

Disability Rights Now 2019

Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019

In response to the List of issues prior to the submission of the combined second and third periodic reports of Australia [CRPD/C/AUS/QPR/2-3]

Compiled by Australian Disabled People's Organisations (DPOs), Disability Representative Organisations (DROs) and Disability Advocacy Organisations

Cover Image Artwork Details:

© "Two Spirit Yarning" by Paul Constable Calcott of the Wiradjuri people. Paul uses the traditional art and symbols of his ancestors to talk to issues relating to LGBTIQ+ (two spirit) First Nations people with disability in remote and urban Australia.

Publishing Information

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About this Report

This Civil Society Shadow Report on the *Convention on the Rights of Persons with Disabilities* (CRPD) presents the perspective of people with disability in relation to Australia's compliance with its obligations under this Convention.

This Report responds to the CRPD Committee's List of Issues prior to the submission of the combined second and third periodic reports of Australia [CRPD/C/AUS/QPR/2-3]. It also provides information under articles 10, 20 and 23, which were not part of the List of Issues Prior to Reporting (LOIPR). The Report numbering under each article corresponds to the relevant LOIPR.

Following a CRPD Shadow Reporting Workshop held in November 2017, an Australian Civil Society CRPD Working Group (the Working Group) was established to assist in preparing for the UN CRPD Review of Australia. In developing this Shadow Report, the Working Group conducted targeted consultations with people with disability and their representative and advocacy organisations, and analysed evidence from government and civil society inquiries, various reports and submissions.

In early-mid 2019, the Working Group conducted an online survey for people with disability to provide an additional opportunity to contribute to the development of this Report. More than 1,000 people with disability responded to the Survey, and the findings have been incorporated into the Report.

The Working Group is comprised of representatives from DPOs, disability representative organisations and disability advocacy organisations:

[Disabled People's Organisations Australia \(DPO Australia\)](#)¹

[Council for Intellectual Disability NSW \(CID\)](#)

[Queensland Advocacy Incorporated \(QAI\)](#)

[Advocacy for Inclusion \(AFI\)](#)

[Disability Advocacy Network Australia \(DANA\)](#)

[Australian Centre for Disability Law \(ACDL\)](#)

[Queensland Voice for Mental Health \(QVMH\)](#)

[Children and Young People with Disability Australia \(CYDA\)](#)

[Australian Federation of Disability Organisations \(AFDO\)](#)

Word Count of this Report:

Consistent with the Guidelines on the Participation of Disabled Persons Organizations (DPOs) and Civil Society Organizations in the work of the Committee [UN Doc CRPD/C/11/2], the word count of this Report is 9,849.

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

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The Working Group also acknowledges the Australian Government, Attorney-General's Department and PwC Australia for their support in producing this Report.

The Working Group acknowledges with thanks, people with disability who completed the National CRPD Survey (2019)¹ which helped to inform this Report.

Endorsements

Executive Summary

The Australian Civil Society CRPD Shadow Report Working Group (the Working Group) has prepared this Shadow Report to provide the views of people with disability to the CRPD Committee.

Australia is a wealthy country and many Australians enjoy their human rights and a high standard of living. Consequently, Australia should be held to the highest standards with regard to its CRPD obligations.

The Working Group acknowledges positive reforms that Australia has initiated since its first review in 2013, particularly implementation of the National Disability Insurance Scheme (NDIS) and the establishment of a Royal Commission into exploitation, violence and abuse of people with disability.

However, people with disability still experience poverty, disadvantage and human rights violations, and this is particularly acute for Indigenous peoples² and communities. In particular, this Report draws attention to critical issues that require Australia to:

