

WWDA'S RESPONSE TO THE NDS POSITION PAPER

The National Disability Strategy Beyond 2020

November 2020



Women
With
Disabilities
Australia
(WWDA)



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This document was written by Carolyn Frohmader, WWDA Executive Director, for and on behalf of WWDA.

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Awards

Winner

National Human Rights Award 2001

Winner

National Violence Prevention Award 1999

Winner

Tasmanian Women's Safety Award 2008

Nominee

French Republic's Human Rights Prize 2003

Nominee

UN Millennium Peace Prize for Women 2000

Certificate of Merit

Australian Crime & Violence Prevention Awards
2008

Nominee

National Disability Awards 2017

Nominee

UNESCO Prize for Digital Empowerment of
Persons with Disabilities 2020

ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

[Women With Disabilities Australia \(WWDA\)](#) is the award winning, national Disabled People's Organisation (DPO) for women and girls with all types of disability in Australia. The key purpose of WWDA is to promote and advance the human rights and freedoms of women and girls with disability. Our goal is to be a national voice for the rights of women and girls with disability and a national force to improve the lives and life chances of women and girls with disability.

WWDA represents more than two million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories of Australia, and is internationally recognised for our global leadership in advancing the human rights of women and girls with disability. As a DPO, WWDA is managed and run by women with disability, for women and girls with disability.

DPO's are recognised internationally as organisations OF people with disability that are led, directed and governed BY 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 these organisations 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

For more information on the extensive work of WWDA, please see:

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INTRODUCTION



INTRODUCTION

WWDA welcomes the opportunity to make this Submission in response to the National Disability Strategy '[Position Paper](#)', July 2020 (the Position Paper), and thanks the Australian Government for the opportunity to contribute.²

WWDA does so in the recognition that the previous *National Disability Strategy 2010-2020*, as an un-gendered framework that ignored gender equality, has regrettably, resulted in little to no improvement in the status of women and girls with disability in Australia, and has, as a consequence, essentially failed women and girls with disability.

This Submission from WWDA is structured in **ten** main sections.

Section One provides a background to the development and implementation of the NDS 2010-2020. Consultations undertaken in 2009 with people with disability to develop the NDS determined that for people with disability, a '*fundamental priority was to ensure that the NDS 2010-2020 realise the rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD)*.' This section also looks at the three national NDS Implementation Plans that were to be developed during the life of the NDS, and highlights that only two were ever completed and had little effect on advancing the rights of people with disability. Despite Australian government's committing to biennial progress reports on the NDS, there were only two progress reports produced over the life of the NDS, and these reports only described actions rather than measuring and evaluating outcomes for people with disability. This section also provides information on the outcomes of a Senate Inquiry into the NDS 2010-2020 undertaken in 2017, including the key recommendations from the Inquiry, with one of the priority recommendations being that the NDS must meet Australia's international reporting obligations under the CRPD and other international human rights treaties to which Australia is a party.

Section Two addresses the requirement for the new NDS, at all levels, to incorporate the fundamental principle of equality between men and women. As the key national policy framework through which to implement the CRPD, this section details the obligations of Australian governments to specifically address the rights of women and girls with disability. It clarifies the requirement to ensure that the new NDS contains focused, gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights. It highlights concerns expressed by the CRPD Committee at Australia's failure to address the human rights of women and girls with disability, including by inadequate support of and for disabled women's organisations and networks.

Section Three of this Submission addresses the purpose, and proposed vision and outcome areas of the new NDS. It argues that a new NDS should clearly articulate its purpose as being to provide the national policy framework to implement the Convention on the Rights of Persons with Disabilities (CRPD). This section proposes a new vision for the NDS that better encapsulates the intent of the NDS in advancing the human rights of people with disability. In this section, WWDA also provides detailed evidence and commentary regarding the proposed new 'outcome areas' for the NDS and argues that the new NDS must include a stand-alone new outcome area on 'Safety from Violence and Abuse'. This section also proposes re-working of the other proposed outcome areas to better reflect the intent of the NDS.

Section Four provides detailed information on the proposed ‘additional’ guiding principles for the new NDS. It provides evidence to demonstrate that the proposed ‘additional’ principles are a duplication of the General Principles of the CRPD, as set out in CRPD article 3. This section also argues that the proposed ‘additional principle’ of ‘Address barriers faced by priority populations’ should not be relegated to an ‘additional principle’ for the new NDS, but rather, the new NDS should, in line with the CRPD, clearly articulate the priority population cohorts that are subject to multiple, aggravated and intersectional forms of discrimination. WWDA expands on these priority population cohorts in this section.

Section Five addresses the area of improving community attitudes through the new NDS. This section argues that a ‘stronger emphasis on improving community attitudes’ must include and address ableism, including ableist government systems, structures and practices that enable discrimination against people with disability to flourish. This section argues that changing community attitudes towards disability requires complementary and multidimensional methods and responses, and that three levels of intervention are required at the same time: personal, organisational and structural. At the end of this section, WWDA provides 29 practical suggestions for consideration in relation to how the new NDS can be used to improve community attitudes towards people with disability.

Section Six looks at the responsibility of levels of government in implementing the new NDS, highlighting that all governments are ultimately responsible for NDS implementation by virtue of Australia’s obligations as a signatory to the CRPD. In this section, WWDA offers a number of suggestions as to how determining the roles and responsibilities of governments could be improved. WWDA highlights the fact that, in response to many inquiries, reviews or concerns, the Australian Government regularly refers responsibility for reform to State and Territory governments. WWDA uses the examples of forced sterilisation and enforced medical correction of intersex variations, to clarify that decentralising government power through devolution or delegation does not negate the obligation on the Australian Government to undertake reform (such as through the enactment of national legislation) that is applicable throughout its jurisdiction.

Section Seven of this Submission focuses on the role of organisations **of** people with disability, and the role of independent advocacy in realising the purpose and vision of the NDS. This section clarifies the critical role of organisations **of** people with disability, as opposed to organisations **for** people with disability, as articulated by the CRPD Committee and the UN Special Rapporteur on Disabilities. In recognising that people with disability have the right to be at the front and centre of all decision-making processes that affect their lives, this section outlines the crucial role of independent advocacy, including individual, systemic and self-advocacy. WWDA argues, consistent with recommendations from the CRPD Committee, that all governments have a shared responsibility to adequately fund and support independent advocacy on a long-term basis.

Section Eight provides information on how Australian governments can better report NDS progress to the public. This section argues that meaningful, accessible and transparent reporting is fundamental, and that people with disability must be

meaningfully involved in all NDS progress reporting. In this section, WWDA provides 14 practical suggestions as to how NDS reporting can be improved.

Section Nine examines the issue of proposed Targeted Action Plans under the new NDS. Using evidence-based research and information, WWDA argues that Targeted Action Plans should prioritise areas where there are particular egregious violations of the human rights of people with disability in Australia, and that the CRPD Concluding Observations and recommendations to Australia from other human rights treaty monitoring bodies relating to people with disability, should be used to inform and shape priority areas for the targeted Action Plans. In this context, WWDA suggests seven thematic based targeted Action Plans be developed under the new NDS. These are: 1) Sexual and Reproductive Rights; 2) Segregation of People with Disability; 3) Indefinite Detention of People with Disability; 4) Legal Capacity and Supported Decision-Making; 5) Inclusive Education; 6) Poverty; 7) Disaster and Emergency Planning, Management and Recovery.

Section Ten of this Submission provides detailed information on strategies and mechanisms to improve and promote meaningful participation and engagement of people with disability in all aspects of the new NDS. Noting the CRPD Committee's consistent recommendation that Australia establish formal and permanent mechanisms to ensure the full and effective participation of persons with disability, WWDA offers 19 practical suggestions as to how people with disability, and the disability community, can meaningfully participate in the delivery and monitoring of the CRPD and the new NDS.

In considering input and feedback from people with disability to develop a new National Disability Strategy, WWDA draws the attention of the Department of Social Services (DSS) to the following additional Submissions for consideration:

Frohman, C. (2014) ['Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities.](#) Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2- 1.

Disabled Peoples Organisations Australia (DPOA) (2017) [Submission to Senate Inquiry Into the Delivery of Outcomes Under the National Disability Strategy 2010-2020.](#) DPO Australia, Sydney.

Australian Cross Disability Alliance (2015) [Submission to the Department of Social Services: Review of the National Disability Advocacy Framework.](#) ACDA, Sydney.

SECTION ONE
BACKGROUND



BACKGROUND

- 1.1 In late 2008, the Australian Government released a Discussion Paper asking the community to respond to a series of questions about their experience of disability. The consultations were intended to inform the development of a *National Disability Strategy*. More than 750 written submissions were received in response to the Discussion Paper, more than half of which were from individuals and the remainder from a range of organisations. More than 2,500 people also attended consultations in capital cities in every state and territory of Australia, as well as in regional and remote areas. More than 15 per cent of written submissions focused on particular issues facing women with disability. In addition, a number of regional consultations were conducted with women with disability.
- 1.2 The consultations culminated in the 2009 report *Shut Out: The Experience of People with Disabilities and their Families in Australia*.³ The *Shut Out* Report identified amongst other things that the National Disability Strategy should act as an overarching policy statement, setting the national view, establishing future direction and identifying priorities for people with disability. A fundamental **priority** was to ensure that the National Disability Strategy **realise the rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD)**. The *Shut-Out* Report identified four strategic priorities for a National Disability Strategy:
- increasing the social, economic and cultural participation of people with disability and their families, friends and carers;
 - introducing measures that address discrimination and human rights violations;
 - improving disability support and services; and,
 - building in major reform to ensure the adequate financing of disability support over time.
- 1.3 The National Disability Strategy (NDS) was subsequently developed in 2010 and formally endorsed by the Council of Australian Governments (COAG) in February 2011. It was articulated by the Australian Government as the '*foundation of Australia's work to advance disability rights*'⁴ and set out the national policy framework for guiding Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities (CRPD)*.
- 1.4 Australian Governments agreed that the NDS 2010-2020 would "*ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers.*"⁵ These **principles** are:
- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
 - Non-discrimination;
 - Full and effective participation and inclusion in society;
 - Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
 - Equality of opportunity;
 - Accessibility;
 - Equality between men and women;
 - Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

- 1.5 The **vision** of the NDS 2010-2020 was for ‘*an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens*’. The NDS explicitly recognised that ‘*the experiences and needs of people with disability and their families are central to the Strategy, its vision, and its principles*’.⁶ The **purpose** of the NDS was to:
- establish a high-level policy framework to give coherence to, and guide government activity across, mainstream and disability-specific areas of public policy;
 - drive improved performance of mainstream services in delivering outcomes for people with disability;
 - give visibility to disability issues and ensure they are included in the development and implementation of all public policy that affects people with disability;
 - provide national leadership toward greater inclusion of people with disability.
- 1.6 The NDS set out **goals** and **objectives** under **six areas** of mainstream and disability-specific public policy. The six areas were: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and well-being. There were a number of objectives/policy directions under each of the six areas. The Objectives/Policy Directions under each of the 6 outcome areas were identified to guide actions over the life of the Strategy. The policy directions contained fifty-three areas for future action. These actions were intended to be progressed during the life of the Strategy.
- 1.7 The NDS was **un-gendered**, however, it did recognise that ‘*not all people with disability are alike*’. It stated:
- ‘People with disability have specific needs, priorities and perspectives based on their personal circumstances, including the type and level of support required, education, sex, age, sexuality, and ethnic or cultural background. Some experience multiple disadvantages. Sex, race and age can significantly impact on the experience of disability. Women and men with disability often face different challenges by reason of their sex or experience the same issues in different ways. For example, women and men with disability are likely to experience violence in different ways and so need different supports. Recognition of the diversity of experiences of people with disability underpins the six outcome areas of the Strategy.’⁷*
- 1.8 The NDS was supported by three **Implementation Plans** developed over its ten-year life span. The first implementation plan - **Laying the Groundwork: 2011–2014⁸** - detailed actions to be taken in policies and programs across all areas of government. These actions represented the first-round commitment to transform the experience of people with disability by improving the design and delivery of services and programs to achieve more inclusive communities. The Plan included six main actions⁹ aimed at driving change across each of the Strategy’s policy outcomes and directions. The Plan provided detailed information on how the Australian and state and territory governments would respond to the fifty-three areas for future action that sat under the six policy outcome areas of the National Disability Strategy. During the life of the first implementation plan, work was to be undertaken to identify gaps in achieving the Strategy’s policy outcomes and directions. This work was also intended to identify possible new priorities for consideration.

- 1.9 The second implementation plan - ***Driving Action 2015–2018***¹⁰ - outlined new priority actions as well as ongoing commitments. It intended to consolidate actions that were driving improved outcomes and identify where more effort was needed. Development of the plan was to draw on the results of the 2014 NDS Progress Report to the COAG in addition to considering input from consultations with people with disability and their representative organisations. The third and final implementation plan - ***Measuring Progress 2019–2020*** – was intended to identify new and emerging priority outcomes to be implemented in the final years of the Strategy. Each implementation plan was to be underscored by the need for a change of attitude about disability by governments and the broader community; a change of attitude that promoted dignity and human rights and that supported participation in all aspects of community life.¹¹
- 1.10 As well as the National Implementation Plans, each state and territory government had its own disability planning process to drive improved outcomes through mainstream policies, programs, services and infrastructure. Each jurisdiction had, or was meant to develop, an individual plan to translate the Strategy’s vision into tangible and achievable service improvements. These plans were to be developed in response to the particular circumstances and priorities in each jurisdiction. Actions were to be locally based and aimed to work in parallel with activities under the national implementation plan. State and territory governments were expected to share information about their activities for the progress reports to the Council of Australian Governments (COAG).¹²
- 1.11 The Second Implementation Plan ***Driving Action 2015–2018***¹³ for the NDS was only released in December 2016, halfway through the implementation period 2015-2018. It prioritised ‘Communication activities’ as an area for ‘increased national effort’,¹⁴ however, to date there still remains no evidence of action on this priority, and an evaluation of the NDS in 2018 found that public awareness could be improved through clarifying agency responsibilities for promoting awareness and a commitment to supporting public awareness campaigns.¹⁵
- 1.12 The Second Implementation Plan ***Driving Action 2015–2018***¹⁶ also appeared to be a document that highlighted existing priorities within the remit of the Commonwealth Department of Social Services (NDIS transition and employment reform). This created the very real risk that the NDS had become a **‘welfare focused strategy’** rather than a mechanism to drive CRPD implementation across government agencies and between jurisdictions.¹⁷
- 1.13 The final Implementation Plan ***‘Measuring Progress (2019-2020)’*** for the NDS was never released. It was intended to identify new and emerging outcomes to be implemented in the final years of the Strategy.
- 1.14 Under the NDS, a high-level **Progress Report** was to be submitted to the COAG every two years.¹⁸ These progress reports were intended to monitor progress against the six policy outcomes using independent reporting and analysis of data on trend indicators. The progress reports were also to include:
- other evidence of change, such as reporting from the [then] Standing Council on Community and Disability Services about key achievements as well as reporting from disability champion ministers and, where appropriate, other portfolio ministers;
 - outcomes of any reviews of national agreements and national partnerships;

- state and territory government information on their disability plans;
- Australian Government agencies' policies and programs that were working towards achieving the Strategy's vision;
- the views of people with disability, their families and carers and their representative organisations on progress.

- 1.15 An **initial Report** to the COAG, endorsed by all Australian Governments, was released in December 2012. This Report contained the plan for first implementation phase (*Laying the Groundwork: 2011–2014*). It outlined the action that governments had taken, or would take, to deliver on the Strategy, including information on the fifty-three areas for future action identified as priorities in 2009.
- 1.16 Despite Australian government's committing to biennial progress reports on the NDS, there were **only two progress reports produced** over the life of the NDS.¹⁹ These reports only **described** actions rather than measuring and evaluating outcomes for people with disability. The progress reports on NDS implementation provided a clear indication of the need to recast the NDS as an engine for change, rather than a way to simply report on actions and 'activities' already undertaken.
- 1.17 In 2017, the Senate Community Affairs References Committee, published its report following its Inquiry into '**Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities**'.²⁰ The final report clarified that the Inquiry only '*focused on one aspect of the Disability Strategy, the accessibility and inclusiveness of the Australian community for people with disability.*' Despite this, the Final Report contained a number of recommendations in relation to how the NDS could be improved, including for example:
- ensuring the NDS meets domestic and international reporting obligations;
 - establishing an Office of Disability Strategy (under the oversight of the Disability Reform Council), as a coordination agency;
 - ensuring specific measurable goals for implementation of the NDS are created, that these are routinely monitored, and data is collected and reported biannually to the Disability Reform Council, the Office of Disability Strategy (if created) and presented to Parliament;
 - developing best practice guidelines for detailed consultation with people with disability and their advocates;
 - that the new NDS beyond 2020, be developed in consultation with people with disability, and included the critical role of advocacy in this process;
 - that the new NDS beyond 2020 include development of solutions to the barriers identified throughout the Senate Inquiry.
- 1.18 Australia has undergone two reviews by the **Committee on the Rights of Persons with Disabilities**²¹ in relation to its compliance with the *Convention on the Rights of Persons with Disabilities* (CRPD). The inaugural review was conducted in 2013 and the second review was undertaken in 2019. On both occasions, in order to inform the reviews, a **Civil Society Shadow Report** was developed which provided information for the Committee on Australia's compliance with the CRPD from the perspective of people with disability in Australia. The first Civil Society Shadow Report, entitled '[Disability Rights Now 2012](#)' contained a significant number of recommendations in relation to the National Disability Strategy (NDS). The second Civil Society Shadow Report, entitled '[Disability Rights Now 2019](#)' also contained specific recommendations related to the National Disability Strategy (NDS).

- 1.19 Following the 2013 review, the Committee on the Rights of Persons with Disabilities released its **Concluding Observations** of Australia's compliance with the CRPD. The Committee made a number of recommendations to Australia regarding the NDS; however, these were not implemented. Again, following Australia's 2019 Review, the Committee released its **Concluding Observations**, and re-iterated several of its recommendations from the 2013 review regarding the NDS.
- 1.20 ***A copy of both the 2013 and 2019 Concluding Observations from the Committee are provided as an Appendix to this Submission.***

SECTION TWO
THE CRPD, GENDER, AND THE NDS



THE CRPD, GENDER, AND THE NDS

- 2.1 The *National Disability Strategy* is clearly framed within and underpinned by the CRPD. The NDS is the **key national policy framework to implement the CRPD** at the domestic level. It is also the key mechanism to implement disability related international obligations from other United Nations treaties to which Australia is a party.²² The NDS is **critical** to the realisation of the human rights of people with disability in Australia.
- 2.2 Although Australian Governments formally agreed that the NDS 2010-2020 would *'ensure that the principles underpinning the CRPD are incorporated into policies and programs affecting people with disability, their families and carers,*²³ the fundamental principle of **equality between men and women**, was not reflected in the NDS 2010-2020.
- 2.3 Despite the obligations of the CRPD in relation to women and girls with disability, it remains the case that in the Australian legislative, policy and service context, people with disability are still often treated as asexual, genderless human beings. This **gender-neutrality** can (and does) create and perpetuate the consequences of gender-based discrimination and can (and does) lead to misleading analyses of issues and/or inaccurate assessments of likely policy outcomes.
- 2.4 The CRPD is *clear* on **gender**. The CRPD recognises gender as one of the most **important categories** of social organisation. It expressly states the requirement to incorporate a gender perspective in all efforts to promote the human rights of people with disability, meaning that the rights of women with disability must be addressed when interpreting, implementing and monitoring **every** article of the Convention.
- 2.5 The CRPD **prioritises women and girls with disability** as a group warranting specific attention and additional measures. It obliges Governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms. It clarifies the need to ensure that national policies, frameworks and strategies - **such as the NDS** - make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and that such policies and frameworks include **focused, gender-specific measures** to ensure that women and girls with disability experience full and effective enjoyment of their human rights.
- 2.6 Article 6 of the CRPD (Women with Disabilities) as a cross-cutting article, means that the rights of women with disability must be specifically identified and addressed in **all measures** in the implementation of the CRPD, including through the NDS. **It is clear that in the Australian context, this is yet to occur.**
- 2.7 Article 6 of the CRPD is a **binding equality and non-discrimination article** that prohibits discrimination against women and girls with disability and obliges States parties to promote equality of both opportunity and outcomes. Article 6 ensures that the CRPD is not gender neutral, and this is reinforced by other elements within

the CRPD:

- Preamble paragraph (s) states, “[e]mphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities”;
- Article 3 (g) contains the principle “Equality between men and women”; and
- Specific ‘sex’, ‘gender’ and ‘age’ references throughout the CRPD.²⁴

- 2.8 Guidance on interpretation and implementation of Article 6 has been developed by the CRPD Committee in its *General Comment No. 3 (2016) on women and girls with disabilities*.²⁵ General Comment 3 clarifies that CRPD Article 6 is a binding non-discrimination and equality provision that **unequivocally outlaws** discrimination against women with disability. It specifically recognises that women and girls with disability are more likely to be discriminated against than men and boys with disability and women and girls without disability.²⁶
- 2.9 The fact that the NDS 2010-2020 was an un-gendered framework that ignored gender equality, was highlighted and detailed by WWDA in its 2014 review of the NDS, contained in a report entitled ‘*Gender Blind, Gender Neutral: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*’.²⁷ Although this detailed Submission was sent to all COAG members, relevant Ministers and senior bureaucrats, **none of WWDA’s recommendations** were enacted.
- 2.10 In 2019, in its ‘Review of Implementation of the NDS,’ undertaken by the Social Policy Research Centre at UNSW and commissioned by DSS, the Review Report highlighted that “*the Strategy does not include any gender-specific measures to ensure the rights of women and girls with disability*” and that **gender equality** was one of the key ‘**cross-cutting gaps**’ in the NDS 2010-2020.²⁸
- 2.11 The first phase of the national consultations on a new NDS was conducted in 2019. It consisted largely of face to face community workshops and an online survey. Women made up 77 per cent of the online survey respondents and outnumbered males in many of the community workshops.²⁹ The Final Report from the first phase of the national consultations highlighted the fact that many participants “*suggested gender and gender equality be reflected as a specific issue in the next National Disability Strategy*.”³⁰
- 2.12 In addition, both the SPRC Review and the first stage of the NDS Consultations, identified the need for the new NDS to **prioritise those cohorts** who experience particular disadvantage and exclusion, including First Nations people with disability; **women and girls with disability**; people with disability from CALD backgrounds; and people with disability from LGBTIQ+ communities.³¹ The Report from the SPRC Review stated “*the text of the new framework could recognise the additional barriers experienced by these groups*.”³²
- 2.13 The Committee on the Rights of Persons with Disabilities, through General Comment 3 [on Article 6: Women and girls with disabilities] and General Comment 7 [on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention]³³ has **re-iterated the obligations** of State parties in relation to women and girls with disability.

