



Women
With
Disabilities
Australia
(WWDA)



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

**PRELIMINARY RESPONSE TO FINAL
REPORT AND RECOMMENDATIONS**

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First Nations peoples should be aware that this publication may contain the names and words of people who have passed.

Acknowledgements

WWDA acknowledges the traditional owners of the land on which this publication was produced. We acknowledge First Nations people's deep spiritual connection to this land. We extend our respects to community members and Elders past, present and emerging.

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ABN: 23 627 650 121

ARBN: 621 534 307

Contact

Women With Disabilities Australia (WWDA)
Contact: Carolyn Frohmader, Executive Director
PO BOX 407 Lenah Valley, Tasmania, 7008 Australia

+61 438 535 123

carolyn@wwda.org.au

officeadmin@wwda.org.au

www.wwda.org.au

www.facebook.com/WWDA.Australia

twitter.com/WWDA_AU

Women With Disabilities Australia (WWDA) has Special Consultative Status with the Economic and Social Council of the United Nations.

Awards

Winner

National Human Rights Award 2001

Winner

National Violence Prevention Award 1999

Winner

Tasmanian Women's Safety Award 2008

Nominee

UNESCO Prize for Digital Empowerment of Persons with Disabilities 2021

Nominee

French Republic's Human Rights Prize 2003

Nominee

UN Millennium Peace Prize for Women 2000

Certificate of Merit

Australian Crime & Violence Prevention Awards 2008

Nominee

National Disability Awards 2017

Finalist

International Zero23 Award, Information and Communication Technologies (ICT)

ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

Women With Disabilities Australia (WWDA) Inc is the national Disabled People’s Organisation (DPO) and National Women’s Alliance (NWA) for women, girls, feminine identifying and non-binary people with disability in Australia. As a DPO and a NWA, WWDA is governed, run, and staffed by and for women, girls, feminine identifying and non-binary people with disability.

WWDA uses the term ‘women and girls with disability’, on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.

WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA’s work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. All WWDA’s work is based on co-design with and participation of our members. WWDA projects are all designed, governed, and implemented by women and girls with disability.

Disabled People’s Organisations (DPOs) 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. DPOs are organisations of people with disability, as opposed to organisations which may represent people with disability. The United Nations Committee on the Rights of Persons with Disabilities has clarified that States should give priority to the views of DPOs when addressing issues related to people with disability. The Committee has further clarified that States should prioritise resources to organisations of people with disability that focus primarily on advocacy for disability rights and, adopt an enabling policy framework favourable to their establishment and sustained operation.¹



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PRELIMINARY RECOMMENDATIONS

1. PRELIMINARY RECOMMENDATIONS

Overarching

- 1.1 People with disability through our representative organisations must be closely consulted and actively involved in all aspects of evaluation, refinement, and implementation of recommendations arising from the Disability Royal Commission.¹

End Segregation of people with disability

- 1.2 In line with Australia's international human rights obligations, ensure that all measures adopted to respond to the DRC are underpinned by an understanding that segregation on the basis of impairment constitutes discrimination, and that segregation fosters violence, abuse, neglect and exploitation.
- 1.3 Based on the DRC recommendations to end segregation (recommendations 7.14, 7.32 and 7.43), develop, implement and resource national plans and strategies, with established timeframes and comprehensive measures to urgently end segregation in education, employment and housing (group homes).
- 1.4 Review and amend law, policy, systems and practice frameworks to ensure they do not legitimise segregation on the basis of disability and to transition from segregated settings to inclusive ones, and ensure anti-discrimination and equal opportunity laws protect the right of people with disability not to be segregated.
- 1.5 Ensure that people with disability, including those who may require support in making decisions, are not obliged to 'choose' between services and settings that do not comply with the CRPD.

Ensure all people with disability enjoy legal capacity and equality before the law

- 1.6 Review the DRC recommendations for establishing supported decision-making mechanisms in order to identify and implement appropriate amendments to ensure compliance with the principles and standards of the CRPD.
- 1.7 Develop a comprehensive, timebound transition plan to undertake legislative and policy reform to replace substitute decision-making with supported decision-making, including in the areas of guardianship, financial management, mental health, aged care, family and child protection and criminal justice.
- 1.8 Implement legislative and policy measures to ensure that supported decision-making mechanisms replace the common law doctrine of 'parens patriae' for people with disability.
- 1.9 Implement legislative and policy reform measures to ensure that the 'best interests of the child' principle is understood in the context of human rights as elaborated by the CRC and the CRPD, and that the will and preferences of children with disability are respected on an equal basis with other children.
- 1.10 Withdraw Australia's interpretative declaration to Article 12 of the CRPD.

End all forms of forced treatment and restrictive practices

- 1.11 Implement the recommendations from the DRC commissioned research report into Restrictive Practices: 'Restrictive practices: A pathway to elimination' (July 2023).²

- 1.12 Review the DRC recommendations relating to authorisation and regulation of restrictive practices in order to identify and implement appropriate amendments to ensure compliance with the principles and standards of the CRPD and to ensure national consistency across service systems including disability services, mental health, aged care, education, child welfare and criminal justice.
- 1.13 Ensure the DRC recommendations for strengthening the evidence base (recommendation 6.38) and for the collection and reporting of data (recommendation 6.39) includes diverse groups of people with disability, including First Nations people with disability, LGBTIQ+ people with disability, people with disability from culturally and linguistically diverse backgrounds, women and girls with disability, children with disability and older people with disability.
- 1.14 Withdraw the interpretative declaration to article 17 of the CRPD.
- 1.15 Undertake work with state and territory governments to establish and implement a comprehensive plan to repeal or amend legislative, policy and practice frameworks that authorise forced treatment, restrictive practices and forced detention on the basis of impairment, including in mental health systems.³
- 1.16 Prohibit deferrable medical interventions, including surgical and hormonal interventions, that are applied to infants and children born with innate variations of sex characteristics (intersex) without free and informed personal consent;⁴ and implement the recommendations from the Australian Human Rights Commission.
- 1.17 inquiry report, 'Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics' (2021).⁵

Ensure people with disability, particularly women and girls enjoy sexual and reproductive rights

- 1.18 Review recommendation 8.23 to consider the implications of a separate Action Plan to end violence against women and children with disability as opposed to prioritising women and children with disability in the national Plan to End Violence against Women and Children 2022-2032.
- 1.19 Review the DRC recommendation 6.41 in relation to sterilisation in order to remove ambiguous terminology ('non-therapeutic'), clarify exceptions ('threat to the life of the person with disability') and to ensure compliance with the principles and standards of the CRPD, and with the aim of enacting nationally consistent legislation that prohibits the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.
- 1.20 Abolish the practice of non-consensual administration of menstrual suppressant drugs and anti-androgenic treatments.
- 1.21 Implement the recommendations from WWDA's submission to the DRC: 'WWDA Submission on Sexual and Reproductive Rights of Women and Girls with Disability' (December 2022).⁶
- 1.22 Using an intersectional lens, conduct disability-inclusive research and inquiries into the sexual and reproductive rights of people with disability, including for women and girls with disability, men and boys with disability, First Nations people with disability, LGBTIQ+ people with disability, culturally and linguistically diverse people with disability, and older people with disability.

- 1.23 Commission a national inquiry into the legal, policy and social support environment that gives rise to the removal of babies and children from parents with disability, at a rate at 10 times higher than non-disabled parents, with a specific focus on First Nations parents with disability.
- 1.24 Implement the recommendations from the DRC commissioned research report into parenting: 'Parents with disability and their experiences of child protection systems' (July 2023).⁷
- 1.25 In co-design with people with disability, the National Disability Insurance Scheme (NDIS) should develop a 'Sexuality & Relationships Policy' which includes explicit provisions for NDIS participants to access funded supports that enable them to realise their rights to sexual health information, sexual pleasure, expression, association, freedom, autonomy and self-determination.⁸

Urgently address indefinite detention and deprivation of liberty of people with disability, particularly First Nations people with disability, people with cognitive disability and people with psychosocial disability

- 1.26 Implement DRC recommendations in relation to OPCAT – recommendations 8.2 and 11.6-11.11 – as a matter of priority.
- 1.27 Implement DRC recommendation 8.22, Age of criminal responsibility as a matter of priority.
- 1.28 Review recommendation 8.3, Prohibiting solitary confinement in youth detention to ensure greater clarity and stronger safeguards to respond to histories of child trauma, abuse and neglect and to the specific development, health and well-being needs of children.
- 1.29 Review recommendation 8.4, Screening and assessment for disability in youth detention to ensure that it applies to all children and young people.
- 1.30 In line with the CRPD, amend and/or repeal all state, territory and federal legislation that limits the legal capacity of persons with disability allowing them to be indefinitely detained and guarantee access to justice on an equal basis with others throughout judicial proceedings. This action should be mandatory, irrespective of endorsement and implementation of the National Principles.
- 1.31 Establish and implement supported decision-making mechanisms and gender, age and culturally appropriate support and assistance programs to facilitate access to justice (CRPD article 13), to enable the exercise of legal capacity (CRPD article 12), and to avoid 'unfit to plead' declarations and the trajectory to indefinite detention (CRPD article 14).
- 1.32 Develop and implement a national disability justice strategy to address the over-representation of people with disability, particularly First Nations people with disability in the criminal justice system that includes comprehensive measures to prevent and respond to the criminalisation of disability, such as establishing justice reinvestment strategies⁹ and intensive and gender, age and culturally appropriate coordinated support from multiple agencies.
- 1.33 Undertake an analysis of recommendations from previous inquiries and reports¹⁰ to ensure that, in combination with the DRC recommendations, a full suite of recommendations is implemented to address the situation of people with disability in the criminal justice system.
- 1.34 Ensure close engagement with the Australian Human Rights Commission (AHRC) investigation into youth justice system reforms and child well-being across Australia.

End discrimination against migrants and refugees with disability

- 1.35 Withdraw Australia's interpretative declaration on article 18 of the CRPD.
- 1.36 Remove the exemption in the DDA in relation to the Migration Act 1958 (Cth) and amend migration laws and policies to eliminate discrimination in migration and asylum policies and procedures.
- 1.37 Implement the recommendations set out by Welcoming Australia¹¹ in its Position Statement on Migration and Disability¹² and its submission¹³ to the Department of Home Affairs' Review of Australia's visa Significant Cost Threshold (SCT).¹⁴
- 1.38 Remove the 10-year qualifying period for migrants to access the Age and Disability Support Pensions and ensure asylum seekers and/or people with disability living in Australia on non-permanent visas can access the NDIS.
- 1.39 Conduct an independent inquiry into the asylum seeker laws, policies and practices, including mandatory immigration detention.

Urgently address the over-representation of people with disability living in poverty and ensure an adequate standard of living and social protection

- 1.40 Develop a disability-inclusive National Poverty Reduction Plan, with specific priority actions for First Nations peoples, recognition of intersectionality and linkages with other national plans, such as the National Disability Strategy, Closing the Gap, and the National Strategy to Achieve Gender Equality.¹⁵
- 1.41 Review the Final Report from the Senate Community Affairs References Committee inquiry into the extent and nature of poverty in Australia and incorporate recommendations into the National Poverty Reduction Plan.
- 1.42 Implement the recommendations from the Senate Community Affairs References Committee inquiry into the purpose, intent and adequacy of the Disability Support Pension (DSP).¹⁶
- 1.43 Raise the rate of income support payments in line with recommendations from the Australian Council of Social Services (ACOSS).¹⁷
- 1.44 Urgently address the lack of appropriate, available, accessible and affordable housing for people with disability, including by implementing the DRC recommendations 7.33–7.40.
- 1.45 Undertake disability-inclusive research to assess the specific situation of women with disability in relation to poverty, social protection, housing and homelessness, as well as for other groups of people with disability, including children, older persons, First Nations peoples, LGBTIQ+ people and people with disability from culturally and linguistically diverse backgrounds.

Ensure effective participation of people with disability including through their representative organisations in all matters that affect them

- 1.46 Co-designed with people with disability through their representative organisations, and in line with articles 4(3) and 33(3) of the CRPD, establish a formal, permanent, and adequately resourced national OPD/DPO¹⁸ Implementation and Monitoring

Committee to ensure close consultation and active involvement of people with disability in the implementation and monitoring of the CRPD and other decision-making processes.

- 1.47 Review funding arrangements of organisations of people with disability (OPDs/ DPOs) to ensure adequate, long-term, sustainable funding that is inclusive of funding for systemic advocacy, representation, capacity building and research and that recognises the increase in activities associated with recent review processes, including the DRC and the NDIS review.
- 1.48 Review DRC recommendation 4.11, Consultation with people with disability to ensure it recognises the priority role of people with disability and their representative organisations in consultation processes in line with the CRPD Committee's general comment no. 7.
- 1.49 Undertake further consultation with people with disability through their representative organisations in relation to the proposed 'system for voluntary registration' and associated 'approval process'.
- 1.50 Ensure that the DRC Taskforce and other key stakeholders analysing and implementing DRC recommendations do not misunderstand the interchangeable use of the terminology 'DPO' and 'DRO' in the Final Report as inferring that people with disability through their representative organisations are not the main interlocutors in CRPD implementation and monitoring, and that they understand the distinction between organisations of people with disability and organisations for people with disability.

Implement a Disability Royal Commission Redress and Reparation Scheme

- 1.51 Consistent with international human rights obligations, the Van Boven Principles, and the International Principles and Guidelines on Access to Justice for Persons with Disabilities, the Australian Government establish a National Disability Royal Commission Redress and Reparation Scheme co-designed with people with disability and their representative organisations and drawing on 'lived experience-led' and disability-inclusive research.

Embed human rights of people with disability into law and policy

- 1.52 Defer consideration of the DRC recommendation 4.1 for the establishment of a Disability Rights Act until the Parliamentary Joint Committee on Human Rights (PJCHR) has released its report, due on 31 March 2024.
- 1.53 Integrate DRC recommendations for a Disability Rights Act into a comprehensive, judicially enforceable Human Rights Act that incorporates Australia's obligations under the CRPD, under other human rights treaties and under UNDRIP.
- 1.54 Ensure the right to liberty and security of person in a national Human Rights Act is in line with the CRPD.
- 1.55 Expand the role and functions of the Australian Human Rights Commission (AHRC) and the Disability Discrimination Commissioner (DDC) to include a disability rights mandate,

including by designating the AHRC as an independent monitoring mechanism of CRPD implementation in line with article 33(2), and renaming the DDC as Disability Rights Commissioner (DRC).

- 1.56 Provide appropriate resourcing for the AHRC and the DRC to perform expanded roles.
- 1.57 Implement recommendations 4.22 - 4.30 and 4.32-4.34 to revise and strengthen the DDA.

INTRODUCTION

2. INTRODUCTION

- 2.1 This submission has been prepared by Women With Disabilities Australia (WWDA). It provides our initial analysis and response to the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission / DRC) and its 222 recommendations, which was tabled in the Australian Parliament on 29 September 2023.
- 2.2 The DRC was conducted over four years from September 2019 - September 2023. It is the culmination of tireless and persistent advocacy over two decades by WWDA and the disability community for recognition of, response to, and redress for the significant violence, abuse, neglect and exploitation experienced by people with disability in all situations and settings, and which is underpinned by a lack of respect for our human rights.
- 2.3 We are committed to working collaboratively with the Commonwealth Disability Royal Commission Taskforce (DRC Taskforce), which has been established by the Australian Government as a means of coordinating a holistic response across departments and agencies to the recommendations contained in the Final Report.¹⁹
- 2.4 We have been actively involved in all aspects of the DRC inquiry, including by giving direct evidence at public hearings, participating in private sessions, providing evidence-based submissions, attending forums, contributing to commissioned research, working collaboratively with Commissioners and staff of the DRC, and engaging in stakeholder groups, sector coordination and much more.
- 2.5 We have significant expertise to contribute to discussions about the 222 recommendations, and as key beneficiaries of these recommendations, we are instrumental to identifying measures that strengthen efforts to achieve the vision outlined in the Final Report - an inclusive Australia, where people with disability live free from violence, abuse, neglect and exploitation and where human rights are protected and respected.²⁰
- 2.6 We pay tribute to each and every person with disability, ally and advocate, who contributed to the DRC, and we acknowledge the distress and trauma that many have experienced, re-experienced, and continue to experience in this endeavour. We trust that, as an outcome of our DRC, the Australian Government will act to ensure that all people with disability who are victim/survivors of violence, abuse, neglect and exploitation - be it historical or current - are provided with redress and reparation.²¹
- 2.7 Our submission does not provide an analysis of all 222 recommendations, or all the information contained in the 12 volumes of the Final Report. For the purpose of this submission, our analysis focuses on ten areas for action, which we have long considered to be priorities in the context of moving forward to end all forms of violence, abuse, neglect and exploitation of people with disability:
- End segregation of people with disability in all settings and contexts.
 - Ensure all people with disability enjoy legal capacity and equality before the law.
 - End all forms of forced treatment and restrictive practices.
 - Ensure people with disability, particularly women and girls enjoy sexual and reproductive rights.
 - Urgently address indefinite detention and deprivation of liberty of people with disability, particularly First Nations people with disability, people with cognitive disability and people with psychosocial disability.
 - End discrimination against migrants and refugees with disability.