- withdraw its Interpretative Declarations to articles 12, 17 and 18, which 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;
- strengthen anti-discrimination laws to address intersectional discrimination; enable representative complaints; enable complaints regarding disability hate crimes; and ensure people with disability can effectively make complaints about denial of reasonable accommodation;
- develop and enact national legislation on the prevention of all forms of gender-based violence;
- incorporate CRPD rights into legislation, policies and programs that apply to children and young people; and develop mechanisms to ensure that children and young people with disability can participate in consultations, decision-making processes and policy development that affect their lives;
- establish a national framework for mandated compliance against *Disability Standards for Accessible Public Transport*; *the Disability (Access to Premises - Buildings) Standards*; and the *National Standards for Disability Services*; and amend the *National Construction Code* to mandate minimum access features for all new and extensively modified housing;
- urgently address the over-representation of people with disability in the criminal justice system, and end the unwarranted use of prisons for the management of unconvicted people with disability;
- act to ensure that Auslan is recognised as a national language, and harmonise laws to ensure that people with disability, including Deaf people are able to equally serve on juries;
- establish a nationally, consistent framework for the protection of people with disability from behaviour modification and the elimination of restrictive practices across a broad range of settings;
- enact national uniform and enforceable legislation prohibiting sterilisation and medically unnecessary interventions of people with disability and people with intersex variations in the absence of their prior, fully informed and free consent;
- develop a national plan for the closure of residential institutional environments, and develop genuine community based housing and support options for people with disability;
- take urgent action on discrimination against parents with disability, particularly action to address the high rate of child removal from parents with disability;
- develop a national Action Plan for Inclusive Education that includes a legislative and policy framework that fully complies with Article 24 and General Comment 4;
- develop a national disability employment strategy that contains targeted gendered measures for increasing workforce participation of people with disability, and that transitions people from segregated employment towards mainstream employment and equitable remuneration for work;
- end ongoing eligibility restrictions for the disability pension (DSP), and increase the rate of income support payments (Newstart) to ensure access to an adequate standard of living.
- establish a formal mechanism for meaningful engagement of people with disability in decision making and the implementation and monitoring of the CRPD in line with General Comment 7.

² In the Australian context, the term 'Aboriginal and Torres Strait Islander peoples' and/or 'First Peoples' is the accepted terminology to refer to Indigenous peoples. Consistent with internationally recognised terminology, this Report deliberately uses the term 'Indigenous people' whilst recognising that in the Australian context, the preferred terminology is 'Aboriginal and Torres Strait Islander people'.

Response to List of issues prior to reporting (LOIPR):

Purpose and general obligations (arts. 1-4)

1. There remains no comprehensive legal framework for the protection of human rights in Australia. The CRPD has still not been fully incorporated into domestic law. Whilst the *Disability Discrimination Act 1992* (DDA)² and State/Territory based anti-discrimination legislation incorporate some of the rights under the CRPD,³ the scope of protected rights and grounds of discrimination are much narrower in Australia than under international human rights law.⁴

Australia's Interpretative Declarations on CRPD Articles 12, 17 and 18 restrict effective implementation of the CRPD, 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.⁵

2. There are no permanent or effective mechanisms to ensure active participation of people with disability, including children with disability in implementation and monitoring of the CRPD.⁶ The important role of DPOs, in line with General Comment 7 is not well understood by governments. Resourcing for DPOs and organisations representing people with disability (DROs) is competitive, restricts engagement in international human rights activities and has been reduced since the last reporting period.⁷

The *National Disability Advocacy Program (NDAP)*⁸ was reviewed in 2016, but identified reforms have not been implemented. Many State and Territory Governments are reducing or ceasing funding for independent disability advocacy under the mistaken view that the *National Disability Insurance Scheme (NDIS)*⁹ will resolve issues for people with disability. There remains insufficient funding to respond to the high levels of need for disability advocacy across the country.¹⁰ People with disability and independent inquiries¹¹ have recommended that advocacy funding be restored by jurisdictions that have ceased or reduced funding.¹²

2. The *National Disability Strategy 2010-2020 (NDS)*¹³ sets out the national policy framework to guide Australian governments to meet their obligations under the CRPD.¹⁴ The NDS is now in review in preparation for its ten year completion, with a view to another ten year plan. However the final *Implementation Plan*¹⁵ under the NDS has not been released, and there have only been two progress reports despite commitment to biennial progress reports. These reports only describe actions rather than evaluate outcomes for people with disability. The NDS lacks actions and measurable outcomes to address systemic human rights violations, lacks resourcing in implementation, monitoring and evaluation across its policy outcome areas and lacks accountability and implementation mechanisms.¹⁶ Disaggregated data and the collection of information on the situation of women and children with disability are not built into the NDS.¹⁷