2.14 For example, CRPD General Comment 7, expressly articulates that:

Article 6 of the Convention requires measures to ensure the full development, advancement and empowerment of women and girls with disabilities. States parties should encourage and facilitate the establishment of organisations of women and girls with disabilities, as a mechanism for enabling their participation in public life, on an equal basis with men with disabilities, through their own organisations. States parties should recognise the right of women with disabilities to represent and organize themselves and facilitate their effective involvement in close consultations under articles 4 (3) and 33 (3). Women and girls with disabilities should also be included on an equal basis in all branches and bodies of the implementation and independent monitoring framework. All consultation bodies, mechanisms and procedures should be disability-specific, inclusive and ensure gender equality.

2.15 CRPD General Comment 7, also explains that:

Women with disabilities should be part of the leadership of organisations of persons with disabilities on an equal basis with men with disabilities and be given space and power within umbrella organisations of persons with disabilities through parity representation, women's committees, empowerment programmes, etc. States parties should ensure the participation of women with disabilities, including women who are under any form of guardianship or institutionalised, as a prerequisite in the design, implementation and monitoring of all measures that have an impact on their lives. Women with disabilities should be able to participate in decision-making processes addressing issues that have an exclusive or disproportionate impact on them, and on women's rights and gender equality policies in general, for example, policies on sexual and reproductive health and rights, and all forms of gender-based violence against women.

2.16 In its 2019 review of Australia's compliance with the CRPD,³⁴ the Committee **expressed its concern** regarding the low percentage of women and girls with disability, particularly of Indigenous background, having access to services under NDIS; as well as concerns regarding the **limited opportunities** for women and girls with disability to participate in the development of policies regarding the rights of women and gender equality.

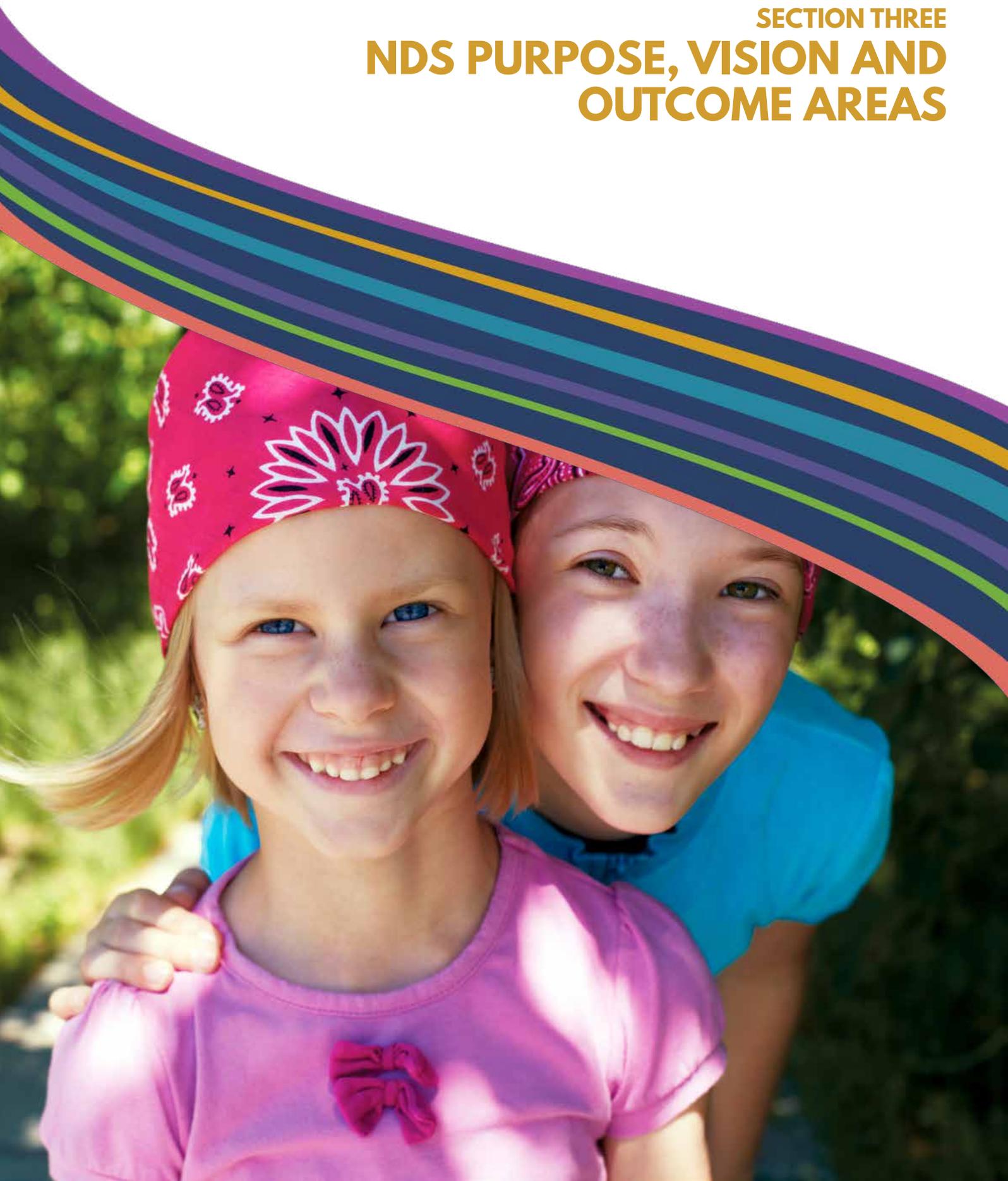
2.17 The Committee recommended that:

'In line with its general comment No. 3 (2016) and in the view of targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, the Committee recommends that the State party strengthen measures to address multiple and intersectional forms of discrimination against women and girls with disabilities and, in particular:

(a) Facilitate women and girls with disabilities', particularly of Indigenous background, access to services under NDIS;

(b) Adequately support organizations and networks of women and girls with disabilities, particularly those representing Aboriginal and Torres Strait Islander women with disabilities, to engage in all initiatives to promote gender equality and ensure their effective participation in the development of policies for gender equality and the advancement of women and girls.'

SECTION THREE
**NDS PURPOSE, VISION AND
OUTCOME AREAS**



NDS PURPOSE, VISION AND OUTCOME AREAS

Position Paper Question 1:

During the first stage of consultations we heard that the vision and the six outcome areas under the current Strategy are still the right ones. Do you have any comments on the vision and outcome areas being proposed for the new Strategy?

WWDA Response:

3.1 In its Introduction, the Position Paper states:

“The current Strategy is the primary mechanism through which Australia implements its obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). The new Strategy will continue to uphold Australia’s commitments under the UN CRPD.”

3.2 The Position Paper also states:

*“The new Strategy will be person-centric in that the policy architecture should revolve around creating the structures and practices through **which people with disability can understand and exercise their rights across all domains.**” [emphasis added]*

3.3 The proposed ‘**vision**’ for the new NDS is currently expressed in the Position Paper as:

“An inclusive Australian society that enables people with disability to fulfil their potential as equal members of the community.”

3.4 Given that the new NDS is clearly framed within and underpinned by the CRPD and is the mechanism for ongoing implementation of the CRPD at the domestic level, it would be logical if the vision for the new NDS **reflected the purpose and vision of the CRPD**. The purpose of the CRPD is to: *promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*³⁵

3.5 In this context, WWDA suggests the proposed ‘vision’ for the new NDS be **amended** to be more closely aligned with the purpose and vision of the CRPD. **WWDA considers it important that the new ‘vision’ articulates the ‘rights’ of people with disability**, rather than their ‘potential’. Possible examples for the new ‘vision’ include:

*“An inclusive Australian society that enables people with disability to **exercise their rights** as equal members of the community.” [Preferred option]*

*“An inclusive Australian society that enables people with disability to **enjoy their rights** as equal members of the community.”*

*“An inclusive Australian society that enables people with disability to **realise their rights** as equal members of the community.”*

- 3.6 WWDA notes that the Position Paper does not include a **‘Purpose’** Statement for the new NDS. For example: the NDS 2010-2020 identified the ‘purpose’ of the NDS in the following way:

‘The **purpose** of the National Disability Strategy is to:

- establish a high-level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy
- drive improved performance of mainstream services in delivering outcomes for people with disability
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability
- provide national leadership toward greater inclusion of people with disability.’

- 3.7 Whilst WWDA supports these statements regarding the purpose of the NDS, we would recommend that if these statements were to be retained in the new NDS, a **priority statement** is needed to clearly articulate that:

The purpose of the NDS is to provide the national policy framework to implement the Convention on the Rights of Persons with Disabilities (CRPD).

- 3.8 The Position Paper proposes that the existing **‘Outcome Areas’** of the NDS 2010-2020, be retained as part of the new Strategy. These Outcome Areas are:

1. Economic security
2. Inclusive and accessible communities
3. Rights protection, justice and legislation
4. Personal and community support
5. Learning and skills
6. Health and wellbeing

- 3.9 Research undertaken by WWDA³⁶ and confirmed in the SPRC Implementation Review Report,³⁷ indicates that the Outcome Area of **‘Rights protection, justice and legislation’** has seen the least purchase for people with disability, particularly women and girls with disability. This Outcome Area was defined in the NDS 2010-2020 as:

“statutory protections such as anti-discrimination measures, complaints mechanisms, advocacy, the electoral and justice systems.”³⁸

- 3.10 There was nothing in the description that indicated that **violence against people with disability** was included in the Outcome Area.

- 3.11 The Outcome Area of **‘Rights protection, justice and legislation’** had 5 Policy Directions in order to meet the Outcome, with each Policy Direction having a “list”

of strategies for actions to address it. Policy Direction 4 was ‘*People with disability to be safe from violence, exploitation and neglect*’. The **only strategy** listed under this policy direction was to ‘*Develop strategies to reduce violence, abuse and neglect of people with disability.*’ **So, in effect, the main strategy in the NDS 2010-2020 to address ‘violence, exploitation and neglect’ of people with disability was to ‘develop more strategies’.**

3.12 Australia has clear obligations under international human rights law to enact, implement and monitor legislation addressing **all forms of violence against people with disability**, including its gender-based dimensions, and including those egregious forms of violence that affect people with disability disproportionately, such as forced sterilisation, forced institutionalisation and forced abortion. The incorporation of international human rights law into the domestic legal, judicial and administrative order at every level and the adoption of measures for implementation – including through policy frameworks such as the **National Disability Strategy** - are critical prerequisites for Australia’s capacity and responsibility to meet its obligations to not only ensure legal protection for people with disability, but also to **promote a culture where no form of violence against people with disability is tolerated.**³⁹

3.13 It is clear that violence, abuse, neglect and exploitation of people with disability is an **epidemic** in Australia. This is borne out by the fact that in April 2019, after 2 decades of advocacy by people with disability and their supporters, the Prime Minister announced the **Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability** (the Disability Royal Commission).⁴⁰ In announcing the Royal Commission, the Prime Minister Hon Scott Morrison stated:

*“Violence, abuse, neglect and exploitation of people with disability is unacceptable and abhorrent and it’s critically important to make this truly a national inquiry.”*⁴¹

3.14 The Hon Ronald Sackville AO QC, appointed to Chair the Disability Royal Commission stated:

*“The Royal Commission is the product of tireless and persistent efforts by people with disability, their families, advocates, academics and many others who have long recognised that people with disability in this **country are routinely subjected to violence, abuse, neglect and exploitation.**”* [Emphasis added].

3.15 The Disability Royal Commission recognised the particular need to focus on people with disability who face **multiple intersecting disadvantage**, and this is reflected through Term of Reference G, of the Royal Commission Letters Patent:

*(g) the specific experiences of violence against, and abuse, neglect and exploitation of, people with disability are multilayered and influenced by experiences associated with their age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, including the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability;*⁴²

3.16 In addition, in acknowledging that some groups are at higher risk of violence, abuse, neglect and exploitation, the Royal Commission has **specifically** articulated that:

*“Women and girls with disability **are far more likely** to experience violence and abuse than women and girls without disability, and they are less likely to report this abuse for both personal and systemic reasons.”⁴³*

3.17 CRPD *General Comment No. 3 on women and girls with disabilities*,⁴⁴ published by the Committee on the Rights of Persons with Disabilities in 2016, elaborates on this fact, and draws particular attention to the **structural and institutional forms** of gender-based violence related to law, the state and culture that women and girls with disability not only experience, but are more at risk of.⁴⁵

3.18 In 2018, the Australian **NGO CRPD Shadow Report Coordinating Committee**, undertook a national survey of people with disability to help inform the development of the *CRPD NGO Shadow Report* for Australia’s 2019 CRPD review.⁴⁶ Of the almost 900 respondents, **72%** were women with disability. **33%** of respondents reported that they experience violence or abuse. In addition to this, just **41%** of respondents said that they feel safe in their community, and only **53%** of respondents said that they feel safe where they live. **76.5%** of respondents reported that they feel discriminated against or treated unfairly because of their disability.⁴⁷

3.19 In its Final Report from the *Senate Inquiry into violence against people with disability in institutions*,⁴⁸ the Senate Community Affairs References Committee found that “*violence, abuse and neglect of people with disability is both widespread and takes many forms*”. The Committee found that:

*“Throughout this inquiry, the evidence presented from people with disability, their families and advocates, showed that a root cause of violence, abuse and neglect of people with disability begins with the de-valuing of people with disability. This de-valuing permeates the attitudes of individual disability workers, service delivery organisations **and most disturbingly, government systems** designed to protect the rights of individuals.”* [emphasis added].

3.20 In relation to the National Disability Strategy, the Committee recommended that:

*“the National Disability Strategy must be updated to refer to the specific needs of children and young people, **must address violence, abuse or neglect of people with disability** and should be linked to domestic violence frameworks.”⁴⁹*

3.21 In September 2020, it was widely reported that the **National Disability Insurance Scheme Quality and Safeguards Commission**,⁵⁰ “*had received more than 8,000 complaints over in the past two years*”.⁵¹ It was reported that “*more than 5,700 complaints led to 8,168 investigations into alleged abuse and neglect, provider practice and worker conduct*”.⁵² It is acknowledged and recognised that these ‘complaints’ are only the tip of the iceberg. Many people with disability particularly

those in closed settings and environments, do not have access to the Internet, and are often denied access to information due to the ‘gatekeeping’ behaviour of service providers, some of which can be the perpetrator of violence, abuse, exploitation and neglect of people with disability. The sheer number of complaints lodged with the National Disability Insurance Scheme Quality and Safeguards Commission over the past two years, reflects and supports the fact that violence, abuse and neglect of people with disability in Australia **remains rife**.

3.22 The SPRC Implementation Review Report, found that ‘Protection against violence and abuse’ was an **“implementation gap”** in the NDS 2010-2020, and subsequently identified the need for **‘Protection against violence and abuse’** to be incorporated into the new NDS as a **‘priority’**.⁵³

3.23 The Interim Report of the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*,⁵⁴ released on 30th October 2020, states:

*‘People with disability can experience violence, abuse, neglect or exploitation in almost **every aspect of their lives**. The experiences also bring home the profound consequences that can flow from these experiences, for both people with disability themselves and their families..... Violence, abuse, neglect and exploitation experienced by people with disability is **not limited to discrete settings or contexts**. Rather, violence against, and abuse, neglect and exploitation of, people with disability point to **systemic and structural failures across multiple and overlapping systems**.’*

3.24 Given the epidemic that is violence and abuse of people with disability in Australia, WWDA is strongly of the view that **‘Safety from Violence and Abuse’** should be a new, **stand-alone Outcome Area** of the new NDS. It should not remain ‘buried’ within Outcome Area ‘Rights protection, justice and legislation’, as this does not accurately reflect the right to safety to all forms of violence, nor does it do justice to the fact that violence, abuse, exploitation and neglect of people with disability remains one of the most urgent and unaddressed human rights issues for people with disability in Australia. There have already been a number of recommendations⁵⁵ regarding the importance of the NDS to **explicitly** recognise safety from violence and abuse, as a **priority area**.

3.25 In relation to the existing six Outcome Areas, WWDA suggests that some of these be re-framed/re-worded, in order to provide more clarity in the new NDS. For example, Outcome Area 1 [**Economic Security**] is a very broad concept that encompasses a range of areas, not just ‘financial security’ or ‘job security’. Economic security is broadly understood to be composed of *‘basic social security, defined by access to basic needs infrastructure pertaining to health, education, dwelling, information, and social protection, as well as work-related security.’*⁵⁶

3.26 The Report from the first phase of NDS consultations, states that:

*“survey results showed finding and keeping a job and work and career opportunities were the biggest issues for people with disability. In workshops, people said having employment with fair wages was critical to being able to achieve independence and to live a full and healthy life.”*⁵⁷

- 3.27 Given that **'Economic Security'** encompasses such a wide range of areas, to better reflect the outcomes of the first phase of NDS consultations, and to give greater clarity as to the *intent* of the Outcome Area, WWDA is of the view that this Outcome Area would be better expressed as **'Employment and Financial Security'**.
- 3.28 In relation to Outcome Area **'Employment and Financial Security'**, WWDA recommends that the NDS articulate that there are many people with disability who have no or minimal opportunities to engage in paid work throughout their adult life. Reflecting Australia's obligations to safeguard and promote an **adequate standard of living and social protection for people with disability**, [CRPD Article 28], the NDS should explain that a government provided, broadly based, **adequate financial safety net is essential** if economic security for people with disability is to be enhanced.⁵⁸
- 3.29 In relation to current Outcome Area 3 [**Rights protection, justice and legislation**] WWDA suggests that this Outcome Area be re-worded to provide a more accurate intent of the area. For example, 'legislation' is not an 'outcome' and it is unclear as to why it would be included in the 'name' of the Outcome Area. WWDA is of the view that this Outcome Area would be better expressed as **'Rights Protection and Access to Justice'**.
- 3.30 In relation to Outcome Area 5 [**Learning and Skills**], WWDA is of the view that this Outcome Area would be better expressed as **'Education and Learning'**. WWDA is of the view that expressing the Outcome Area in this way, is more consistent with the CRPD, and also the *intent* of the Outcome Area. 'Skills' are an output of education and learning, so WWDA strongly recommends that the word **'Education'** is explicitly used in this Outcome Area.
- 3.31 It is unclear at this stage, as to what 'key strategies' etc will be 'prioritised' under each of the Outcome Areas. However, WWDA strongly suggests that the Outcome Area [**Health and Wellbeing**] include **'sexual and reproductive health and rights'** as a priority under the 'Health and Wellbeing' Outcome area. The NDS 2010-2020 was completely **silent on the sexual and reproductive rights** of people with disability. It must be acknowledged that the omission of sexual and reproductive rights from the national policy framework to *'advance the rights of people with disabilities'* only serves to perpetuate the stereotype of people with disability as asexual, genderless human beings; denies people with disability their most fundamental human rights; and gives rise to a policy, program and service vacuum whereby the sexual and reproductive rights of people with disability remain violated, denied, ignored and trivialised.
- 3.32 Given Australia's recent experiences with the 2019/2020 Bushfires, the COVID-19 pandemic, the link between climate change and extreme events, and the **disproportionate effect** on people with disability in disaster and emergency situations - WWDA also suggests that consideration be given to incorporating **'Disaster and Emergency Planning, Management and Recovery'** into the new NDS, either as an additional new Outcome Area or within one of the Outcome Area (which are yet to be finalised).

SECTION FOUR
NDS GUIDING PRINCIPLES



NDS GUIDING PRINCIPLES

Position Paper Question 2:

What do you think about the guiding principles proposed here?

WWDA Response:

- 4.1 The Position Paper proposes that, as well as the **General Principles** as set out in Article 3 of the CRPD, a number of ‘additional principles’ be added to the new NDS, in order to “*guide the development of policy and design of programs*”. The ‘additional principles’ proposed in the Paper are:
- **Involve and engage:** *has the policy process or program design engaged with and listened to people with disability at all stages of planning and implementation and provided accessible information and opportunities for feedback?*
 - **Design universally:** *have the principles of universal design been applied where possible and has the project taken advantage of accessible and assistive technology where available?*
 - **Engage the broader community:** *how has the broader community been informed of, involved in and been made responsible for removing barriers and supporting the inclusion of people with disability?*
 - **Address barriers faced by priority populations:** *how have the priority populations noted by the National Disability Strategy been identified and what action has been taken to specifically address the barriers they may experience?*
 - **Support carers and supporters:** *how have the needs of the family, carers and circles of information and formal support for the person with disability been considered in the development of the policy or program?”*
- 4.2 CRPD Article 3 identifies a set of overarching principles that **guide the interpretation and implementation** of the Convention, and subsequently, the **implementation of the NDS**.
- 4.3 The **General Principles** as set out in Article 3 of the CRPD⁵⁹ are:
- a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
 - b) Non-discrimination;
 - c) Full and effective participation and inclusion in society;
 - d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
 - e) Equality of opportunity;
 - f) Accessibility;
 - g) Equality between men and women;
 - h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

- 4.4 WWDA is of the view that all of the proposed ‘additional principles’ for the new NDS, **are a duplication** of the General Principles of the CRPD, and also a duplication of several of the cross-cutting articles of the CRPD.
- 4.5 The suggested ‘additional principle’ of **‘Involve and engage’** is already addressed within the CRPD through General Principle (c) as set out in Article 3 of the CRPD **[Full and effective participation and inclusion in society]**. The term ‘Involve and Engage’ does not sufficiently address the fundamental requirement of the CRPD in regard to ‘participation of people with disability’. The CRPD Committee has made it clear that:

*“[t]he effective and meaningful participation of persons with disabilities, through their representative organisations, is [thus] at the heart of the Convention”.*⁶⁰

- 4.6 Principle (c) of Article 3 **[Full and effective participation and inclusion in society]** means that the participation of persons with disability, through their representative organisations, cuts across the **entire** text and applies to the whole Convention. It refers to engaging with **all persons**, including persons with disability, to provide for a sense of belonging to and being part of society. CRPD Article 33 (3) emphasises the obligation of States parties to ensure that civil society is involved and can participate in the independent monitoring framework established according to the Convention. CRPD General Comment 7 [on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention]⁶¹ also provides **authoritative guidance** and recommendations to States regarding participatory rights of people with disability.
- 4.7 In relation to the **participatory rights of children** and young persons with disability, the Committee on the Rights of the Child (CRC) has developed **General Comment 12: The right of the child to be heard**.⁶² CRC General Comment 12 provides detailed guidance on the implementation of Article 12 of the Convention on the Rights of the Child, and includes guidance on the implementation of participatory rights of children, including through representative organisations.
- 4.8 The UN **Human Rights Council**⁶³ has identified that the right to participate in political and public affairs continues to face obstacles to its full realisation, particularly for marginalised and excluded groups. In 2014, seeking to address this systemic issue in a comprehensive way, the Human Rights Council provided **detailed guidance and recommendations** to States regarding the promotion, protection and implementation of participatory rights.⁶⁴
- 4.9 The **Human Rights Council** clarifies that participation requires ‘a long-term and genuine commitment to engage in processes of intensive dialogue regarding the development of policies, programmes and measures in all relevant contexts.’ It determines that **intersecting and compound forms of discrimination** have an especially devastating effect on the right to participate in political and public affairs, and that lack of decision-making power is a universal and basic characteristic of marginalised and excluded groups. The Human Rights Council has further determined that participation mechanisms are **most effective** when they

are premised on empowerment and aimed at building the capacity, social capital, confidence, rights awareness and knowledge of individuals. This specifically includes the requirement for States to devote resources to **long- term, sustainable participatory mechanisms**.⁶⁵

4.10 WWDA is of the view that a new principle of **‘Involve and Engage’** is not required in the new NDS, given that Principle (c) of CRPD Article 3 [Full and effective participation and inclusion in society] and CRPD General Comment 7 already address participatory rights. If it is decided that the new principle of ‘Involve and Engage’ be included in the new NDIS, WWDA suggests that it be re-named as **‘Participation and Engagement’**.