- Urgently address the over-representation of people with disability living in poverty and ensure an adequate standard of living and social protection.
 - Ensure effective participation of people with disability including through their representative organisations in all matters that affect them.
 - Implement a Disability Royal Commission Redress and Reparation Scheme.
 - Embed human rights of people with disability into law and policy.
- 2.8 The ten priority areas for action broadly relate to the thematic issues covered by key DRC recommendations. They provide additional context and content to strengthen and complement the DRC recommendations, outline areas where there are gaps in recommendations and provide our strong concerns regarding recommendations that do not adhere to the human rights of people with disability.
- 2.9 The ten priority areas for action are strongly focused on actions that respect, protect and fulfil the human rights of people with disability. They recognise that the Terms of Reference (ToR) for the DRC acknowledge Australia’s international human rights obligations, and specifically its obligations:
- “to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of exploitation, violence and abuse under the Convention on the Rights of Persons with Disabilities”.*²²
- 2.10 The Chair of the DRC, Commissioner Hon Ronald Sackville AO QC stated in his 2019 opening statement:
- “With the active participation of people with disability and the disability community at large, the Royal Commission provides an opportunity to achieve transformational change. It is a very large challenge, but it is one that should be embraced... The Royal Commission provides an unprecedented opportunity, on a national scale, to shine a light on the abuse of people with disability, and to help realise the rights of people with disability, and to promote a more inclusive society. It is an opportunity for healing and a real step towards justice for people with disability.”*²³
- 2.11 Our submission reflects this statement, with the ten priority areas for action focused on facilitating transformational change, providing a clear pathway to genuine equality and inclusion of all people with disability in society, facilitating healing and justice and prioritising and implementing actions to realise all human rights and fundamental freedoms, including civil, political, economic, social and cultural rights set out in the Convention on the Rights of Persons with Disabilities (CRPD)²⁴ and the other international human rights treaties to which Australia is a party.
- 2.12 We cannot accept the outcome of our DRC to be anything other than transformative. We cannot accept actions that merely ‘tweak’ the status quo and deliver less than a clear pathway to genuine equality and inclusion of people with disability in our society.
- 2.13 With this in mind, and recognising that more comprehensive analysis and response is required for many of the 222 recommendations and the 12 volumes of the Final Report, our overarching recommendation is that:
- people with disability through our representative organisations must be closely consulted and actively involved in all aspects of evaluation, refinement, and implementation of recommendations arising from the Disability Royal Commission.*²⁵

PRIORITY AREAS

3. PRIORITY AREAS FOR ACTION

3.1 End segregation of people with disability in all settings and contexts

- 3.1.1 The long-standing and dominant ableist law, policy and practice response to people with disability fosters ‘special’, segregated service systems and social arrangements as legitimate and benevolent in order to provide care, treatment and protection.²⁶ On the basis of impairment, many people with disability are separated from the rest of the community in a range of ‘special’, segregated arrangements such as: special schools, units or classrooms;²⁷ group homes and other institutional living settings (e.g.: boarding houses, specialist residential services (SRS), semi-supported residential facilities, congregate care residential facilities, aged care facilities); psychiatric facilities and forensic disability units; disability day care programs and segregated workplaces, including Australian Disability Enterprises (ADEs) (also known as sheltered workshops).²⁸ Not only does segregation expose the “social apartheid”²⁹ experienced by people with disability, it also significantly contributes to, and increases the experience and risk of violence, abuse, neglect and exploitation in our daily lives.³⁰
- 3.1.2 The CRPD, consistent with international human rights law, holds that segregation based on impairment is discrimination.³¹ The principles of equality and non-discrimination are foundational human rights contained in all the core international human rights conventions, and because they are interconnected with human dignity, they are the cornerstones of all human rights.³² Legitimising segregated systems, policies and practices for people with disability is a direct contravention of the CRPD and the human rights normative standard of equality and non-discrimination.³³
- 3.1.3 Under Australia’s international human rights obligations,³⁴ segregation cannot **under any circumstances**, be justified as a transitional measure to achieve equality.³⁵ Further, segregation can never be viewed as a form of protection of people with disability or a ‘choice’.³⁶ Following its reviews of Australia in 2013 and 2019, the Committee on the Rights of Persons with Disabilities (CRPD Committee) recommended concerted action be taken to replace segregated systems with inclusive ones.³⁷
- 3.1.4 The DRC only focused its investigation on specific areas of segregation - education, employment and housing (group homes). During the DRC, there was a significant amount of evidence, research and information provided by the disability community, human rights experts, researchers and advocates that emphasised the link between the segregation of people with disability and the experience of violence, abuse, neglect and exploitation, and that outlined Australia’s obligation under the CRPD to eliminate segregation based on impairment.
- 3.1.5 In light of the evidence, there was agreement between the Commissioners of the DRC that mainstream systems “must be significantly reformed, and in some cases transformed, to remove multiple barriers to access and enable meaningful inclusion”.³⁸ This includes in relation to safe, equal and inclusive education,³⁹ inclusive employment,⁴⁰ and inclusive housing.⁴¹
- 3.1.6 However, we are extremely concerned that the substantial evidence provided to the DRC was not entirely accepted by all Commissioners. A majority of Commissioners⁴² considered that “segregation is inherently harmful”,⁴³ yet Commissioners were

divided in their response to segregation. Despite agreement on measures to significantly enhance inclusion, a minority of Commissioners maintained support for segregated education,⁴⁴ employment⁴⁵ and housing (group homes)⁴⁶ based on a range of opinions. These opinions included that the word ‘segregation’ itself denotes negativity and more neutral terms should be used;⁴⁷ that settings that segregate people with disability may not necessarily be detrimental or harmful;⁴⁸ that certain groups of people with disability – those with complex support and educational needs⁴⁹ or with intense health and aging support needs⁵⁰ and those with intellectual or cognitive disabilities⁵¹ – may have their needs better met in segregated settings; and that segregated options may be the preferred choice of people with disability.⁵²

3.1.7 We argue that these views reaffirm and reinforce long-standing ableist policy positions that legitimise the denial and limitation of the human rights of people with disability. The CRPD refutes these ableist policy positions by stipulating that impairment cannot be the basis for the denial or limitation of human rights.⁵³ This means that:

- Regardless of terminology or the use of neutral terms instead of the word ‘segregation’, the outcome and effects of actions that separate people with disability on the basis of impairment is discrimination;
- Settings that separate people with disability from the rest of the community based on their impairment are detrimental because this separation constitutes discrimination; discrimination is inherently detrimental;
- Human rights cannot be limited or denied based on the type or degree of impairment; **all** people with disability are entitled to “the full and equal enjoyment of all human rights and fundamental freedoms”;⁵⁴
- People with disability do not have a **genuine** choice when segregated systems did not emerge historically through the exercise of choice by people with disability, when there are no alternatives to segregated systems, when people with disability are referred through pathways of segregated systems, when people with disability have only experienced segregation, when segregated systems constitute discrimination and when segregated systems do not reflect the underlying purpose of the CRPD and its principles and standards.

3.1.8 A failure to accept segregation on the basis of impairment as discrimination and to take measures to address the segregation of people with disability fundamentally undermines the DRC vision for an inclusive Australia, where people with disability live free from violence, abuse, neglect and exploitation and where human rights are protected and respected.⁵⁵

3.1.9 WWDA supports the following DRC recommendations in principle, noting the need for further consultation on specific timeframes and measures to achieve outcomes:

- Recommendation 7.14, Phasing out and ending special/segregated education.
- Recommendation 7.32, End segregated employment.
- Recommendation 7.43, A roadmap to phase out group homes.

Preliminary Recommendations

- In line with Australia’s international human rights obligations, ensure that all measures adopted to respond to the DRC are underpinned by an understanding that segregation

on the basis of impairment constitutes discrimination, and that segregation fosters violence, abuse, neglect and exploitation.

- Based on the DRC recommendations to end segregation (recommendations 7.14, 7.32 and 7.43), develop, implement and resource national plans and strategies, with established timeframes and comprehensive measures to urgently end segregation in education, employment and housing (group homes).
- Review and amend law, policy, systems and practice frameworks to ensure they do not legitimise segregation on the basis of disability and to transition from segregated settings to inclusive ones, and ensure anti-discrimination and equal opportunity laws protect the right of people with disability not to be segregated.
- Ensure that people with disability, including those who may require support in making decisions, are not obliged to ‘choose’ between services and settings that do not comply with the CRPD.

3.2 Ensure all people with disability enjoy legal capacity and equality before the law

- 3.2.1 Legal capacity underpins personhood,⁵⁶ and is essential for human dignity, personal agency and free personal development.⁵⁷ Legal capacity is “indispensable for the exercise of other human rights”.⁵⁸ It is the key to individual autonomy and personal independence, to full and effective participation and inclusion in society, to freely making one’s own choices and to exercising choice and control over one’s life.⁵⁹ Legal capacity – the ability to hold and exercise rights - is central to equality before the law and is guaranteed in article 12 of the CRPD, the Universal Declaration of Human Rights⁶⁰ and other core human rights treaties to which Australia is a party.⁶¹
- 3.2.2 The denial of legal capacity through substitute decision-making regimes (such as guardianship, financial management, and mental health laws) and the common law doctrine of ‘parens patriae’⁶² gives rise to and enables violence, abuse, neglect and exploitation of people with disability. The CRPD Committee has affirmed that a person’s status as a person with disability or the existence of an impairment, including perceived or actual deficits in “mental capacity”, must **never** be used as “grounds for denying legal capacity or any of the rights provided for in article 12” of the CRPD.⁶³ Furthermore, the CRPD Committee has clarified that “the development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the Convention”.⁶⁴
- 3.2.3 The DRC made a number of recommendations to reform guardianship and administration law and policy with the aim of shifting from substitute decision-making to supported decision-making and upholding the autonomy of people with disability. While the supported decision-making framework, including the supported decision-making principles recommended by the DRC would move Australia significantly closer to adherence with the CRPD, we are concerned that key recommendations fall short of the principles and standards of the CRPD by retaining substitute decision-making as a last resort option.⁶⁵ The CRPD Committee has made clear that “support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making.”⁶⁶

- 3.2.4 Confusingly, the DRC states that “some substitute decisions can be considered part of supported decision-making”⁶⁷ as long as substitute decision-making is based on a ‘will and preference’ approach and not on a ‘best interests’ approach. Here, the DRC deviates from the definition of substitute decision-making provided by the CRPD Committee, which clearly situates substitute decision-making within a ‘best interests’ framework as opposed to supported decision-making, which is situated in a ‘rights, will and preference’ framework.⁶⁸ This deviation runs the risk of creating unnecessary confusion about CRPD principles and standards and unnecessary obstacles to the implementation of supported decision-making.
- 3.2.5 The DRC recommendations also allow for an appointed representative to override a person’s will and preference “when necessary to prevent serious harm”, and in these situations, for the representative to be “guided by the standard of promoting ‘personal and social wellbeing’.”⁶⁹ Aside from reference to existing Victorian legislation and policy, there is no guidance or definition of what constitutes ‘serious harm’ or how to prevent a ‘best interests’ interpretation of ‘serious harm’.⁷⁰ Similarly, the term ‘personal and social wellbeing’ is not clearly defined except in relation to existing guardianship and administration law, and also runs the risk of ‘best interests’ interpretation and decisions being made that run counter to human rights.⁷¹
- 3.2.6 It is noted by the DRC that the term ‘personal and social wellbeing’ would be more easily understood and provide more clarity than the standard of upholding a person’s human rights that was proposed by the Australian Law Reform Commission in 2014.⁷² However, this is a deviation from the ‘rights, will and preference’ standard of the CRPD that should underpin any new supported decision-making system,⁷³ and which would also require appropriate measures to respond to the critical need for education, guidance and information on human rights standards and principles. The lack of respect for and understanding of the human rights of people with disability, which is a key driver of violence, abuse, neglect and exploitation requires concerted action to address, rather than simply adopting “more commonly used language that may be more easily understood”.⁷⁴
- 3.2.7 The examination by the DRC of autonomy and supported decision-making only focused on guardianship and administration regimes, with a recognition that “there is a need for wide-ranging reform across different service systems, sectors and areas of law”.⁷⁵ We strongly agree that there is a need for broader reform, and note with concern the legislative and policy reform required in many areas that deny or restrict legal capacity on the basis of impairment, including in mental health, aged care, family and child protection, and criminal justice.
- 3.2.8 We also note with concern that even if guardianship, financial management, mental health and other relevant legislation is reformed, the common law doctrine of ‘parens patriae’, which operates as a ‘best interests’ framework underpinned by ableist and gendered assumptions,⁷⁶ would still apply to people with disability unless explicitly excluded through legislation. While the DRC discussed the ‘parens patriae’ jurisdiction, it did not provide any recommendations for reform, despite noting that rather than protect children and adults with disability from harm, ‘parens patriae’ has been used to authorise sterilisation and termination of pregnancies of women and girls with disabilities.⁷⁷
- 3.2.9 A supported decision-making framework should replace the ‘parens patriae’

jurisdiction. The CRPD Committee has made clear that the ‘best interests’ principle “is not a safeguard which complies with article 12 in relation to adults”.⁷⁸ In relation to children, the human rights principles and standards require that the ‘best interests of the child’ be a primary consideration in all actions concerning them, that children can freely express their views and that these views are given due weight in accordance with their age and maturity.⁷⁹ The CRPD explicitly requires “[r]espect for the evolving capacities of children with disabilities”,⁸⁰ and in the context of article 12, this requires an examination of laws and policies “to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children”.⁸¹ Importantly, the ‘best interests of the child’ principle should only be applied in the context of human rights as specifically provided for in the Convention on the Rights of the Child (CRC)⁸² and further elaborated in the CRPD for children with disabilities.⁸³

3.2.10 We strongly support the DRC recommendation for the Australian Government to withdraw its interpretative declaration to article 12 of the CRPD.⁸⁴ It has been over fifteen years since Australia ratified the CRPD and substantial guidance and interpretation of article 12 has been developed by the CRPD Committee,⁸⁵ the Special Rapporteur on the Rights of Persons with Disabilities⁸⁶ and other human rights experts and academics⁸⁷ that refute Australia’s understanding that article 12 “allows for fully supported or substitute decision-making arrangements, which provide for decisions to be made on behalf of a person”.⁸⁸ While the interpretative declaration remains, critical reform will not adhere to the now well-recognised interpretation of article 12 of the CRPD.

Preliminary Recommendations

- Review the DRC recommendations for establishing supported decision-making mechanisms in order to identify and implement appropriate amendments to ensure compliance with the principles and standards of the CRPD.
- Develop a comprehensive, timebound transition plan to undertake legislative and policy reform to replace substitute decision-making with supported decision-making, including in the areas of guardianship, financial management, mental health, aged care, family and child protection and criminal justice.
- Implement legislative and policy measures to ensure that supported decision-making mechanisms replace the common law doctrine of ‘parens patriae’ for people with disability.
- Implement legislative and policy reform measures to ensure that the ‘best interests of the child’ principle is understood in the context of human rights as elaborated by the CRC and the CRPD, and that the will and preferences of children with disability are respected on an equal basis with other children.
- Withdraw Australia’s interpretative declaration to Article 12 of the CRPD.

