



Women
With
Disabilities
Australia
(WWDA)

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
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Committee on the Elimination of Racial Discrimination
The Office of the High Commissioner for Human Rights

By email: ohchr-cerd-gr37@un.org

4 August 2023

Dear Committee on the Elimination of Racial Discrimination,

**Submission to the call for comments on the draft General recommendation No. 37 (2023) on
Racial discrimination in the enjoyment of the right to health**

I write to you from [Women with Disabilities Australia \(WWDA\)](#), 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. WWDA thanks the Committee on the Elimination of Racial Discrimination for the opportunity to comment on draft General recommendation No. 37 (2023) on Racial discrimination in the enjoyment of the right to health (**General Recommendation**). Our response draws attention to the issues relevant to women and girls with disability in interpreting key sections of the draft.

There is strong evidence that women with disabilities from cultural, ethnic and racial minorities experience compounding forms of discrimination at the intersections of racism, imperialism, ableism, and sexism. As a key element of the human rights approach to disability required by the Convention on the Rights of Persons with Disabilities (**CRPD**), intersectionality highlights how these overlapping forms of discrimination result in unique barriers, and specific experiences of marginalisation and violence. Legal and policy responses that seek to protect against human rights violations must take into account the interactions between gender, disability, race and other elements of structural inequality.

Gender-based violence

At the outset, WWDA is concerned that there is limited recognition within the General Recommendation of the interactions between health, colonial and racist violence, and gender-based violence. As WWDA has continually argued, the prevention of violence against women is an obligation in relation to gender rights; civil and political rights; economic, social and cultural rights; disability rights; child rights; and rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment), and racial discrimination.¹

While we commend the Committee's acknowledgement of forced sterilisation as an egregious form of violence targeting racial and ethnic minorities, we ask that attention be drawn to all forms of gender-based violence as both an issue of health and of racial discrimination. In General recommendation No. 35, the

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Committee on the Elimination of Discrimination against Women (CEDAW) re-affirmed that discrimination against women is inextricably linked to other factors that affect their lives, including ethnicity and race, Indigenous or minority status, colour, national origin, migration status, and health status.² Women who are racially, culturally or ethnically marginalised face an increased risk of violence both in incidence and severity.³

Gender-based violence, including gender-based violence that is motivated or exacerbated by racism, has tangible and detrimental impacts on physical and mental health outcomes, access to healthcare, and access to health information. Gender-based violence is also a cause of disability: every week in Australia, three women are hospitalised with a brain injury as a direct result of violence perpetrated by a family member.⁴ It is also globally recognised that refugees and asylum seekers with disability are at increased risk of gender-based violence. At the intersections of migration policy, racial discrimination and gender-based violence, female asylum seekers and refugees have experienced rape and sexual abuse within immigration detention centres.⁵ At the intersections of colonial violence, racial discrimination and gender-based violence, First Nations women in Australia are significantly more likely than non-Indigenous women to sustain serious injury requiring hospitalisation, and die, due to gender-based violence.⁶ We respectfully request that the General Recommendation address the unique experiences of women within the purview of the Convention in relation to all forms of gender-based violence and the right to health.

Sexual and reproductive health and forced sterilisation

WWDA commends the Committee on its recognition of forced sterilisation as a violation of the rights of women to reproductive autonomy, access to information, personal integrity, privacy, and the right to be free from racial and gender-based violence and discrimination. However, we respectfully request that the Committee elaborate on its statement regarding women with disabilities. Forced sterilisation for women with disability is not solely a result of denial of legal capacity, but a consequence of the interactions between denial of legal capacity; laws and regimes that enable and legitimise substitute decision-making within healthcare settings; and a system of ableism that purports that women with disability do not want, or should not be able, to procreate. The former Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has identified the targeting of ethnic and racial minorities, women from marginalised communities and women with disabilities in relation to forced sterilisation 'because of discriminatory notions that they are "unfit" to bear children' as a form of torture and social control.⁷

The addition of cultural and linguistic difference in healthcare settings reinforces the perception that women with disabilities are not capable of making autonomous decisions, or that it is too difficult for them to engage in consultation and decision-making. This is exacerbated by a lack of appropriate communication supports. Accordingly, where the Committee addresses the rights to healthcare information and participation, Paragraph 30 should reference the need for accessible formats of information and mechanisms for supported decision-making. This includes support for people with disability to make informed and autonomous healthcare decisions, in alignment with Article 12 of the

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Convention on the Rights of Persons with Disabilities.⁸ We also request that in addressing specific areas where coercive measures disproportionately apply and affect groups within the purview of the Convention (Paragraph 45), that the Committee expressly include institutional and group home settings for people with disability, as well as regimes that enable guardianship and substitute decision-making. Finally, and consistent with the recommendations of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee should call for the prohibition of non-consensual medical treatment (including forced sterilisation) in addition to its prevention (Paragraph 39).

Access to healthcare and health information

In our recent research on the experiences of culturally and linguistically diverse women with disabilities in accessing healthcare in Australia, participants recalled being unable to access health information in appropriate formats, specific to their dialects and disability-related needs. In order to address the intersections of racial and disability discrimination in the enjoyment of the right to health, the Committee should require that approaches to healthcare and healthcare practices are disability inclusive and accessible to people with a range of impairments (Paragraph 40). The Committee should also expressly include people with disability within the purview of the Convention in relation to recommendations regarding consultation with "relevant groups" and "communities" (Paragraphs 29, 39 and 40). This will ensure consistency with the obligations of States under the CRPD to consult with and actively involve people with disabilities in decision-making processes concerning issues relating to people with disabilities.⁹ This will also ensure that the adoption of community-centred approaches includes approaches of and for people with disability.