4.11 The Position Paper suggests that **‘Design Universally’** be included as a new ‘principle’ for the new NDS. WWDA is of the view that this proposed ‘principle’ is already covered within the CRPD Guiding Principle f) **Accessibility** [and CRPD Article 9]. Article 9 is also a **cross-cutting article** of the CRPD, meaning that ‘Accessibility’ is expected to be considered in implementation of **each** article of the CRPD.

4.12 Article 2 of the CRPD [Definitions] provides a definition of **universal design**:

*“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.*⁶⁶

4.13 In addition, CRPD General Comment 2 [**Article 9: Accessibility**] provides **authoritative guidance** and recommendations to States regarding how Article 9 is to be implemented and monitored. The CRPD, in developing General Comment 2, has articulated that:

*“the fact that accessibility is indeed a vital precondition for persons with disabilities to participate fully and equally in society and enjoy effectively all their human rights and fundamental freedoms, the Committee finds it necessary to adopt a general comment on article 9 of the Convention on accessibility, in accordance with its rules of procedure and the established practice of the human rights treaty bodies.”*⁶⁷

4.14 CRPD General Comment 2 [**Article 9: Accessibility**] clearly addresses universal design.⁶⁸ It states, in part:

“The strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a way that takes full account of their inherent dignity and diversity. It should contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers.....The application of universal design makes society accessible for all human beings, not only persons with disabilities.”

- 4.15 WWDA is of the view that a new principle of **‘Design Universally’** is not required in the new NDS, given that Principle (f) of Article 3 [Accessibility] and General Comment 2 already address universal design. If it is decided that the new principle of ‘Design Universally’ be included in the new NDIS, WWDA suggests that it be re-named as **‘Accessibility’** (although this would be a replication of CRPD Principle (f) of Article 3 [Accessibility]).
- 4.16 The Position Paper suggests that **‘Engage the broader community’** be included as a new ‘principle’ for the new NDS. The current descriptor for this new principle is ambiguous in its current form. For example: it states: *“How has the broader community been informed of, involved in and **been made responsible** for removing barriers and supporting the inclusion of people with disability?”* The idea that the ‘broader community’ [although not defined] could be held “responsible” for removing barriers and supporting the inclusion of people with disability, appears **ill conceived**.
- 4.17 CRPD Article 33 (3) emphasises the obligation of States parties to ensure that civil society is involved and can participate in the independent monitoring framework established according to the Convention.
- 4.18 As articulated in CRPD General Comment 7 [on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention]⁶⁹ the term “civil society organisation” comprises **different kinds of organisations**, including research organisations/institutes, organisations of service providers and **other private stakeholders**.
- 4.19 CRPD General Comment 7 states:
- “States parties should give priority to the views of organizations **of persons with disabilities** when addressing issues related to persons with disabilities, and develop frameworks to request civil society organizations and **other stakeholders** to consult and involve organizations **of persons with disabilities** in their work related to the rights enshrined in the Convention.....”*[Emphasis added].⁷⁰
- 4.20 At paragraph 27 of CRPD General Comment 7, it clarifies what **“full and effective participation”** means. It includes, for example:
- “Full and effective participation” (art. 3 (c)) in society refers to **engaging with all persons**, including persons with disabilities, to provide for a sense of belonging to and being part of society.”*
- 4.21 In addition, to be able to realise **‘Engaging the broader community’** in the efforts to ‘be informed of, involved in and responsible for removing barriers and supporting the inclusion of people with disability’, it is critical that CRPD Article 8 [Awareness-raising] be fully implemented.
- 4.22 The Position Paper suggests that **‘Address barriers faced by priority populations’** be included as a new ‘principle’ for the new NDS. The CRPD recognises this

requirement, explicitly acknowledging different layers or intersections of identity, through **Preamble paragraph (p)**:

‘Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple and aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, Indigenous or social origin, property, birth, age or other status.’⁷¹

4.23 As articulated and explained recently by Kayess and Sands (2020):

‘Intersectional discrimination recognises the ‘multidimensional layers of identities, statuses and life realities’ that ‘interact with each other at the same time in such a way as to be inseparable’. It acknowledges that people with disability do not experience discrimination as a homogenous group. The recognition of intersectional discrimination, along with individual and structural discrimination, is addressed through the combination of formal, substantive and transformative equality.’⁷²

4.24 And, as recently highlighted by Clifton (2020):

‘Intersectionality speaks to the ways in which systems of power, including sex, gender, sexuality, race, class, caste, ability, and age intersect and overlap, shaping an individual’s experience of the social world.’⁷³

4.25 CRPD Articles 6 and 7 ensure that the CRPD is not gender-neutral nor adult-focussed. For women and girls with disability, this is reinforced by **Preamble paragraph (s)** which emphasises, *‘the need to incorporate a **gender perspective** in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.’⁷⁴*

4.26 Articles 6 and 7 are illustrative of intersectionality and not exhaustive. While the CRPD does not contain specific articles for other identity or population groups, the **Preamble paragraph (p)** makes it clear that interpretation and implementation of the CRPD must recognise **intersectionality** broadly, including, for example, as it is has been recognised by, and described in the *Royal Commission into Violence, Abuse, Neglect and Exploitation* (the Disability Royal Commission) Terms of Reference [at g] in relation to:

...age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, including the particular situation of Aboriginal and Torres Strait Islander and culturally and linguistically diverse people with disability.’⁷⁵

4.27 As explained recently by Kayess and Sands (2020):

*‘Other international human rights norms can provide additional guidance in the application of human rights in addressing **intersectionality**, including the International Convention on the*

Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the UN Declaration on the Rights of Indigenous Persons (UNDRIP),⁷⁶ as well as other useful guidance material, such as the Yogyakarta Principles.⁷⁷

- 4.28 In order to address the situation of **First Nations people with disability** through the new NDS, requires **applying the standards contained in the UNDRIP** to implement CRPD rights. The CRPD Preamble **paragraph (p)** clearly includes First Nations people with disability within the scope and purpose of the Convention to promote, protect and ensure the rights of all people with disability. Article 30 of the CRPD establishes for people with disability the *‘recognition and support of their cultural and linguistic identity’*, reinforcing the need for States Parties to apply a **cultural lens** to the implementation of rights through laws, policy and practice.⁷⁸
- 4.29 In this context, in order for the new NDS to ‘address barriers faced by priority populations’, the new NDS should, **in its text**, clearly articulate that **women and girls** [CRPD Article 6]; **children and young people** [CRPD Article 7]; **First Nations people with disability** [CRPD Preamble paragraph (p), UNDRIP] and **culturally and linguistically diverse people with disability** [CALD] [CRPD Article 30], are subject to multiple and aggravated forms of discrimination and **must be recognised in the new NDS as priority population cohorts**.
- 4.30 WWDA therefore suggests that **‘priority populations’** not be reduced to only a ‘principle’ for the new NDS, but that, consistent with the CRPD, the new NDS clearly articulate these **‘priority population cohorts’** and ensure that the **NDS Outcomes Framework** (including its data collection, monitoring, evaluation and reporting process), explicitly include the priority cohorts in order to track progress for these groups over the life of the Strategy.
- 4.31 The Position Paper suggests that **‘Support carers and supporters’** be included as a new ‘principle’ for the new NDS.
- 4.32 The Position Paper also clarifies that:
- “The new Strategy will be person-centric in that the policy architecture should revolve around creating the structures and practices through which **people with disability** can understand and **exercise their rights** across all domains.” [emphasis added]*
- 4.33 Historically, a focus on individual incapacity or the ‘tragedy’ of disability constructed people with disability as dependent, helpless, and in need of care and protection, often resulting in their isolation, segregation and exclusion from participation in the wider community. Too often, people with disability, particularly women and girls with disability, **have their views ignored or disregarded** in favour of those of ‘experts’, ‘professionals’, parents, guardians, and carers, as well as representatives of organisations not controlled by and constituted of people with disability themselves.⁷⁹
- 4.34 Whilst the role of carers and supporters are valuable in the lives of **some** people

with disability, it is critical that the new NDS is focused on, and for, **people with disability**. People with disability have the right to be at the front and centre of all decision-making processes that affect their lives. Where relevant, and directed by people with disability themselves, workers and service providers (and others) should engage respectfully with partners, families of choice, families of origin, friends, carers, advocates, guardians, support persons and other important people in the lives of people with disability. At all times, and consistent with the principle of maximising **choice and control**, people with disability **must be afforded their right** to determine who, if anyone, they wish to be involved in matters related to their lives, including in relation to services and supports.

- 4.35 CRPD General Comment 7 [on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention]⁸⁰ addresses the role of **families and carers** in the context of participatory rights of people with disability. It states, for example:

*‘Organizations including family members and/or relatives of persons with disabilities, which are pivotal in facilitating, promoting and securing the interests and supporting the autonomy and active participation of their relatives with intellectual disabilities, dementia and/or children with disabilities, when these groups of persons with disabilities **want** to be supported by their families as united networks or organizations. In such cases, these organisations should be included in consultation, decision-making and monitoring processes. **The role of parents, relatives and caregivers in such organisations should be to assist and empower persons with disabilities to have a voice and take full control of their own lives. Such organisations should actively work to promote, and use supported decision-making processes to ensure and respect the right of persons with disabilities to be consulted and to express their own views.***

- 4.36 WWDA is of the view that the **new NDS must separate the terminology of “people with disability and their carers”** (and/or “people with disability and their families”), to **“people with disability”** - in order to increase the autonomy of people with disability, emphasise a focus on people with disability and their rights to self-determination, choice and control, and challenge the **prevailing stereotype** of people with disability as dependent and burdens of care.
- 4.37 As highlighted earlier, WWDA is of the view that the proposed ‘additional principles’ for the new NDS, are a duplication of the General Principles of the CRPD, and also a duplication of CRPD Articles, including the cross-cutting articles of the CRPD.
- 4.38 In this context, WWDA recommends that the new NDS not introduce or include additional ‘principles.’ It would be more useful if the new NDS provided a brief description of and/or a Guidance Statement regarding what each of the General Principles (as set out in Article 3 of the CRPD), mean in practice, and articulate that **ALL** these principles should be used to guide the development and design of policy and programs by all levels of government and non-government organisations.

SECTION FIVE
IMPROVING COMMUNITY ATTITUDES



IMPROVING COMMUNITY ATTITUDES

Position Paper Question 3:

What is your view on the proposal for the new Strategy to have a stronger emphasis on improving community attitudes across all outcome areas?

WWDA Response:

- 5.1 The 2009 report *Shut Out: The Experience of People with Disabilities and their Families in Australia*⁸¹ made it clear that for people with disability, **‘a fundamental priority was to ensure that the National Disability Strategy realise the rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD).’** The *Shut-Out Report* concluded that:

*“People with disabilities want to bring about a **transformation** of their lives. **They want their human rights recognised and realised.** They want the things that everyone else in the community takes for granted. They want somewhere to live, a job, better health care, a good education, a chance to enjoy the company of friends and family, to go to the footy and to go to the movies. They want the chance to participate meaningfully in the life of the community.”⁸²*

- 5.2 WWDA **supports** the proposal in the Position Paper for the new NDS to have a stronger emphasis on improving community attitudes across all outcome areas. However, WWDA is of the view that this ‘stronger emphasis’ **must include and address ableism** - the harmful social norms and beliefs that devalue people with disability as ‘less than’, as ‘deficient’, as ‘other’. **Ableism** underpins the inequality and discrimination experienced by people with disability. As recently highlighted by Clifton (2020):

“ableism is another reference to power and its attendant violence, the hierarchy of the abled over and against the disabled.”⁸³

- 5.3 And, also, as recently articulated by Kayess and Sands (2020), in Australia, **ableism** is:

“still entrenched in contemporary legal, policy and practice frameworks which continue to segregate people with disability from the general population – in special schools, special institutions and accommodation arrangements, segregated employment, segregated transport systems, special access arrangements, special sporting events – and deny their autonomy through the removal of legal capacity, through compulsory financial management, compulsory mental health detention and treatment, and indefinite detention through justice diversion provisions.”⁸⁴

- 5.4 Segregated and parallel systems enable and foster discriminatory community

attitudes that continue to view people with disability as ‘dangerous’, ‘incapable,’ in need of ‘regulation and surveillance,’ as ‘less than’, as ‘deficient,’ and as ‘other.’ In order to **‘improve community attitudes’** towards people with disability, **it is critical that the new NDS incorporate measures to dismantle these systems and undertake structural and systemic reforms to adhere to the CRPD.**

- 5.5 As outlined earlier in this Submission, in its Final Report from the *Senate Inquiry into violence against people with disability in institutions*,⁸⁵ the Senate Community Affairs References Committee found that “*violence, abuse and neglect of people with disability is both widespread and takes many forms*”. The Committee found that:

“Throughout this inquiry, the evidence presented from people with disability, their families and advocates, showed that a root cause of violence, abuse and neglect of people with disability begins with the de-valuing of people with disability. This de-valuing permeates the attitudes of individual disability workers, service delivery organisations and most disturbingly, government systems designed to protect the rights of individuals.” [emphasis added].

- 5.6 It is therefore critical that, in efforts to ‘improve community attitudes’ towards people with disability across all outcome areas of the new NDS, there must firstly, be a recognition that **ableist government systems and practices** contribute to, fail to condemn, and actively foster discriminatory attitudes towards people with disability. Secondly, the new NDS must not only focus on *activities* to ‘raise awareness’ of the value of people with disability in society. Whilst ‘awareness raising’ activities are critically important in helping to shape community attitudes, this cannot be done in isolation from addressing and **dismantling ableist systems and practices** that enable discriminatory attitudes towards people with disability to flourish.

- 5.7 The Interim Report of the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*,⁸⁶ released on 30th October 2020, clearly articulates that **‘ableism frames the discrimination and exclusion experienced by people with disability.’** The report identifies that:

*‘The intersection of **ableism** with other forms of oppression - such as racism, sexism, ageism or homophobia - works to disempower many people with disability and can have serious and sometimes deadly implications.’*

- 5.8 The Interim Report⁸⁷ also highlights that **ableism intersects with sexism**, and that:

‘Research [also] shows that women with disability are more likely to be disadvantaged by negative attitudes than men with disability, particularly in the workforce.’

- 5.9 It must be recognised that without a sound understanding of how society constructs disability and the ways in which different systems and structures of oppression intersect to shape the experiences of discrimination, it is more likely

that those tasked with shaping or implementing policies will develop solutions better suited for **short-term fixes** instead of long-term structural change.

- 5.10 The development of the new NDS could benefit from lessons learned from the legislative, policy and practice frameworks Australia has developed to address **violence against women**. For example, it was not that many years ago that violence against women was once considered to be a ‘personal matter’ rather than a public health concern. However, in contemporary Australia it is recognised that to address the scourge that is violence against women, a **social transformation** is needed. For example, it is now well understood that **gender inequality** drives violence against women.⁸⁸ Gender inequality operates at many levels, ‘from social and cultural norms (the dominant ideas about men and women in society), to economic structures (such as the pay gap between men and women), to organisational, community, family and relationship practices’.⁸⁹ There is also growing recognition that an **intersectional approach** is essential to prevent and respond to violence against women.
- 5.11 It is therefore vital that in efforts to change community attitudes towards people with disability, and to give effect to the ‘**social transformation**’ that is needed to enable them to realise their rights, we must be prepared to clearly articulate that **ableism** is the foundation of the inequality and discrimination experienced by people with disability. In so doing, the NDS must include **positive obligations** – beyond awareness-raising, education, training and sensitisation of the media – to include government policy and legislative reforms across all sectors and jurisdictions to promote equality and address discrimination (including intersectional discrimination).⁹⁰
- 5.12 It is also critical to recognise that in order to address the effect of negative community attitudes towards people with disability, we need to know what current community attitudes are, what underpins these attitudes, **which areas most need to change**, and how governments and others can effectively intervene to change them.
- 5.13 Changing community attitudes towards disability requires **complementary and multidimensional methods and responses**. Research on ‘changing community attitudes’, including towards people with disability, recognises that three levels of intervention are required: personal, organisational and structural. Interventions at the *personal level* are those directed towards change on the part of individuals; interventions at the *organisational level* are related to service interactions in people’s life domains (such as education, employment, justice and health); while interventions at the *structural level* are related to the review, enactment, implementation and enforcement of policy and legislation.⁹¹ Critically, these interventions must be **co-designed with people with disability** and recognise that people with disability are the experts in their own lives.
- 5.14 The Committee on the Rights of Persons with Disabilities, through General Comment 7, has emphasised that:

‘Awareness- raising campaigns and training programmes aimed at all public sector officials must be in conformity with the principles of

*the Convention and based on the **human rights model of disability** to overcome entrenched gender and disability stereotypes in society.'*

- 5.15 WWDA offers the following **suggestions for consideration** in relation to improving community attitudes towards people with disability across **all** NDS outcome areas. These suggestions are not in any order of priority.
- 5.15.1 Establish an independent high-level **Office of Disability** within the Department of Prime Minister and Cabinet⁹² to drive the new NDS across all levels of governments and to ensure compliance with the CRPD and the NDS.
- 5.15.2 Conduct an annual/bi-annual **Prime Ministers Summit on Disability**, similar to the Prime Minister's Summits on Violence Against Women, held in 2016 and 2018. Each State/Territory Premier (with their Disability Ministers) to attend and provide information on what each State/Territory is doing to progress the rights of people with disability, consistent with the CRPD and the Outcome areas of the new NDS.
- 5.15.3 Conduct a bi-annual **National Conference on the NDS and People with Disability**, which would include Conference streams consistent with the Outcome Areas of the new NDS. High level sponsorship from the corporate sector could be sought. Re-purpose a proportion of the annual funding provided under the National Disability Conference Initiative (NCDI) to the bi-annual National Conference on the NDS and People with Disability.
- 5.15.4 Fund and support an annual or bi-annual **'Citizen's Jury'**⁹³ of people with disability to report on, and evaluate progress on the NDS from the perspective of disabled people.
- 5.15.5 Establish a process and day modelled on ['Closing the Gap'](#) whereby the Prime Minister reports to Parliament on progress to implement the National Disability Strategy.
- 5.15.6 Develop a national media strategy and awareness campaign, funded by Commonwealth, State **and** Territory Governments, and in consultation with people with disability and their representative organisations, similar to the ['Stop it at the Start'](#) campaign to address violence against women.
- 5.15.7 Develop a national **cross government awareness raising strategy** to promote positive images and human rights of people with disability in line with the CRPD.
- 5.15.8 Commission and undertake a comprehensive **evaluation of past 'Awareness Raising' campaigns**, including at national and State/Territory levels, including for example: International Day of People with Disability; the National Disability Awards, Don't Dis-myAbility; etc.
- 5.15.9 **Invest in media content across all platforms**, including in the

mainstream media, that are co-designed by people with disability and that operate within a human rights-based framework. Initiatives such as ‘Employable Me’ on ABCTV, plus ‘One on One’ (also on ABCTV) are positive examples, however, these types of programs need to be embedded into mainstream TV and other platforms.