3.3 End all forms of forced treatment and restrictive practices

3.3.1 Restrictive practices are forms⁸⁹ of “legally authorised and/or socially and professionally sanctioned violence”⁹⁰ that are applied to people with disability on a discriminatory basis; strip people with disability of dignity; often constitute

torture, cruel and punishing treatment; cause lifelong trauma and life-altering effects; are at odds with the human rights of people with disability and contravene the international human rights treaties to which Australia is a party. Research unequivocally demonstrates that people with disability are subject to the greatest use of restrictive practices in segregated and congregated contexts where people with disability are clustered together.⁹¹

- 3.3.2 Australia has not withdrawn nor repealed legislation, policies and practices that allow for ‘behaviour modification’ practices, restrictive practices and forced treatments against adults and children with disability across the broad range of areas in which they occur, including in disability services, mental health services, aged care services, education systems, child welfare systems and criminal justice systems. Across Australia, laws, policy and practice regulate and authorise the forced treatment of people with disability, limiting individual rights to liberty and security, equal recognition before the law, freedom from torture and ill-treatment and exploitation, violence and abuse, and respect for bodily and mental integrity. Laws have failed to prevent, and in some cases actively condone these egregious human rights violations, which include invasive and irreversible treatments.⁹²
- 3.3.3 The treaty monitoring bodies, along with relevant UN Special Rapporteurs, the Office of the High Commissioner for Human Rights (OHCHR) and UN agencies, have made it clear that all forms of restrictive practices and forced treatments should be eliminated, rather than regulated.⁹³
- 3.3.4 We are deeply disappointed that the DRC recommendations maintain the focus on legal and policy frameworks for the authorisation, review and oversight of restrictive practices rather than on prohibition and elimination of restrictive practices.⁹⁴ This means that the DRC reaffirms the policy and legislative context that only applies to people with disability and that is distinguished from broader legal and social contexts that define these practices as violence.⁹⁵
- 3.3.5 We support the DRC recommendations for strengthening the evidence base on reducing and eliminating restrictive practices,⁹⁶ and for improving the collection and reporting of restrictive practices data,⁹⁷ and for the need for these measures to include diverse groups of people with disability, including First Nations people with disability, LGBTIQ+ people with disability, and culturally and linguistically diverse people with disability. These recommendations should ensure the inclusion of women with disability and older people with disability, and interface with work being undertaken to implement recommendations that have been made by the Royal Commission into Aged Care Quality and Safety,⁹⁸ ensuring that both sets of recommendations adhere to the CRPD.
- 3.3.6 The DRC did not examine the effect of Australia’s interpretative declaration on CRPD article 17, which states that Australia understands the CRPD as allowing for “compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability”.⁹⁹ Similar to the Interpretative declaration on CRPD article 12, there is now substantial guidance and interpretation that refutes Australia’s understanding of article 17.¹⁰⁰
- 3.3.7 Of particular concern is the lack of specific examination by the DRC of deprivation of

liberty on the basis of impairment, forced treatment and the use of restrictive practices that are routinely experienced by people with psychosocial disability¹⁰¹ and that are inherent to mental health law, policy and practice.¹⁰² For example, the discussion on psychotropic medication in the Final Report was largely focused on people with cognitive disability, which is an important and critical area of examination, but it was based on a problematic assumption that appropriate prescription of psychotropic medication “can improve health outcomes, especially for patients with mental health conditions”.¹⁰³ This belies evidence that estimates that people with psychosocial disability have a mortality rate 2.2 times that of people without, and that the adverse effects of psychotropic medication and the impact of polypharmacy are among the reasons for this.¹⁰⁴ Under mental health law, policy and practice, psychotropic medication is very often prescribed to people with psychosocial disability without their consent.

- 3.3.8 The recent Royal Commission into Victoria’s Mental Health System recognised that “[c]onsumers still have their human rights breached through compulsory treatment and the use of seclusion and restraint”,¹⁰⁵ and made recommendations for system reform. However, the recommendations do not ensure compliance with the CRPD, including because they do not contain actions to end forced treatment, eliminate restrictive practices and end forced detention on the basis of impairment.¹⁰⁶
- 3.3.9 In terms of the right to bodily integrity and involuntary medical procedures,¹⁰⁷ UN Treaty Bodies have recognised that intersex people who have had unnecessary surgery or treatment without their consent are ‘victims of abuses and mistreatment’¹⁰⁸ and have urged Australia to “adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent”.¹⁰⁹ Australia has not enacted national legislation against enforced medical interventions for innate variations of sex characteristics, although recent ACT legislation¹¹⁰ to protect intersex people from medical procedures without their consent provides a legislative model for other jurisdictions to follow.
- 3.3.10 Transformational change to respect, protect and fulfil the rights of all people with disability, requires concerted action to eliminate all forms of restrictive practices, to end involuntary internment on the basis of impairment and to eliminate forced treatment and forced medical interventions. Without this, many people with disability, including those with cognitive and/or psychosocial disability will continue to experience serious breaches of their human rights.

Preliminary Recommendations

- Implement the recommendations from the DRC commissioned research report into Restrictive Practices: ‘Restrictive practices: A pathway to elimination’ (July 2023).¹¹¹
- Review the DRC recommendations relating to authorisation and regulation of restrictive practices in order to identify and implement appropriate amendments to ensure compliance with the principles and standards of the CRPD and to ensure national consistency across service systems including disability services, mental health, aged care, education, child welfare and criminal justice.
- Ensure the DRC recommendations for strengthening the evidence base (recommendation

6.38) and for the collection and reporting of data (recommendation 6.39) includes diverse groups of people with disability, including First Nations people with disability, LGBTIQ+ people with disability, people with disability from culturally and linguistically diverse backgrounds, women and girls with disability, children with disability and older people with disability.

- Withdraw the interpretative declaration to article 17 of the CRPD.
- Undertake work with state and territory governments to establish and implement a comprehensive plan to repeal or amend legislative, policy and practice frameworks that authorise forced treatment, restrictive practices and forced detention on the basis of impairment, including in mental health systems.¹¹²
- Prohibit deferrable medical interventions, including surgical and hormonal interventions, that are applied to infants and children born with innate variations of sex characteristics (intersex) without free and informed personal consent;¹¹³ and implement the recommendations from the Australian Human Rights Commission inquiry report, ‘Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics’ (2021).¹¹⁴

3.4 Ensure people with disability, particularly women and girls enjoy sexual and reproductive rights

3.4.1 Sexual and reproductive rights are fundamental human rights. They include the right to dignity, equality, autonomy, privacy, freedom, and self-determination – the right of everyone to make free and informed decisions about, and have full control over - their body, sexuality,¹¹⁵ health, relationships, and if, when and with whom to partner, marry and have children, without any form of discrimination, stigma, coercion or violence.¹¹⁶ However, regardless of country or context, no group has ever been as severely restricted, or negatively treated, in respect of their sexual and reproductive rights, as people with disability, particularly women and girls with disability.¹¹⁷

3.4.2 Given the fact that women and girls with disability experience, or are at greater risk of, significantly higher levels of all forms of violence, WWDA was extremely disappointed that the DRC largely confined its discussion on the specific experiences of women and girls with disability to one chapter of one volume of its Final Report.¹¹⁸ One part of this chapter¹¹⁹ discusses the deprivation of reproductive rights of women and girls with disability, including involuntary sterilisation, menstrual suppression, forced contraception and forced abortion, but there are no recommendations regarding these human rights abuses except in relation to involuntary sterilisation. The omission of recommendations to address sexual and reproductive rights is deeply concerning given that forced contraception¹²⁰ of women and girls with disability through the use of menstrual suppressant drugs is a widespread, largely unregulated¹²¹ current practice in Australia.¹²²

3.4.3 Recommendations specific to women and girls with disability are scattered across various volumes of the Final Report with a focus on improving disaggregated data collection,¹²³ ensuring a disability-inclusive definition of family and domestic violence (FDV),¹²⁴ and an action plan to end violence against women and children with disability.¹²⁵ WWDA supports recommendations to improve disaggregated data and ensure disability-inclusive definitions of FDV, however we provide conditional

support for recommendation 8.23, Action plan to end violence against women and children with disability. Over many years, WWDA has advocated for the inclusion of violence against women and girls with disability to be understood as gender-based violence and included in prevention and response plans, and not to be relegated as a separate matter to the disability sector. Women and girls with disability should be prioritised in the National Plan to End Violence against Women and Children 2022-2032,¹²⁶ which requires consideration of whether a separate action plan can achieve this objective or whether it risks mainstream violence prevention and response systems abdicating responsibility for women and girls with disability.

- 3.4.4 The sexual and reproductive rights of men and boys with disability were not examined by the DRC, and there is a dearth of research on this issue. However, anecdotal information indicates that anti-androgenic medications to control sexual arousal and functioning of men and boys with disability are largely unregulated¹²⁷ and commonly prescribed by the medical profession without the consent of the person concerned, and that men with disability are being coerced into undergoing vasectomies before they can marry, continue sexual relationships or after the birth of a child.¹²⁸ Research has found that boys and young men with disability can be subjected to orchidectomies, or castration by surgical removal of the testes, in the absence of disease or health risks.¹²⁹
- 3.4.5 The DRC also did not discuss sexual and reproductive rights in the context of diverse groups of people with disability, such as First Nations people with disability, LGBTIQ+ people with disability, culturally and linguistically diverse people with disability, children with disability and older people with disability. There needs to be more research and data to build an evidence base on sexual and reproductive rights that would inform measures to prevent and respond to violence, abuse, neglect and exploitation for all people with disability.
- 3.4.6 While the DRC recommendation on involuntary sterilisation – recommendation 6.41 - focuses on prohibition of this practice, it uses the terminology of ‘therapeutic’ and ‘non-therapeutic’ sterilisation. This terminology is problematic as determinations of what constitutes ‘therapeutic’ for women and girls with disability can be different to what is considered ‘therapeutic’ for women and girls without disability.¹³⁰ The current authorisation of ‘non-therapeutic’ sterilisation “is indicative of gendered ableism because it would be incomprehensible to sterilise non-disabled girls for reasons other than those related to serious and life-threatening medical issues”.¹³¹
- 3.4.7 The exception to prohibition in the DRC recommendation is where “there is a threat to the life of the person with disability were the procedure not performed”.¹³² However, it is extremely concerning that the example to illustrate the application of this exception relates to a person with disability experiencing “terrible pain, where alternative therapy has been tried” and where the person “is deemed unable to consent to a medical procedure”, which would allow for the sterilisation procedure to occur.¹³³ In this example, there is no indication if there is a threat to the life of the person with disability and there appears to be no recognition of supported decision-making replacing substitute decision-making. This example appears to adhere to the existing system where sterilisation in the absence of a threat to life can be authorised through substitute decision-making mechanisms. This implies that forced sterilisation¹³⁴ of women and girls with disability will remain an ongoing

practice that is legal and sanctioned by Australian Governments.

- 3.4.8 Forced sterilisation is recognised as a particularly egregious form of gender-based violence;¹³⁵ a form of social control and a form of torture that has no place in a civilized world.¹³⁶ Since 2005, UN treaty bodies, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia enact national legislation prohibiting forced sterilisation,¹³⁷ and have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.¹³⁸
- 3.4.9 In Australia, children of people with disability are subject to removal from their parents by authorities at a rate up to ten times higher than other parents.¹³⁹ The DRC examined this issue in the context of First Nations parents with disability, exposing the cultural biases within child protection policy and practice, the lack of culturally safe services and the erroneous identification of parental disability as a risk factor and basis for removal of children.¹⁴⁰ Evidence provided to the DRC demonstrated significant systemic and structural failures underpinned by ableism and racism within the child protection system that leads to breaches of the human rights of parents with disability, in particular First Nations parents with disability.¹⁴¹
- 3.4.10 The CRPD Committee has expressed concern about issues of child removal from parents with disability on the basis of impairment, and has urged Australia to “[e]nsure that no child is separated from his or her parents because of the disability of either the child or one or both of the parents” and to “[a]dopt comprehensive and gender- and culturally- specific parenting and family support measures for parents with disabilities”.¹⁴²
- 3.4.11 In relation to pursuing parenthood, women with disability experience significant discrimination in accessing assisted reproductive technologies (such as in-vitro fertilisation (IVF) and assisted insemination).¹⁴³

Preliminary Recommendations

- Review recommendation 8.23 to consider the implications of a separate Action Plan to end violence against women and children with disability as opposed to prioritising women and children with disability in the national Plan to End Violence against Women and Children 2022-2032.
- Review the DRC recommendation 6.41 in relation to sterilisation in order to remove ambiguous terminology (‘non-therapeutic’), clarify exceptions (‘threat to the life of the person with disability’) and to ensure compliance with the principles and standards of the CRPD, and with the aim of enacting nationally consistent legislation that prohibits the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.
- Abolish the practice of non-consensual administration of menstrual suppressant drugs and anti-androgenic treatments.
- Implement the recommendations from WWDA’s submission to the DRC: ‘WWDA Submission on Sexual and Reproductive Rights of Women and Girls with Disability’ (December 2022).¹⁴⁴

- Using an intersectional lens, conduct disability-inclusive research and inquiries into the sexual and reproductive rights of people with disability, including for women and girls with disability, men and boys with disability, First Nations people with disability, LGBTIQ+ people with disability, culturally and linguistically diverse people with disability, and older people with disability.
- Commission a national inquiry into the legal, policy and social support environment that gives rise to the removal of babies and children from parents with disability, at a rate at 10 times higher than non-disabled parents, with a specific focus on First Nations parents with disability.
- Implement the recommendations from the DRC commissioned research report into parenting: ‘Parents with disability and their experiences of child protection systems’ (July 2023).¹⁴⁵
- In co-design with people with disability, the National Disability Insurance Scheme (NDIS) should develop a ‘Sexuality & Relationships Policy’ which includes explicit provisions for NDIS participants to access funded supports that enable them to realise their rights to sexual health information, sexual pleasure, expression, association, freedom, autonomy and self-determination.¹⁴⁶

3.5 Urgently address indefinite detention and deprivation of liberty of people with disability, particularly First Nations people with disability, people with cognitive disability, and people with psychosocial disability

- 3.5.1 Liberty and security of the person is one of the most precious rights to which everyone is entitled.¹⁴⁷ Depriving people with disability of their liberty, including through restrictive practices (see section 3.3 above), involuntary mental health legislation (see section 3.3 above) and indefinite detention through justice diversion provisions, violates the right to liberty and security on an equal basis with others. CRPD article 14, Liberty and security of person requires the absolute prohibition of detention on the basis of impairment.¹⁴⁸
- 3.5.2 There remain deeply concerning issues with legislative, policy and practice frameworks, which result in the indefinite detention of people with disability, disproportionately experienced by First Nations people with disability, people with cognitive disability and people with psychosocial disability – including children across these cohort groups.¹⁴⁹
- 3.5.3 In its examination of this issue, the DRC highlighted that justice diversion provisions – ‘unfit to plead’ and ‘not guilty on the basis of mental impairment’ – are intended to protect people with disability, but “in practice, they can deny people with disability the right to exercise legal capacity and expose them to long-term detention”, including indefinite detention in forensic mental health units, forensic disability units or psychiatric hospitals and in adult prisons or juvenile detention facilities.¹⁵⁰
- 3.5.4 Once in indefinite detention, people with disability are subject to punitive treatment and practices that often amount to torture and other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment), such as chemical, physical and other restraints, solitary confinement, denial of basic supports and a lack of

appropriate support and housing options to enable people to leave detention facilities.¹⁵¹

- 3.5.5 Following international and Australian criticism and calls for reform,¹⁵² Australia made a voluntary commitment¹⁵³ at the 2016 Universal Periodic Review (UPR)¹⁵⁴ 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. In 2016 Australian Governments¹⁵⁵ tabled the National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles).¹⁵⁶ As of August 2019, the National Principles have been endorsed by all states and territories, except South Australia.¹⁵⁷ The National Principles are to be implemented by endorsing states and territories in the context of their own legislation, policy and procedures.¹⁵⁸ However, despite endorsement, there remains minimal evidence to demonstrate how the National Principles are effecting any change in practice. The Australian Government has committed to a review of the National Principles in 2024.¹⁵⁹
- 3.5.6 The DRC examined the over-representation of adults and children with disability,¹⁶⁰ including the gross over-representation of First Nations people in the criminal justice system.¹⁶¹ It highlighted research that demonstrated underlying factors for over-representation, such as the criminalisation of disability,¹⁶² poverty, disrupted family backgrounds, family violence, unstable housing and homelessness and “the ongoing impact of colonisation, intergenerational trauma and grief and loss for First Nations people”.¹⁶³ Disturbingly, research found that “the over-representation of First Nations people with mental and cognitive disabilities in the criminal justice system became ‘normalised’ in every community and context investigated”.¹⁶⁴
- 3.5.7 Reports and evidence from other inquiries¹⁶⁵ have noted the disproportionate over-representation of First Nations women and girls in prisons, that the overwhelming majority of First Nations women in prison are survivors of violence, including sexual violence, and that they experience the effects of trauma, disability, poverty and housing insecurity.¹⁶⁶ However, criminal justice systems are largely unresponsive to the unique and specific circumstances of First Nations women.¹⁶⁷
- 3.5.8 The DRC found that “the youngest children in the justice system are most often First Nations children, those with disability, and those involved in child protection systems”.¹⁶⁸ Evidence provided to the DRC highlighted children with fetal alcohol spectrum disorder (FASD) “and those with intellectual or psychosocial disabilities are at particular risk of being held in indefinite detention and are generally overrepresented in the juvenile justice system”.¹⁶⁹
- 3.5.9 Significant evidence was provided to the DRC regarding the ill-treatment of people with disability in adult prisons and juvenile detention facilities, including the lack of reasonable supports, lack of access to medication, medical attention and mental health treatment, and significant experiences of violence, restrictive practices, seclusion and solitary confinement.¹⁷⁰
- 3.5.10 Other investigations have found that there is a lack of gender-specific measures in women’s correctional facilities, including correctional facilities based on male maximum security prisons, the use of strip searches despite the availability of body scanners, the lack of provision of sanitary items, the inconsistency in delivering

cultural support and activities for First Nations women, the inconsistency in female staff availability and lack of appropriate communication and face-to-face settings for women with cognitive disability and those with low literacy.¹⁷¹