The NDS is siloed within the Department of Social Services (DSS) as a disability policy responsibility. DPOs have 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.¹⁸ This recommendation has been echoed by a Senate Inquiry¹⁹ however has been rejected by Government.²⁰

- 4(a) The NDIS aims to assist 10%, or 460,000 people with disability in Australia. The assessment criteria²¹ for accessing the NDIS is set out in the *NDIS Act 2013* (Cth).²² As at the end of 2018, 244,653 NDIS participants had an approved plan,²³ which fell well short of the 315,721 participants who were expected to have had approved plans by this time.²⁴

There is an over reliance on medical diagnoses rather than on functional assessments. The planning process for NDIS participants is complex and confusing, and often lacks clarity and transparency.²⁵ Scheme participants are often not aware of their rights and options.²⁶ Evidence from people with disability²⁷ demonstrate that planners have developed plans which are not representative of

participants' needs; they are making adverse decisions that they are not qualified to make; there are lengthy delays in receiving plans, plan reviews, and other information from the *National Disability Insurance Agency* (NDIA); and plan reviews have sparked unnecessary reductions in participant funding.²⁸

Not all eligible participants are benefiting from the NDIS.²⁹ People with psychosocial disability, Indigenous people with disability, culturally and linguistically diverse (CALD) people with disability, women and children with disability, LGBTIQ+ people with disability, people with intellectual disability, and those in remote areas, are not only experiencing difficulty accessing the Scheme, but are also most at risk of experiencing poor outcomes.³⁰ There is a culture in the NDIA that is not placing the participant at the centre of the Scheme.³¹ There is growing evidence that NDIS participants are being denied services and care because of funding disputes between the NDIA and other government services.³²

There is clear gender inequity in the NDIS. Across all jurisdictions, the percentage of female participants remains at less than 37%.³³ DPOs have called for the development of an NDIS Gender Strategy.

People with disability remain concerned with underspending on the NDIS, with payments expected to decrease by \$1.6 billion in 2019-20 attributed by Government to the slower than expected transition of people into the scheme.³⁴ People with disability argue that the slower than expected uptake is due to problems in people accessing the scheme and lengthy waiting times for participants to receive supports, and argue that underspent funds should be used to fix the scheme's implementation problems.³⁵

There is currently no clear national strategy to grow the workforce despite the need for an additional 70,000 disability workers by 2020.³⁶

- 4(b) People with disability over the age of 65 years are ineligible for the NDIS and reliant on an age care system that does not provide equity of support and lacks expertise in specialist disability support.³⁷

Governments are withdrawing their funding for a number of mental health support programs and using this funding to offset part of their contribution to the NDIS. At this stage, it is unclear what supports will be available for people with psychosocial disability who do not meet the NDIS eligibility criteria.³⁸

As disability support programs are rolled into the NDIS, people using these services³⁹ who are not eligible for the NDIS may no longer receive support. While the Commonwealth and State/Territory Governments have agreed to provide continuity of support through disability services outside the NDIS, in practice there is confusion and uncertainty about what services will continue to be provided and/or funded.⁴⁰ Some disability supports are not being provided because of unclear boundaries about the responsibilities of the different levels of government.⁴¹

In 2017, the NDIA began rolling out the NDIS *Information, Linkages and Capacity Building* (ILC) program.⁴² At the same time, State and Territory Governments are withdrawing from existing ILC-type activities. ILC is short-term and project focused and does not have the investment required to create accessible and inclusive mainstream communities nor to build capacity of people with disability.⁴³

- 4(c) There are limited opportunities for people with disability and their representative organisations to monitor and evaluate the NDIS. NDIS Quarterly Performance Reports⁴⁴ provide no substantive information from the perspective of people with disability and their representative organisations. People with disability have identified a need for improved public reporting of NDIS review processes.⁴⁵ The Joint Standing Committee on the NDIS has recommended that a principle be added to the *NDIS Act*, to ensure the NDIA collaborate with people with disability in the development and review of its operational plans and guidelines.⁴⁶

Recommendations

That Australia:

- Withdraw the Interpretative Declarations on CRPD Articles 12, 17 and 18.
- In partnership with people with disability through their representative organisations, establish a permanent implementation and monitoring mechanism to ensure meaningful participation in the development and implementation of legislation and policies to implement the CRPD.
- Consistent with CRPD General Comment 7, ensure that representative organisations of people with disability are adequately resourced to effectively participate in implementation and monitoring activities.
- Ensure that all people with disability have access to adequately resourced independent advocacy to assert and be accorded their human rights and fundamental freedoms under the CRPD.
- Ensure the new NDS is adequately resourced, developed in an intersectional framework, and contains measurable outcomes, an accountability framework, and measures to ensure disaggregation of data across all policy areas.
- Establish an independent high level Office of Disability Inclusion to drive the NDS across government and to ensure compliance with the CRPD.
- Address the inequity in the NDIS for marginalised groups, and develop an NDIS Gender Strategy.
- Amend the NDIS Act to include a principle for collaboration with people with disability and their representative organisations.

Equality and non-discrimination (art.5)

5. More than 75% of people with disability report experiencing discrimination because of their impairment.⁴⁷

In the absence of a federal Charter of Rights or Human Rights Act,⁴⁸ there remain significant gaps in the protection of human rights for people with disability.⁴⁹

Existing Commonwealth and most State/Territory anti-discrimination legislation does not protect against systemic and intersectional discrimination and disability hate crimes. There are no effective legislative remedies to address intersectional discrimination. DPOs and other groups cannot bring representative complaints under the DDA.

Denial of reasonable adjustment is a form of discrimination under the DDA. However, findings in a recent court case⁵⁰ has resulted in a person with disability being required to show that the denial of reasonable accommodation was caused by the person's impairment in order for it to constitute discrimination. This has made the DDA ineffective in addressing the denial of reasonable accommodation.⁵¹

Recommendations

That Australia:

- Establish a comprehensive, judicially enforceable Human Rights Act that incorporates Australia's obligations under the CRPD and other human rights treaties.
- Strengthen anti-discrimination laws to address intersectional discrimination; to enable representative complaints by DPOs and advocacy organisations; and to enable complaints regarding vilification and hate crimes on the basis of disability.
- Amend the DDA to ensure people with disability can effectively make complaints about denial of reasonable accommodation.

Women with disabilities (art.6)

6. Despite recommendations from the CRPD Committee,⁵² other treaty bodies and UN mechanisms,⁵³ there remains no national legislation on the prevention of all forms of gender-based violence.⁵⁴

The *National Plan to Reduce Violence Against Women and their Children 2010-2022*,⁵⁵ is Australia's main policy framework designed to prevent violence against women. The *National Plan* focuses only on sexual assault and domestic/family violence in the context of intimate partner violence.⁵⁶ It conceals and renders invisible, structural and institutional forms of gender-based violence related to law, the state and culture that women with disability³ not only experience, but are more at risk of.⁵⁷ It excludes reproductive rights violations and many of the settings and spaces in which women with disability experience violence.⁵⁸

National awareness campaigns to address violence against women are not inclusive of women with disability.⁵⁹ There are serious methodological restrictions in the main survey instruments used to capture data on violence against women,⁶⁰ resulting in significant under-representation of women with disability in population-based studies on the prevalence of domestic and family violence and sexual assault.⁶¹

Australia's primary national service response to address and prevent violence against women is through its 1800RESPECT service,⁶² which was established in 2010 under the *National Plan*, to provide a confidential telephone and online counselling, information and referral service. There are significant limitations with 1800RESPECT for women with disability, as the service is focused on 'domestic' and 'family' violence and sexual assault in the context of intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners.⁶³

There have been some recent welcome measures and initiatives⁶⁴ to improve support and services to women with disability under the *National Plan*, but these have been largely project-focused and one-off initiatives rather than nationally consistent and comprehensive. In addition, funding for these initiatives have been provided to large for-profit companies and other government agencies,⁶⁵ with no direct funding being provided to DPOs.

There is a lack of expertise and a range of structural barriers within domestic violence, sexual assault and women's crisis services that prevent appropriate responses to support women with disability.⁶⁶

There are limited opportunities for women with disability to participate in the development of policies regarding the rights of women and gender equality.⁶⁷ Women with disability are marginalised from initiatives to monitor the implementation of CEDAW and there is no government support to enable women with disability to attend and/or participate in the Commission on the Status of Women (CSW).⁶⁸

Recommendations

That Australia:

- Develop and enact national legislation on the prevention of all forms of gender-based violence.
- Ensure that the *National Plan to Reduce Violence Against Women and their Children* is inclusive of all forms of gender-based violence, regardless of the setting and the perpetrators of such violence.
- Address the methodological restrictions in data collection instruments used to capture data on violence against women.