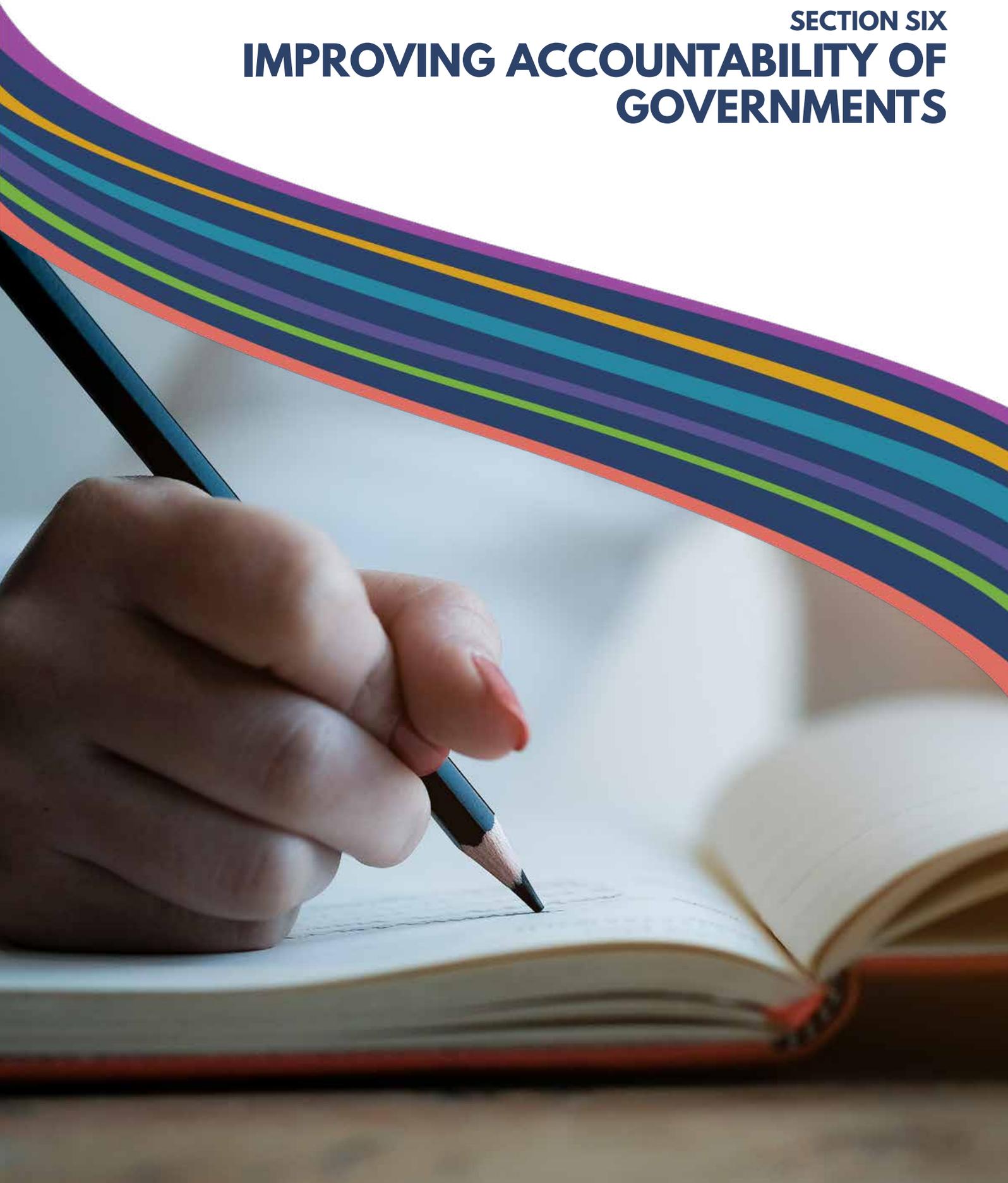
- 5.15.10 Establish a **Disability Equality Agency**, under special purpose legislation (eg: a Workforce Disability Equality Act) modelled on the [Workplace Gender Equality Agency \(WGEA\)](#) that aims to improve and promote equality for people with disability in the workforce. Similar to the *Workplace Gender Equality Act 2012*, a Workforce Disability Equality Act, could:
- promote and improve disability equality (including equal remuneration between disabled persons and non-disabled persons) in employment and in the workforce;
 - support employers to remove barriers to the full and equal participation of people with disability in the workforce;
 - promote, amongst employers, the elimination of discrimination on the basis of disability in relation to employment matters;
 - foster workplace consultation between employers and employees on issues concerning disability equality in employment and in the workforce;
 - improve the productivity and competitiveness of Australian business through the advancement of disability equality in employment and in the workforce.
- 5.15.11 Commission the **Australian Law Reform Commission (ALRC)** to review, and provide processes for reform of, laws, policies and practice frameworks that are not compliant with the CRPD.
- 5.15.12 Withdraw the **Interpretative Declarations** on articles 12, 17 and 18 of the CRPD. Australia’s Interpretative Declarations on CRPD Articles 12, 17 and 18 restrict effective implementation of the CRPD (and consequently the NDS), prevent reform and allow for human rights violations including denial of legal capacity, forced treatments, and discrimination against non-Australian people with disability seeking to enter or remain in Australia.⁹⁴
- 5.15.13 Establish **formal and permanent mechanisms** to ensure the full and effective participation of people with disability, including through representative organisations of people with disability, in the development and implementation of legislation and policies to implement the CRPD and the NDS, ensuring adequate resources and provision of necessary supports (See response to Question 8 for more information).
- 5.15.14 Develop a national plan and/or targeted Action Plans, embedded within the new NDS, to **end the segregation** of people with disability, including in institutional living environments, educational settings, segregated workplaces, psychiatric facilities, forensic disability units, and aged care facilities.
- 5.15.15 In line with the recommendations made to Australia since 2013 by the CRPD Committee and the General Comment on article 12, *Equal*

recognition before the law,⁹⁵ and the recommendations of the Australian Law Reform Commission's 2014 report '*Equality, Capacity and Disability in Commonwealth Laws*', **develop and implement a nationally consistent supported decision-making framework.**

- 5.15.16 Ensure that the **National Disability Research Partnership (NDRP)** in its work to develop a national disability research agenda is strongly underpinned by the CRPD and provides a **comprehensive agenda** that is not limited to existing service system improvement.
- 5.15.17 Investigate the feasibility of developing a **Disability Procurement Policy**, similar to Australia's Indigenous Procurement Policy.⁹⁶
- 5.15.18 Resource the **Australian Human Rights Commission (AHRC)** to enable the Disability Discrimination Commissioner to develop and present an **Annual Report to the Australian Parliament** on progress to advance the rights of persons with disability (similar to the AHRC Children's Rights Report⁹⁷ and the AHRC former Social Justice Reports).⁹⁸
- 5.15.19 In consultation with people with disability and their representative organisations, appoint an **Ambassador for Disability Equality** (similar to the role of Ms Natasha Stott Despoja when she was the Australian Ambassador for Women and Girls).
- 5.15.20 Instigate **Press Club addresses** – by relevant Ministers, Disability Discrimination Commissioner, Ambassador for Disability Equality, high profile persons with disability.
- 5.15.21 Reinstate and adequately resource the **National Disability Awards**, with award 'categories' under each Outcome area of the new NDS.
- 5.15.22 Develop a **CRPD and NDS website**, linked to the National Disability Gateway, and showcase 'real' stories of people with disability across all NDS Outcome Areas.
- 5.15.23 Establish an **NDS Twitter and Instagram** account, linked to the NDS website.
- 5.15.24 Develop an **NDS Marketing Strategy** to promote the NDS 'brand/logo'.
- 5.15.25 Develop and implement an **NDS Social Media Strategy/Package**, including specific initiatives targeted at young people.
- 5.15.26 Design and implement a new **national, longitudinal survey** focused on community attitudes to people with disability, similar to the British Social Attitudes (BSA) Survey,⁹⁹ and the National Community Attitudes towards Violence against Women Survey (NCAS).¹⁰⁰
- 5.15.27 Investigate the feasibility of introducing additional questions/indicators in the **General Social Survey (GSS)**¹⁰¹ and other relevant national surveys (ie: Labour Force Survey) on attitudes towards people with disability.

- 5.15.28 Address the **methodological restrictions** in the main survey instruments used to capture data on violence against women,¹⁰² which continues to result in significant under-representation of women with disability in population-based studies on the prevalence of domestic and family violence and sexual assault.¹⁰³
- 5.15.29 Commit to investment and support to the ABC to establish a **dedicated disability online portal** or programming voice within the ABC, to meet the obligations of the ABC Charter in respect of disability, such as a multi-media news, opinion and podcast portal to build on the work of **ABC Ramp Up**.

SECTION SIX
IMPROVING ACCOUNTABILITY OF
GOVERNMENTS



IMPROVING ACCOUNTABILITY OF GOVERNMENTS

Position Paper Question 4:

How do you think that clearly outlining what each government is responsible for could make it easier for people with disability to access the supports and services they need?

WWDA Response:

- 6.1 As Australia is a signatory to the CRPD, **all Australian governments are bound by its obligations**. Given that the NDS is the mechanism not only to implement the CRPD at the domestic level but is also the key national policy framework to implement disability related international obligations from other UN treaties to which Australia is a party,¹⁰⁴ all levels of government have a responsibility to implement the NDS.
- 6.2 The Position Paper proposes that the new NDS seek to enhance **government accountability** by:
- clearly describing the roles and responsibilities of government, including that of the NDIS;
 - measuring outcomes;
 - reporting on outcomes;
 - committing to the collection of relevant data to enable effective monitoring and reporting;
 - having a coordinated approach to the evaluation of policies and programs.
- 6.3 WWDA supports these intentions, however, would recommend that **‘including people with disability in government accountability processes’** is also a critical feature and component of any strategy to strengthen accountability in relation to the implementation, monitoring, evaluation and reporting of the new NDS.
- 6.4 The Position Paper proposes that, in clearly describing ‘roles and responsibilities’ of various levels of government in disability policy and service delivery, the new NDS will:
- Link to relevant publicly available information which summarises the role of the NDIS and outlines the roles and responsibilities that have already been agreed between governments.
 - Link to the ***Principles to Determine the Responsibilities of the NDIS and Other Service Systems and accompanying Applied Principles and Tables of Service*** (APTOS). These set out the roles and responsibilities in Commonwealth, state and territory governments for providing supports to NDIS participants through both the NDIS and mainstream service systems such as

- health, education, justice and transport.
 - Outline the roles and responsibilities of all levels of Government in disability-specific and mainstream services.
 - Outline the important role of the non-government sector in improving outcomes for people with disability.
- 6.5 Whilst WWDA supports these initiatives, **we make the following points:**
- 6.6 The NDS is siloed within the Australian Government Department of Social Services (DSS) as a disability policy responsibility only. This means there is **little authority** to leverage change across other Australian Government departments, or across State and Territory jurisdictions. DPOs have consistently urged Australian Governments to establish an **executive mechanism within the Department of Prime Minister and Cabinet** to secure high level and cross government coordination of the NDS.¹⁰⁵ This recommendation has been echoed by a Senate Inquiry,¹⁰⁶ and the CRPD Committee,¹⁰⁷ however has, to date, been rejected by Government.¹⁰⁸
- 6.7 The new NDS should link to, and from, **existing policy frameworks** that are critical in advancing the human rights of people with disability. There have been significant concerns raised over the years regarding the ‘siloing’ of national policy frameworks,¹⁰⁹ and the lack of co-ordination between these national frameworks.
- 6.8 For example, as highlighted earlier in this Submission, the NDS 2010-2020 contained **limited measures** to address violence against people with disability, identifying only that there was a need to ‘*develop strategies to reduce violence, abuse and neglect of people with disabilities.*’ The first NDS Implementation Plan - *Laying the Groundwork: 2011–2014* - contained only **one** specific action to achieve this, which was to: ‘ensure that the *National Plan to Reduce violence against women and their Children 2010–2022* and the *National Framework for Protecting Australia’s Children* have priority action to improve the safety and wellbeing of women and children with disability.’¹¹⁰
- 6.9 Yet the *National Plan to Reduce violence against women and their Children 2010–2022* focuses on traditional notions of domestic/family violence (ie: intimate partner/spousal violence) and sexual assault and has **little emphasis** on girls with disability. It **fails to address the many forms of violence perpetrated against women and girls with disability** (such as sexual and reproductive rights violations; restrictive practices; forced treatment; seclusion and restraint; deprivation of liberty) and the many settings and spaces in which violence against women and girls with disability occurs (such as institutions, service settings, out-of-home care). These forms of violence and settings currently fall ‘outside’ the scope of the *National Plan*.
- 6.10 The *National Framework for Protecting Australia’s Children 2009-2020* contained **very limited reference to disability** across the six intended outcomes. Indeed, the primary action in relation to children with disability was to ‘enhance support’ to achieve Outcome 3, in which the disability of a child is problematically understood as a ‘risk factor’ for child abuse or neglect. The other 5 outcomes, which included ensuring that ‘*child sexual abuse and exploitation is prevented, and survivors receive adequate support,*’ included no reference to disability. Essentially, this

meant that the only appearance that children with disability made in the *National Framework for Protecting Australia's Children* is **where their disability is treated as a cause of the violence** and abuse they experience: a clear case of blaming the victim.¹¹¹ Although the research priorities under the Framework included disaggregating by disability, much of the research excluded those settings where children with disability are overrepresented and where violence is endemic, including for example, out of home care run by disability service providers, psychiatric facilities and hospitals.¹¹²

- 6.11 In this context, WWDA suggests that the new NDS **provide clear linkages to existing policy frameworks** that all have a bearing on advancing the rights of people with disability. Outcomes of these national frameworks should be linked to the outcomes reporting processes for the new NDS.
- 6.12 In addition, WWDA recommends that data from the **NDIS Outcomes Reporting Framework**, be included in the **NDS Outcomes Reporting Framework**, given that the NDIS 'sits under' the NDS. It would appear illogical not to include data/outcomes reporting for the NDIS, in the NDS Outcomes Framework and subsequent reporting processes.
- 6.13 The Position Paper identifies that the new NDS will 'link to' the ***Principles to Determine the Responsibilities of the NDIS and Other Service Systems and accompanying Applied Principles and Tables of Service*** (APTOS).¹¹³ However, the Principles are subject to interpretation and lack clarity. This has resulted in boundary issues and funding disputes, which have led to reduced or no access to services for both NDIS participants and people with disability not eligible for the NDIS.¹¹⁴ Although the Principles allow for the provision of disability supports to people with disability in prisons and forensic detention, there remains uncertainty about how, or whether, this provision is supported and implemented.
- 6.14 WWDA would **recommend** that the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems and accompanying Applied Principles and Tables of Service* (APTOS)¹¹⁵ be **reviewed and updated** in order to **provide more clarity and consistency for governments** and people with disability alike.
- 6.15 The new NDS and the Outcomes Framework should articulate the role of the **Australian Human Rights Commission (AHRC)** in the monitoring of the new NDS. The Committee on the Rights of Persons with Disabilities, states, through CRPD General Comment 7:

*In accordance with article 33 (2), the Committee has recognised the importance of establishing, maintaining and promoting independent monitoring frameworks, including national human rights institutions, at all stages of the monitoring process. Such institutions play a key role in the monitoring process of the Convention, in promoting compliance at the national level and in facilitating the coordinated actions of national actors, including State institutions and civil society, to protect and promote human rights.*¹¹⁶

- 6.16 There are **several systemic issues** affecting people with disability where the Australian Government has, in the past, claimed that these issues are a matter

for States/Territories. For example, for over 15 years, UN treaty bodies, DPOs, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia **enact national legislation prohibiting forced sterilisation**.¹¹⁷ Similarly, UN Treaty body Committees are increasingly recognising that intersex people who have had unnecessary surgery or treatment are ‘victims of abuses and mistreatment’,¹¹⁸ and have recommended that Australia enact legislation against enforced medical correction of intersex variations.¹¹⁹

- 6.17 Australia’s response to these recommendations¹²⁰ **passes responsibility** for action on forced sterilisation and ‘sex normalising’ practices to State and Territory jurisdictions; and retains the focus on regulation and non-binding guidelines rather than prohibition of such practices. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and ‘sex normalising’ medical interventions within Australia.
- 6.18 The UN treaty monitoring bodies have expressed concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that **decentralising government power through devolution or delegation does not negate the obligation** on a State party to enact national legislation that is applicable throughout its jurisdiction.¹²¹
- 6.19 In this context, WWDA recommends that the new NDS, either through its Outcome Areas, or through targeted Action Plans (or both) make provision for the Australian Government to **urgently develop and enact national legislation** to prohibit forced sterilisation and ‘sex normalising’ medical interventions.
- 6.20 In response to many inquiries, reviews or concerns, the Australian Government **regularly refers** responsibility for reform to State and Territory governments, but it is not clear if States and Territories are responding to the recommendations from Australian government agencies and parliamentary reviews and inquiries. Importantly, **the NDS is a framework agreed by all governments** within Australia and is a key mechanism through which Australia must take a leadership role to coordinate a national, uniform response to progress human rights for people with disability.¹²²
- 6.21 Successful implementation of the NDS is dependent on commitment to and implementation of State, Territory and Local Government Disability Plans. However, **State and Territory plans do not always correlate with the NDS**. For example, the *NSW Disability Inclusion Plan (2015)*¹²³ only focused on four policy areas. An evaluation of the *NSW Disability Inclusion Plan (2019)*¹²⁴ found, in part that:
- *‘Reporting was widely recognised as problematic. Much reporting was anecdotal with little sense of impact or outcomes. Stakeholders were also concerned that there was limited documentation of challenges and limitations. Balancing reporting requirements to deliver valuable and meaningful data without overburdening agencies was identified as a key challenge.*
 - *Most agencies were not actively monitoring or collecting data that could demonstrate meaningful outcomes. Disparate monitoring*

and data collection made it difficult to quantify the tangible impacts of the DIAP. Despite this, many narratives of success have been gathered demonstrating the breadth of the groundswell towards disability inclusion.'

- 6.22 The success of the NDS is **undermined** if parts of the NDS are ignored, not properly understood, and not nationally consistent. It also compromises national consistency in implementation, monitoring and evaluation frameworks, progress reporting, including in data collection, and review.¹²⁵
- 6.23 Outlining what each government is responsible for, does not, and **will not necessarily** equate to people with disability **finding it easier** to access the supports and services they need. Whilst the Australian Government is developing the *National Disability Information Gateway*,¹²⁶ which will provide information on available services for people with disability, it is critical that the new NDS recognises and articulates the critical importance of **independent advocacy, including individual, systemic and self-advocacy** in assisting people with disability in accessing the supports they require, and assisting them to realise their human rights. This is addressed further in the following section.

SECTION SEVEN
**ORGANISATIONS OF PEOPLE WITH
DISABILITY AND INDEPENDENT
ADVOCACY**



ORGANISATIONS OF PEOPLE WITH DISABILITY AND INDEPENDENT ADVOCACY

Position Paper Question 5:

How do you think the Strategy should represent the role that the non-government sector plays in improving outcomes for people with disability? (Examples of the non-government sector include big, medium and small businesses, community organisations, employees of these businesses, private research, investment organisations and individuals.)

WWDA Response:

7.1 The Position Paper states:

*“The new Strategy will be person-centric in that the policy architecture should revolve around creating the structures and practices through which **people with disability can understand and exercise their rights across all domains.**” [emphasis added]*

7.2 As outlined earlier in this Submission, it is critical that the new NDS is focused on, and **prioritises**, people with disability. **People with disability have the right to be at the front and centre of all decision-making processes that affect their lives.**

7.3 The NDS should articulate and prioritise the critical role of organisations **‘of’** persons with disability in improving outcomes for people with disability, including across the non-government sector. The NDS 2010-2020 highlighted for example that: **‘Disability organisations are essential in promoting the rights of people with disability** and in helping people with disability to reach their full potential through participation in all aspects of Australian life.’ In the ten years since the NDS was developed, there have been significant advancements in the understanding of the importance and priority of **‘Disability organisations’ that are organisations ‘of’ persons with disability rather than organisations ‘for’ persons with disability.**

7.4 The Committee on the Rights of Persons with Disabilities¹²⁷ has clarified that:

*...organisations **of** persons with disabilities should be rooted, committed to and fully respect the principles and rights recognised in the Convention. **They can only be those that are led, directed and governed by persons with disabilities.** A clear majority of their membership should be recruited among persons with disabilities themselves..... they **employ**, are represented by, entrust or specifically nominate/appoint persons with disabilities themselves.*

7.5 Through CRPD General Comment 7, and consistent with CRPD Articles 6 and 7, the critical role of organisations of children and young people with disability and of women and girls with disability is **specifically addressed.**

7.6 CRPD General Comment 7, clearly articulates that:

*States parties should give priority to the views of organisations of persons with disabilities when addressing issues related to persons with disabilities and develop frameworks to request civil society organisations and other stakeholders to consult and involve organisations of persons with disabilities in their work related to the rights enshrined in the Convention. States parties should also consider consultations with and the involvement of persons with disabilities as a **mandatory** step prior to the approval of laws, regulations and policies, whether mainstream or disability specific.*

7.7 In this context, it is vital that the new NDS makes it clear that the non-government sector ‘including big, medium and small businesses, community organisations, employees of these businesses, private research, investment organisations and individuals’, **should ensure the full and effective participation of people with disability**, in all decision-making processes that affect their lives.

7.8 The new NDS should specifically articulate the critical role of **independent advocacy, including individual, systemic and self-advocacy** in advancing the rights of people with disability and clarify that **all governments have a responsibility to adequately fund** and support disability advocacy.

7.9 The NDS 2010-2020 provided the following definition of ‘**Disability Advocacy**’:

Disability advocacy enables and supports people with disability to safeguard their rights and overcome barriers that impact on their ability to participate in the community. Advocacy supports people to make sure that their rights are promoted and valued, to participate in the decisions that affect their lives, especially around access to services and support, and to be actively involved in the life of their communities. Disability advocacy enables people with disability to actively participate in the decision-making processes that safeguard and advance their human rights, wellbeing and interests.

Individual advocacy supports people with disability to understand and exercise their rights, through either one-to-one support, or by supporting people to advocate for themselves individually, or on a group basis. Systemic advocacy seeks to introduce and influence longer term changes to ensure the rights of people with disability are attained and upheld to positively affect the quality of their lives. Systemic advocates can influence positive changes to legislation, policy and service practices and work towards raising and promoting community awareness and education of disability issues.

7.10 The Australian Government, through the Department of Social Services (DSS) is currently undertaking a review of disability advocacy. **WWDA recommends that**, in consultation with people with disability, and in the context of the current review of disability advocacy, the definitions of ‘Disability Advocacy’ used in the NDS 2010-2020 be **reviewed and updated**. The updated definition should articulate the need

for, and define, **independent advocacy, including individual, systemic and self-advocacy.**

7.11 It is critical that the importance of **‘independent’ advocacy** is understood in the context of implementation of the CRPD and the NDS¹²⁸ – that is:

- independent advocacy is a **critical, interconnected component** of progressing the human rights of people with disability and supporting Australia’s international human rights obligations;
- independent advocacy remains **critically under resourced** for it to achieve its objectives and the desired human rights outcomes for all people with disability in Australia;
- in the changing disability service landscape **advocates are often the only constant independent support** for people with disability;
- advocacy agencies are being increasingly called upon for assistance from people with disability, families, government and service providers. The **impact and value** of this role should not be underestimated or taken for granted;
- NDIS participants and people with disability **not** eligible for the NDIS must have **equal access** to independent advocacy supports;
- advocacy support that is **owned and managed** by Aboriginal and Torres Strait Islander peoples and communities should be developed and resourced;
- **independence from service systems** and disability support agencies is critical to ensuring that advocacy support is free from conflicts of interest and always puts the rights, will and preference of people with disability at the forefront;
- investment, funding and resourcing for representation and independent advocacy needs to be available **from both** Commonwealth and State and Territory Governments.

7.12 The role of **independent advocacy, including individual, systemic and self-advocacy** is therefore, critical in implementing and monitoring the CRPD and the NDS. The CRPD Committee, through General Comment 7, states:

The promotion of advocacy by and empowerment of persons with disabilities are key components of their participation in public affairs; they call for the development of technical, administrative and communication skills, and the facilitation of access to information and tools concerning their rights, legislation and policymaking.

7.13 In its 2019 review of Australia’s compliance with the CRPD, the Committee expressed its concerns at the **lack of sustainably, adequately resourced continuous, individual and independent advocacy** programmes, and recommended that Australia:

*‘Ensure that all persons with disability have access to **continuous, sustainable and adequately resourced** individual and independent advocacy programmes, particularly outside the NDIS.’¹²⁹*

7.14 In relation to the role of advocacy in relation to violence against people with

disability, the Interim Report of the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*,¹³⁰ released on 30th October 2020, states:

*'We have heard from many advocacy and representative organisations that **increased advocacy** is a **key measure** to address violence, abuse, neglect and exploitation and would lead to a more inclusive society. We have also heard that there is a lack of advocacy services, including for First Nations people with disability and people with complex needs, and that **existing advocacy services are under-funded.**'*

- 7.15 The new NDS should also articulate the importance and role of **research and data collection** in the implementation, monitoring and evaluation of the NDS. The new NDS should identify how the **National Disability Research Partnership (NDRP)**¹³¹ aligns to the NDS. The new NDS should also identify how the **National Disability Data Asset**¹³² will align to the NDS and the NDS Outcomes Framework.

SECTION EIGHT
REPORTING TO THE PUBLIC ON NDS
PROGRESS



REPORTING TO THE PUBLIC ON NDS PROGRESS

Position Paper Question 6:

What kind of information on the Strategy's progress should governments make available to the public and how often should this information be made available?