- 3.5.11 Investigations and media reports have found that children with disability in juvenile detention facilities are restrained with handcuffs, leg shackles and spit hoods, strip-searched, subject to excessive use of force by youth detention officers and subject to sexual assault by other detainees and youth detention officers.¹⁷² Children with disabilities, many of whom are First Nations children, continue to be held in deplorable conditions and subject to restraint in adult detention centres and adult watch houses, including being placed in isolation for weeks.¹⁷³ In Queensland, the indefinite detention of children in adult police watch houses has been facilitated by legislation that overrides the Human Rights Act 2019 (QLD).¹⁷⁴
- 3.5.12 The DRC examined Australia’s human rights obligations under international law, state and territory human rights law, and anti-discrimination law in relation to criminal justice and the rights of people with disability.¹⁷⁵ Despite these obligations, and numerous recommendations from other Royal Commissions, independent inquiries and parliamentary inquiries,¹⁷⁶ the evidence overwhelmingly demonstrates that significant violations of human rights, including indefinite detention and violations that constitute torture and ill-treatment continue to be experienced by people with disabilities in forensic mental health units, forensic disability units or psychiatric hospitals and adult prisons and juvenile detention facilities.
- 3.5.13 The ongoing disturbing evidence regarding the situation of adults and children with disability, particularly First Nations people in the criminal justice system, and the lack of implementation of recommendations from numerous previous inquiries makes it imperative that the DRC recommendations do not become part of the “inquiry mentality, in which investigation is allowed as substitution for action, and reporting is accepted as a replacement for results”.¹⁷⁷ Urgent and concerted action is required.
- 3.5.14 We generally support the DRC recommendations in relation to the criminal justice system,¹⁷⁸ but we argue that a number of these recommendations need to be strengthened. We also believe that these recommendations do not go far enough, and there needs to be additional action to address indefinite detention and the over-representation of people with disability in the criminal justice system. In this context, we make the following points:
- In relation to monitoring under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),¹⁷⁹ we strongly support all recommendations in the Final Report – recommendations 8.2 and 11.6-11.11 – and consider that these recommendations should be implemented as a matter of priority.
 - In relation to raising the age of criminal responsibility – recommendation 8.22 – we strongly support this recommendation and consider that it should be implemented as a matter of priority.

- The prohibition of solitary confinement in youth detention – recommendation 8.3 – is supported in principle. The definition of solitary confinement as being “enforced isolation or segregation... for 22 or more hours in any day”¹⁸⁰ is the same for adult prisoners and youth detainees, some as young as 10 years of age.¹⁸¹ While this definition is consistent with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),¹⁸² further discussion is required to refine this recommendation for more clarity and stricter safeguards to respond to probable histories of child trauma, abuse and neglect and to the specific development, health and well-being needs of children.¹⁸³
- Screening and assessment for disability in youth detention - recommendation 8.4 – is supported in principle. However, we do not agree that screening and assessment should be limited to children with cognitive disability. Evidence demonstrates that there is a lack of disaggregated data on disability in youth detention,¹⁸⁴ although available evidence indicates that children and young people in detention are more likely to have cognitive disability, psychosocial disability and unidentified hearing impairment¹⁸⁵ as well as multiple impairments. All children and young people should receive screening and assessment in order to ensure that the necessary reasonable adjustments and appropriate therapeutic and/or disability supports are identified and delivered.
- WWDA argues that implementation of the National Principles – recommendation 8.12 – is a weak mechanism to address the indefinite detention of people with disability, particularly given there is no evidence that the National Principles have been able to effectively address this issue to date. Both the CRPD Committee and the Committee on the Rights of the Child (CRC Committee) have called on Australia to end the practice of indefinite detention,¹⁸⁶ and relying on non-binding National Principles and buy-in from states and territories to achieve this is problematic and ineffective. While the proposed inclusions to revised National Principles, as outlined in this recommendation are important, there needs to be greater focus on actions that compel governments to repeal laws that allow for indefinite detention.
- The CRPD Committee has stipulated that detention on the basis of ‘unfitness to stand trial’ or ‘non-responsibility’ declarations are contrary to article 12 (see section 3.2 above) and article 14 and should be removed from the criminal justice system.¹⁸⁷ People with disability should be provided with necessary and appropriate supports, including supported decision-making, reasonable accommodation and procedural accommodations to facilitate their effective participation in judicial proceedings.¹⁸⁸ The DRC recommendation to amend legislation on fitness to stand trial – recommendation 8.12 – is provided in the context of alignment with the National Principles. However, amendments to legislation should ensure alignment with the CRPD.¹⁸⁹

- While the DRC examined the issue of supports and assistance that could be provided to people with disability to facilitate their effective participation in judicial proceedings,¹⁹⁰ there were no recommendations for the development and resourcing of support and assistance programs, such as the Disability Justice Support Program.¹⁹¹ Along with supported decision-making mechanisms (see section 3.2 above), gender, age and culturally appropriate support and assistance programs need to be established and implemented to facilitate access to justice on an equal basis with others (CRPD article 13), to enable the exercise of legal capacity (CRPD article 12), and to avoid ‘unfit to plead’ declarations and the trajectory to indefinite detention (CRPD article 14).
- There needs to be concerted effort to address the over-representation of people with disability, particularly First Nations people with disability in the criminal justice system. The overwhelming evidence¹⁹² of cumulative disadvantage that underpins the criminalisation of disability urgently requires early, intensive and gender, age and culturally appropriate coordinated support from multiple agencies and sources as well as the redirection of investment in criminal justice responses to investment in addressing economic, social and cultural disadvantage.¹⁹³
- We note the numerous recommendations made from other relevant inquiries and reports.¹⁹⁴ There needs to be an analysis of these recommendations to ensure that, in combination with the DRC recommendations, a full suite of recommendations is implemented to address the situation of people with disability.
- We note that the Australian Human Rights Commission (AHRC) is currently conducting a project that is investigating youth justice system reforms and child well-being across Australia.¹⁹⁵ There needs to be close engagement between the work undertaken in this project and the implementation of DRC recommendations.

Preliminary Recommendations

- Implement DRC recommendations in relation to OPCAT – recommendations 8.2 and 11.6-11.11 – as a matter of priority.
- Implement DRC recommendation 8.22, Age of criminal responsibility as a matter of priority.
- Review recommendation 8.3, Prohibiting solitary confinement in youth detention to ensure greater clarity and stronger safeguards to respond to histories of child trauma, abuse and neglect and to the specific development, health and well-being needs of children.
- Review recommendation 8.4, Screening and assessment for disability in youth detention to ensure that it applies to all children and young people.

- In line with the CRPD, amend and/or repeal all state, territory and federal legislation that limits the legal capacity of persons with disability allowing them to be indefinitely detained and guarantee access to justice on an equal basis with others throughout judicial proceedings. This action should be mandatory, irrespective of endorsement and implementation of the National Principles.
- Establish and implement supported decision-making mechanisms and gender, age and culturally appropriate support and assistance programs to facilitate access to justice (CRPD article 13), to enable the exercise of legal capacity (CRPD article 12), and to avoid ‘unfit to plead’ declarations and the trajectory to indefinite detention (CRPD article 14).
- Develop and implement a national disability justice strategy to address the over-representation of people with disability, particularly First Nations people with disability in the criminal justice system that includes comprehensive measures to prevent and respond to the criminalisation of disability, such as establishing justice reinvestment strategies¹⁹⁶ and intensive and gender, age and culturally appropriate coordinated support from multiple agencies.
- Undertake an analysis of recommendations from previous inquiries and reports¹⁹⁷ to ensure that, in combination with the DRC recommendations, a full suite of recommendations is implemented to address the situation of people with disability in the criminal justice system.
- Ensure close engagement with the Australian Human Rights Commission (AHRC) investigation into youth justice system reforms and child well-being across Australia.

3.6 End discrimination against migrants and refugees with disability

- 3.6.1 Australia’s migration laws discriminate against people with disability or health issues applying to enter Australia.¹⁹⁸ People with disability, and families who have members with disability, consistently have their visa applications denied because they are unable to meet the strict health requirement under the Migration Act 1958 (Cth).¹⁹⁹ An individual or family could have been living in Australia for many years, contributing to the economic and social life of the community, yet could be deported because of a failure to meet the health requirement.²⁰⁰
- 3.6.2 In its examination of this issue, the DRC observed that the “blanket exemption” provided by section 52 of the Disability Discrimination Act 1992 (Cth) (DDA) in relation to the Migration Act 1958 (Cth), the Migration Regulations 1994 (Cth) and “decisions about visas to enter and remain in Australia” meant that protections against discrimination and the objectives of non-discrimination contained in the DDA do not apply.²⁰¹ The DRC noted similar findings and recommendations from the Productivity Commission²⁰² in 2004 and the 2010 report from the House of Representatives Joint Standing Committee on Migration’s inquiry into the Migration Treatment of Disability.²⁰³

- 3.6.3 The Special Rapporteur on the human rights of migrants raised concerns about Australia’s health requirement and recommended that section 52 of the DDA should be repealed.²⁰⁴ The CRPD Committee recommended in 2019 that Australia remove the exemption in the DDA in relation to the Migration Act 1958 (Cth) and amend migration laws and policies to eliminate discrimination in migration and asylum policies and procedures.²⁰⁵ In 2021, in its consideration of the case *Sherlock v Australia*, the CRPD Committee found that the health criteria discriminated against people with disability in contravention of articles 5 and 18 of the CRPD.²⁰⁶
- 3.6.4 Despite this evidence, the DRC only recommended a review of the operation of section 52 of the DDA - recommendation 4.31 - rather than removal of the exemption, and consideration of “changes to legislation and migration practices to eliminate or minimise the discrimination”.²⁰⁷ WWDA does not consider that a review is warranted given the evidence that section 52 facilitates discrimination.
- 3.6.5 Australia’s current legislative and administrative framework to processing visa applications of people with disability is preserved by the interpretative declaration on article 18 of the CRPD.²⁰⁸ The interpretative declaration should be removed to facilitate reform as recommended by the CRPD Committee.²⁰⁹
- 3.6.6 Asylum seekers and/or people with disability living in Australia on non-permanent visas are ineligible to access the National Disability Insurance Scheme (NDIS) as they do not meet residency requirements.²¹⁰ The Age and Disability Support Pensions have a 10-year qualifying residence period,²¹¹ leaving migrants with disability at an increased risk of poverty and a range of human rights violations under the CRPD.²¹²
- 3.6.7 Australia’s asylum seeker laws, policies and practices have resulted in institutionalised, severe and routine violations of the prohibition on torture and ill-treatment; have subsequently been found to create serious physical and mental pain and suffering; and continue to cause life-long impairments and health conditions.²¹³

Preliminary Recommendations

- Withdraw Australia’s interpretative declaration on article 18 of the CRPD.
- Remove the exemption in the DDA in relation to the Migration Act 1958 (Cth) and amend migration laws and policies to eliminate discrimination in migration and asylum policies and procedures.
- Implement the recommendations set out by *Welcoming Australia*²¹⁴ in its Position Statement on Migration and Disability²¹⁵ and its submission²¹⁶ to the Department of Home Affairs’ Review of Australia’s visa Significant Cost Threshold (SCT).²¹⁷
- Remove the 10-year qualifying period for migrants to access the Age and Disability Support Pensions and ensure asylum seekers and/or people with disability living in Australia on non-permanent visas can access the NDIS.
- Conduct an independent inquiry into the asylum seeker laws, policies and practices, including mandatory immigration detention.

3.7 Urgently address the over-representation of people with disability living in poverty and ensure an adequate standard of living and social protection

- 3.7.1 The DRC did not address the interface between poverty, disability and violence. However, there is sufficient evidence that demonstrates that poverty can be considered a form of violence because it involves structural and systemic inequalities that prevent enjoyment of all human rights and fundamental freedoms, including the right to be free from exploitation, violence and abuse.²¹⁸
- 3.7.2 Poverty has various manifestations, including “lack of income and productive resources, hunger and malnutrition, ill-health, limited access to education and other basic services, homelessness and inadequate housing, unsafe environments, and social discrimination and exclusion”.²¹⁹ Strong social protection systems²²⁰ are essential for mitigating the effects of, and preventing people from falling into, poverty.²²¹
- 3.7.3 There is minimal sex and disability disaggregated data, however it is recognised that people with disability, particularly women with disability throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society.²²² Depending on the measure of poverty used, data demonstrates that people with disability in Australia experience an above-average risk of poverty;²²³ that 45% of people with disability live in poverty, more than double the OECD average of 22%;²²⁴ that the rate of poverty among adults with disability is between 17%-20% depending on the level of ‘core activity limitation’;²²⁵ that the poverty rate for people reliant on Disability Support Pension was higher at 43%;²²⁶ that one-third or 33% of adults in poverty had disability;²²⁷ and 11.2% of people with disability experience deep and persistent disadvantage, more than twice the national prevalence.²²⁸
- 3.7.4 The poverty rate is significantly higher for First Nations peoples with disability.²²⁹ Evidence provided to the current Senate inquiry, ‘The extent and nature of poverty in Australia’²³⁰ has highlighted “the enduring legacy of colonisation” as a causal factor for First Nations people being “amongst the most profoundly disadvantaged and at risk of poverty”.²³¹ The Senate inquiry received evidence that:
- “disproportionally high rates of poverty among Aboriginal and Torres Strait Islander people take place against a background of structural impediments to full participation in the Australian economy and are evidenced across multiple drivers and measures of inequality. Poverty is reinforced and entrenched by ongoing experiences of structural and interpersonal racism, discrimination, dispossession of culture, land and language, and intergenerational trauma.”²³²
- 3.7.5 People with disability generally have a significantly lower level of personal income than people without disability.²³³ Government pensions are the main source of personal income for 43% of people with disability of working age compared to 7.9% of non-disabled persons of working age.²³⁴ The labour force participation²³⁵ rate for people with disability has remained largely unchanged from 2003 (53%) to 2018 (53.4%).²³⁶ In contrast, the labour force participation rate for people without disability increased from 63.6% in 2003 to 84.1% in 2018.²³⁷ Income,

welfare and taxation systems in Australia do not recognise the significant costs of disability that people with disability incur throughout their lifetime.²³⁸

- 3.7.6 The right to an adequate standard of living includes the right to adequate housing, which includes certain critical aspects - security of tenure, availability, affordability, habitability, accessibility, location and cultural adequacy.²³⁹ Yet, lack of access to appropriate, available, accessible and affordable housing is a major factor contributing to the poverty of many people with disability in Australia. People with disability are substantially over-represented in public housing; are less likely to own their own homes than non-disabled persons; are in the lowest income earning bracket yet pay the highest level of their gross income on housing; and are over-represented in the main factors that increase the risk of homelessness.²⁴⁰ Older women, including older women with disability were the fastest growing cohort of homeless people in Australia between 2011 and 2016, increasing by 31%.²⁴¹
- 3.7.7 Several of these issues were examined by the DRC.²⁴² We support the recommendations in the Final Report regarding these issues: include people with disability in national housing and homelessness agreements and planning;²⁴³ include homelessness in Australia's Disability Strategy;²⁴⁴ increase the supply of accessible housing through the National Construction Code;²⁴⁵ increase access to social housing;²⁴⁶ increase tenancy and occupancy protections;²⁴⁷ improve regulatory oversight in supported accommodation settings;²⁴⁸ and improve responses to homelessness.²⁴⁹
- 3.7.8 However, more action needs to be taken to research and assess the specific situation of women with disability in relation to poverty, social protection, housing and homelessness, as well as for other groups of people with disability, including children, older persons, First Nations peoples, LGBTIQ+ people and people with disability from culturally and linguistically diverse backgrounds.