³ For the purposes of this report, the term 'women with disability' is inclusive of girls with disability.

- Ensure gender-based violence services are inclusive of women and girls with disability.
- Resource and support DPOs to develop and implement initiatives to address violence against women with disability.
- Adequately support organisations and networks of women with disability to engage in all initiatives to promote gender equality.

Children with disabilities (art.7)

7(a)(b) There are no policies or programs that focus on progressing and promoting the rights of children with disability, including with regard to expressing their views on all matters concerning them. Where disability receives cursory attention, it is often framed through a lens of risk, and focused on reducing incidence of disability. There is no nationally agreed definition or conceptual framework regarding the principle of 'best interests of the child', resulting in inconsistent application across Australian jurisdictions.

The *National Framework for Protecting Australia's Children 2009-2020*⁶⁹ is the national policy framework for ensuring the safety and wellbeing of Australia's children. However, children with disability are afforded minimal focus in the Framework, are segregated from broader concerns about child welfare, and actions regarding disability are not child-centred.⁷⁰ The Framework expires in 2020, and there is no indication of a new national Framework.

A National Children's Commissioner was appointed in 2013, yet no substantive work has been completed to date that describes, investigates, promotes or protects the rights of children with disability.

7(c) Australia lacks a comprehensive data collection mechanism for children and young people with disability. Data collection on out of home care is not disaggregated by disability. National child protection reporting does not include disability status.

7(d)(e) In 2019, the *National Principles for Child Safe Organisations*⁷¹ was endorsed by the Council of Australian Governments. The Principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. However, they are not mandatory.

More than a third of children in out-of-home care placements are Indigenous. Compared with non-Indigenous children, Indigenous children are 10 times more likely to be in out-of-home care and 9 times more likely to be on care and protection orders.⁷² There remains inadequate culturally appropriate support available to Indigenous children with disability and their families.⁷³

Recommendations

That Australia:

- Incorporate CRPD rights, including the principle of the best interest of the child into legislation, policies and programs that apply to children and young people.
- Develop comprehensive strategies and mechanisms to ensure that children and young people with disability can participate in consultations, decision-making processes and policy development that affect their lives.
- Address the over-representation of Indigenous children in out-of-home care placements and on care and protection orders.
- Adequately resource culturally appropriate, community owned and local responses and support for Indigenous children with disability.

Awareness raising (art.8)

8(a)(b) There is no national targeted strategy to raise awareness of the rights of people with disability. Although the Australian Government promotes disability awareness on International Day of Persons with Disability, the activities do not always reflect a human rights-based approach to disability, and the National Disability Awards⁷⁴ were ceased in 2018 without consultation.⁷⁵

Several national awareness raising initiatives⁷⁶ have been de-funded since the last reporting period.

The *NDS Second Implementation Plan (2015–2018)*⁷⁷ prioritised ‘Communication activities’ as an area for ‘increased national effort’.⁷⁸ To date there is 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.⁷⁹

8(c) There is no formal mechanism, nor adequate resourcing for involvement of people with disability through their representative organisations in the design, implementation, monitoring and evaluation of awareness-raising campaigns and strategies.

Recommendations

That Australia:

- Develop a national cross government strategy to promote positive images and human rights of people with disability in line with the CRPD.

Accessibility (art.9)

9. There have been three reviews of the *Disability Standards for Accessible Public Transport (2002)*,⁸⁰ with each review recommending the establishment of a national framework for compliance reporting. The Australian Government has not acted on this recommendation.⁸¹ Accessible transport remains a key problem for people with disability.⁸²

There is a lack of a coherent governance structure for progressing reform of the *Disability (Access to Premises - Buildings) Standards 2010*. There is no consistent framework at the state and territory level to collect Premises Standards performance-related data, and an inadequate understanding and awareness of the Standards.⁸³ A significant proportion of the existing built environment remains inaccessible.⁸⁴

The *National Standards for Disability Services (2013)*⁸⁵ are not covered by the DDA. Monitoring and compliance is outsourced to an independent certification body.⁸⁶ There is no public reporting on service compliance with the Standards.