WWDA Response:

- 8.1 As outlined earlier in this Submission, despite Australian government's committing to biennial progress reports on the NDS 2010-2020, there were **only two progress reports produced over the life of the NDS**.¹³³ These reports only **described** actions rather than measuring and evaluating outcomes for people with disability. There was minimal to no information regarding outcomes for people with disability. The two progress reports on NDS implementation provided a clear indication of the need to recast the NDS as an **engine for change**, rather than a way to simply report on actions and 'activities' already undertaken.
- 8.2 WWDA acknowledges that the Australian Government has proposed **four main options** for reporting progress on the NDS. These are:
- **Targeted Action Plans (TAPs) Report:** Produced annually on a financial year basis this high-level report will cover the implementation of the Targeted Action Plans. It will be coordinated by the Department of Social Services.
 - **NDS Outcome Dashboard:** Produced annually on a financial year basis the NDS Outcomes Dashboard will publish high level data against the outcomes of the NDS as per the NDS Outcomes Framework. It will be prepared by third party data specialist.
 - **NDS Implementation Report:** This two-yearly report will focus less on data and is more of a progress report and will include the voice of people with disability and broader community. It will be coordinated by the department.
 - **Evaluation reports:** Evaluation reports will provide an independent evaluation of the NDS with recommendations for improvement. They will occur every five years and be undertaken by an independent reviewer.
- 8.3 Whilst WWDA strongly supports meaningful and transparent reporting regarding the NDS, we find these four main options as **potentially limiting**.
- 8.4 In this context, WWDA offers, for consideration, the **following suggestions**, for **information on the Strategy's progress that governments should make available to the public**:
- 8.4.1 Develop a CRPD and NDS website, linked to the **National Disability**

Gateway, and showcase ‘real’ stories of people with disability across **all** NDS Outcome Areas. Utilise the central coordination point of a CRPD and NDS website portal to house **all forms of reporting** for the NDS.

- 8.4.2 Develop a **funded mechanism** for people with disability to report on progress of the NDS, across all NDS Outcome Areas.
- 8.4.3 Publish bi-annual reports to the National Cabinet that focus on progress on **achievement of outcomes** under each of the NDS Outcome areas; that includes both **quantitative and qualitative data** and information; that are written in Plain Language (and provided in Easy Read and other formats); and that include the voices of people with disability.
- 8.4.4 Resource the **Australian Human Rights Commission (AHRC)** to enable the Disability Discrimination Commissioner to develop and present an **Annual Report** to the Australian Parliament on progress to advance the rights of persons with disability (similar to the AHRC Children’s Rights Report¹³⁴ and the AHRC former Social Justice Reports).¹³⁵
- 8.4.5 In consultation with people with disability, through their representative organisations, instigate **Press Club** addresses – by relevant Ministers, Disability Discrimination Commissioner, Ambassador for Disability Equality, and high-profile persons with disability.
- 8.4.6 Conduct an annual/bi-annual **Prime Ministers Summit on Disability**, similar to the Prime Minister’s Summits on Violence Against Women, held in 2016 and 2018. Each State/Territory Premier (with their Disability Ministers) to attend and provide information on what each State/Territory is doing to progress the rights of people with disability, consistent with the CRPD and the Outcome areas of the new NDS.
- 8.4.7 Conduct a bi-annual **National Conference on the NDS and People with Disability**, which would include Conference streams consistent with the Outcome Areas of the new NDS. High level sponsorship from the corporate sector could be sought. Re-purpose a proportion of the annual funding provided under the National Disability Conference Initiative (NCDI) to the bi-annual National Conference on the NDS and People with Disability.
- 8.4.8 Fund and support an annual or bi-annual **‘Citizen’s Jury’**¹³⁶ of people with disability to report on and evaluate progress on the NDS from the perspective of disabled people.
- 8.4.9 Establish a process and day modelled on [‘Closing the Gap’](#) whereby the Prime Minister reports to Parliament on progress to implement the National Disability Strategy.
- 8.4.10 Support organisations of people with disability, including through funding, to develop a bi-annual **‘Shadow Report’** on the implementation and progress of the NDS. Such a ‘Shadow Report’ could be subsequently utilised to develop the Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities and to other UN human

rights treaty monitoring bodies undertaking reviews of Australia under the international human rights treaties to which Australia is a party.

- 8.4.11 The **National Cabinet** could quarantine one meeting per year (or every two years) to focus solely on the implementation and progress of the NDS and deliver a Public Communique (in all accessible formats).
- 8.4.12 Public reporting on the progress of the NDS should **highlight gaps and emerging issues**, rather than just focusing on ‘positive’ progress, as was the case in the two progress reports produced over the life of the NDS 2010-2020.
- 8.4.13 NDS progress reporting needs to be *engaging*. A **wide variety of strategies** should be used in reporting on NDS progress, in order to engage with, and reflect, different audiences and interest groups. Reporting should make use of **digital platforms** that many people utilise (such as Instagram and Twitter). This is particularly the case for young audiences. In addition, **creative mechanisms** should also be utilised – such as: Snapshots; artwork; blogs etc.
- 8.4.14 Reporting strategies must also recognise and respect that many people with disability do not have access to the Internet, or the latest hardware and software, or have download limits and so on. In this context, **innovative ways** need to be considered regarding how to provide NDS reporting to these groups. **Hard copy materials** should be developed in accessible formats (such as Easy Read and Easy English) and made available in a wide variety of places and settings – including mainstream service settings, disability specific service settings, and in general community spaces and places.

SECTION NINE
TARGETED ACTION PLANS



TARGETED ACTION PLANS

Position Paper Question 7:

What do you think of the proposal to have Targeted Action Plans that focus on making improvements in specific areas within a defined period of time (for example within one, two or three years)?

WWDA Response:

- 9.1 Australia is a party to seven core international human rights treaties, all of which create obligations to promote the rights of people with disability. As a party to these treaties, Australia has **chosen** to be bound by the treaty requirements and has an international legal obligation to implement the treaty provisions through its laws and policies. However, there remains a disjuncture between these obligations and commitments in relation to people with disability and their integration into domestic law, policy, strategies and frameworks.
- 9.2 Despite Australia's international human rights obligations, people with disability in Australia are still not regarded or treated as subjects of human rights law **on an equal basis as others**. Rather, people with disability continue to be subject to the effects of an ableist society and ableist practices that denigrate, devalue, oppress and limit their potential and their rights. These ableist practices continue to pervade many of our state institutions. People with disability in Australia represent the most detained, restrained and violated sector of our population – significantly over-represented in prisons, institutionalised and segregated within communities, locked up in schools, confined in mental health facilities, incarcerated in detention centres, and trapped within their own homes.
- 9.3 Wide-ranging **systemic failures in legislation, policies and service systems** in Australia facilitate conditions that give rise to denial of the human rights of people with disability. These failures are embedded within and underscored by an ableist culture which sees the promotion and support of laws, systems, policies and practices which not only deny people with disability their most basic human rights, but which provide a legitimised gateway through which human rights violations against people with disability can flourish.
- 9.4 As highlighted earlier in this Submission, the Interim Report of the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*,¹³⁷ released on 30th October 2020, reflects this, and makes it clear that:
- 'violence, abuse, neglect and exploitation experienced by people with disability is not limited to discrete settings or contexts. Rather, violence against, and abuse, neglect and exploitation of, people with disability point to **systemic and structural failures across multiple and overlapping systems.**'*
- 9.5 In this context, WWDA suggests that Targeted Action Plans should **prioritise** areas

where there are particular **egregious violations** of the human rights of people with disability in Australia. The CRPD Concluding Observations and recommendations to Australia from other human rights treaty monitoring bodies relating to people with disability, should be used to inform and shape priority areas for the targeted Action Plans.

9.6 In this context, WWDA offers the following suggestions, with **evidence-based rationale**, for **thematic** based targeted Action Plans. These are:

- **Sexual and Reproductive Rights**
- **Segregation of People with Disability**
- **Indefinite Detention of People with Disability**
- **Legal Capacity and Supported Decision-Making**
- **Inclusive Education**
- **Poverty**
- **Disaster and Emergency Planning, Management and Recovery**

Sexual and Reproductive Rights

9.7 As highlighted earlier in this Submission, the NDS 2010-2020 was completely **silent** on the sexual and reproductive rights of people with disability. The omission of sexual and reproductive rights from the national policy framework to '*advance the rights of people with disabilities*' only serves to perpetuate the stereotype of people with disability as asexual, genderless human beings; denies people with disability their most fundamental human rights; and gives rise to a policy, program and service vacuum whereby the sexual and reproductive rights of people with disability remain violated, denied, ignored and trivialised.

9.8 People with disability in Australia continue to experience **gross violations** of their sexual and reproductive rights.¹³⁸

9.9 Women and girls with disability in Australia are more exposed to practices which qualify as **torture** or inhuman or degrading treatment, including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.¹³⁹ **Forced sterilisation**¹⁴⁰ of women and girls with disability, is an ongoing practice that remains legal and sanctioned by Australian Governments.¹⁴¹ In many parts of the world, forced sterilisation is recognised as a particularly egregious form of gender-based violence that has no place in a civilised world.¹⁴² However, in Australia, it remains **legal to forcibly sterilise children and adults with disability**, provided that they 'lack capacity' and that the procedure is in their 'best interest' as determined by a third party. There is no law in Australia that **explicitly prohibits** forced sterilisation of children; or that prohibits forced sterilisation of adults without their full, prior and informed consent.¹⁴³

9.10 As highlighted earlier in this Submission, UN Treaty body Committees are increasingly recognising that **intersex people** who have had unnecessary surgery or treatment are 'victims of abuses and mistreatment',¹⁴⁴ and have recommended that Australia **enact legislation** against enforced medical correction of intersex variations.¹⁴⁵

9.11 Australia's response to these recommendations¹⁴⁶ passes responsibility for

action on forced sterilisation and ‘sex normalising’ practices to State and Territory jurisdictions; and retains the focus on regulation and non-binding guidelines rather than **prohibition** of such practices. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and ‘sex normalising’ medical interventions within Australia.

- 9.12 For more than 15 years, the treaty monitoring bodies of the human rights Conventions to which Australia is a party, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia **enact national legislation** prohibiting forced sterilisation.¹⁴⁷ Forced sterilisation has been recognised as an act of violence, a form of social control and a form of **torture** by the UN Special Rapporteur on Torture.¹⁴⁸
- 9.13 In its 2014 Concluding Observations¹⁴⁹ following the review of the combined fourth and fifth periodic reports of Australia,¹⁵⁰ the **Committee against Torture** recommended that Australia **enact uniform national legislation** prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied.
- 9.14 In its 2018 review¹⁵¹ of Australia’s eighth periodic report¹⁵² under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee expressed its concern at harmful practices against women and children occurring in Australia. The Committee recommended that Australia **abolish the practices of the non-consensual administration of contraceptives to, the performance of abortion on and the sterilisation of women and girls with disabilities**. The Committee also recommended that Australia 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, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures.
- 9.15 In its 2019 Concluding Observations¹⁵³ of Australia, the **Committee on the Rights of the Child** recommended that Australia **enact legislation** explicitly prohibiting coerced sterilisation of all children or unnecessary medical or surgical treatment, guaranteeing the bodily integrity and autonomy of intersex children and providing adequate support and counselling to families of intersex children.
- 9.16 In 2017, the **Committee on Economic, Social and Cultural Rights** released its Concluding Observations¹⁵⁴ on the fifth periodic report of Australia.¹⁵⁵ The Committee expressed its deep concern regarding the fact that laws in Australia permit compulsory treatment, including **forced sterilisation**. The Committee recommended that Australia **repeal all legislation** that authorises medical intervention without the free, prior and informed consent of the person concerned, abolishing the use of restraint and the enforced administration of intrusive and irreversible treatments.
- 9.17 In its 2019 review of Australia’s compliance with the CRPD, the **Committee on the Rights of Persons with Disabilities**, once again urged Australia to:

- (a) *Review and amend the Family Law Rules 2004 relating to Medical Procedure Applications in line with the Convention and adopt uniform legislation prohibiting, in the absence of free and informed consent, the sterilization of adults and children, the administration of contraception and abortion procedures on women and girls with disability;*
- (b) *Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary, invasive and irreversible medical interventions, including surgical, hormonal or other medical procedures on intersex children before they reach the legal age of consent, the electroconvulsive therapy, without their free and informed consent of the person concerned; also provide adequate counselling and support for the families of intersex children and redress to intersex persons having undergone such medical procedures.*

9.18 A parent with disability in Australia – usually a mother - is up to **ten times more likely** than other parents to have a child removed from their care,¹⁵⁶ often on the basis of parental disability rather than evidence of neglect or abuse.¹⁵⁷ More than **15%** of people with disability report difficulty accessing services to assist with being a parent.¹⁵⁸ Women with disability also often lose their children in custody disputes simply because the woman has a disability. Women with disability also battle against political agendas and social commentaries which cast their children as ‘young carers’ at risk of parentification and themselves as burdens of care.¹⁵⁹ Women with disability and LGBTIQ+ people with disability experience significant discrimination in accessing assisted reproductive technologies.¹⁶⁰

9.19 In 2013, the Australian Council of Human Rights Agencies (ACHRA) recommended the Australian Government take **urgent action** on discrimination against parents with disability. **This recommendation has never been implemented.**

9.20 ACHRA identified discrimination against ‘potential and actual parents with disability’ as one of three most **urgent and pressing human rights issues** in Australia today. The Communiqué from the ACHRA 2013 annual meeting stated:

“Finally, having regard to evidence: (a) that parents with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity to be effective parents; (b) that there is a lack of systematic data collection and analysis; (c) that there is a lack of appropriate supports to potential and actual parents with disability, - ACHRA calls for better data collection and better research into negative presumptions being made about people with disabilities being able to effectively parent. ACHRA calls for better support for these parents to fulfil their parenting roles and has identified that this as a priority given the discriminatory impact of negative presumptions.”¹⁶¹

9.21 In its 2019 review of Australia’s compliance with the CRPD,¹⁶² the **Committee on**

the Rights of Persons with Disabilities, expressed its concern regarding: parents with disability being more likely to have their children removed from their care on the basis of disability; the lack of support to parents with disability to exercise parental responsibilities; and the discrimination experienced by women with disability, lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons with disability in accessing assisted reproductive technologies.

9.22 The CRPD Committee¹⁶³ recommended that Australia:

‘ensure that no child is separated from parents because of the disability of one or both parents; adopt comprehensive gender and culturally specific parenting and family support measures for parents with disability; and that women with disability and LGBTIQ people with disability have equal access to assisted reproductive technologies.’

Segregation of People with Disability

9.23 Segregation of people with disability – in all its forms - must be conceptualised and understood as a **violation of fundamental human rights**, and as an ideology with resultant practices that contravene the CRPD and other human rights treaties to which Australia is a party.¹⁶⁴

9.24 Many people with disability remain indirectly segregated from community life by pervasive environmental, communication, attitudinal and systemic barriers that law, policy and practice frameworks have failed to remove – such as inaccessible housing, transport, information and communication systems, voting; non-inclusive violence prevention and response services; barriers in accessing justice and legal systems; and employment and health discrimination. Many people with disability remain **directly segregated by law, policy and practice frameworks** that continue to establish, maintain and fund segregated settings - such as special schools, units and classrooms; institutional accommodation settings; and segregated employment - as well as through substitute decision-making arrangements that limit their autonomy, such as guardianship, financial management and involuntary mental health systems.¹⁶⁵

9.25 Segregation and isolation and the loss of liberty and security, personal choice, autonomy and freedom of movement are “defining elements” of institutionalisation.¹⁶⁶ These elements can occur in family homes, in large-scale institutions, disability supported accommodation arrangements, group homes and other residential facilities, special schools, and segregated employment settings such as ADEs (commonly referred to as “sheltered workshops”).

9.26 As highlighted earlier in this Submission, **segregated and parallel systems** enable and foster discriminatory community attitudes that continue to view people with disability as ‘dangerous’, ‘incapable,’ in need of ‘regulation and surveillance,’ as ‘less than’, as ‘deficient,’ and as ‘other.’ It is critical that the new NDS incorporate measures to **dismantle these systems** and undertake structural and systemic reforms to adhere to the CRPD.

9.27 The CRPD reflects international human rights law, which affirms that segregation

and segregated facilities are a **prima facie form of discrimination**¹⁶⁷ and that impairment or diagnosis or disability cannot be used to justify segregation and exclusion from community life or be used to limit human rights protections for people with disability. CRPD Article 5 **prohibits segregation** on the basis of impairment, reflecting the established principle in international law that segregation is inherently unequal and discriminatory.¹⁶⁸

- 9.28 The CRPD provides the principles and standards to undertake the social transformation required to end segregation of all people with disability.¹⁶⁹
- 9.29 In its 2013 and 2019 reviews of Australia's compliance with the CRPD,¹⁷⁰ the recommendations from the Committee on the Rights of Persons with Disabilities, included a focus on **ending segregation and segregated facilities**, particularly in relation to 'special' education, institutional living arrangements, and segregated employment.¹⁷¹

Indefinite Detention of People with Disability

- 9.30 In Australia, there remain significant issues with legislative, policy and practice frameworks, which result in the **indefinite detention** of people with disability, disproportionately experienced by Indigenous people with disability, people with intellectual disability and people with psychosocial disability.¹⁷²
- 9.31 All Australian jurisdictions have in place legislation that addresses a defendant within the criminal justice system and their 'fitness' to stand trial. These justice diversion provisions are applied when people with disability, particularly those with cognitive or psychosocial disability are deemed '**unfit**' to stand trial. An unfitness test may arise as an issue before or during the trial process.¹⁷³
- 9.32 Justice diversion provisions have resulted in people with disability **being detained indefinitely** in prisons or psychiatric facilities without being convicted of a crime. In numerous cases, people are being detained for a longer period than if they had been convicted.¹⁷⁴ This situation is exacerbated by a lack of community-based housing, therapeutic and disability support options available for people with disability who are deemed 'unfit' to stand trial.
- 9.33 In reviewing Commonwealth laws and programs and legal capacity for people with disability in 2014, the Australian Law Reform Commission (ALRC) recommended **reform of the 'unfitness' test**, the provision of appropriate supports, limits and reviews on detention.¹⁷⁵ As highlighted earlier in this Submission, the Australian Government is yet to respond to the Law Reform Commission's 2014 report '*Equality, Capacity and Disability in Commonwealth Laws*'.
- 9.34 The practice of **indefinite detention** is disproportionately experienced by **Indigenous people** with disability.¹⁷⁶ A lack of transparency in data makes it difficult to quantify the number of people indefinitely detained, however evidence provided to a Senate Inquiry on indefinite detention, estimates that there are at least 100 people detained across Australia without conviction in prisons, psychiatric units and forensic detention services under mental impairment legislation. These people are predominately Indigenous, have cognitive and/or psychosocial impairment,

cultural communication barriers and/or hearing loss.¹⁷⁷ This issue intersects with the high rates of incarceration of Indigenous Australians, who whilst making up 2.5% of the Australian population, comprise at least 50% or one-half of the people detained without conviction.¹⁷⁸

- 9.35 In 2016, the Australian Senate tabled its *Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment* in Australia.¹⁷⁹ The Inquiry Report set out a series of recommendations for comprehensive law, policy and program reform to address indefinite detention of people with cognitive and psychiatric impairment.¹⁸⁰ **More than four years on from the tabling of the Senate Report, the Australian Government is yet to respond to the Report.**
- 9.36 At the 2016 **Universal Period Review (UPR)**¹⁸¹ Australia made a voluntary commitment¹⁸² 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 Governments¹⁸³ tabled the *Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment (the National Principles)*.¹⁸⁴
- 9.37 All states and territories have considered the **National Principles** and as of August 2019 they have been endorsed by the Australian Capital Territory, Queensland, New South Wales, the Northern Territory, Western Australia, Victoria and Tasmania. **South Australia** has not endorsed the *National Principles* as they are *‘inconsistent with their current legislative provisions, policies and procedures.’*¹⁸⁵ The states and territories who have provided endorsement *‘will implement the National Principles in the context of their own legislation, policy and procedures.’*¹⁸⁶
- 9.38 The *National Principles* state, in part that: *‘Collaboration between government agencies and, where appropriate, relevant non-government service providers and professional associations, is necessary to develop and implement strategies to safeguard the rights of persons who are found unfit to plead, of unsound mind, or not guilty by reason of cognitive or mental health impairment.’*¹⁸⁷ It remains unclear as to how, or whether, **organisations of people with disability** have been engaged in the development of such ‘strategies’.
- 9.39 In its 2019 review of Australia’s compliance with the CRPD,¹⁸⁸ the **Committee on the Rights of Persons with Disabilities**, expressed its serious concern regarding: legislative frameworks, policies and practices which result in the arbitrary and indefinite detention and forced treatment of persons with disability; the ongoing practice of compulsory treatment for persons with “cognitive and mental impairment”, including through indefinite detention in psychiatric centres; the commitment of persons with intellectual or psychosocial disability to custody, often indefinitely or for terms longer than those imposed in criminal convictions; the absence of data on indefinite detention; and, the practice of retaining and restraining children with disability in adult settings.
- 9.40 The CRPD Committee¹⁸⁹ subsequently **urged** Australia to:
- (a) *Repeal any law and policy and cease any practice or custom that enables deprivation of liberty on the basis of impairment, and forced medical interventions on persons with disabilities, particularly Indigenous persons*

- with disabilities;*
- (b) *Implement the recommendations from the 2016 Senate Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia;*
 - (c) *End committing persons with disabilities to custody and to indefinite terms or to terms longer than those imposed in criminal convictions;*
 - (d) *Collect data on the number of persons indefinitely detained and a number of cases on an annual basis, disaggregated by nature of offence, time of detention, disability, Aboriginal and other origin, sex, age and jurisdiction, with the aim to review their detention;*
 - (e) *End the practice of detaining and restraining children with disabilities in any settings.*

Legal Capacity and Supported Decision-Making

9.41 Article 12 of the CRPD [**Equal recognition before the law**] is critical to the exercise of all other human rights. Central to equality before the law is **legal capacity**, or the ability to hold rights and the ability to exercise those rights. Article 12 affirms that ‘all persons with disabilities have full legal capacity’. The CRPD is explicit that legal capacity applies universally to **all** people and that this principle **must** be upheld for people with disability on an equal basis with others.¹⁹⁰

9.42 The **Committee on the Rights of Persons with Disabilities** has observed that:

*‘there is a general misunderstanding of the exact scope of the obligations of States parties under Article 12 of the Convention. Indeed, there has been a general failure to understand that **the human rights-based model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making.***¹⁹¹

9.43 The **denial of legal capacity** to people with disability has, in many cases, led to their being deprived of many fundamental rights, including the right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty.¹⁹²

9.44 The **Committee on the Rights of Persons with Disabilities** has clarified that:

*‘a person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in Article 12. All practices that in purpose or effect violate article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.’*¹⁹³

9.45 Legal capacity is the key to accessing full and effective participation in society and in decision-making processes and should be **guaranteed to all** persons with disability, including persons with intellectual disability, persons with autism and persons with actual or perceived psychosocial impairment, and children with

disability, through their representative organisations.