Preliminary Recommendations

- Develop a disability-inclusive National Poverty Reduction Plan, with specific priority actions for First Nations peoples, recognition of intersectionality and linkages with other national plans, such as the National Disability Strategy, Closing the Gap, and the National Strategy to Achieve Gender Equality.²⁵⁰
- Review the Final Report from the Senate Community Affairs References Committee inquiry into the extent and nature of poverty in Australia and incorporate recommendations into the National Poverty Reduction Plan.
- Implement the recommendations from the Senate Community Affairs References Committee inquiry into the purpose, intent and adequacy of the Disability Support Pension (DSP).²⁵¹
- Raise the rate of income support payments in line with recommendations from the Australian Council of Social Services (ACOSS).²⁵²
- Urgently address the lack of appropriate, available, accessible and affordable housing for people with disability, including by implementing the DRC recommendations 7.33–7.40.

- Undertake disability-inclusive research to assess the specific situation of women with disability in relation to poverty, social protection, housing and homelessness, as well as for other groups of people with disability, including children, older persons, First Nations peoples, LGBTIQ+ people and people with disability from culturally and linguistically diverse backgrounds.

3.8 Ensure effective participation of people with disability including through their representative organisations in all matters that affect them

- 3.8.1 Participation is a core human rights principle and a basic condition of democratic societies.²⁵³ Effective, meaningful and active participation of people with disability is at the core of the CRPD, in particular through the obligations required under article 4(3), General obligations and article 33(3), National implementation and monitoring.
- 3.8.2 Article 4(3) enshrines the obligation to “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations” in the development of laws, policies and decision-making processes.²⁵⁴ Article 33(3) enshrines the obligation to ensure full involvement and participation of people with disability and their representative organisations in the CRPD monitoring process.²⁵⁵ These obligations are cross-cutting, which means they must be applied in all implementation and monitoring processes aimed at realising the rights of people with disability. Through these obligations, the CRPD recognises that people with disability are the main interlocutors in CRPD implementation and monitoring, and that priority should always be given to the opinions of people with disability including through their representative organisations in all matters that affect them.²⁵⁶
- 3.8.3 The CRPD Committee provides guidance on the interpretation of articles 4(3) and 33(3) in its General Comment No. 7. The CRPD Committee emphasises that organisations of people with disability “can only be those that are led, directed and governed by persons with disabilities” (emphasis added),²⁵⁷ and has clarified that these organisations “should be distinguished from organisations ‘for’ persons with disabilities”,²⁵⁸ such as service providers, carer organisations or professional associations. Organisations of people with disability²⁵⁹ “that focus primarily on advocacy for disability rights” should be prioritised in resource allocation for consultation processes,²⁶⁰ and public resources should be increased “for the establishment and strengthening of organisations of persons with disabilities”²⁶¹ for representation and advocacy. There should be an enabling policy framework favourable to establishment and sustained operation of organisations of people with disability.²⁶²
- 3.8.4 However, in Australia there are no permanent or effective mechanisms to ensure the active, full and meaningful participation of people with disability, including children with disability through their representative organisations in all stages of the implementation and monitoring of the CRPD and other decision-making processes that affect the lives of people with disability.²⁶³ Open competitive tendering, short term

funding contracts, inflexible funding guidelines and no guarantees of operational funding for more than two years at a time, continue to position organisations of people with disability in a precarious and thoroughly unsustainable position.

- 3.8.5 Following the 2019 review of Australia, the CRPD Committee recommended in relation to article 4(3) that “formal and permanent mechanisms” be established:

“to ensure the full and effective participation of persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation and policies to implement the Convention, ensuring adequate resources and the provision of the necessary support.”²⁶⁴

- 3.8.6 In relation to article 33(3), The CRPD Committee recommended that Australia:

“Establish a formal mechanism and ensure sustainable and adequate funding for the meaningful engagement of persons with disabilities and their representative organizations in the implementation and monitoring of the Convention.”

- 3.8.7 In its examination of article 4(3), the DRC noted that Professor Ron McCallum, the former Chair of the CRPD Committee had observed that Australia was not in compliance with the CRPD.²⁶⁵ It concluded, that despite recent initiatives,²⁶⁶ “people with disability are currently not sufficiently involved in government decision-making processes and the development of laws and policies affecting them”.²⁶⁷ The DRC recommended that Commonwealth entities be legally required to consult with people with disability when developing and evaluating policies, laws and programs, and in planning new initiatives or making major changes to services – recommendation 4.11.²⁶⁸

- 3.8.8 While we support this recommendation in principle, it is not in itself sufficient to address the need for a formal and permanent mechanism that would adhere to articles 4(3) and 33(3) of the CRPD, including by ensuring that the views of people with disability and their representative organisations are given priority in CRPD implementation and monitoring. The current recommendation appears to place consultation with people with disability and their representative organisations on par with consultation with other entities and families, carers and supporters of people with disability,²⁶⁹ disregarding the distinction made between organisations ‘of’ and organisations ‘for’ people with disability. To refine and agree on this recommendation, further consultation with people with disability and their representative organisations is required.

- 3.8.9 This recommendation is also discussed in terms of “a system for voluntary registration” of “organisations that are truly representative of people with disability”, and an approval process for such organisations “against established criteria”.²⁷⁰ This proposal requires much more discussion and consultation with organisations of people with disability before support can be provided.

- 3.8.10 In addition, we are concerned that terminology that is defined in one way by the

DRC, appears to be used interchangeably throughout the Final Report creating confusion about when it is actually referring to organisations of people with disability – those that are led, directed and governed by people with disability. In particular, the term, ‘disability representative organisation (DRO)’ is defined as “[a] peak organisation providing systemic advocacy and representation for people with disability” (emphasis added) and the term, ‘disabled people’s organisation (DPO)’ is defined as “[a]n organisation where the majority of members, as well as those on the governing body are people with disability”.²⁷¹ While the term ‘DPO’ reflects the definition of ‘representative organisations’ or ‘organisations of persons with disabilities’ outlined in General Comment No. 7, the term ‘DRO’ reflects the definition used by the Department of Social Services (DSS) for its National Disability Representative Organisations program – a “program to provide systemic advocacy and representation for Australians with disability” (emphasis added).²⁷²

- 3.8.11 Throughout the Final Report and its recommendations, the interchangeable use of this terminology runs the serious risk of the DRC Taskforce and other key stakeholders misunderstanding the content and recommendations of the DRC and inferring that “people with disability through their representative organisations”²⁷³ are not necessarily the main interlocutors in CRPD implementation and monitoring. Terminology should reflect the definition of ‘representative organisations’ or ‘organisations of persons with disabilities’ (OPDs) outlined in General Comment No. 7, including reflecting the distinction between ‘organisations of people with disability’ and ‘organisations for people with disability’.²⁷⁴

Preliminary Recommendations

- Co-designed with people with disability through their representative organisations, and in line with articles 4(3) and 33(3) of the CRPD, establish a formal, permanent, and adequately resourced national OPD/DPO²⁷⁵ Implementation and Monitoring Committee to ensure close consultation and active involvement of people with disability in the implementation and monitoring of the CRPD and other decision-making processes.
- Review funding arrangements of organisations of people with disability (OPDs/DPOs) to ensure adequate, long-term, sustainable funding that is inclusive of funding for systemic advocacy, representation, capacity building and research and that recognises the increase in activities associated with recent review processes, including the DRC and the NDIS review.
- Review DRC recommendation 4.11, Consultation with people with disability to ensure it recognises the priority role of people with disability and their representative organisations in consultation processes in line with the CRPD Committee’s general comment no.7.
- Undertake further consultation with people with disability through their representative organisations in relation to the proposed ‘system for voluntary registration’ and associated ‘approval process’.
- Ensure that the DRC Taskforce and other key stakeholders analysing and implementing DRC recommendations do not misunderstand the interchangeable use of the terminology ‘DPO’ and ‘DRO’ in the Final Report as inferring that people with disability through their representative organisations are not the main interlocutors in CRPD implementation and monitoring, and that they understand the distinction between organisations of people with disability and organisations for people with disability.

3.9 Implement a Disability Royal Commission Redress and Reparation Scheme

- 3.9.1 In 2019, following Australia’s review, the CRPD Committee recommended that “adequate resources and a redress mechanism” be ensured for the DRC.²⁷⁶ In its 2020 Interim Report, the DRC observed that “it is clear that the question of redress, including compensation for serious harm, is worthy of further investigation”.²⁷⁷ It proposed to investigate “whether it is feasible to establish a scheme to compensate people with disability who have sustained serious harm from violence, abuse, neglect or exploitation in circumstances where no other redress is available to them”.²⁷⁸
- 3.9.2 However, while the issue of redress was raised throughout a number of public hearings,²⁷⁹ we are extremely disappointed that the DRC did not conduct specific public hearings, prepare issues papers or commission research on the feasibility of a national redress and reparation scheme. The Final Report of the DRC confined its discussion and recommendations on redress to disability services, with a focus on the provision of redress by individual NDIS providers²⁸⁰ and the development of universal guidelines for inclusive and responsive complaint handling processes.²⁸¹ These are important areas, but they fall far short of a systemic, overarching approach to providing redress and reparation to people with disability, including the many people with disability who provided evidence to the DRC about experiences of violence, abuse, neglect and exploitation in almost every aspect of their lives and throughout different life stages.²⁸²
- 3.9.3 As outlined throughout the Final Report of the DRC, failures in law, policy and practice across a broad range of systems have facilitated, and in many cases authorised breaches of human rights constituting violence, abuse, neglect and exploitation, which have led to unresolved trauma and distress, long-term effects on physical and mental health, loss of hope and distrust of professionals, support systems and support workers. In the face of the evidence, it is bewildering that there is not a recommendation for the establishment of a national redress and reparation scheme.
- 3.9.4 International human rights law provides for the right to a remedy for human rights violations.²⁸³ The International Covenant on Civil and Political Rights (ICCPR) requires access to an effective remedy that is enforceable, including compensation and rehabilitation for specific rights violations, such as deprivation of liberty and unlawful detention.²⁸⁴ Article 14 of the Convention Against Torture (CAT) outlines the duty to ensure victims of torture obtain redress and have access to “an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.²⁸⁵ Article 16 of the CRPD, Freedom from exploitation, violence and abuse requires “appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration” of victims/survivors of violence, and that such measures respond to gender- and age-specific needs.²⁸⁶
- 3.9.5 In relation to gender-based violence, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has emphasised the need to provide effective reparations, such as compensation, the provision of legal, social and health services, and guarantees of non-repetition, as well as to adequately fund

transitional justice mechanisms to address individual, institutional and structural injustices.²⁸⁷ In its General Comment No. 3 on women and girls with disabilities, the CRPD Committee has emphasised the duty to provide access to redress and reparations where human rights violations, including violence has occurred.²⁸⁸

- 3.9.6 The CRPD Committee’s guidelines on the right to liberty and security affirm the need to ensure access to justice, reparation and redress for people with disability deprived of their liberty on the basis of impairment.²⁸⁹ The CRPD Committee’s guidelines on deinstitutionalisation also affirm the need for remedies, reparations and redress to respond to the multiple violations of CRPD rights caused by institutionalisation.²⁹⁰ The guidelines emphasise individual, structural and collective remedies, such as formal apologies, compensation, rehabilitation, legal prohibitions against disability-based detention, institutionalisation and disability-related torture and ill-treatment and truth commissions. All remedies “should be designed and implemented with the consultation and involvement of persons with disabilities, particularly survivors of institutionalisation”.²⁹¹
- 3.9.7 The right to redress is set out in the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (the ‘Van Boven Principles’).²⁹² Specifically, the Van Boven Principles provide that remedies for gross human rights violations include the victim’s right to ‘equal and effective access to justice’; ‘adequate, effective and prompt reparation for harm suffered’; and ‘access to relevant information concerning violations and reparation mechanisms’.²⁹³
- 3.9.8 As well as providing just outcomes in terms of remedies, there should also be the provision of accessible justice processes. Article 13 of the CRPD requires “effective access to justice for persons with disabilities on an equal basis with others”,²⁹⁴ and this is elaborated further in the guidance, International Principles and Guidelines on Access to Justice for Persons with Disabilities.²⁹⁵ International human rights “emphasise the importance of equal access to remedies through the courts and justice systems, as well as access to redress beyond what is provided by law and through the courts”.²⁹⁶ This is particularly significant in relation to violence, abuse, neglect and exploitation that violates international human rights but is “beyond the scope of court-based remedies, such as violence that is lawful under domestic law or is of a historical nature”.²⁹⁷
- 3.9.9 The DRC provides a significant “opportunity for healing and a real step towards justice for people with disability”, as noted by the Chair of the DRC, Commissioner Hon Ronald Sackville AO QC.²⁹⁸ To seize this opportunity, it is critical that the evidence provided to the DRC lead to the establishment of a national redress and reparations scheme.
- 3.9.10 A national redress and reparations scheme, co-designed with people with disability through their representative organisations, is needed to respond to individual, structural and collective injustice that facilitate violence, abuse, neglect and exploitation of people with disability. It would provide a broad range of remedies, such as compensation, truth-telling, individual and collective apologies, rehabilitation, and commitments to legal and policy reform. Importantly, it would also enable the community, governments and service and legal systems to confront, acknowledge

and take responsibility for the harm caused and to begin the process of healing and providing justice.²⁹⁹

- 3.9.11 There is a dearth of research and practical examples to draw upon in relation to redress and reparations for people with disability in Australia. However, the National Redress Scheme for people who have experienced institutional child sexual abuse³⁰⁰ was established in response to the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse,³⁰¹ and this scheme provides specific support to people with disability.³⁰² There are also a number of redress schemes for Stolen Generation survivors, including those with disability, in the Northern Territory (NT), Australian Capital Territory (ACT) and Jervis Bay Territory, in New South Wales (NSW) and Victoria (VIC)³⁰³ that have been established over the past decade. The National Redress Scheme and the redress schemes for Stolen Generation survivors only operate at the individual level and don't address broader reparations.
- 3.9.12 Some recent Australian research has specifically examined redress and reparations for specific groups of people with disability. Following the Royal Commission into Victoria's Mental Health System,³⁰⁴ a 'lived experience-led' project³⁰⁵ was commissioned to provide advice to the Minister for Mental Health on options for acknowledging the harm caused by the mental health system to people with psychosocial disability. The advice to the Minister detailed six options for consideration: political (or state-based) apologies; truth and reconciliation processes; individual material reparations; collective material reparations; symbolic reparations; and guarantees of non-repetition.³⁰⁶ It made 2 recommendations "informed by the principles of restorative justice, transitional justice, mad studies, human rights, critical pedagogy, relationality, critical approaches to violence and First Peoples' calls for justice on this continent":³⁰⁷ firstly, for the Mental Health and Wellbeing Commission to undertake a truth and reconciliation process, or a Restorative Justice process; and secondly, for the Victorian Government to formally apologise to those communities identified in the Restorative Justice Process report.³⁰⁸
- 3.9.13 Another disability-inclusive research project, the Dementia Redress Project³⁰⁹ was undertaken following the Royal Commission into Aged Care Quality and Safety³¹⁰ and the omission of recommendations for redress and reparations for harm caused to people living in residential aged care. The project has resulted in the Dementia Reparations Principles to guide the design and operation of reparations for people with dementia,³¹¹ and a project report.³¹² Together, the principles and project report "provide a conceptual framework and evidence-base for developing reparative approaches... to equal access to justice and remedies for people with disability and older people".³¹³ The principles and project report were shared with the DRC.

Preliminary Recommendations

- Consistent with international human rights obligations, the Van Boven Principles, and the International Principles and Guidelines on Access to Justice for Persons with Disabilities, the Australian Government establish a National Disability Royal Commission Redress and Reparation Scheme co-designed with people with disability and their representative organisations and drawing on 'lived experience-

led' and disability-inclusive research.