10. The DDA and the *NDS* remain the primary legislative and policy framework designed to increase equality of access for people with disability. However, inaccessibility in transport, the built environment, housing, information and modes of communications remain.⁸⁷ There has been minimal effect in increasing equality of access for people with disability.⁸⁸
11. There are no mandated national access requirements for housing. The *Livable Housing Design Guidelines*⁸⁹ provide aspirational targets for all new homes to be of an agreed liveable housing design standard by 2020.⁹⁰ It is estimated that only 5% of housing stock will meet the standards by 2020.⁹¹ Regulatory intervention through the *National Construction Code*⁹² is required to achieve change.⁹³

Recommendations

That Australia:

- Establish and enact a national framework for mandated compliance reporting against the *Disability Standards for Accessible Public Transport*; the *Disability (Access to Premises - Buildings) Standards*; and the *National Standards for Disability Services*.
- Amend the *National Construction Code* to mandate minimum access features for all new and extensively modified housing.
- Employ measures to address the full range of accessibility obligations under CRPD Article 9.

Right to life (art.10)

People with disability have a life expectancy up to 20 years lower than those without disability.⁹⁴

Lower life expectancy has a greater impact on Indigenous people with disability. The rate of disability for Indigenous people, including children⁹⁵ is twice as high as that among the general population.⁹⁶ The gap in life expectancy between Indigenous and non-Indigenous Australians is around 10.6 years for males and 9.5 years for females.⁹⁷ Indigenous children are twice as likely as non-Indigenous children to die before the age of five.⁹⁸

In 2017 suicide was the leading cause of death among Indigenous children aged 5-17.⁹⁹ Indigenous children aged 10-14 die of suicide at 8.4 times the rate of non-Indigenous children.¹⁰⁰

Suicide remains the leading cause of death among people aged 15 to 44 years,¹⁰¹ equating to more than eight deaths by suicide each day.¹⁰² The suicide rate amongst Indigenous people is more than double the national rate.¹⁰³ An alarming number of people with disability express suicidal ideation, largely due to lack of supports, poverty, and isolation.¹⁰⁴

Compared to the general population, people with intellectual disability have an average life expectancy up to 26 years shorter,¹⁰⁵ and are twice as likely to suffer a potentially avoidable death.¹⁰⁶

The rate of premature and avoidable deaths of people with disability in care settings is alarmingly high. More than half of all deaths in care are determined to be unexpected and potentially avoidable.¹⁰⁷

Recommendations

That Australia:

- In consultation with Indigenous peoples, develop measures to address the high rate of suicide, with targeted measures for Indigenous children.
- Ensure the *National Mental Health and Suicide Prevention Plan* includes targeted measures for people with disability.
- Ensure that the training of health professionals includes education about the human rights of people with disability in respect to right to life and access to proper care and treatment to sustain life.

Situations of risk and humanitarian emergencies (art.11)

12. There are no nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive supports during emergencies.¹⁰⁸

The Department of Home Affairs is leading Australia's reporting against the Sendai Framework¹⁰⁹ and driving implementation¹¹⁰ at a national level, however there is no mechanism for engagement with people with disability.

The effects of climate change are exacerbating the social and economic inequalities that already contribute to profound inequities for people with disability, particularly for Indigenous people with disability in remote areas.¹¹¹

Recommendations

That Australia:

- Establish a mechanism to engage with people with disability in the implementation and monitoring of the Sendai Framework.

Equal recognition before the law (art.12)

- 13(a) The Report *'Equality, Capacity and Disability in Commonwealth Laws'*¹¹² was tabled in Parliament in 2014. A key recommendation was for reform of Commonwealth, state and territory laws and legal frameworks¹¹³ concerning individual decision-making to be guided by *National Decision-Making Principles and Guidelines* to implement supported decision-making mechanisms based on the will and preferences of the person with disability. 5 years later, there is still no government response to the Report.
- 13(b) There is no comprehensive training across national, State and Territory levels for all actors on the recognition of legal capacity of persons with disability. A number of Australian laws, policies and practices, including guardianship, estate management and mental health laws deny recognition of people with disability as equal persons before the law, and the right to the assumption of legal capacity. Australia continues to rely on its Interpretive Declaration 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.