General comments to address the key priorities for women with disability

In addition to the above thematic recommendations, we make the following comments for consideration by the Committee:

1. In relation to the impact of exclusion from access to documents or identification (Paragraph 10), include reference to the impacts of documentation on access to supports and services for disability. For example, access to funding schemes or social protections for disability may require historical medical evidence which has been destroyed during conflict or disaster.
2. In relation to medical bias (Paragraph 12(d)), address how racial discrimination and sex discrimination together produce unique barriers for women. For example, there are significant racial differences in the treatment of pain-related disabilities for Black women, including racist assumptions that Black women with chronic pain are drug-seeking.¹⁰

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3. In relation to artificial intelligence (**AI**) (Paragraph 13), address how AI-assisted decision-making also impacts the social determinants of health outside of healthcare settings.¹¹ For example, AI-assisted recruitment practices have been found to discriminate against candidates on the basis of ethnicity, and the use of AI in the criminal justice system has been found to have detrimental impacts for racial and ethnic minorities.¹² Also include, in recommending that States ensure compliance of artificial intelligence with the prohibition of racial discrimination in health (Paragraph 41), a requirement that this extend to compliance more broadly in relation to the social determinants of health.
4. In relation to the impacts of climate change (Paragraph 15), include reference to gender and disability as exacerbating factors, noting evidence that the human rights and health of women and people with disability are disproportionately affected by the negative impacts of climate change.¹³
5. In relation to the impacts of migration and visa status on access to health (Paragraph 16), include reference to non-citizens, migrants, refugees, asylum seekers and stateless persons with disability. The Committee should address the discriminatory laws that deny visa applications based on disability status and prevent people with disability from accessing social protections due to residency requirements.
6. In relation to representation of groups within the purview of the Convention in health systems (Paragraph 27), include representation of marginalised identities within racial and ethnic minorities, such as women with disability. In our recent research on the experiences of culturally and linguistically diverse women with disabilities in accessing healthcare, participants considered that healthcare workers with lived experience of disability and racial or ethnic minority status were crucial to improving the accessibility of services, and trust in healthcare providers.
7. In recommending that States adopt comprehensive legislation against racial discrimination in the right to health in civil, administrative and criminal law, include a **requirement** for States to explicitly reference intersectionality (Paragraph 38).
8. In relation to human rights education within healthcare settings (Paragraphs 48-50), clarify that human rights education should be based on international human rights obligations and not on States' local approaches to human rights or discrimination.
9. In relation to establishing judicial and non-judicial mechanisms for accountability (Paragraph 59), include a requirement to ensure that such mechanisms are accessible and take trauma-informed and intersectional approaches to redress. We note that in Australia, grievance mechanisms such as the Federal anti-discrimination frameworks require a person seeking redress for unlawful



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discrimination to identify a single attribute (such as race
or disability) as the basis for the unlawful discrimination.

Thank you again for the opportunity to provide this response.

Yours sincerely

Carolyn Frohmader
Executive Director
Women With Disabilities Australia (WWDA)

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

¹ Frohmader, C., Dowse, L., Didi, A. (2015) Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective. *Women With Disabilities Australia (WWDA January 2015)* 18.

² 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) [12].

³ Costello, K., & Greenwald, B. D. (2022). Update on Domestic Violence and Traumatic Brain Injury: A Narrative Review. *Brain sciences*, 12(1), 122. <https://doi.org/10.3390/brainsci12010122>

⁴ Brain Injury Australia (August 11, 2015) Media Release: Every week in Australia, one woman is killed - the result of family violence. Every week in Australia, three women are hospitalised with a brain injury - the result of family violence. <http://www.braininjuryaustralia.org.au/> See also: Gorman, G. (2019) 'The terrible injury often overlooked in domestic violence'.

⁵ UN General Assembly (24 April 2017) Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru. UN Doc. No. A/HRC/35/25/Add.3.

⁶ See for eg: OurWatch, Changing the picture: preventing violence against Aboriginal and Torres Strait Islander women.

⁷ Juan E Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN GAOR, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) 11.

⁸ *Convention on the Rights of Persons with Disabilities*, [2008] ATS 12, article 12.

⁹ *Convention on the Rights of Persons with Disabilities*, [2008] ATS 12, article 4.

¹⁰ Cousin, L., Johnson-Mallard, V., & Booker, S. Q. (2022). "Be Strong My Sista": Sentiments of Strength From Black Women With Chronic Pain Living in the Deep South. *ANS. Advances in nursing science*, 45(2), 127–142.

¹¹ United Nations General Assembly (18 June 2020) Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance UN Doc A/HRC/44/57.

¹² United Nations General Assembly (18 June 2020) Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance UN Doc A/HRC/44/57.

¹³ United Nations General Assembly Human Rights Council (2021) Human Rights and Climate Change, Human Rights Council 41st Session, Agenda Item 3, UN Doc A/HRC/RES/41/2 (12 July 2019).

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