability' to refer to our membership.

WWDA would like to thank you for the opportunity to contribute to the Royal Commission's work on the issue of 'Inclusion' of people with disability in Australia. While over two-million women and girls with disability live in Australia, making up approximately 20% of the population of women;¹ women and girls with disability still remain excluded from full and meaningful participation in almost every institutional and community context.

In order to address the systemic exclusion of women and girls with disability, there are many structural and societal barriers that must change. In this letter, we highlight **three key areas** that we argue require interrogation by the Royal Commission, and that ultimately, require critical reform.

1. In practical and immediate terms, there is a desperate need for robust **accountability mechanisms** that ensure legislation (and policies) such as the *Disability Discrimination Act* and the *National Disability Strategy* are adhered to.

While there is a common understanding across Australia of the need to 'include' disabled people, loopholes in legislation, including a lack of accountability measures in practice means

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that inaccessibility issues continue to exist across all public institutions, including educational institutions, workplaces, healthcare, political organisations and even public education.² As the ability and the right to full and effective participation for women and girls with disability is dependent on accessibility, it is essential that support requirements are provided for in all their variations. This includes, for example, making accommodations for physical accessibility needs and support people, as well as the need for timely access to accurate, accessible and appropriate information, including in formats such as Easy Read, Auslan, accessible information technology and more.

2. The exclusion of women and girls with disability is fundamentally underpinned and exacerbated by the idea that people with ‘disability’ equates to ‘abnormality’ or an inability to participate in the same way as our non-disabled peers. Negative attitudes of others toward women and girls with disability affects the potential for and the quality of participation in our communities, the types and quality of the services we receive, and our ability to live full, meaningful and complete lives on the same basis as our peers.³

Due to stereotypes about our capacity, potential and abilities, women and girls with disability are frequently excluded from making or participating in decisions that affect our lives on a daily basis, including as active agents in our own health care, living arrangements and conditions, finances, relationships and more.⁴ Too often, women and girls with disability have our views ignored or disregarded in favour of ‘experts’, ‘professionals’, parents, guardians, and carers, as well as representatives of organisations not controlled and constituted by women with disability themselves.⁵ Wide-ranging systemic failures in legislation, policies and service systems in Australia continue to facilitate conditions that give rise to violence, abuse, neglect and exploitation of women and girls with disability. These failures are embedded within and underscored by an ableist culture which sees the promotion, support and resourcing of laws, systems, policies and practices which not only deny women and girls with disability their most basic human rights, but which provide a legitimised gateway through which human rights violations against us – including violence, abuse, neglect and exploitation - can flourish.

One key example of the widespread exclusion of women and girls with disability in decisions that affect our own lives occurs in the pervasive practice of substitute decision-making. Despite the fact that substitute decision-making approaches have been thoroughly criticised as fundamentally contravening disabled people’s rights under international treaties and conventions that Australia is party to; substitute decision-making has continued to be sanctioned by the Australian Governments as a practice that is in the ‘best interests’ of disabled individuals. Substitute decision-making and ‘best interest’ approaches have been thoroughly criticised as fundamentally contravening the CRPD and as intrinsically value laden.⁶ In practice, the ‘best interest’ approach most often serves the interests of guardians, families, carers and service providers.⁷



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For example, for more than 15 years, United Nations treaty monitoring bodies, the UN General Assembly, UN Special Procedures and international medical bodies⁸ have categorically confirmed that forced sterilisation of children (and of adult women with disability without their prior, full and informed consent) is a clear breach of some of the most fundamental human rights – including the right to freedom from violence. To date, Australian Governments remain of the view that it is an acceptable practice to sterilise girls and women with disability, provided that they ‘lack capacity’ and that the procedure is in their ‘best interest’, as determined through a third party, such as a guardian or family member.⁹

In order to support the right of women and girls with disability to fully participate in their own life decisions, WWDA has over many years, consistently called on successive Australian governments for the prohibition of the use of substitute decision-making regimes; and instead implement the use of supported decision-making processes, where people with disability are given the support, information and resources they require to make decisions that are informed and autonomous. The *Committee on the Rights of Persons with Disabilities* has affirmed that a person’s status as a person with a disability or the existence of an impairment, including perceived or actual deficits in “mental capacity”, must never be grounds for denying legal capacity or any of the rights provided for in CRPD article 12. In relation to article 12, the Committee has repeatedly stated that States parties must “*review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences*”.¹⁰

For women and girls with disability to be able to make meaningful choices in their lives, including where to live and with whom to live, and for the free development, autonomy and agency of the person, Australia must meet its obligations under CRPD Article 12 and replace substitute decision-making with supported decision-making that respects the rights, will and preferences of **all** people with disability. It is simply unreasonable and unethical for successive Australian governments to continue to “cherry pick” the human rights it believes people with disability are entitled to.

3. Last, but not least, we draw attention to the existing laws, policies and practices that endorse and maintain the **segregation of people with disability** through arrangements, such as ‘special’ schools, institutional living environments and segregated workplaces.