3.10 Embed human rights of people with disability into law and policy

- 3.10.1 International human rights treaties provide an agreed set of standards and principles for the realisation of all human rights and fundamental freedoms for all people, including people with disability. By ratifying a human rights treaty, a country voluntarily accepts binding legal obligations under international law regarding human rights.
- 3.10.2 Australia has ratified seven core international human rights treaties.³¹⁴ Australia has also formally endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)³¹⁵ - an international non-binding human rights instrument that “establishes a universal framework of minimum standards for the survival, dignity and well-being” of the world’s Indigenous peoples and it outlines how existing human rights standards and fundamental freedoms apply to Indigenous peoples, including First Nations people in Australia.³¹⁶
- 3.10.3 In Australia, ratification of a treaty, or endorsement of non-binding declarations does not mean automatic incorporation of these rights into domestic law. This requires the enactment of laws by the Australian, state and territory parliaments in order for the rights to be binding and directly enforced by Australian courts and tribunals.³¹⁷ This means that “people’s basic human rights are not very well protected in Australian law”.³¹⁸
- 3.10.4 In its examination, the DRC concluded that despite many positive legal, policy and programmatic measures,³¹⁹ Australia takes a piecemeal approach to implementation of disability rights that has not prevented violence, abuse, neglect and exploitation of people with disability.³²⁰ The DRC recommended that the Australian Government commit to the enactment of a Disability Rights Act (DRA) – recommendation 4.1 – to “clearly articulate the human rights of people with disability in Commonwealth law”³²¹ in line with the CRPD.
- 3.10.5 While WWDA agrees that the international human rights of people with disability should be incorporated into domestic law, we hold the position that this should be achieved through a national Human Rights Act. This position is long-standing and has been provided to the DRC through our written submissions and formal evidence during DRC public hearings and is consistent with other organisations of people with disability, disability representative organisations and disability advocacy organisations over many years.³²² Most recently, this position has been provided in submissions to the Parliamentary Joint Committee on Human Rights (PJCHR) for its inquiry into Australia’s Human Rights Framework,³²³ with many disability organisations³²⁴ supporting the model for a National Human Rights Act provided by the Australian Human Rights Commission as part of its five-year long project, Free and Equal.³²⁵
- 3.10.6 There are several reasons why WWDA supports a national Human Rights Act, such as the one proposed by the AHRC:
- Implementation of the international human rights treaties and declarations

should not be a mutually exclusive exercise. These treaties and declarations create a holistic framework of rights protection that are universal and inalienable, inter-related, indivisible and interdependent. Together, they provide the framework to delineate the obligations and responsibilities of governments and other duty-bearers to comprehensively promote and protect the human rights of all people with disability in all our diversity. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Implementing a stand-alone DRA reinforces the piecemeal approach to human rights protection for people with disability.

- There are already inconsistencies and fragmentation in Australia's existing anti-discrimination framework, which should not be mirrored by a stand-alone DRA. Other population groups, or groups that may not be covered by a DRA will potentially argue for other separate Acts, which only replicates existing inconsistencies and fragmentation.
- As outlined in the Final Report,³²⁶ many people with disability experience intersectional inequality and discrimination, including women and girls with disability, children with disability, older people with disabilities, First Nations people with disability, LGBTIQ+ people with disability and people with disability from culturally and linguistically diverse backgrounds. While the proposed DRA contains some clauses relevant to intersectionality in a few sections, it does not provide the broadest scope for protection against intersectional inequality and discrimination that would be found in a national Human Rights Act.
- A comprehensive national Human Rights Act would incorporate civil and political rights and economic, social and cultural rights. While human rights laws in Victoria, Queensland and the ACT predominantly protect civil and political rights, the evidence of poverty and cumulative economic and social disadvantage that was provided to the DRC demonstrates a critical need for the protection of economic, social and cultural rights. However, the proposed DRA is also predominantly focused on civil and political rights.
- The proposed DRA refers to specific actions for First Nations people with disability in some clauses and requires that the Act be interpreted "as far as possible" with UNDRIP.³²⁷ However, it does not enshrine the specific cultural rights of First Nations people as is proposed by the AHRC.³²⁸

3.10.7 WWDA recognises that there are elements of the proposed DRA that are not included in the AHRC model for a national Human Rights Act but argues that these elements could be assessed for incorporation into a national Human Rights Act. In particular, the DRC recommendation for the inclusion of the right to live free from exploitation, violence and abuse – recommendation 4.7 - should be included in a national Human Rights Act.

3.10.8 Specifically in relation to the right to liberty and security of person – DRC recommendation 4.8 – WWDA is concerned about the implications of the proposed provision which states that, "[n]o person with disability may be deprived of liberty, except on the grounds and in accordance with the procedures established by law".³²⁹ As noted in this submission, people with disability are subjected to lawful deprivation of liberty on the basis of impairment, which constitutes violations of

article 14 of the CRPD, in particular deprivation of liberty through mental health laws and justice diversion provisions (see sections 3.3 and 3.5 above). While the wording of this provision reflects the wording in the ICCPR, and the wording in the AHRC proposal, it does not reflect the wording of the CRPD which states that “the existence of a disability shall in no case justify a deprivation of liberty”.³³⁰ In relation to liberty and security of person, the wording used in a national Human Rights Act should reflect the wording of the CRPD and be interpreted in line with the CRPD Committee guidelines on article 14.

3.10.9 WWDA does not support the establishment of a National Disability Commission – recommendation 5.5 – for several reasons:

- The role and functions of the National Disability Commission (NDC) appear to overlap or duplicate the role and functions of the Australian Human Rights Commission. This will contribute to greater confusion and complexity for people with disability, industry and other stakeholders in accessing information, understanding rights and obligations and in lodging or responding to complaints. There is existing complexity in Australian, state and territory anti-discrimination and rights protection mechanisms, and we do not support this being exacerbated.
- A separate NDC would segregate disability rights from human rights matters addressed by the AHRC. This is a retrograde step in ensuring recognition that disability rights are human rights, and that people with disability through our representative organisations should be included in human rights activities and mechanisms. A separate NDC would mean constant referral of disability rights matters to the NDC, when issues, such as the rights of women and girls with disability need to be addressed holistically and intersectionally with other human rights. This has been a constant and frustrating experience for WWDA in obtaining recognition within both women’s and disability rights policy and law reform processes. In addition, the AHRC would be weakened in its ability to work intersectionally across the various areas of its mandate.
- The AHRC is accredited with the Global Alliance of National Human Rights Institutions (GANHRI) as an A-Status national human rights institution (NHRI).³³¹ This provides recognition and credibility when monitoring and reporting on Australia’s human rights obligations and participating in UN reviews of Australia under human rights treaties. A NDC will not have the breadth of mandate required to be able to attain NHRI status, and the A-Status accreditation of the AHRC would be compromised by the removal of disability rights from its mandate.
- The roles and functions proposed by an NDC could be absorbed by the AHRC with amendments to legislation and the provision of appropriate resources to fulfil an expanded mandate. In this situation, the role of Disability Discrimination Commissioner could be renamed ‘Disability Rights Commissioner’. An expanded disability rights mandate for the AHRC would also support formal recognition and resourcing for independent monitoring of implementation of the CRPD in line with article 33(2).

3.10.10 WWDA generally supports the recommendations to strengthen the Disability Discrimination Act 1992 (DDA) – recommendations 4.22 - 4.34 – but notes our

concerns in relation to recommendation 4.31 outlined in the above section 3.6, End discrimination against migrants and refugees with disability. In relation to recommendations 4.33 and 4.34, we highlight the lack of accuracy in the titles of treaties which creates interpretative ambiguity, and which needs to be addressed. There is reference to “the Disabilities Convention” in recommendations 4.33 and 4.34, reference to “the Convention” in recommendation 4.34 and omission of the work ‘International’ before the Covenant on Civil and Political Rights in recommendation 4.34.

Preliminary Recommendations

- Defer consideration of the DRC recommendation 4.1 for the establishment of a Disability Rights Act until the Parliamentary Joint Committee on Human Rights (PJCHR) has released its report, due on 31 March 2024.
- Integrate DRC recommendations for a Disability Rights Act into a comprehensive, judicially enforceable Human Rights Act that incorporates Australia’s obligations under the CRPD, under other human rights treaties and under UNDRIP.
- Ensure the right to liberty and security of person in a national Human Rights Act is in line with the CRPD.
- Expand the role and functions of the Australian Human Rights Commission (AHRC) and the Disability Discrimination Commissioner (DDC) to include a disability rights mandate, including by designating the AHRC as an independent monitoring mechanism of CRPD implementation in line with article 33(2), and renaming the DDC as Disability Rights Commissioner (DRC).
- Provide appropriate resourcing for the AHRC and the DRC to perform expanded roles.
- Implement recommendations 4.22 - 4.30 and 4.32-4.34 to revise and strengthen the DDA.

ENDNOTES

ENDNOTES

- 1 This reflects obligations under article 4(3) of the CRPD. See section 8 of this submission, Ensure full participation of people with disability including through their representative organisations in all matters that affect them. This overarching recommendation also recognises that analysis and response to the 222 recommendations and the 12 volumes of the Final Report is an extensive and time intensive task, which was not possible to undertake for the purpose of this submission.
- 2 Dr Claire Spivakovsky (The University of Melbourne), Associate Professor Linda Steele (University of Technology Sydney), Associate Professor Dinesh Wadiwel (The University of Sydney), op. cit. See also: Cortis, N., Smyth, C. and Katz, I. (2023). Reducing restrictive practices: A review of evidence based alternatives. Report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Sydney: UNSW Social Policy Research Centre.
- 3 For guidance in repealing or amending mental health legislation, policy and practice, see World Health Organisation, [‘Mental health, human rights and legislation: guidance and practice’](#), Geneva 2023, World Health Organisation and United Nations (represented by the Office of the United Nations High Commissioner for Human Rights).
- 4 For actions and measures to recognise and respect the right to bodily integrity of intersex people, see, the Joint statement by the Australian and Aotearoa/New Zealand intersex community organisations and independent advocates, [‘Darlington Statement’](#) (March 2017). Also see, [Intersex Human Rights Australia](#).
- 5 Australian Human Rights Commission (AHRC), [‘Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics’](#) (October 2021) AHRC 2021.
- 6 Women With Disabilities Australia (WWDA) (2022), ‘Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’, WWDA, Hobart
- 7 Terri Libesman, Paul Gray, Eloise Chandler, Linda Briskman, Aminath Didi and Scott Avery, [‘Parents with Disability and their Experiences of Child Protection Systems’](#) (July 2023) Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- 8 See [National Disability Insurance Agency v WRMF](#) [2020] FCAFC 79. Also see: People with Disability Australia, [‘Landmark decision for the right of people with disability to have sex’](#) (Media release, 12 May 2020); Sara Gingold, ‘Sex and the NDIS: the Case That Has Everyone Talking’ (Website article, 20 May 2020), DSC.
- 9 See e.g., Change the Record, [‘Justice Reinvestment’](#) (Website information).
- 10 See e.g., [Royal Commission into Aboriginal Deaths in Custody](#) (1987-1991); [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) (2016-2017); [Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings](#) (2021-2023); [Inquiry into Incarceration rates of Aboriginal and Torres Strait Islander peoples](#) (Australian Law Reform Commission, 2017); [Inquiry into Indefinite detention of people with cognitive and psychiatric impairment in Australia](#) (Senate Community Affairs References Committee, 2016).
- 11 The Welcoming Disability campaign is coordinated by Australian Lawyers for Human Rights and Down Syndrome Australia.
- 12 Welcoming Disability, [‘Position Statement on Migration and Disability’](#) (2 November 2022), Welcoming Disability campaign.
- 13 Welcoming Disability, [‘Review of Australia’s visa Significant Cost Threshold \(SCT\)’](#) (November 2023), Welcoming Disability campaign.
- 14 Department of Home Affairs, ‘Review of Australia’s visa Significant Cost Threshold (SCT)’ (Website information).
- 15 Department of the Prime Minister and Cabinet, [‘National Strategy to Achieve Gender Equality’](#) (Website information).
- 16 Community Affairs References Committee, [‘Purpose, intent and adequacy of the Disability Support Pension’](#), (Senate Report, February 2022), Commonwealth of Australia.
- 17 See: Australian Council of Social Services (ACOSS), [‘It’s not enough: why more is needed to life people out of](#)

[poverty](#)' (September 2023) ACOSS. See also: Australian Council of Social Service, '[Increase to social security payments grossly inadequate](#)' (Media release, 20 September 2023).

18 Ibid.

19 The Hon Amanda Rishworth MP, The Hon Bill Shorten MP, '[Findings of the Disability Royal Commission](#)', (Media Release, 29 September 2023).

20 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Final Report – Executive Summary, Our vision for an inclusive Australia and Recommendations', (September 2023), Commonwealth of Australia, p. 37.

21 See section 9 of this submission, Implement a Disability Royal Commission Redress and Reparation Scheme. The Interim Report of the DRC stated that there was an intention to investigate 'whether it is feasible to establish a scheme to compensate people with disability who have sustained serious harm from violence, abuse, neglect or exploitation in circumstances where no other redress is available to them.' Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, '[Interim Report](#)' (October 2020), Commonwealth of Australia, p. 258. See also: Committee on the Rights of Persons with Disabilities, Concluding Observations on the Combined Second and Third Periodic Reports of Australia, Adopted by the Committee at Its 511th Meeting (20 September 2019) of the 22nd Session; CRPD/C/AUS/CO/2-3, 15 October 2019, para. 32b.

22 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Final Report – Volume 2 – About the Royal Commission' (September 2023), Commonwealth of Australia, p. 13.

23 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, '[Transcript of Proceedings](#)', (First Public Sitting, 16 September 2019, Brisbane), p. 13.

24 Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 13 March 1976).

25 This reflects obligations under article 4(3) of the CRPD. See section 8 of this submission, Ensure full participation of people with disability including through their representative organisations in all matters that affect them. This overarching recommendation also recognises that analysis and response to the 222 recommendations and the 12 volumes of the Final Report is an extensive and time intensive task, which was not possible to undertake for the purpose of this submission.

26 Disability Representative Organisations (DRO) Position Paper '[Segregation Of People With Disability Is Discrimination And Must End](#)' (September 2020).

27 1 in 5 (20%) students with 'severe or profound' disability attend a special school. Of school students with disability who attend a mainstream school, those with 'severe or profound disability' (21%) are more likely than other students with disability (13%) to go to special classes in a mainstream school (2018). People with disability are more likely than people without disability to leave school early and to have a lower level of education. See: Australian Institute of Health and Welfare (2022) People with disability in Australia 2022: In brief, catalogue number DIS 81, AIHW, Australian Government.

28 Disability Representative Organisations (DRO) Position Paper '[Segregation Of People With Disability Is Discrimination And Must End](#)' (September 2020).

29 Commissioner Andrea Mason, 'Transcript of Proceedings', (First Public Sitting, 16 September 2019, Brisbane), p. 5; See also: Gerard Goggin and Christopher Newell, Disability in Australia – Exposing a Social Apartheid (University of New South Wales Press Ltd, 2005).

30 See e.g., Community Affairs References Committee, '[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, November 2015, Commonwealth of Australia. See also: Human Rights Council (13 July 2021) Accelerating efforts to eliminate all forms of violence against women and girls: preventing and responding to all forms of violence against women and girls with disabilities, Resolution 47/15. See also: Committee on the Rights of the Child and Committee on the Rights of Children with Disabilities, '[Joint Statement - The rights of children with disabilities](#)' (23 August 2021).