- 9.46 A number of Australian laws, policies and practices still **deny or diminish** recognition of people with disability as persons before the law, and/or deny or diminish the right of a person with disability to exercise legal capacity.
- 9.47 This takes place in laws such as guardianship, estate management and mental health laws and affects areas such as financial services, voting, public office, board participation, access to justice, will making and deposition, providing evidence in court proceedings, and the opportunity for people with disability to choose what disability supports they need, who will provide them and when.¹⁹⁴ Australia continues to rely on its **Interpretive Declaration**¹⁹⁵ to insist that this legislative and policy framework complies with article 12, despite the fact that it **breaches**, is inconsistent with, and/or fails to fulfil CRPD obligations as outlined in General Comment No. 1.¹⁹⁶
- 9.48 As highlighted earlier in this Submission, the **Australian Law Reform Commission (ALRC)** conducted an inquiry into barriers to equal recognition before the law and legal capacity for people with disability, and provided its final report from this inquiry in November 2014.¹⁹⁷ The ALRC made **55 recommendations** for reform aimed at providing people with disability equal recognition before the law, in particular, in relation to the right to make decisions that affect their lives and to have those decisions respected. A key recommendation was for the recognition of **National Decision-Making Principles and Guidelines** to guide reform of Commonwealth, State and Territory laws and legal frameworks.¹⁹⁸ Almost five years on from the release of the ALRC Report, **there is still no government response to the Report.**
- 9.49 Whilst the ALRC Inquiry was welcome, the inquiry was limited to **Commonwealth legislation**. It did not directly address the State and Territory financial management, guardianship and mental health laws but only had regard to how Commonwealth laws and legal frameworks interact with State and Territory laws in the areas under review.¹⁹⁹
- 9.50 In its 2013 and 2019 reviews of Australia's compliance with the CRPD,²⁰⁰ the recommendations from the **Committee on the Rights of Persons with Disabilities**, called for an **end to substitute decision-making arrangements**,²⁰¹ which undermine autonomy, enable forced treatments and medical interventions and facilitate forced placement of people with disability in segregated facilities, such as institutional living arrangements, psychiatric facilities and segregated employment.
- 9.51 In its 2019 review of Australia's compliance with the CRPD,²⁰² the **Committee on the Rights of Persons with Disabilities**, expressed its concern regarding: the lack of progress to abolish the guardianship system and substituted decision-making regime, particularly in decisions concerning forced psychiatric treatment, and at the lack of a timeframe to completely replace it with supported decision-making systems.
- 9.52 The **CRPD Committee**²⁰³ subsequently recommended that Australia:

- (a) *Repeal any laws and policies, and end practices or customs, which have the purpose or effect of denying or diminishing recognition of any person with disabilities as a person before the law;*
- (b) *Implement a nationally consistent **supported decision-making framework**, as recommended in the Australian Law Reform Commission's 2014 report, 'Equality, Capacity and Disability in Commonwealth Laws'.*

Inclusive Education

- 9.53 The current education system in Australia is **failing to adequately meet** the needs of students with disability, and it is rare for students with disability to be provided with a genuine inclusive educational experience.²⁰⁴ Only **27%** of people with disability believe they have the same education opportunities as non-disabled people.²⁰⁵
- 9.54 Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.²⁰⁶ 28% of school aged people with disability **do not attend school**.²⁰⁷ Students with disability report that their disability is the main reason they cannot attend school.²⁰⁸ Further, there is no data on part time attendance of students with disability despite the frequently reported direct experience of many children not being “allowed” to attend school on a full time basis.
- 9.55 Many mainstream schools are **inaccessible**. Principals and/or personnel of mainstream schools often use exclusion practices referred to as “**gatekeeping**”, whereby school personnel suggest to parents that another school could better support their child.²⁰⁹ This means that many students with disability are re-directed to ‘special’ schools instead. ‘**Special schools**’ in Australia are those that “only enrol students with special needs.”²¹⁰ Segregation of students with disability has **increased significantly** over the past decade, with a shift towards students with disability attending special schools and away from attending mainstream schools. **The number of students with disability attending a special school increased by 35% between 2003 and 2015**. This increase is supported by a funding incentive, whereby a child with disability receives higher funding if they attend a special school rather than a mainstream school.²¹¹
- 9.56 Students with disability **routinely experience discrimination**, lack of supports, inadequately trained teachers, a lack of expertise and an entrenched systemic culture of low expectations.²¹² Around 3 in 4 students with disability experience difficulties at school, predominately due to fitting in socially, communication difficulties, and learning difficulties.²¹³ 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination.²¹⁴
- 9.57 Students with disability experience disturbing rates of **bullying and situations of restraint and seclusion**.²¹⁵ There are an increasing number of incidents being reported of children with disability being placed in ‘withdrawal spaces’, which

effectively amount to restraint and seclusion in fenced off spaces, cages and cupboards.²¹⁶ There is **no** government data on these experiences.

- 9.58 The rate of disability for **Indigenous peoples**, including children²¹⁷ is twice as high as that among the general population.²¹⁸ The retention rate to Year 12 for Indigenous students is significantly lower than that for non-Indigenous students. Although the retention rate to Year 12 for Indigenous students has increased steadily, from 47% in 2010 to 60% in 2016, it is still significantly lower than the non-Indigenous rate (79% in 2010 and 86% in 2016).²¹⁹ While most students with disability struggle in the education system, it is **much worse** for Indigenous students with disability. Many Indigenous students with disability fall through the cracks because educators lack sufficient training to recognise when children have a disability and require support.²²⁰ Some of these issues also impact upon students from culturally and linguistically diverse (CALD) backgrounds. Evidence has shown that parents from **CALD backgrounds** are often unaware of the rights of, and supports available to, students with disability. Families from these backgrounds also suffer from a lack of a voice in decision-making processes about the education of their child.²²¹
- 9.59 In its 2019 review of Australia’s compliance with the CRPD,²²² the **Committee on the Rights of Persons with Disabilities**, expressed its concern regarding: the lack of implementation of recommendations of the 2015 review of the Disability Standards for Education, the significant increase in students with disability experiencing segregated education, seclusion and isolation, insufficient funding for inclusive education in mainstream schools, and the lack of national disaggregated data on students with disability, including on the use of restrictive practices and cases of bullying.
- 9.60 The **CRPD Committee**²²³ clarified that, in line with the Committee’s General Comment No. 4 (2016) on the **right to inclusive education** and targets 4.5 and 4.a of the Sustainable Development Goals and reiterating its previous recommendation (CRPD/C/AUS/CO/1, para. 46) the Committee recommended that Australia:
- (a) *Conduct a robust review, in consultation with organisations of persons with disabilities, of the Disability Standards for Education (2005), implement the recommendations in the new standards and **develop a national Action Plan for Inclusive Education**;*
 - (b) **Address the increasing rate of segregation, seclusion and isolation, lack of age appropriate settings for students with disabilities, in particular Aboriginal and Torres strait Islanders, at all levels and redirect adequate resources to a nationwide inclusive education system for all students;**
 - (c) **Expand the collection of data on the numbers of students with disabilities, who do not qualify for an adjustment, are unable to enrol in local mainstream schools, educational attainment and completion, suspension and expulsion rates and the use of restrictive practices and bullying.**

Poverty

- 9.61 **Forty-five per cent** of people with a disability in Australia live in poverty.²²⁴ 11.2% of people with disability experience deep and persistent disadvantage, more than twice that of the national prevalence.²²⁵ This rate is significantly higher for Indigenous people with disability. 61% of people with disability **cannot afford** to cover their basic needs on their current income.²²⁶ Poverty is a major structural barrier to employment for people with disability. It is virtually impossible to be ‘work ready’ for anyone when living in poverty.
- 9.62 Government pensions are the main source of personal income for **42%** of people with disability of working age.²²⁷ By comparison, wages or salary is the main source of personal income for **68%** of people of working age without disability.²²⁸ The median gross weekly personal income of people with disability is **half that** of people without disability.²²⁹ Income, welfare and taxation systems in Australia do not recognise the significant costs of disability that people with disability incur throughout their lifetime.²³⁰ For eg: research indicates that women with disability spend more of their income on medical care and health related expenses than men with disability.²³¹ Women with disability between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of non-disabled women. Women with disability between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.²³²
- 9.63 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. For example, women with disability are substantially over-represented in public housing, are less likely to own their own homes than their male counterparts, 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.²³³ Women aged 55 and over, including those with disability, were the fastest growing cohort of homeless Australians between 2011 and 2016, increasing by 31%.²³⁴
- 9.64 The **Disability Support Pension (DSP)**²³⁵ is inadequate to support people with disability.²³⁶ DSP eligibility has been tightened to such a degree that 25-30% of people with disability are now receiving the much lower *Newstart* unemployment payment,²³⁷ which has further entrenched poverty. The rate of successful DSP claims has declined markedly – from 69% in 2011 to 29.8% in 2018.²³⁸ While governments have significantly reduced the number of people receiving the DSP, this has **not translated into increased employment** and economic security for people with disability.²³⁹
- 9.65 It is unrealistic, for example, to think that employment of people with disability will improve, without Government recognising the need to increase the rate of the **Disability Support Pension (DSP)** and the *Newstart Allowance*. Research has found that people with disability ineligible for the *Disability Support Pension (DSP)* live in poverty on the **Newstart Allowance** and are unable to afford basic necessities such as for example, food, baby formula and sanitary pads. The low rate of *Newstart Allowance* additionally means that people with disability cannot afford medication, attend medical appointments, and/or purchase necessary medical aids and equipment.²⁴⁰

9.66 In its 2019 review of Australia’s compliance with the CRPD,²⁴¹ the **Committee on the Rights of Persons with Disabilities**, expressed its concern regarding: the significant proportion of persons with disabilities living either near or below the poverty line; the eligibility restrictions for the Disability Support Pension and the inadequate income support payments to persons with disabilities, such as the Newstart unemployment payment; and the limited consideration of persons with disabilities, particularly Indigenous persons with disabilities, in poverty and homelessness reduction strategies

9.67 The **CRPD Committee**²⁴² subsequently recommended that Australia:

- (a) Develop **a national poverty reduction plan** that is inclusive and accessible to all persons with disabilities and prioritize the realisation of the right to an adequate standard of living and social protection for Indigenous persons with disabilities;*
- (b) End the eligibility restrictions for the **Disability Support Pension**, increase the rate of **Newstart** unemployment payment and other income support payments to ensure persons with disabilities have access to an adequate standard of living;*
- (c) Ensure that persons with disabilities are included as a **priority cohort** in the implementation of poverty and homelessness reduction programmes, including the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.*

Disaster and Emergency Planning, Management and Recovery

9.68 Australia is witnessing a significant increase in both the severity and frequency of natural disasters, and the link between climate change and extreme events is increasingly being recognised. Research has shown that people with disability **are disproportionately affected** in disaster and emergency situations due to the lack of accessibility in evacuation, response, and recovery efforts, and exclusion of disability issues in planning and preparedness.²⁴³

9.69 Research on the effects of disaster on people with disability confirms that people with disability are **at higher risk** than those without disability of death, injury, loss of property, difficulties during sheltering, vulnerability post-disaster, and require more intensive disaster management.²⁴⁴ Research from the United Nations shows that only 20% of people with a disability could evacuate immediately and without difficulty, in the event of a sudden disaster like a bushfire; the remainder could only do so with a degree of difficulty and 6% would not be able to do so at all.²⁴⁵

9.70 Australia is a signatory to the **Sendai Framework for Disaster Risk Reduction 2015-2030**,²⁴⁶ which was adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015. The Sendai Framework is a 15-year agreement with seven targets and four priorities for action which aim to achieve substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries. People with disability are acknowledged in the Sendai Framework - establishing them and their representative

organisations as **legitimate stakeholders** in the design and implementation of disaster risk reduction policies. In the Australian context, the Department of Home Affairs is leading Australia's reporting against the Sendai Framework²⁴⁷ and driving implementation²⁴⁸ at a national level, however there is **no mechanism for engagement** with people with disability.

9.71 Australia's two frameworks currently in place to prepare for disasters [the *National Disaster Risk Reduction Framework (2018)*²⁴⁹ and the *Australian Disaster Preparedness Framework (2018)*]²⁵⁰ do not address disability, nor do they 'ensure access to disability-specific and disability-responsive support during emergencies', as recommended by the Committee on the Rights of Persons with Disabilities. There is also **no established mechanism** to engage with people with disability in the implementation and monitoring of the National Disaster Risk Reduction Framework and the Australian Disaster Preparedness Framework.

9.72 In 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia's compliance with the CRPD.²⁵¹ In relation to Article 11 [Situations of risk and humanitarian emergencies], the Committee expressed its concern about the lack of:

- (a) Nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive support during emergencies;
- (b) A mechanism for engagement with organizations of persons with disabilities in the implementation of the Sendai Framework at the national level and its reporting process.

9.73 The CRPD Committee subsequently reiterated its **previous recommendation** (CRPD/C/AUS/CO/1, para 23)²⁵² and in addition recommended that:

*in close consultation with representative organizations of persons with disabilities, the establishment of a **fully accessible and inclusive mechanism** to engage with persons with disabilities in the implementation and monitoring of the Sendai Framework.*²⁵³

SECTION TEN
MECHANISMS AND STRATEGIES
TO ENGAGE WITH PEOPLE WITH
DISABILITY



MECHANISMS AND STRATEGIES TO ENGAGE WITH PEOPLE WITH DISABILITY

Position Paper Question 8:

How could the proposed Engagement Plan ensure people with disability, and the disability community, are involved in the delivery and monitoring of the next Strategy?

WWDA Response:

- 10.1 Access to decision-making, political participation and representation are **essential markers of equality**. Yet people with disability in Australia continue to be denied the right to participate in, and remain largely excluded from, decision-making, participation and advocacy processes, about issues that affect their lives and those of their families, communities and nations.
- 10.2 Women and girls with disability in particular, are **frequently excluded** from making or participating in decisions that affect their lives on a daily basis, including as active agents in their own health care, including sexual and reproductive health care.²⁵⁴ Too often, women and girls with disability have their views ignored or disregarded in favour of ‘experts’, ‘professionals’, parents, guardians, and carers, as well as representatives of organisations not controlled by, and constituted of, women with disability themselves.²⁵⁵
- 10.3 CRPD Article 3 identifies a set of overarching principles that guide the interpretation and implementation of the Convention. It includes “**full and effective participation and inclusion in society**”, which means that the participation of persons with disability, through their representative organisations, cuts across the **entire text** and applies to the whole Convention. As part of the general obligations of States parties, article 4 (3) applies to the entire Convention and is significant in implementing all of its obligations. CRPD article 4 (3) states:
- In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.*
- 10.4 The CRPD Committee, however, has reported that it continues to observe an important gap between the goals and the spirit of CRPD articles 4 (3) and 33 (3) and the degree to which they have been implemented. According to the Committee, this is due, among other things, to the **absence of meaningful consultation with and involvement of persons with disability, through their representative organisations**, in the development and implementation of policies and programmes.²⁵⁶

- 10.5 In its 2019 review of Australia’s compliance with the CRPD, the Committee expressed its concern that ‘there are **no permanent or effective mechanisms** to ensure the active participation of persons with disabilities in implementation and monitoring of the Convention’. The Committee recommended that:

*The State party, in line with the Committee’s general comment No. 7 (2018), establish **formal and permanent mechanisms** 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 provision of necessary supports.*

- 10.6 The **CRPD Committee** has clarified that:

*The involvement of organisations **of** persons with disabilities in all forms of decision-making strengthens the ability of such persons to advocate and negotiate, and empowers them to more solidly express their views, realize their aspirations and reinforce their united and diverse voices. States parties should ensure the full and effective participation of persons with disabilities, through their representative organizations, as a measure to achieve their inclusion in society and combat discrimination against them.*

- 10.7 **Noting the CRPD Committee’s consistent recommendation that Australia establish formal and permanent mechanisms to ensure the full and effective participation of persons with disability, WWDA offers the following suggestions as to how people with disability, and the disability community, can meaningfully participate in the delivery and monitoring of the CRPD and the new NDS.**

- 10.7.1 Fund and adequately resource a **new model of disability representation** at the national level that prioritises organisations **of** people with disability that represent **priority population** cohorts, including children and young people with disability. Consistent with recommendations from the CRPD Committee, the Australian Government should:

- take initiatives to **increase the resources** available for independent organisations **of** persons with disabilities,
- create an **enabling environment** for the establishment and functioning of organizations **of** persons with disabilities, by adopting a policy framework favourable to their establishment and sustained operation;
- guarantee their **independence and autonomy** from the State,
- ensure the establishment, implementation of and access to **adequate funding** mechanisms, including public funding and international cooperation
- ensure the **provision of support**, including technical assistance, for empowerment and capacity- building.

- 10.7.2 In consultation with people with disability through their representative organisations, establish and **separately fund a national coalition** of organisations **of** persons with disability, that could meet 3-4 times per year, in order to foster collaboration and coordination and participate in the delivery and monitoring of

the CRPD and the new NDS (based on a model similar to the National Caucus of Disability Consumer Organisations, funded by the Australian Government in the 1990s), and similar to New Zealand's Independent Monitoring Mechanism (IMM)²⁵⁷ established to monitor implementation of the CRPD in New Zealand.

- 10.7.3 Establish a formal **National Standing Committee of People with Disability**²⁵⁸ that:
- Includes the Chair of each State/Territory Ministerial Disability Advisory Committee;
 - Includes a delegate from each of the national disability organisations of people with disability;
 - Has direct engagement with the Ministerial Disability Reform Council;
 - Has the ability to form sub-committees/working groups on thematic issues (eg: in line with NDS targeted Action Plans and NDS Outcome areas) and draw on expertise from across the sector;
 - Has its secretariat function provided by the Australian Government Department responsible for oversight of the NDS;
 - Includes the Disability Discrimination Commissioner;
 - Is co-chaired by the Federal Disability Minister and a person with disability elected by the members of the National Standing Committee.
- 10.7.4 Establish an **annual Forum between the Commonwealth/State/Territory Ministers for Disability**²⁵⁹ and the National Standing Committee of People with Disability and the national coalition of organisations of persons with disability, as a mechanism for formal dialogue on the implementation of the CRPD and the NDS.
- 10.7.5 In consultation with people with disability and their representative organisations, **appoint an Ambassador for Disability Equality** (similar to the role of Ms Natasha Stott Despoja when she was the Australian Ambassador for Women and Girls).
- 10.7.6 Establish a dedicated **Disability Policy Unit** within each Commonwealth Government Department and establish intergovernmental NDS Implementation Committee with membership drawn from the head of each Policy Unit.
- 10.7.7 Adequately fund the **Disability Advocacy Network of Australia** and develop a mechanism for independent advocacy to assist in informing the measurement of outcomes under the NDS Outcomes Framework.
- 10.7.8 The Australian Government Department responsible for the collection of data and information from independent advocacy organisations, should **publish an annual thematic report**, disaggregated where possible, and make this publicly available, including to national and State/Territory based systemic advocacy organisations.
- 10.7.9 Recognising that national organisations of people with disability (DPOs/DROs) work across all government portfolio areas, investigate the feasibility of **each Commonwealth agency contributing funds** to ensure that the DPOs/DROs are adequately resourced to work across all NDS Outcomes Areas.
- 10.7.10 Develop minimum **5-year funding contracts for DPOs/DROs**, streamline reporting processes, and reduce reporting duplication.
- 10.7.11 In consultation with organisations of people with disability, develop **National**

Standards for Disability Representative Organisations, linked to an accreditation program developed and implemented by people with disability. This could be modelled on the Australian Service Excellence Standards²⁶⁰ or similar.

- 10.7.12 In consultation with organisations of people with disability, develop **National Best Practice Standards/Guidelines** for Engaging with People with Disability.
- 10.7.13 Develop a **National Systemic Advocacy Outcomes reporting framework** that includes both quantitative and qualitative measures.
- 10.7.14 Fund the Australian Human Rights Commission to develop **Information and Communication Standards** under the Disability Discrimination Act (DDA) that require information to be fully accessible and communication supports to be routinely available.
- 10.7.15 Develop a **Plain Writing Act** similar to the *Plain Writing Act of 2010 (USA)*²⁶¹ that requires government agencies to use clear communication that the public can understand.
- 10.7.16 Ensure that the critical role of **independent advocacy**, including individual, systemic and self-advocacy, is **adequately resourced** on a long-term basis by Commonwealth **and** State/Territory governments.
- 10.7.17 Conduct a bi-annual **National Conference on the NDS and People with Disability**, which would include Conference streams consistent with the Outcome Areas of the new NDS. High level sponsorship from the corporate sector could be sought.
- 10.7.18 Fund and support an annual or **bi-annual ‘Citizen’s Jury’ of people with disability** to evaluate progress on the NDS from the perspective of disabled people.
- 10.7.19 Investigate the **feasibility of mandating**, through legislation, the requirement for consultations with and the involvement of people with disabilities prior to the approval of laws, regulations and policies, whether mainstream or disability specific.

APPENDIX 1

CRPD CONCLUDING OBSERVATIONS [AUSTRALIA] 2013



Committee on the Rights of Persons with Disabilities

**Concluding observations on the combined second and third reports
of Australia^{1*}**

I. Introduction

1. The Committee considered the combined second and third periodic reports of Australia (CRPD/C/AUS/2-3) at its 499th and 500th meetings (see CRPD/C/SR.499 and 500), held on 12 and 13 September 2019. It adopted the present concluding observations at its 511st meeting, held on 20 September 2019.
2. The Committee welcomes the combined second and third periodic reports of Australia, which were prepared in accordance with the Committee's reporting guidelines and in response to its list of issues prior to reporting (CRPD/C/AUS/QPR/2-3).
3. The Committee appreciates the constructive dialogue held during the consideration of the report and commends the State party for the strength of its high-level delegation, which included representatives of the relevant government ministries and departments.

II. Positive aspects

4. The Committee appreciates the adoption of the following legislative, policy and administrative measures:
 - (a) The National Disability Insurance Scheme Act 2013;
 - (b) States' and territories' legislation and policies such as Disability Inclusion Act, Disability Services Act, Disability Justice Plans and Disability Action Plans;
 - (c) The disability inclusion strategy, Development for all 2015-2020, for development assistance;
 - (d) The new National Disability Employment Framework;
 - (e) The Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability;
 - (f) The establishment of the Royal Commission into Violence, Abuse, Neglect and Exploitation

1 *
Adopted by the Committee at its twenty-second session (26 August – 20 September 2019).

Adopted by the Committee at its twenty-second session (26 August – 20 September 2019).

of People with Disability in 2019;

- (g) The establishment of the National Disability and Carers Advisory Council;
- (h) The commitment to introduce seven percent employment target for persons with disabilities in the public service;
- (i) The endorsement of a new national disability data set bringing together commonwealth, state and territory data from across multiple sources and systems to provide a more complete picture of the needs of people with disabilities.

III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

5. The Committee is concerned about:

- (a) The insufficient harmonization of the domestic legal framework with the Convention;
- (b) The lack of progress to review and withdraw the interpretive declarations on articles 12, 17 and 18 by the State party;
- (c) The serious delays to release the third Implementation Plan under National Disability Strategy (NDS) 2010-2020;
- (d) The weak mechanisms and limited funding under the NDS and National Disability Agreement (NDA) for full and effective engagement of persons with disabilities through their representative organisations in the policy development, implementation and monitoring of actions relating to the Convention;
- (e) Disability assessment to be eligible to receive services through the National Disability Insurance Scheme (NDIS) still relying heavily on the medical model of disability and not providing older persons with disabilities, persons with disabilities from culturally and linguistically diverse (CALD) or Indigenous backgrounds and persons with intellectual or psychosocial disabilities with equal opportunities;
- (f) Inaccessibility of the NDIS due to the complex, complicated procedures, limited publically available and accessible information, and lack of services in remote areas;
- (g) The lack of sustainably, adequately resourced continuous, individual and independent advocacy programmes.