Compared to others, women and girls with disability are much more likely to be isolated and segregated within the range of settings in which they reside, be incarcerated, or coerced into submission.¹¹ This is particularly the case for women with intellectual disability, cognitive, and psychosocial disabilities, and compounded for marginalised cohorts of women with disability, such as those in Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse (CaLD) communities. Across every state and territory, Indigenous women with disability for instance, are at a particularly high risk of being detained indefinitely, in prisons and in forensic psychiatric units.¹²

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In order for all people with disability, including women and girls with disability, to be fully included in Australian society, it is imperative that Australian Governments act decisively to reform educational institutions, workplaces, housing facilities and healthcare services to transition away from segregated arrangements, support people with disability to be included in mainstream forms of participation and address the widespread ableist and xenophobic attitudes that contribute to the unnecessary incarceration of disabled women.

Furthermore, it is essential that the segregation of people with disability is recognised and conceptualised as discrimination and as not adhering to the Convention on the Rights of Persons with Disabilities (CRPD) and other international human rights conventions.¹³ The prohibition of ‘separate’ standards for ‘separate’ groups is reinforced in the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR). In its general comments, or guidance papers on interpretation and implementation of ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR Committee) outlines that disability-based discrimination includes segregation, isolation and separation. In order to do justice to all people with disability, the Royal Commission must, as articulated by the Chair of the Commission, the Hon Ronald Sackville AO QC: *“translate the human rights recognised in the CRPD into practicable and sustainable policies and practices that will promote the right of people with disability to live free from violence, abuse, neglect and exploitation.”*¹⁴ It is therefore incumbent on the Royal Commission, in all its work (including in its Final Report), to provide clear and detailed recommendations that will lead to ending the segregation of people with disability in Australia – in all settings and contexts.

In summary, WWDA asserts that in order to support the full inclusion of women, girls, feminine identifying and non-binary people with disability, the Australian Government must take **immediate** action to:

1. Ensure that all public institutions, facilities and services are accessible to and inclusive of all people with disability, regardless of their disability type, gender, gender identity, sexuality, location, culture, race or Indigeneity;
2. Undertake the necessary reforms to ensure that, consistent with CRPD Article 12, substitute decision-making regimes are replaced by supported decision-making mechanisms, including through the development of a national supported decision-making framework;
3. Consistent with the CRPD, and reflecting recommendations to Australia from international human rights treaty monitoring bodies, initiate and undertake the structural and systemic reforms necessary to dismantle the laws, policies and practice frameworks that enable and foster the segregation of people with disability.

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For a more in-depth analysis on the issues raised in this letter, WWDA respectfully requests the Royal Commission to refer to the following papers:

- [WWDA Position Statement 3: The Right to Participation](#)
- [WWDA Position Statement 2: The Right to Decision-Making](#)
- [Position Paper: Segregation of People With Disability is Discrimination and Must End](#)

WWDA appreciates the opportunity to provide this contribution to the Royal Commission, and we trust that the Commission will find our contribution useful in its ongoing work.

With kind regards,

Carolyn Frohmader
Executive Director

Finalist, 100 Women of Influence Awards 2015
Australian Human Rights Award (Individual) 2013
State Finalist Australian of the Year 2010
Inductee, Tasmanian Women's Honour Roll 2009
Australian Capital Territory Woman of the Year Award 2001

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ENDNOTES

- 1 AIHW (2019) [People with disability in Australia 2019](#). In Brief. Australian Institute of Health and Welfare.
- 2 Frohmader, C (2016) [WWDA Position Statement 3: The Right to Participation](#), Women With Disabilities Australia, Hobart, Tasmania.
- 3 Ibid; Frohmader, C., Dowse, L., and Didi, A. (2015) '[Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective](#)'. Women With Disabilities Australia (WWDA), Hobart, Tasmania;
- 4 Frohmader, C (2016) [WWDA Position Statement 2: The Right to Decision-Making](#), Women With Disabilities Australia, Hobart, Tasmania.
- 5 UN Human Rights Council (2016) [Report of the Special Rapporteur on the rights of persons with disabilities](#), UN Doc. A/HRC/31/62.
- 6 Women With Disabilities Australia (WWDA) '[WWDA Position Statement 2: The Right to Decision-Making](#)'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-7-6.
- 7 Women With Disabilities Australia (WWDA) '[WWDA Position Statement 2: The Right to Decision-Making](#)'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-7-6.
- 8 See for eg: CRPD/C/AUS/QPR/2-3; E/C.12/AUS/CO/5; A/C.3/72/L.18/Rev.1; A/HRC/38/47/ Add.1; CCPR/C/AUS/CO/6; CEDAW/C/AUS/CO/8; 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/>
- 9 Community Affairs References Committee (2013) Involuntary or coerced sterilization of people with disabilities in Australia. Parliament of Australia. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation.
- 10 Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014) Article 12: Equal recognition before the law.
- 11 Frohmader, C (2016) [WWDA Position Statement 3: The Right to Participation](#), Women With Disabilities Australia, Hobart, Tasmania.
- 12 Ibid.
- 13 Australia has ratified seven of the nine core international human rights treaties: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); and Convention on the Rights of Persons with Disabilities (CRPD).
- 14 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) Interim Report.



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