31 Committee on Economic, Social and Cultural Rights, 'General comment No. 5: Persons with disabilities', eleventh session (1994), UN Doc E/1995/22 (9 December 1994) para 15; Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Australia, UN Doc E/C.12/AUS/CO/5, paras 55-56. See also: Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, UN Doc No. CRPD/C/GC/4; Committee on the Rights of Persons with Disabilities, General comment No. 5 (2017) on living independently and being included in the community, UN Doc CRPD/C/GC/5;

- Committee on the Rights of Persons with Disabilities, General comment No. 8 (2022) on the right of persons with disabilities to work and employment, UN Doc CRPD/C/GC/8. See also: United Nations Office of the High Commissioner for Human Rights, Human Rights indicators on the Convention on the Rights of Persons with Disabilities. Accessed at: <https://www.ohchr.org/en/disabilities/sdg-crpd-resource-package>
- 32 Women With Disabilities Australia (WWDA), ‘Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’ (December 2022), para 4.24, p. 53.
- 33 Committee on the Rights of Persons with Disabilities, ‘General comment No. 6 (2018) on equality and non-discrimination’, UN Doc: CRPD/C/GC/6 (26 April 2018). See also: Rosemary Kayess and Therese Sands, ‘Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation’ (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report), 2020, p. 9, 25, 29. See also: Prof. Gerard Quinn, Prof. Grainne de Búrca, Prof. Lisa Waddington, Prof. Mark Bell, Prof. Anna Lawson, Prof. Michael Stein, Prof. Titti Mattsson and Prof. Luke Clements, ‘Segregation and segregated facilities as a prima facie form of discrimination. The Impermissibility of using the ESIF to invest monies in long term care residential institutions for persons with disabilities’ (Legal Memo, 17 March 2018).
- 34 See Committee on the Rights of Persons with Disabilities, ‘General comment No. 8 (2022) on the right of persons with disabilities to work and employment’ (7 October 2022) UN Doc: CRPD/C/GC/8; Committee on the Rights of Persons with Disabilities, ‘General comment No. 5 (2017) on living independently and being included in the community’ (27 October 2017) UN Doc: CRPD/C/GC/5; Committee on the Rights of Persons with Disabilities, ‘General Comment No. 4 (2016) on the right to inclusive education’ (25 November 2016) UN Doc: CRPD/C/GC/4; Committee on the Rights of Persons with Disabilities (10 Oct 2022) [Guidelines on deinstitutionalization, including in emergencies](#), (15 August–9 September 2022), UN Doc. CRPD/C/5. See also, Committee on Economic, Social and Cultural Rights (CESCR), ‘General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)’, 7 April 2016, E/C.12/GC/23; Committee on the Elimination of Discrimination against Women [Concluding observations on the eighth periodic report of Australia](#), 25 July 2018, UN Doc. CEDAW/C/AUS/CO/8; Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, [Concluding observations: Australia](#), 1 November 2019, UN Doc. CRC/C/AUS/CO/5-6; Committee on Economic, Social and Cultural Rights (2017) [Concluding observations on the fifth periodic report of Australia](#), 11 July 2017, UN Doc. E/C.12/AUS/CO/5.
- 35 For example: “Article 24 of the CRPD obliges States Parties to transition to a system of fully inclusive education” involving “over the medium-term to long-term the allocation of resources to general schools to support this transition and the eventual abolition of special schools and other forms of segregated education for children with disability”. However, “some aspects of the right are immediately realisable,” meaning “that a number of steps need to be taken immediately including the adoption of a policy, a baseline assessment, the setting of measurable and time-defined goals, and means of monitoring and reviewing progress.” From Professor Andrew Byrnes (2020) [Analysis of article 24 of the convention on the rights of persons with disabilities and its relation to other international instruments](#)’ (Legal Advice for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2020), pp. 1-2.
- 36 Committee on the Rights of Persons with Disabilities, ‘Guidelines on deinstitutionalization, including in emergencies’ (10 October 2022) UN Doc: CRPD/C/5, para 8.
- 37 Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the combined second and third periodic reports of Australia’, 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3; Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-23 September 2013), 21 October 2013, UN Doc CRPD/C/AUS/CO/1.
- 38 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Inclusive education, employment and housing – Summary and recommendations’, (Final Report, Volume 7), p. 9.
- 39 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Inclusive education, employment and housing – Part A’, (Final Report, Volume 7), p. 90
- 40 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Inclusive education, employment and housing – Part B’, (Final Report, Volume 7), p. 461.
- 41 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Inclusive education, employment and housing – Part C’, (Final Report, Volume 7), p. 615.
- 42 Commissioners Galbally, McEwin, Bennett and Mason.
- 43 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Inclusive education,

- employment and housing – Part B’, (Final Report, Volume 7), p. 479.
- 44 The Chair and Commissioners Ryan and Mason.
- 45 The Chair and Commissioner Ryan.
- 46 The Chair and Commissioner Ryan. The Chair’s views were not reflected by a specific recommendation.
- 47 Views of the Chair and Commissioners Ryan and Mason in relation to education in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part A’, (Final Report, Volume 7), p. 92; views of the Chair and Commissioner Ryan in relation to employment in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part B’, (Final Report, Volume 7), p. 462.
- 48 Views of the Chair and Commissioner Ryan in relation to employment in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part B’, (Final Report, Volume 7), p. 518.
- 49 Views of the Chair and Commissioners Ryan and Mason in relation to education in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part A’, (Final Report, Volume 7), p. 93.
- 50 View of Commissioner Ryan in relation to group homes in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part C’, (Final Report, Volume 7), p. 648.
- 51 View of the Chair and Commissioner Ryan in relation to employment in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part B’, (Final Report, Volume 7), p. 519
- 52 View of the Chair and Commissioners Ryan and Mason in relation to education in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part A’, (Final Report, Volume 7), p. 93; view of the Chair and Commissioner Ryan in relation to employment in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part B’, (Final Report, Volume 7), p. 519; view of the Chair in relation to group homes in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., ‘Part C’, (Final Report, Volume 7), p. 651.
- 53 This is central to the human rights model of disability which is enshrined in the CRPD. See Committee on the Rights of Persons with Disabilities, ‘General Comment No. 6 (2018) on equality and non-discrimination’ (26 April 2018), UN Doc CRPD/C/GC/6, paras 8-9.
- 54 CRPD, art. 1.
- 55 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Final Report – Executive Summary, Our vision for an inclusive Australia and Recommendations’, (September 2023), Commonwealth of Australia, p. 37.
- 56 Gerard Quinn, [Personhood & Legal Capacity Perspectives on the Paradigm Shift of Article 12 CRPD](#) (Concept Paper for the Harvard Law School Project on Disability Conference), Cambridge, 20 February 2010) 5.
- 57 As clearly articulated in the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights” (article 1); “Everyone has the right to recognition everywhere as a person before the law” (article 6).
- 58 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 1.
- 59 These principles are outlined in article 3, General principles of the Convention on the Rights of Persons with Disabilities.
- 60 Universal Declaration of Human Rights (UDHR) 1948, UN Doc: A/RES/217A(111), art. 6.
- 61 International Covenant on Civil and Political Rights (ICCPR) 1966, UNTS, vol. 999, p.171, art. 26; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, UNTS, vol. 1249, p. 13, art. 15.
- 62 ‘Parens patriae’ is a Latin term meaning ‘the parent of his or her country’. Pursuant to the common law doctrine ‘the Sovereign has an obligation to protect the interests of those unable to protect themselves, such as protecting the assets of children and ‘lunatics’ [Peter Butt and PE Nygh, Butterworths Encyclopaedic Australian Legal Dictionary (online), ‘parens patriae’]. In practice in common law nations, it involves the crown (or head of state) assuming responsibility for those persons unable to care for themselves, such as children and the “mentally ill”. See: Parliament of Australia [‘The king, the courts and ‘incompetent’ children: the welfare jurisdiction of the Family Court of Australia’](#).

- 63 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 14.
- 64 Ibid, para. 28.
- 65 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Enabling autonomy and access’ (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 115.
- 66 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 17.
- 67 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 122.
- 68 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 27.
- 69 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 123.
- 70 Ibid, p. 191-192.
- 71 Ibid, p. 190. For example, a ‘personal and social wellbeing’ standard could be used to ensure a person receives mental health treatment by using mental health legislation to forcibly detain and treat that person in contravention of their human rights under articles 12, 14 and 17 of the CRPD.
- 72 Ibid, p. 190.
- 73 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, paras. 17, 20, 21, 22, 50(b).
- 74 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 190.
- 75 Ibid, p. 118.
- 76 For a comprehensive discussion of the ‘parens patriae’ jurisdiction, see Women With Disabilities Australia (WWDA) (2020), ‘Our Right to Decide: Equality and Autonomy for Women with Disability’ (Submission on Guardianship and Financial Management to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability), WWDA, Hobart; see also Women With Disabilities Australia (WWDA) (2022), ‘Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’, WWDA, Hobart.
- 77 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 124.
- 78 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 21.
- 79 Convention on the Rights of the Child, (20 November 1989), UNTS, vol. 1577, p. 3, arts. 3 and 12; Convention on the Rights of Persons with Disabilities, (24 January 2007), UN Doc: A/RES/61/106, art. 7.
- 80 Convention on the Rights of Persons with Disabilities, (24 January 2007), UN Doc: A/RES/61/106, art. 3(h).
- 81 Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1, para. 36.
- 82 Convention on the Rights of the Child, (20 November 1989), UNTS, vol. 1577, art. 2(1); see also Committee on the Rights of the Child, ‘General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)’ (29 May 2013), UN Doc: CRC/C/GC/14, Part A, p. 2.
- 83 Convention on the Rights of Persons with Disabilities, (24 January 2007), UN Doc: A/RES/61/106, art. 7(1). See also, Committee on the Rights of the Child and Committee on the Rights of People with Disabilities, [‘Joint Statement – The rights of children with disabilities’](#), 18 March 2022.
- 84 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, Recommendation 6.20, p. 224.
- 85 See e.g., Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) on Equal recognition before the law, (19 May 2014), UN Doc: CRPD/C/GC/1; numerous concluding observations on States Parties, including Australia that state that substitute decision-making must be replaced by supported decision-

making, which respects the person's rights, will and preference.

- 86 See e.g., Special Rapporteur on the Rights of Persons with Disabilities, 'Report of the Special Rapporteur on the rights of persons with disabilities' (Report to the Human Rights Council), thirty-seventh session, 26 February-23 March 2018, UN Doc: A/HRC/37/56, sections 111-VI, pp. 4-20.
- 87 Gerard Quinn, 'An Ideas Paper – Rethinking Personhood: New Directions in Legal Capacity Law & Policy. Or How to Put the 'Shift' back into 'Paradigm Shift' (29 April 2011) Centre for Disability Law and Policy, National University of Ireland, Galway, Ireland; Anna Arstein-Kerslake, 'Legal Capacity & Gender: Realising the Human Right to Legal Personhood and Agency of Women, Disabled Women, and Gender Minorities' (27 January 2022), Springer Cham, Switzerland; Clóna de Bhailís and Eilionóir Flynn, 'Recognising legal capacity: commentary and analysis of Article 12 CRPD', International Journal of Law in Context, Cambridge University Press, Volume 13, Issue 1, March 2017, pp. 6-21.
- 88 Australia, Declarations and Reservations, United Nations Treaty Collection, Chapter IV-Human Rights, Part 15 Convention on the Rights of Persons with Disabilities, accessed online: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&clang=_en#EndDec
- 89 "Restrictive practices include, but are not limited to, chemical, mechanical, physical and environmental restraint and seclusion, guardianship, forced sterilisation, menstrual suppression and anti-libidinal medication, financial management, involuntary mental health treatment, and other non-consensual or coercive interventions said to be undertaken for protective, behavioural or medical reasons" as outlined in Dr Claire Spivakovsky (The University of Melbourne), Associate Professor Linda Steele (University of Technology Sydney), Associate Professor Dinesh Wadiwel (The University of Sydney), 'Restrictive practices: A pathway to elimination' (Research Report, July 2023) Royal Commission into Violence, Abuse, neglect and Exploitation of People with Disability, op. 17-18.
- 90 Dr Claire Spivakovsky (The University of Melbourne), Associate Professor Linda Steele (University of Technology Sydney), Associate Professor Dinesh Wadiwel (The University of Sydney), The University of Sydney, p. cit., p. 17.
- 91 Ibid, p. 7.
- 92 For example, the authorisation of psychosurgery, electroconvulsive therapy and forced sterilisation, chemical, mechanical and physical restraint and seclusion. See e.g.: 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; 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, paras 21-26 and 37-44. See also: Lynne Webber, Mandy Donley and Hellen Tzanakis, '[Chemical Restraint: What Every Disability Support Worker Needs to Know](#)' (Article, Office of the Senior Practitioner, 2008); Australian Psychological Society (May 2011) [Psychologists call for prompt end to restrictive practices in disability sector](#), Media Release; May 2011. 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. See also: Dillon, M. (22 Feb 2019) [What have we heard at the Royal Commission into Aged Care Quality and Safety so far?](#) ABC News.
- 93 See e.g., Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 28(a), 28(e), 30(a); Committee on the Rights of the Child, 'Concluding observations on the combined fifth and sixth periodic reports of Australia', 1 November 2019, UN Doc CRC/C/AUS/CO/5-6, paras. 30(g), 31(b); Committee against Torture, 'Concluding observations on the sixth periodic report of Australia', 5 December 2022, UN Doc CAT/C/AUS/CO/6, paras. 38(c), 38(d), 40(a)-(e); Committee on Economic, Social and Cultural Rights, 'concluding observations on the fifth periodic report of Australia', 11 July 2017, UN Doc: E/C.12/AUS/CO/5, para. 46(d); Special Rapporteur on the rights of persons with disabilities, 'Report on the deprivation of liberty of persons with disabilities', 11 January 2019, UN Doc: A/HRC/40/54, sections III-VII, pp. 4-19; World Health Organisation, '[Mental health, human rights and legislation: guidance and practice](#)', Geneva 2023, World Health Organisation and United Nations (represented by the Office of the United Nations High Commissioner for Human Rights).
- 94 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit. (Final Report, Volume 6), September 2023, Commonwealth of Australia, recommendation 6.35, p. 512.
- 95 Dr Claire Spivakovsky (The University of Melbourne), Associate Professor Linda Steele (University of Technology Sydney), Associate Professor Dinesh Wadiwel (The University of Sydney), p. cit., p. 15.

- 96 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, recommendation 6.38 p. 536.
- 97 Ibid, recommendation 6.39, p. 538.
- 98 [Royal Commission into Aged Care Quality and Safety](#) (2019-2021)
- 99 Australia, Declarations and Reservations, United Nations Treaty Collection, Chapter IV-Human Rights, Part 15 Convention on the Rights of Persons with Disabilities, accessed online: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&clang=_en#EndDec
- 100 See e.g., Committee on the Rights of Persons with Disabilities, 'Guidelines on the right to liberty and security of persons with disabilities', (2015) annex to the Report of the Committee on the Rights of Persons with Disabilities to the General Assembly, 2017, UN Doc: A/72/55, p. 16; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3; Juan E. Méndez, '[Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#)' (1 February 2013) UN Doc: A/HRC/22/53. See also: World Health Organisation, '[Mental health, human rights and legislation: guidance and practice](#)', Geneva 2023, World Health Organisation and United Nations (represented by the Office of the United Nations High Commissioner for Human Rights).
- 101 The term 'psychosocial disability' is used in this submission to reflect its usage by the disability community, the CRPD Committee and human rights experts in the context of international human rights and the CRPD. The term draws on the social model definition of disability found in article 1 of the CRPD, and it denotes that psychosocial disability arises from the interaction between persons with actual or perceived mental health or emotional challenges, trauma or distress and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. Individuals will choose their own terminology to describe themselves and their situations and this should be respected.
- 102 People with psychosocial disability have reported difficulties and barriers in engaging with the DRC and being largely omitted from its recommendations, see e.g., Victorian Mental Illness Awareness Council (VMIAC), '[VMIAC report on Barriers to Engagement with the Disability Royal Commission](#)' (June 2023); Nicole Lee and Simon Katterl, '[Locked inside units and outside disability reform](#)', (Opinion, 17 October 2023) Independent Australia.
- 103 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit., (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 518
- 104 Australian Institute of Health and Welfare (AIHW), 'Physical health of people with mental illness' (Web article, 28 March 2023), accessed at: <https://www.aihw.gov.au/reports/mental-health/physical-health-of-people-with-mental-illness>
- 105 Royal Commission into Victoria's Mental Health System, 'Final Report – Summary and recommendations' (February 2021), State of Victoria, p. 4.
- 106 Chris Maylea, '[Does New Mental Health Legislation in Victoria, Australia, Advance Human Rights?](#)' (April 3, 2023) in Health and Human Rights Journal (HHR), Vol 25/1, 2023, pp. 149-160.
- 107 In this submission, discussion on forced sterilisation is contained in section 4, Ensure people with disability, particularly women and girls, enjoy their sexual and reproductive rights on an equal basis with others.
- 108 See e.g., Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]. See Also: Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/C/DEU/CO/7-8), 3 March 2017, at [23] and [24]; Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/DEU/CO/6), 10 February 2009, at [61] and [62]; Committee on the Elimination of Discrimination against Women, Concluding observations on Ireland (CEDAW/C/IRL/CO/6-7), 3 March 2017, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on France (CEDAW/C/FRA/CO/7-8), 22 July 2016, at [17], [18]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on the Netherlands (CEDAW/C/NLD/CO/6), 18 November 2016, at [21] and [22]; Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]; Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/4-5), 30 October 2015, at [48]; Committee on the Rights of the Child, Concluding observations on Ireland (CRC/C/IRL/CO/3-4), 1 March 2016, at [39], [40]; Committee on the Rights of the Child, Concluding observations on France (CRC/C/FRA/CO/5), 29 January 2016, at [47] and [48]; Committee on the Rights of the Child, Concluding observations on Great Britain and Northern Ireland (CRC/C/GBR/CO/5), 3 June 2016, at [45], [46]; Committee on the Rights of the Child,

Concluding observations on New Zealand (CRC/C/NZL/CO/5), 30 September 2016, at [24], [25]; Committee on the Rights of the Child, Concluding observations on South Africa (CRC/C/ZAF/CO/2), 30 September 2016, at [37], [38].