6. **The Committee recommends that the State party:**

- (a) Fully harmonize domestic legislation with the Convention, carrying out disability rights impact assessments on legislative changes that may impact the rights of persons with disabilities;**
- (b) Review and withdraw the Interpretative Declarations on articles 12, 17 and 18 of the Convention;**
- (c) Roll out the third Implementation Plan for the NDS, and ensure that the NDA and the next NDS have active participation of and in close consultation with diverse organizations of persons with disabilities, adequate resources, implementation plan with measurable goals and robust monitoring, formalised performance reporting framework, evaluation, governance and accountability requirements, including by implementing the recommendations made by the Productivity Commission;**
- (d) Review disability assessment criteria for support schemes under the NDIS and align them with the human rights model of disability, ensuring adequate support for older persons with disabilities, CALD or Indigenous persons with disabilities, and persons with intellectual or psychosocial disabilities;**
- (e) Simplify, clarify and make the NDIS more transparent with publically available and accessible information and ensure that it meets the diverse and intersecting requirements of persons with disabilities in all areas;**

(f) Ensure that all persons with disabilities have access to continuous, sustainable and adequately resourced individual and independent advocacy programmes, particularly outside the NDIS.

7. The Committee is concerned that there are no permanent or effective mechanisms to ensure the active participation of persons with disabilities in implementation and monitoring of the Convention.

8. The Committee recommends that the State party, in line with the Committee's general comment No. 7 (2018), establish formal and permanent mechanisms 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 provision of necessary supports. In particular, involve Aboriginal and Torres Strait Islander persons with disabilities and their representative organizations in all aspects of the design, implementation monitoring and evaluation of the Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability.

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

9. The Committee is concerned that there is no effective legislative framework to protect persons with disabilities from systemic, intersectional and multiple forms of discrimination, especially at the Commonwealth level, that Aboriginal and Torres Strait Islander persons with disabilities are particularly disadvantaged and often not consulted on matters that affect them, and that the complaints mechanisms under existing law, especially the Disability Discrimination Act 1992 (DDA), are inaccessible to persons with disabilities.

10. The Committee, in line with its general comment no. 6 (2018) on the equality and non-discrimination, reiterates its previous recommendation (CRPD/C/AUS/CO/1, para. 15) that the State party strengthen anti-discrimination laws, particularly the DDA, to:

(a) Address and prohibit systemic, intersectional and multiple forms of discrimination, recognizing discrimination on a single or on multiple and/or intersectional characteristics and allowing for systemic complaints, representative and group actions and a sanction mechanism for a lack of access and for discriminatory behaviour;

(b) Support persons with disabilities in their own decisions, actions, and filing complaints, especially persons with high support requirements, and persons with intellectual or psychosocial disabilities.

Women with disabilities (art. 6)

11. The Committee is concerned about:

(a) The low percentage of women and girls with disabilities, particularly of Indigenous background, having access to services under NDIS;

(b) Limited opportunities for women and girls with disabilities to participate in the development of policies regarding the rights of women and gender equality.

12. In line with its general comment No. 3 (2016) and in the view of targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, the Committee recommends that the State party strengthen measures to address multiple and intersectional forms of discrimination against women and girls with disabilities and, in particular:

(a) Facilitate women and girls with disabilities', particularly of Indigenous background, access to services under NDIS;

(b) Adequately support organizations and networks of women and girls with disabilities, particularly those representing Aboriginal and Torres Strait Islander women with disabilities, to engage in all initiatives to promote gender equality and ensure their effective

participation in the development of policies for gender equality and the advancement of women and girls.

Children with disabilities (art. 7)

13. The Committee is concerned about:

- (a) The lack of focus on the rights of children with disabilities in the national plan of action for the realisation of the rights of the child;
- (b) The lack of access to early intervention mechanisms for children with disabilities;
- (c) The lack of disability and age appropriate assistance for children with disabilities to participate and express their views;
- (d) The lack of culturally suitable support for Indigenous children with disabilities and their families;
- (e) The situation of refugee and asylum seeking children with disabilities kept in detention facilities in the State party and offshore.

14. The Committee recommends that the State party:

- (a) Include a focus on the rights of children with disabilities in any national plan of action for the realisation of the rights of the child;**
- (b) Ensure access for children with disabilities to quality and human rights-based early intervention mechanisms;**
- (c) Amend all legislation to require that children are provided with age-appropriate support and accommodations to express their views in all matters that affect their rights or interests;**
- (d) Fund and resource culturally suitable support for Indigenous children with disabilities and their families, in the local community;**
- (e) Urgently remove all refugee and asylum seeking children, particularly children with disabilities and their families from detention facilities and ensure the provision of individualized support and recognize the denial of reasonable accommodation as a form of discrimination.**

Awareness-raising (art. 8)

15. The Committee is concerned about the lack of concerted efforts at all levels, and the low level of participation of persons with disabilities, particularly women, Aboriginal and Torres Strait Islander, CALD, LGBTIQ+ persons with disabilities, through their representative organizations to promote awareness-raising efforts, including campaigns, promoting a positive image and awareness of the contribution of persons with disabilities in line with the Convention.

16. The Committee recommends that the State party develop a national government strategy to promote a positive image and awareness of the human rights of all persons with disabilities, and ensure the participation of all persons with disabilities, particularly women, Aboriginal and Torres Strait Islander, CALD, LGBTIQ+ persons with disabilities, in the development and delivery of all awareness raising activities.

Accessibility (art. 9)

17. The Committee is concerned about:

- (a) The lack of a national framework for reporting compliance with the Disability Standards for Accessible Public Transport; the Disability (Access to Premises-Buildings) Standards; and the National Standards for Disability Services;
- (b) The significant proportion of existing inaccessible built environment and the lack of mandated national access requirements for housing in the National Construction Code;
- (c) The lack of comprehensive and effective measures to implement the full range of accessibility obligations under the Convention, including of information and communication technology and systems.

18. In the light of article 9 of the Convention and its general comment No. 2 (2014), the Committee recommends that the State party, taking into account goal 9 and targets 11.2 and 11.7 of the Sustainable Development Goals:

(a) Establish and enact a national framework for mandatory compliance reporting of the Disability Standards for Accessible Public Transport; the Disability (Access to Premises-Buildings) Standards; and the National Standards for Disability Services;

(b) Amend the Federal law with mandatory rules on access for all new and extensively modified housing;

(c) Take the necessary legislative and policy measures, such as public procurement criteria, to implement the full range of accessibility obligations under the Convention, including regarding information and communication technology and systems, and ensuring effective sanction measures for non-compliance.

Right to life (art. 10)

19. The Committee is concerned about:

(a) The significantly lower life expectancy of persons with disabilities, particularly persons with intellectual disabilities and within the Indigenous communities, than that of the general population;

(b) A significant number of persons with disabilities expressing suicidal ideation, particularly within the Indigenous communities, due to, inter alia, lack of support, poverty and isolation;

(c) The high rate of premature, unexpected but avoidable deaths among persons with disabilities in care settings.

20. The Committee recommends that the State party:

(a) Address the low life expectancy of persons with disabilities, especially persons with intellectual disabilities and persons with disabilities from Indigenous communities;

(b) Ensure the National Mental Health and Suicide Prevention Plan includes targeted measures for persons with disabilities and develop, in consultation with Aboriginal and Torres Strait Islander persons with disabilities, culturally appropriate measures to prevent, identify and address the high rate of suicides among those populations, with targeted measures for children with disabilities;

(c) Ensure a comprehensive approach to suicide prevention among persons with disabilities in the training of all professionals working with and for persons with disabilities including health, social, education and community workers.

Situations of risk and humanitarian emergencies (art. 11)

21. The Committee, recognizing that the effects of climate change contribute to exacerbating inequality and vulnerability of persons with disabilities remains concerned about the lack of:

(a) Nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive support during emergencies;

(b) A mechanism for engagement with organizations of persons with disabilities in the implementation of the Sendai Framework at the national level and its reporting process.

22. The Committee reiterates its previous recommendation (CRPD/C/AUS/CO/1, para 23) and recommends, in close consultation with representative organizations of persons with disabilities, the establishment of a fully accessible and inclusive mechanism to engage with persons with disabilities in the implementation and monitoring of the Sendai Framework.

Equal recognition before the law (art. 12)

23. Despite the recommendations of the Australian Law Reform Commission, the Committee is concerned about the lack of progress to abolish the guardianship system and substituted decision-making regime, particularly in decisions concerning forced psychiatric treatment, and at the lack of a timeframe to completely replace it with supported decision-making systems.

24. Recalling its general comment No. 1 (2014), on equal recognition before the law, the Committee

recommends that the State party:

(a) Repeal any laws and policies, and end practices or customs, which have the purpose or effect of denying or diminishing recognition of any person with disabilities as a person before the law;

(b) Implement a nationally consistent supported decision-making framework, as recommended in the Australian Law Reform Commission's 2014 report, "Equality, Capacity and Disability in Commonwealth Laws".

Access to justice (art. 13)

25. The Committee is concerned about:

(a) The fact that only some states and territories have passed legislation to support equal participation of persons with disabilities in the jury system while the rest and the commonwealth government have not done so;

(b) The lack of nationally consistent Disability Justice Plans across governments, to ensure that persons with disabilities are supported to access the same legal protections and redress as the rest of the community, particularly for those with intellectual or psychosocial disabilities whose reasonable and procedural accommodations are not adequately met;

(c) The fact that legislation still provides for persons with disabilities as being unfit to plead;

(d) The over representation of convicted young persons with disabilities in the youth justice system, especially male youth from Indigenous communities;

(e) Ongoing use of substitute decision-making to assist "persons with disabilities unable to navigate the legal system by themselves";

(f) Absence of national data disaggregated by disability through all the stages of the criminal justice system, including on the number of persons unfit to plead who are committed to custody in prison and other facilities.

26. The Committee recommends that the State party, in consultation with persons with disabilities through their representative organizations ensure effective access to justice for persons with disabilities without any discrimination, and:

(a) Develop legislation in all states on equal participation of persons with disabilities in the jury system;

(b) Develop nationally consistent Disability Justice Plans across governments to ensure that persons with disabilities, particularly those whose reasonable and procedural accommodations are not adequately met, are supported in accessing the same legal protections and redress as the rest of the community;

(c) Bring all state, territory and federal legislation, including criminal law, and policy in compliance with the Convention to ensure due process guarantees for all persons with disabilities and ensure a review of the legal situation of persons whose equal recognition before the law is restricted and have been declared unfit to stand to trial;

(d) Address the over-representation of Indigenous young people in the youth justice system and implement the recommendations from the *National Inquiry into the Incarceration Rate of Indigenous Peoples*;

(e) Eliminate substitute decision-making and provide gender and culture specific individualized support, including psychosocial support for persons with disabilities in the justice system, and the provision of accessible information and community based sentencing options;

(f) Ensure that training modules on working with persons with disabilities and the Convention are incorporated into mandated training programs for police, prison officers, lawyers, judicial officers, judges and court staff;

(g) Collect data disaggregated by disability, age, gender, location and ethnicity at all stages of the criminal justice system, including on the number of persons unfit to plead who are committed to custody in prison and other facilities.

Liberty and security of the person (art. 14)

27. The Committee is seriously concerned about:

(a) Legislative frameworks, policies and practices which result in the arbitrary and indefinite detention and forced treatment of persons with disabilities, disproportionately experienced by Indigenous persons with disabilities, persons with intellectual or psychosocial disabilities;

(b) Ongoing practice of compulsory treatment for persons with “cognitive and mental impairment”, including through indefinite detention in psychiatric centers, despite recommendations of the Senate Community Affairs References Committee’s 2016 report on indefinite detention of persons with “cognitive and psychiatric impairment”;

(c) The commitment of persons with intellectual or psychosocial disabilities to custody, often indefinitely or for terms longer than those imposed in criminal convictions;

(d) The absence of data on the number of persons found not guilty due to “cognitive or mental health impairment” indefinitely detained and a number of cases on an annual basis;

(e) The practice of retaining and restraining children with disabilities in adult settings.

28. The Committee, recalling its guidelines on article 14 of the Convention (2015) see report of the Committee on the Rights of Persons with Disabilities Supplement No. 55 (A/72/55), annex I), urges the State party to:

(a) Repeal any law and policy and cease any practice or custom that enables deprivation of liberty on the basis of impairment, and forced medical interventions on persons with disabilities, particularly Indigenous persons with disabilities;

(b) Implement the recommendations from the 2016 Senate Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia;

(c) End committing persons with disabilities to custody and to indefinite terms or to terms longer than those imposed in criminal convictions;

(d) Collect data on the number of persons indefinitely detained and a number of cases on an annual basis, disaggregated by nature of offence, time of detention, disability, Aboriginal and other origin, sex, age and jurisdiction, with the aim to review their detention;

(e) End the practice of detaining and restraining children with disabilities in any settings.

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

29. The Committee is seriously concerned about:

(a) Legislation, policies and practices that allow for psychotropic medication, physical restraint and seclusion under the guise of “behaviour modification” or restrictive practices against persons with disabilities, including children, in any setting, such as justice, education, health, psychosocial and aged care facilities;

(b) The reported abuse of Indigenous young persons with disabilities by fellow prisoners and staff, prolonged solitary confinement, particularly of persons with intellectual or psychosocial disabilities, and a lack of safe and accessible channels for complaints;

(c) Lack of engagement with persons with disabilities through their representative organizations regarding the designation and establishment of a disability inclusive National Preventive Mechanism (NPM).

30. The Committee urges that the State party:

(a) Establish a nationally consistent legislative and administrative framework for the protection of all persons with disabilities, including children, from psychotropic medication, physical restraint and seclusion under the guise of “behaviour modification” and the elimination of restrictive practices, including domestic discipline/corporal punishment, in all settings;

(b) Introduce policies and measure to protect persons with disabilities, including Indigenous youth with disabilities and persons with intellectual or psychosocial disabilities, from abuse by fellow prisoners and staff and ensure that persons with disabilities cannot be held in

solitary confinement;

(c) Ensure that organisations of persons with disabilities can effectively engage in the establishment and work of the national preventive mechanism.

Freedom from exploitation, violence and abuse (art. 16)

31. The Committee is concerned about:

(a) The lack of additional oversight, complaint and redress mechanisms needed for persons with disabilities who are not eligible for NDIS, older persons with disabilities and particularly women with disabilities;

(b) The lack of resources and redress scheme for the Royal Commission into Violence, Abuse, Exploitation and Neglect of Persons with Disabilities;

(c) Lack of implementation of the recommendations of the Australian Human Rights Commission's report A Future without Violence;

(d) The lack of an explicit reference to women and girls with disabilities in the National Plan to Reduce Violence against Women and their Children (2010-2022);

(e) Insufficient expertise and structural barriers within domestic violence, sexual assault and crisis services to adequately support women and girls with disabilities;

(f) Limited data collection instruments on violence against women and girls with disabilities.

32. The Committee recommends that the State party:

(a) Establish a national accessible, oversight, complaint and redress mechanism for persons with disabilities who have experienced violence, abuse, exploitation and neglect in all settings including all those not eligible for NDIS and particularly older women with disabilities;

(b) Ensure adequate resources and provision for a redress scheme in the Royal Commission into Violence, Abuse, Exploitation and Neglect of Persons with Disabilities;

(c) Implement the recommendations in the Australian Human Rights Commission's report A Future without Violence;

(d) Ensure inclusion of women and girls with disabilities in the National Plan to Reduce Violence against Women and their Children (2010-2022) beyond project based programs and activities;

(e) Ensure gender and age-sensitive services to address gender-based violence that are inclusive and accessible for all women and girls with disabilities and ensure staff are adequately trained;

(f) Address the methodological restrictions in data collection instruments used to capture data on violence against women and girls with disabilities.

Protecting the integrity of the person (art. 17)

33. The Committee is seriously concerned about:

(a) Ongoing practice of forced sterilization, forced abortion and forced contraception of persons with disabilities, particularly women and girls, without their free and informed consent, which remains legal;

(b) Unregulated use of involuntary surgery on infants and children born with variations in sex characteristics, and other intrusive and irreversible medical interventions, without their informed consent or evidence of necessity.

34. The Committee urges that the State party to:

(a) Review and amend the Family Law Rules 2004 relating to Medical Procedure Applications in line with the Convention and adopt uniform legislation prohibiting, in the absence of free and informed consent, the sterilization of adults and children, the administration

of contraception and abortion procedures on women and girls with disability;

(b) Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary, invasive and irreversible medical interventions, including surgical, hormonal or other medical procedures on intersex children before they reach the legal age of consent, the electroconvulsive therapy, without their free and informed consent of the person concerned; also provide adequate counselling and support for the families of intersex children and redress to intersex persons having undergone such medical procedures.

Liberty of movement and nationality (art. 18)

35. The Committee is concerned about:

(a) The migration and asylum legislation, such as the Migration Act (1958) and the health requirement in Migration Regulations (1994), which allow for discrimination of persons with disabilities in the asylum and migration procedures;

(b) The Disability Discrimination Act 1992 providing an exemption for certain provisions within the Migration Act 1958 which results in exclusion of persons with disabilities;

(c) The 10-year qualifying period for migrants with non-permanent visa to access the Age and Disability Support Pensions;

(d) Transfers of refugees and asylum seekers with disabilities to Nauru, Papua New Guinea and other “regional processing countries”.

36. The Committee recommends that the State party:

(a) Review and amend migration laws and policies to ensure persons with disabilities do not face discrimination in any of the formalities and procedures relating to migration and asylum, especially remove the exemption in the Disability Discrimination Act 1992 to certain provisions of the Migration Act;

(b) Remove the 10-year qualifying period for migrants to access the Age and Disability Support Pensions;

(c) Cease transfers of refugees and asylum seekers, particularly persons with disabilities to Nauru, Papua New Guinea and other “regional processing countries” as requested by the UNHCR, in the Fact Sheet on the Protection of Australia’s so-called “Legacy caseload” asylum-seekers of 1 February 2018, and establish a minimum standard of healthcare and adequate support for persons with disabilities held in immigration detention.

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

37. The Committee is concerned about:

(a) The fact that the specialist disability accommodation (SDA) framework facilitates and encourages the establishment of residential institutions and will result in persons with disabilities having to live in particular living arrangements to access NDIS supports;

(b) The lack of appropriate, affordable, and accessible social housing, which severely limits the capacity of persons with disabilities to choose their place of residence;

(c) The Younger People in Residential Aged Care—Action Plan only outlines plans to reduce the number of persons, including persons with disabilities, under the age of 65 years living in aged care facilities, but does not end the practice.

38. The Committee recommends that the State party:

(a) Develop a national framework for the closure of all disability-specific residential institutions, and the prevention of trans-institutionalisation including addressing how persons with disabilities not eligible for the NDIS can be supported to transition to live independently in the community;

(b) Increase the range, affordability and accessibility of public and social housing for persons with disabilities, including by implementing a quota for accessible social housing and by developing regulations and standards to guarantee the progressive application of universal design principles in accessible housing;

(c) Revise the Younger People in Residential Aged Care—Action Plan to ensure that no person aged under 65 years should enter or live in residential aged care by 2025.

Personal mobility (art. 20)

39. The Committee is concerned about the lack of locally available solutions to address, enhance and promote the use of mobility aids and equipment among persons with disabilities, especially within the Indigenous communities and/or remote areas.

40. The Committee recommends that the State party, in partnership with Indigenous persons with disabilities, their representative organizations and communities, develop locally relevant solutions to address the underlying structural obstacles that can preclude the use of aids and equipment in Indigenous communities and/or remote areas.

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

41. The Committee is concerned that there is no legally binding information and communication standards that require information to be fully accessible beside the provision under the Disability Discrimination Act.

42. The Committee recommends that the State party develop plain language law requiring government agencies to use clear communication and develop legally-binding Information and Communication Standards so that information, particularly all information about significant changes to laws, policies, systems and obligations, is provided in accessible modes, means and formats, including Braille, Easy Read, sign language (Auslan), and other forms and that communication supports are routinely available. It also recommends that the State party promote and support the use of sign language (Auslan) and take steps to ensure the availability of qualified sign language interpreters.

Respect for home and the family (art.23)

43. The Committee is concerned about:

(a) Parents with disabilities having their child more likely removed, often on the basis of disability and by the lack of support in their exercise of parental responsibilities for their children;

(b) The reported discrimination, particularly of women with disabilities and LGBTIQ+ persons with disabilities in accessing assisted reproductive technologies.

44. The Committee recommends that the State party:

(a) Ensure no separation of children from parents on the basis of the disability of either the child or one or both of the parents;

(b) Adopt comprehensive and gender and culturally specific parenting and family support measures for parents with disabilities;

(c) Ensure that women with disabilities and LGBTIQ+ persons with disabilities have equal access to assisted reproductive technologies.

Education (art. 24)

45. The Committee is concerned about:

(a) The lack of implementation of many of the recommendations of the 2015 review of the Disability Standards for Education (2005);

(b) The significant increase of segregated education, seclusion, isolation and lack of age appropriate settings for students with disabilities, and insufficient funding for inclusive education in mainstream schools;

(c) No national disaggregated data on students with disabilities, including on the use of restrictive practices and bullying.

46. In line with the Committee's general comment No. 4 (2016) on the right to inclusive education and targets 4.5 and 4.a of the Sustainable Development Goals, the Committee reiterates its previous recommendation (CRPD/C/AUS/CO/1, para. 46) and recommends that the State party:

(a) Conduct a robust review, in consultation with organizations of persons with disabilities, of the Disability Standards for Education (2005), implement the recommendations in the new standards and develop a national Action Plan for Inclusive Education;

(b) Address the increasing rate of segregation, seclusion and isolation, lack of age appropriate settings for students with disabilities, in particular Aboriginal and Torres Strait Islanders, at all levels and redirect adequate resources to a nationwide inclusive education system for all students;

(c) Expand the collection of data on the numbers of students with disabilities, who do not qualify for an adjustment, are unable to enrol in local mainstream schools, educational attainment and completion, suspension and expulsion rates and the use of restrictive practices and bullying.

Health (art. 25)

47. The Committee is concerned about significantly poorer health and access to information and to adequate, affordable and accessible health services and equipment for persons with disabilities and children with disabilities, particularly for persons with disabilities living in remote areas, Indigenous persons with disabilities, persons with intellectual or psychosocial disabilities, persons with disabilities living in institutions, children and women with disabilities, compared to the general population.

48. The Committee recommends that the State party adhered to article 25 of the Convention in its efforts to achieve targets 3.7 and 3.8 of the Sustainable Development Goals and ensure that:

(a) All persons with disabilities and children with disabilities have access to information, on an equal basis with others, and to affordable, accessible, quality and culturally-sensitive health services and equipment, including sexual and reproductive health and mental health services, with particular consideration for persons with disabilities living in remote areas, Indigenous persons with disabilities, persons with intellectual or psychosocial disabilities, persons with disabilities living in institutions, and women and children with disabilities;

(b) All health care services are based on a non-discriminatory, human rights model to disability, and on the basis of free and informed consent of the person concerned prior to any medical treatment;

(c) Health-care practitioners receive training on the human rights model of disability to enhance their capacity to provide accessible, quality health care to persons with disabilities.