- 109 Committee on the Elimination of Discrimination against Women (2018) Concluding Observations on the Eighth Periodic Report of Australia, UN Doc, CEDAW/C/AUS/CO/8, para 26. See also, Committee on the Rights of the Child, 'Concluding observations on the combined fifth and sixth periodic report of Australia', 1 November 2019, UN Doc: CRC/C/AUS/CO/5-6, para 31(b); Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 34(b).
- 110 Variation in Sex Characteristics (Restricted Medical Treatment) Bill 2023 (ACT).
- 111 Dr Claire Spivakovsky (The University of Melbourne), Associate Professor Linda Steele (University of Technology Sydney), Associate Professor Dinesh Wadiwel (The University of Sydney), op. cit. See also: Cortis, N., Smyth, C. and Katz, I. (2023). Reducing restrictive practices: A review of evidence based alternatives. Report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Sydney: UNSW Social Policy Research Centre.
- 112 For guidance in repealing or amending mental health legislation, policy and practice, see World Health Organisation, '[Mental health, human rights and legislation: guidance and practice](#)', Geneva 2023, World Health Organisation and United Nations (represented by the Office of the United Nations High Commissioner for Human Rights).
- 113 For actions and measures to recognise and respect the right to bodily integrity of intersex people, see, the Joint statement by the Australian and Aotearoa/New Zealand intersex community organisations and independent advocates, '[Darlington Statement](#)' (March 2017). Also see, [Intersex Human Rights Australia](#).
- 114 Australian Human Rights Commission (AHRC), '[Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics](#)' (October 2021) AHRC 2021.
- 115 Sexuality is a central aspect of being human. It encompasses many dimensions that may or may not be experienced or expressed. Sexuality is an evolving concept that encompasses sexual activity, gender identities, sexual orientation, pleasure, eroticism, intimacy and reproduction. Sexuality is experienced and expressed in many ways, including through relationships, attitudes, values, behaviours, practices, beliefs, thoughts, fantasies, and desires. Although sexual and reproductive rights are often inter-related, many expressions of sexuality are non-reproductive and therefore the specificity of sexual rights needs to be understood in its own right, and not automatically subsumed under reproductive rights and reproductive health. See: Women With Disabilities Australia (WWDA) 'WWDA Position Statement 4: Sexual and Reproductive Rights'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8.
- 116 This includes the right of everyone to enjoy and express their sexuality, be free from interference in making personal and private decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. See: Women With Disabilities Australia (WWDA) 'WWDA Position Statement 4: Sexual and Reproductive Rights'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8
- 117 Manjoo, R. (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations General Assembly, UN Doc No. A/67/227. See also: Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination Against Women, '[Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#)' (Joint statement, 29 August 2018); Women With Disabilities Australia (WWDA) (2022), 'Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', WWDA, Hobart.
- 118 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Nature and extent of violence, abuse, neglect and exploitation' (Final Report, Volume 3), September 2023, Commonwealth of Australia, Chapter 4.
- 119 Ibid, Chapter 4, section 4.7, pp. 122-124.
- 120 Forced contraception 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 e.g.,

Women With Disabilities Australia (WWDA) (2022), 'Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', WWDA, Hobart; Women With Disabilities Australia (WWDA), '[WWDA Position Statement 4: Sexual and Reproductive Rights](#)', September 2016, WWDA, Hobart. See also: Joi Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), '[Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#),' (Joint Statement, 29 August 2018).

- 121 Medication to control sexual desire and suppress menstruation is classified as a chemical restraint and regulated for NDIS participants. See: NDIS Quality and Safeguards Commission, 'Regulated Restrictive Practices Guide', October 2020, pp. 10-11.
- 122 In 2019, the CRPD Committee recommended to Australia to adopt uniform legislation prohibiting, in the absence of free and informed consent, sterilisation procedures, administration of contraception and abortion procedures. See: Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 34(a).
- 123 See in particular, recommendations 12.7 and 12.8 in the Final Report.
- 124 Recommendation 8.24 in the Final Report.
- 125 Recommendation 8.23 in the Final Report.
- 126 A joint Australian, state and territory government initiative, 'National Plan to End Violence against Women and Children 2022-2023 – Ending gender-based violence in one generation' (2022) Commonwealth of Australia.
- 127 Anti-libidinal medications to reduce sexual arousal are classified as a chemical restraint and regulated for NDIS Participants. See: NDIS Quality and Safeguards Commission, 'Regulated Restrictive Practices Guide', October 2020, pp. 10-11.
- 128 People with Disability Australia (PWDA), 'Submission to the Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia' (Submission, March 2023), PWDA, Submission No. 50, paras. 18-21.
- 129 Glenys Carlson, Miriam Taylor, Jill Wilson, 'Sterilisation, drugs which suppress sexual drive, and young men who have intellectual disability' (2000) 25(2) Journal of Intellectual & Developmental Disability 91, 91.
- 130 Women With Disabilities Australia (WWDA) (2022), 'Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', WWDA, Hobart, para. 6.62.
- 131 Ibid, para. 6.63.
- 132 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit. (Final Report, Volume 6), September 2023, Commonwealth of Australia, p. 582.
- 133 Ibid, p. 581.
- 134 'Forced sterilisation' refers to the performance of a procedure which results in sterilization in the absence of the prior, free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual's consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences includes situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilisation of a child, unless performed as a life-saving measure, is considered forced sterilization. See e.g., Center for Reproductive Rights (2010), 'Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis' Center for Reproductive Rights, New York. See also: Juan E. Mendez, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', 22nd session, UN Doc A/HRC/22/53. See also: Manjoo, R. (2012) 'Report of the Special Rapporteur on violence against women, its causes and consequences', United Nations General Assembly, UN Doc No. A/67/227. See also: Nair, P. (2011) 'Litigating Against Forced Sterilization of HIV-Positive Women: Recent Developments in Chile and Namibia', Harvard Human Rights Journal, Vol.23, pp.223-231. See also: Frohmader, C. (2013) 'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia' (WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia), Prepared for Women with Disabilities Australia (WWDA), Tasmania. ISBN: 978-0-9876035-0-0.

- 135 Commonwealth of Australia, 'National Plan to End Violence against Women and Children 2022-2032: Ending gender-based violence in one generation' (2022) Commonwealth of Australia, pp. 36, 39, 43. See also: Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19', (26 July 2017) UN Doc: CEDAW/C/GC/35, para. 18.
- 136 Women With Disabilities Australia (WWDA) ['WWDA Position Statement 4: Sexual and Reproductive Rights'](#). WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8. See also: Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. Paragraph 64 of this report also clarifies that: "Forced interventions often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged "best interest" of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment." See also: Committee on the Rights of the Child, 'General Comment No 13: The Right of the Child to Freedom from All Forms of Violence', (18 April 2011) UN Doc CRC/C/GC/13.
- 137 Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 34(a); Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-23 September 2013)', 21 October 2013, UN Doc CRPD/C/AUS/CO/1, para. 40; Committee on the Rights of the Child, 'Concluding observations on the combined fifth and sixth periodic report of Australia', 1 November 2019, UN Doc: CRC/C/AUS/CO/5-6, para 3(g); Committee on the Rights of the Child, 'Concluding observations: Australia', 28 August 2012, UN Doc: CRC/C/AUS/CO/4, para. 47(b); Committee on the Rights of the Child, 'Concluding observations: Australia', 20 October 2005, UN Doc: CRC/C/15/Add.268, para. 46(e); Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – Australia', 47th sess (24 March 2021) UN Doc A/HRC/47/8, paras. 146.245-146.246, 146.248; Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – Australia', 31st sess (13 January 2016) UN Doc A/HRC/31/14, paras 136.180-184; Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – Australia', 17th sess (24 March 2011) UN Doc A/HRC/17/10, paras 86.39; Committee on the Elimination of Discrimination against Women [Concluding observations on the eighth periodic report of Australia](#), 25 July 2018, UN Doc. CEDAW/C/AUS/CO/8, paras. 26(c)-(d); Committee on the Elimination of Discrimination against Women, 'Concluding observations of the Committee on the Elimination of Discrimination against Women – Australia', 30 July 2010, UN Doc: CEDAW/C/AUS/CO/7, para. 43; Committee against Torture, 'Concluding observations on the sixth periodic report of Australia', 5 December 2022, UN Doc CAT/C/AUS/CO/6, paras. 40(a); Committee against Torture, 'Concluding observations on the combined fourth and fifth periodic reports of Australia', 23 December 2014, UN Doc CAT/C/AUS/CO/4-5, para. 20; Human Rights Committee, 'Concluding observations on the sixth periodic report of Australia' 1 December 2017, UN Doc: CCPR/C/AUS/CO/6, para. 24; Committee on Economic, Social and Cultural Rights, 'concluding observations on the fifth periodic report of Australia', 11 July 2017, UN Doc: E/C.12/AUS/CO/5, para. 46(d). See also: FIGO (International Federation of Gynaecology and Obstetrics), [Female Contraceptive Sterilization](#); 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.
- 138 See e.g., Committee on the Elimination of Discrimination against Women, 'General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc: CEDAW/C/GC/28, para. 39.
- 139 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. In 2013, the Australian Council of Human Rights Agencies (ACHRA) identified discrimination against 'potential and actual parents with disability' as one of three of the most urgent human rights matters in Australia. ACHRA called on the Australian Governments to take national leadership and action on the issue, including better support for parents with disability as "an immediate priority given the discriminatory impact of negative presumptions". See: Australian Council of Human Rights (ACHRA) Communiqué from Australian Council of Human Rights Agencies meeting, 18-19 March 2013. Wednesday, 20 March 2013. See also: Women With Disabilities Australia (WWDA), 'Parenting Issues for Women with Disabilities in Australia' (Policy Paper, May 2009), WWDA, Hobart; Women With Disabilities Australia (WWDA) ['WWDA Position Statement 4: Sexual and Reproductive Rights'](#). WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8. Women With Disabilities Australia (WWDA) (2022), 'Submission on Sexual and Reproductive Rights of Women and Girls with

Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', WWDA, Hobart; Australian Disabled People's Organisations (DPOs), Disability Representative Organisations (DROs) and Disability Advocacy Organisations, 'Disability Rights Now 2019 - Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019', July 2019, p. 34.

- 140 Chapter 5, 'Child protection' in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'First Nations people with disability' (Final Report, Volume 9, September 2023), Commonwealth of Australia.
- 141 Terri Libesman, Paul Gray, Eloise Chandler, Linda Briskman, Aminath Didi and Scott Avery, 'Parents with Disability and their Experiences of child Protection Systems' (Research report, July 2023) Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. See also: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, '[Transcript of Proceedings](#)', Day 1-Day 5, Public hearing 8, Brisbane; Nas Campanella & Celina Edmonds, '[Disability, domestic violence a 'catch. 22' as Indigenous children removed from mothers, royal commission hears](#)' (ABC article, 25 November 2020).
- 142 Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 43(a), 44(a)-(b).
- 143 Women with disability experience significant discrimination in accessing assisted reproductive technologies (such as in-vitro fertilisation (IVF) and assisted insemination). Many women with disability - particularly single women with disability and women with disability in same-sex relationships - report being deemed by fertility consultants/clinics as ineligible for assisted reproductive services. Australia's universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed 'medically infertile', but for women who are deemed not to be 'medically infertile' (such as single women and lesbian couples), then no Medicare rebate is available. See: Women With Disabilities Australia (WWDA), 'Parenting Issues for Women with Disabilities in Australia' (Policy Paper, May 2009), WWDA, Hobart; Women With Disabilities Australia (WWDA) '[WWDA Position Statement 4: Sexual and Reproductive Rights](#)'. WWDA, September 2016, Hobart, Tasmania. See also: Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', 15 October 2019, UN Doc CRPD/C/AUS/CO/2-3, paras. 44(c).
- 144 Women With Disabilities Australia (WWDA) (2022), 'Submission on Sexual and Reproductive Rights of Women and Girls with Disability to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', WWDA, Hobart
- 145 Terri Libesman, Paul Gray, Eloise Chandler, Linda Briskman, Aminath Didi and Scott Avery, '[Parents with Disability and their Experiences of Child Protection Systems](#)' (July 2023) Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- 146 See [National Disability Insurance Agency v WRMF](#) [2020] FCAFC 79. Also see: People with Disability Australia, '[Landmark decision for the right of people with disability to have sex](#)' (Media release, 12 May 2020); Sara Gingold, 'Sex and the NDIS: the Case That Has Everyone Talking' (Website article, 20 May 2020), DSC.
- 147 Committee on the Rights of Persons with Disabilities, 'Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities – The right to liberty and security of persons with disabilities' (2015) annex to the Report of the Committee on the Rights of Persons with Disabilities to the General Assembly, 2017, UN Doc: A/72/55, para. 3.
- 148 Ibid. Section III, paras. 6-9. Article 14 of the CRPD is derived from article 9 of ICCPR: 'Everyone has the right to liberty and security of person'. Specifically in relation to First Nations people, article 7 of the Declaration on the Rights of Indigenous Peoples (DRIP) provides that: 'Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person'.
- 149 A lack of nationally consistent and transparent data makes it difficult to quantify the number of people with disability indefinitely detained. Evidence provided to the [Senate Inquiry into Indefinite detention of people with cognitive and psychiatric impairment in Australia](#) estimated that there were at least 100 people detained across Australia without conviction in prisons, psychiatric units and forensic detention services under justice diversion legislation. These people are predominately Indigenous, have cognitive and/or psychosocial impairment, cultural communication barriers and/or hearing loss. This issue intersects with the high rates of incarceration of First Nations people, who whilst making up 2.5% of the Australian population, comprise at least 50% or one-half of the people detained without conviction. See: First Peoples Disability Justice Consortium, '[Aboriginal and Torres Strait Islander Perspectives on the Recurrent and Indefinite Detention of People with Cognitive and Psychiatric Impairment](#)', April 2016, First Peoples Disability Network. See also: Australian Human Rights Commission, '[Indefinite detention of people with cognitive and psychiatric impairment in Australia](#)', Submission to the Senate Community Affairs References Committee, March 2016, p.4. See also: Commonwealth of Australia

- (2016) Senate Community Affairs References Committee, [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#), 2016. See also: Sotiri, M, McGee, P, & Baldry, E (2012) [No End in Sight. The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment](#). Sydney: University of NSW. See also Eileen Baldry, Ruth McCausland, Leanne Dowse, Elizabeth McEntyre, [A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system](#), UNSW, October 2015.
- 150 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Criminal Justice and people with disability’ (Final Report, Volume 8, September 2023), Commonwealth of Australia, p. 130. See also: Disabled People’s Organisations Australia, [‘Indefinite Detention of People with Disability’](#) (CRPD Factsheet, 2019).
- 151 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit. (Final Report, Volume 8, September 2023), Commonwealth of Australia, pp. 134-143. See also: [KA, KB, KC and KD v Commonwealth](#) (Department of Prime Minister and Cabinet, Department of Social Services, Attorney-General’s Department) [2014] AusHRC 80. See also: *Leo v Australia*, communication no. 17/2013, views adopted 30 August 2019, released 18 October 2019, UN Doc: CRPD/C/22/D/17/2013; *Doolan v Australia*, communication no. 18/2013, views adopted 30 August 2019, released 17 October 2019, UN Doc: CRPD/C/22/D/18/2013; *Noble v Australia*, communication no. 7/2012, views adopted 2 September 2016, released 10 October 2012, UN Doc: CRPD/C/16/D/7/2012; *Corey Brough v Australia*, communication no. 1184/2003, views adopted 17 March 2006, released 27 April 2006, UN Doc: CCPR/C/86/D/1184/2003.
- 152 For an overview of these criticisms, see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, op. cit. (Final Report, Volume 8, September 2023), Commonwealth of Australia, pp. 131-134.
- 153 See: Human Rights Law Centre, Australia’s 2nd Universal Periodic Review: [Voluntary Commitments](#). See also: Law Council of Australia, [Australia’s International Human Rights Obligations](#).
- 154 The UPR is a peer review process conducted by the UN Human Rights Council, see: Attorney-General’s Department, [‘Australia’s Universal Periodic Review’](#) (Website information).
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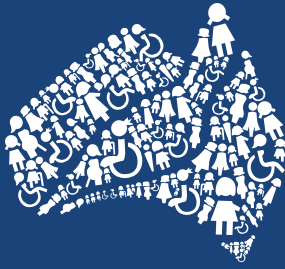
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Women
With
Disabilities
Australia
(WWDA)

Women With Disabilities Australia (WWDA)
PO BOX 407 Lenah Valley, Tasmania, 7008 Australia

[+61 438 535 123](tel:+61438535123)

[+61 438 535 535](tel:+61438535535)

carolyn@wwda.org.au

officeadmin@wwda.org.au

www.wwda.org.au

www.facebook.com/WWDA.Australia

www.twitter.com/WWDA_AU

Winner

National Human Rights Award 2001

Winner

National Violence Prevention Award 1999

Winner

Tasmanian Women's Safety Award 2008

Nominee

UNESCO Prize for Digital Empowerment of Persons with Disabilities
2021

Nominee

French Republic's Human Rights Prize 2003

Nominee

UN Millennium Peace Prize for Women 2000

Certificate of Merit

Australian Crime & Violence Prevention Awards 2008

Nominee

National Disability Awards 2017

Finalist

International Zero23 Award, Information and Communication
Technologies (ICT)