Work and employment (art. 27)

49. The Committee is concerned about:

(a) The narrow and incomplete review of the National Employment Framework for People with Disability as well as the lack of clear measures to reform the Disability Employment Services;

(b) Ongoing practice of segregated employment through Australian Disability Enterprises (ADEs) with sub-minimum wage payment;

(c) Low labour force participation and continuance of employment of persons with disabilities, particularly women with disabilities, Aboriginal and Torres Strait Islander persons with disabilities, persons with disabilities especially CALD, refugee and asylum seeking persons with disabilities due to numerous systemic barriers.

50. The Committee recommends that the State party:

(a) Undertake measures to reform Disability Employment Services and develop a national disability employment strategy that incorporates the recommendations from the Willing to Work Inquiry, and contains targeted gender-sensitive measures;

(b) Undertake a comprehensive review of Australian Disability Enterprises (ADEs) to adhere to Article 27 of the Convention and provide services to transition of persons with disabilities from sheltered employment into open inclusive and accessible forms of employment, ensuring equal remuneration for work for equal value;

(c) Implement measures to address systemic and structural barriers experienced by persons with disabilities, particularly by women, Aboriginal and Torres Strait Islander persons, CALD, refugee and asylum seeking persons with disabilities.

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

51. The Committee is concerned about:

- (a) A significant proportion of persons with disabilities living either near or below the poverty line;
- (b) The eligibility restrictions for the Disability Support Pension and the inadequate income support payments to persons with disabilities, such as the Newstart unemployment payment;
- (c) The limited consideration of persons with disabilities, particularly Indigenous persons with disabilities, in poverty and homelessness reduction strategies including the National Affordable Housing Agreement and National Partnership Agreement on Homelessness.

52. The Committee recommends that the State party:

- (a) Develop a national poverty reduction plan that is inclusive and accessible to all persons with disabilities and prioritize the realisation of the right to an adequate standard of living and social protection for Indigenous persons with disabilities;**
- (b) End the eligibility restrictions for the Disability Support Pension, increase the rate of Newstart unemployment payment and other income support payments to ensure persons with disabilities have access to an adequate standard of living;**
- (c) Ensure that persons with disabilities are included as a priority cohort in the implementation of poverty and homelessness reduction programmes, including the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.**

Participation in political and public life (art. 29)

53. The Committee is concerned that electoral laws provide that persons of ‘unsound mind’ are not entitled to have their names on the electoral roll or to vote in elections and may be removed from the electoral roll following objection. It is also concerned that the electoral process is not fully accessible and does not guarantee secret voting rights of persons with disabilities. The Committee is also concerned about the lack of information on the representation of women with disabilities, particularly Indigenous women with disabilities, in political and public life.

54. The Committee reiterates its previous recommendation (CRPD/C/AUS/CO/1, para. 52) on ensuring the right of persons with disabilities to vote in elections on an equal basis with others and that the State party develop measures with adequate resources to ensure full accessibility of electoral processes with full guarantee of secret voting rights. It further recommends that the State party implement the Concluding Observations of the Committee on the Elimination of Discrimination Against Women (CEDAW/C/AUS/CO/8, para. 36) to ensure representation and accelerate the participation of women with disabilities, particularly Indigenous women with disabilities, in political and public life at all levels.

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

55. The Committee is concerned about the lack of specific measures being put in place to effectively implement the Marrakesh Treaty and the insufficient measures to promote that persons with disabilities, particularly children, participate in cultural life, recreation, leisure and sport, on an equal basis with others.

56. The Committee recommends that the State party take all appropriate measures in order to ensure effective implementation of the Marrakesh Treaty through close consultation with representative organizations of persons with disabilities. It also recommends that the State party increase its efforts to ensure that persons with disabilities, including children, enjoy their right to participate in cultural life, recreation, leisure and sport, on an equal basis with others.

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

57. The Committee is concerned about the lack of nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the Convention.

58. The Committee recommends that the State party, in conjunction with the Office of the National Data Commissioner, develop a national disability data framework to ensure appropriate, nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the Convention, especially with regard to women, children and Indigenous persons with disabilities.

International cooperation (art. 32)

59. The Committee is concerned at the absence of appropriate mechanisms to measure the impact of development cooperation efforts on persons with disabilities and the lack of information about the effective involvement of organizations of persons with disabilities as development cooperation partners.

60. The Committee recommends that the State party:

(a) Adopt measures to ensure full and effective participation of persons with disabilities through their representative organizations in the design, implementation, monitoring and evaluation of programmes and projects developed in international cooperation efforts, such as the Development for All Strategy, in line with the Committee's General Comment No. 7 (2018);

(b) Adopt a development policy in line with the Convention that incorporates its principles and values into all the State party's development cooperation policies and programmes with measurable and tangible targets and indicators and ensure that international cooperation reaches persons with disabilities both by targeting them and mainstreaming their concerns;

(c) Mainstream disability rights and requirements in the national implementation and monitoring of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

National implementation and monitoring (art. 33)

61. The Committee is concerned about:

(a) The lack of sufficient resources allocated to effectively implement the National Disability Strategy;

(b) The existing legal framework limiting the scope and power of the Australian Human Rights Commission to perform the task of effective and independent monitoring of the implementation of the Convention;

(c) The lack of effective monitoring under the NDS as an overarching policy framework;

(d) The lack of a formal mechanism and sustainable funding for full and effective participation of persons with disabilities through their representative organizations in all processes of implementation and monitoring of the Convention.

62. The Committee reiterates its previous recommendation (CRPD/C/AUS/CO/1, para 58) recommends that the State party:

(a) Ensure sufficient resources for effective implementation of the NDS;

(b) Revise existing laws or enact new laws, including a national comprehensive human rights law, which expand and strengthen the scope and power of the Australian Human Rights Commission to perform the task of independent monitoring of the implementation of the Convention, in line with article 33 (2) of the Convention and the Committee's general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention;

(c) Establish a formal monitoring mechanism under the NDS, including the Office of Disability Strategy as recommended by the Senate Standing Committee on Community Affairs in 2017, ensuring effective coordination between the federal and State level;

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

IV. Follow-up

Dissemination of information

63. The Committee emphasizes the importance of all the recommendations contained in the present concluding observations. With regard to urgent measures that must be taken, the Committee would like to draw the State party's attention to the recommendations contained in paragraphs 6 (b) on review and withdrawal of the Interpretative Declarations on articles 12, 17 and 18 of the Convention, and paragraph 28 on liberty and security of the person.

64. The Committee requests the State party to implement the recommendations contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and parliament, officials in relevant ministries, the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using modern social communication strategies.

65. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its periodic report.

66. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, and to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

Next periodic report

67. The Committee requests the State party to submit its combined fourth and fifth periodic reports by 17 August 2026 and to include in them information on the implementation of the recommendations made in the present concluding observations. The Committee also requests the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the due date set for the report of a State party. The replies of a State party to such a list of issues constitute its report.

APPENDIX 2
**CRPD CONCLUDING OBSERVATIONS
[AUSTRALIA] 2019**



	United Nations	CRPD/C/AUS/CO/1
	Convention on the Rights of Persons with Disabilities	Distr.: General 21 October 2013 Original: English

Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)

I. Introduction

1. The Committee considered the initial report of Australia (CRPD/C/AUS/1) at its 107th and 108th meetings, held on 3 and 4 September 2013, and adopted the following concluding observations at its 118th meeting, held on 12 September 2013.
2. The Committee welcomes the initial report of Australia, and thanks the State party for the comprehensive written replies to the list of issues prepared by the Committee (CRPD/C/AUS/Q/1/Add.1).
3. The Committee commends the State party for its delegation, which included representatives of government ministries and the Disability Discrimination Commissioner. The Committee expresses its appreciation for the fruitful dialogue held with the delegation.

II. Positive aspects

4. The Committee commends the State party's adoption of the National Disability Strategy 2010-2020 to implement the Convention across all jurisdictions.
5. The Committee commends the State party for its international cooperation programmes supporting disability-inclusive development, which increases access to education, employment, health services, and law and justice.
6. The Committee commends the State party for introducing DisabilityCare Australia, a national scheme of self-directed disability support, which includes persons in need of intensive support.
7. The Committee welcomes the State party's commissioning, in June 2013, of the Australian Law Reform Commission to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. It also welcomes the funding by New South Wales and South Australia of pilot supported decision-making initiatives.

III. Principal areas of concern and recommendations

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

8. The Committee is concerned that despite the adoption of the National Disability Strategy, the State party has not yet brought its legislation fully into line with the Convention. It is further concerned about the interpretative declarations that the State party has made on articles 12, 17 and 18 of the Convention.

9. **The Committee recommends that the State party incorporate all rights under the Convention into domestic law and that it review its interpretative declarations on articles 12, 17 and 18 with a view to withdrawing them.**

10. The Committee regrets that there are not enough mechanisms for consultation and engagement between Government and persons with disabilities and their organizations in all matters of policy development and legislative reform relating to the Convention.

11. **The Committee recommends that the State party, in partnership with persons with disabilities — including children with disabilities — through their representative organizations, establish mechanisms to ensure meaningful participation in the development and implementation of legislation and policies to implement the Convention.**

12. The Committee is concerned that not all organizations of persons with disabilities, including those of persons with psychosocial disabilities, and Aboriginal and Torres Strait Islander people, are provided with adequate resources for their operations.

13. **The Committee recommends that the State party take initiatives to increase the resources available for independent organizations of persons with disabilities, including organizations representing children with disabilities.**

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.

15. **The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.**

Women with disabilities (art. 6)

16. The Committee is concerned at reports of the high incidence of violence against, and sexual abuse of, women with disabilities.

17. **The Committee recommends that the State party include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence, particularly so as to ensure access for women with disabilities to an effective, integrated response system.**

Children with disabilities (art. 7)

18. The Committee is concerned that the National Framework for Protecting Australia's Children is focused on the protection of children against violence, abuse and neglect, and that there is no comprehensive national policy framework for children, including children with disabilities, that articulates how the rights of children should be implemented, monitored and promoted.

19. **The Committee recommends that the State party:**

(a) **Step up efforts to promote and protect the rights of children**

with disabilities, by incorporating the Convention into legislation, policies, programmes, service standards, operational procedures and compliance frameworks that apply to children and young people in general;

(b) Establish policies and programmes that will ensure the right of children with disabilities to express their views on all matters concerning them.

Accessibility (art. 9)

20. The Committee notes that the Disability Standards for Accessible Public Transport 2002 and the Disability (Access to Premises – Buildings) Standards 2010 introduce regulations to address accessibility barriers for persons with disabilities. However, it remains concerned at the level of compliance with accessibility standards and regulations in the State party.

21. The Committee recommends that sufficient resources be allocated to ensure the monitoring and implementation of the disability standards and requirements.

Situations of risk and humanitarian emergencies (art. 11)

22. The Committee notes with concern that despite the adoption of emergency response and mitigation plans at the local and state levels, disability needs are often not explicitly factored into disaster response measures, and that there are as yet no specific measures in national plans to address emergency intervention strategies for persons with disabilities.

23. The Committee calls upon the State party to consult with people with disabilities to establish nationally consistent emergency management standards to be implemented across all three levels of government, ensure inclusivity across diverse disabilities and cover all phases of emergency management preparation, early warning, evacuation, interim housing and support, recovery and rebuilding. The Committee further recommends the inclusion in national plans of emergency response schemes for persons with disabilities.

Equal recognition before the law (art. 12)

24. The Committee notes that the Australian Law Reform Commission has been recently commissioned to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. However, the Committee is concerned about the possibility that the regime of substitute decision-making will be maintained and that there is still no detailed and viable framework for supported decision-making in the exercise of legal capacity.

25. The Committee recommends that the State party effectively use the current inquiry to take immediate steps to replace substitute decision-making with supported decision-making and that it provide a wide range of measures which respect a person's autonomy, will and preferences and are in full conformity with article 12 of the Convention, including with respect to a person's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry and to work.

26. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.

Access to justice (art. 13)

27. The Committee is concerned at the lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice for persons with disabilities, as well as the lack of guidance on access to justice for persons with disabilities. The Committee is further concerned that access to sign language interpreters or the use of Augmentative and Alternative Modes of Communication is not supported in all Australian states and territories.

28. The Committee recommends that standard and compulsory modules on working with persons with disabilities be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel. It further recommends that legislation and policy across the states and territories be amended to ensure access to justice for persons with disabilities, in line with article 13 of the Convention.

29. **The Committee further urges the State party to ensure that persons with psychosocial disabilities are ensured the same substantive and procedural guarantees as others in the context of criminal proceedings, and in particular to ensure that no diversion programmes to transfer individuals to mental health commitment regimes or requiring an individual to participate in mental health services are implemented; rather, such services should be provided on the basis of the individual's free and informed consent.**

30. **The Committee further recommends that the State party ensure that all persons with disabilities who have been accused of crimes and are currently detained in jails and institutions, without trial, are allowed to defend themselves against criminal charges, and are provided with required support and accommodation to facilitate their effective participation.**

Liberty and security of the person (art. 14)

31. The Committee is concerned that persons with disabilities who are deemed unfit to stand trial due to an intellectual or psychosocial disability can be detained indefinitely in prisons or psychiatric facilities without being convicted of a crime and for periods that can significantly exceed the maximum period of custodial sentence for the offence. The Committee is equally concerned that persons with disabilities are overrepresented in both the prison and juvenile justice systems, in particular women, children, Aboriginal and Torres Strait Islander persons with disability.

32. **The Committee recommends that the State party, as a matter of urgency:**

(a) **End the unwarranted use of prisons for the management of unconvicted persons with disabilities, focusing on Aboriginal and Torres Strait Islander persons with disabilities, by establishing legislative, administrative and support frameworks that comply with the Convention;**

(b) **Establish mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate support and accommodation;**

(c) **Review its laws that allow for the deprivation of liberty on the basis of disability, including psychosocial or intellectual disabilities, and repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability.**

33. The Committee is further concerned that under Australian law a person can be subjected to medical intervention against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment.

34. **The Committee recommends that the State party repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.**

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

35. The Committee is concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.

36. **The Committee recommends that the State party take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention — such as mental health facilities, special schools, hospitals, disability justice centres and prisons —, in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions.**

Freedom from exploitation, violence and abuse (art. 16)

37. The Committee is concerned at reports of high rates of violence perpetrated against women and girls living in institutions and other segregated settings.

38. **The Committee recommends that the State party investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and that it take appropriate measures on the findings.**

Integrity of the person (art. 17)

39. The Committee is deeply concerned that the Senate inquiry report into the involuntary or coerced sterilization of persons with disabilities, released in July 2013, puts forward recommendations that would allow this practice to continue. The Committee further regrets the State party's failure to implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the Working Group on the Universal Periodic Review (A/HRC/17/10) and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), which address concerns regarding sterilization of children and adults with disabilities.

40. **The Committee urges the State party to adopt uniform national legislation prohibiting the sterilization of boys and girls with disabilities, and adults with disabilities, in the absence of their prior, fully informed and free consent.**

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

41. The Committee is concerned that despite the policy to close large residential centres, new initiatives replicate institutional living arrangements, and many persons with disabilities are still obliged to live in residential institutions in order to receive disability support.

42. **The Committee encourages the State party to develop and implement a national framework for the closure of residential institutions and to allocate the resources necessary for support services that would enable persons with disabilities to live in their communities. The Committee recommends that the State party take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence. The State party should therefore map the various forms of living accommodation, based on the needs of various kinds of persons with disabilities.**

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

43. The Committee is concerned by the State party's failure to provide all information in accessible formats and effectively promote and facilitate the use of Australian Sign Language (Auslan) as Australia's official sign language, as well as the use of all other forms of accessible formats of communication (deaf-blind interpretation, Braille, easy and plain English, audio description), in particular when persons with disabilities are engaged in official interactions.

44. **The Committee recommends that the State party recognize Australian Sign Language as one of the national languages of Australia, and develop the use of other accessible formats of communication by allocating adequate funding for their development, promotion and use, in accordance with articles 24, paragraph 3, and 29 (b) of the Convention.**

Education (art. 24)

45. The Committee is concerned that despite the Disability Standards for Education established to ensure access to education on an equal basis, students with disabilities continue to be placed in special schools and many of those who are in regular schools are largely confined to special classes or units. The Committee is further concerned that students with disabilities enrolled in regular schools receive a substandard education due to lack of reasonable accommodation. The Committee is also concerned that secondary school completion rates for students with disabilities are about half of those for people without disability.

46. **The Committee recommends that the State party:**

- (a) Step up its efforts to provide reasonable accommodation of necessary quality in education;**
- (b) Conduct research into the effectiveness of current education inclusion policies and the extent to which the Disability Standards in Education are being implemented in each state and territory;**
- (c) Set targets to increase participation and completion rates by students with disabilities in all levels of education and training.**

Access to habilitation and rehabilitation (art. 26)

47. The Committee regrets the State party's medical model of habilitation and rehabilitation is not

based on the human rights model.

48. **The Committee recommends that the State party establish a framework to protect persons with disabilities from imposed habilitation and rehabilitation services without their free and informed consent.**

Right to work (art. 27)

49. The Committee is concerned that employees with disabilities in Australian Disability Enterprises are still being paid wages based on the Business Services Wage Assessment Tool.

50. **The Committee recommends that the State party:**

(a) **Immediately discontinue the use of the Business Services Wage Assessment Tool;**

(b) **Ensure that the Supported Wage System is modified to secure correct assessment of the wages of persons in supported employment;**

(c) **Adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.**

Participation in political and public life (art. 29)

51. The Committee is concerned that persons with disabilities, in particular those with intellectual or psychosocial disabilities, are automatically excluded from the electoral roll. The Committee is further concerned that persons with disabilities face significant barriers in the voting process.

52. **The Committee recommends that the State party enact legislation to restore presumption of the capacity of persons with disabilities to vote and exercise choice, and ensure that all aspects of voting in an election are made accessible to all citizens with disabilities.**

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

53. The Committee regrets the low level of disaggregated data collected on persons with disabilities and reported publicly. It further regrets that there is little data on the specific situation of women and girls with disability, in particular indigenous women and girls with disabilities.

54. **The Committee recommends that the State party develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. The Committee further recommends that the State party commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**

55. The Committee regrets that the situation of children with disabilities is not reflected in data on the protection of children. It further regrets the paucity of information on children with disabilities, in particular indigenous children, alternative care for children with disabilities and children with disabilities living in remote or rural areas.

56. **The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children. It further recommends that the State party commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**

National implementation and monitoring (art. 33)

57. The Committee is concerned that Australia lacks a participatory and responsive structure for implementing and monitoring the Convention in line with article 33 thereof.

58. **The Committee recommends that the State party immediately set up a monitoring system**

that is fully in line with the provisions of article 33 of the Convention.

Follow-up and dissemination

59. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. The Committee recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in the relevant ministries, the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using modern social communication strategies.

60. The Committee requests the State party to disseminate the present concluding observations widely, particularly to representative organizations of persons with disabilities, non-governmental organizations, persons with disabilities and members of their families, in accessible formats.

61. The Committee encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its next periodic report.

Next report

62. The Committee requests the State party to submit its combined second and third periodic reports no later than 17 July 2018, and to include therein information on the implementation of the present concluding observations.

END NOTES



END NOTES

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- 8 The [National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012](#) incorporates the first implementation plan '*Laying the Groundwork 2011-2014*' and the evaluation framework for the life of the Strategy.
- 9 The six main actions are: 1) influencing the mainstream support system through periodic reviews of Council of Australian Governments national agreements and partnerships - including specific strategies and performance indicators to address outcomes as appropriate; 2) focusing on outcomes through the appointment of disability champion ministers; 3) improving the evidence base; 4) developing, reviewing and implementing state and territory government disability plans and/or initiatives; 5) involving people with disability in the development and implementation of government policies and programs, not just disability-specific policies and programs; 6) embedding change through areas of national cooperation.
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- 24 These references are not intended to limit the gender analysis across the whole of the CRPD. These references are found in article 8 (Awareness-raising); article 13 (Access to justice); article 16 (freedom from exploitation, violence and abuse); article 25 (Health); Article 34 (Committee on the Rights of Persons with Disabilities).
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- 55 Davy, L., Fisher, K.R., Wehbe, A., Purcal, C., Robinson, S., Kayess, R., Santos, D. (2019). [Review of implementation of the National Disability Strategy 2010-2020: Final report.](#) (SPRC Report [4/19]. Sydney: Social Policy Research Centre, UNSW Sydney. See also: Senate Community Affairs References Committee (November 2015) [Final Report: 'Violence, abuse and neglect against people with disability in institutional and residential settings.](#) See also: Frohmader, C. (2014) ['Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities.](#) Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2- 1.
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- 147 See: CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), [Female Contraceptive Sterilization](#). See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) [Global Bodies call for end to Forced Sterilization: Press Release](#), 5 September 2011. See also: Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22.
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or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. The UN Special Rapporteur on Torture also clarified 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: Juan E. Mendez, Opcit., para 64. In addition, the UN Special Rapporteur on Torture also stated that *“hormone therapy and genital-normalizing surgeries under the guise of so called ‘reparative therapies’... are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.”* See: Juan E. Mendez, Op. Cit., para 76.

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- 156 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](#)
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- 180 Commonwealth of Australia (2016) Senate Standing Committee on Community Affairs, Report: [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#).
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- 194 See e.g. Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#). See also: Australian NGO CRPD Shadow Report Coordinating Committee (2019) [Civil Society Shadow Report ‘Disability Rights Now 2019’: Fact Sheets](#). Prepared by Carolyn Frohmader for the NGO CRPD Shadow Report Coordinating Committee.
- 195 ‘Interpretative Declarations’, are formal statements a country makes to express how it intends to ‘interpret’ or ‘understand’ a particular treaty article. [Australia’s ‘Interpretative Declarations’ to the CRPD](#) are as follows: **CRPD Article 12:** “Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards; **CRPD Article 17:** Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards; **CRPD Article 18:** Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia’s health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.”
- 196 Committee on the Rights of Persons with Disabilities, [General Comment No.1 – Article 12: Equal recognition before the law](#), 11th sess, UN Doc CRPD/C/GC/1 (19 May 2014).
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- 205 Australian NGO CRPD Shadow Report Coordinating Committee (2019) National CRPD Survey (2019) [Findings](#).
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Winner

National Human Rights Award 2001

Winner

National Violence Prevention Award 1999

Winner

Tasmanian Women's Safety Award 2008

Nominee

French Republic's Human Rights Prize 2003

Nominee

UN Millennium Peace Prize for Women 2000

Certificate of Merit

Australian Crime & Violence Prevention Awards 2008

Nominee

National Disability Awards 2017

Nominee

UNESCO Prize for Digital Empowerment of Persons with Disabilities
2020