Recommendations

That Australia:

- Modify, repeal or nullify any law or policy, and counteract any practice or custom, which has the purpose or effect of denying or diminishing recognition of any person with disability as a person before the law.
- Implement the recommendations from the 2014 Report *'Equality, Capacity and Disability in Commonwealth Laws'*.

Access to justice (art.13)

14. There is no nationally consistent disaggregated data on the number of persons with disability in the criminal justice system, although available data shows significant over-representation, particularly for people with cognitive and psychosocial disability.¹¹⁴

Indigenous young people, particularly those with disability are overrepresented in the youth justice system, including in detention-based supervision (24 times higher than the rate for non-Indigenous young people), and in community based supervision (17 times higher than the rate for non-Indigenous young people).¹¹⁵

Indigenous people with disability are 14 times more likely to be imprisoned than the rest of the population.¹¹⁶ 50% of the total prison population report a history of psychosocial disability,¹¹⁷ almost one-third report a disability,¹¹⁸ and 25%–30% of prisoners have an intellectual disability.¹¹⁹ Indigenous women are the fastest growing prison population in Australia. A significant proportion have cognitive impairment as well as an undiagnosed psychosocial disability.¹²⁰ People with disability are being sent to prison because there are limited options or alternative pathways for courts to consider.¹²¹

- 15(a)(b) People with disability engaging in the justice system face significant barriers, with many finding access to justice difficult, hostile and ineffectual. As a result, they are often left without legal redress. People with disability report that the legal and justice system are not trained properly to support them, and feel they are denied the same opportunities to engage in the justice system as people without disability.¹²²

Discriminatory attitudes, a lack of support services and programs and minimal provision of legal or procedural adjustments, often means that people with disability are viewed as not credible, not capable of giving evidence, unable to make legal decisions or participate in legal proceedings.

- 15(c) There are no nationally consistent measures to harmonise the regulation of jury composition with the CRPD. Australian laws are inconsistent, with Deaf persons in particular still unable to serve on juries under some State and Territory laws.¹²³

- 15(d) The inability to access effective justice results in many people with disability being left without protection and at risk of ongoing violence, or more likely to be jailed and destined to have repeated contact with the criminal justice system.¹²⁴

- 15(e) The report from the 2017 *National Inquiry into the Incarceration Rate of Indigenous Peoples*¹²⁵ recommended, that Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body; the establishment of specialist Indigenous peoples sentencing courts; and the commissioning of a national inquiry into child protection laws and processes affecting Indigenous children. The Australian Government is yet to respond to the report.

Recommendations

That Australia:

- In consultation with people with disability through their representative organisations, coordinate the development of nationally consistent Disability Justice Strategies across governments to ensure that people with disability are supported to access the same legal protections and redress as the rest of the community.
- Implement gender and culture specific diversionary programs and mechanisms and community based sentencing options that are integrated with flexible disability support packages and social

support programs to prevent adults with disability coming into contact or entering the criminal justice system.

- Ensure that modules on working with people with disability are incorporated into mandated training programs for police, prison officers, lawyers, judicial officers and court staff.
- Address the over-representation of Indigenous young people in the youth justice system.
- Implement the recommendations from the *National Inquiry into the Incarceration Rate of Indigenous Peoples*.

Liberty and security of the person (art.14)

16. There remain significant issues with legislative, policy and practice frameworks, which result in the arbitrary detention and forced treatment of people with disability, disproportionately experienced by Indigenous people with disability, people with intellectual disability and people with psychosocial disability.¹²⁶
- 16(a) There are at least 100 people detained across Australia without conviction in prisons, psychiatric units and forensic detention services under mental impairment legislation.¹²⁷ These people are predominately Indigenous, have cognitive and/or psychosocial impairment, cultural communication barriers and/or hearing loss.¹²⁸
- At the 2016 UPR¹²⁹ Australia made a voluntary commitment¹³⁰ 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 Governments¹³¹ 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*. However, three years later, these Principles are yet to be consulted on, endorsed or implemented.
- 16(b)(c) Australia's Interpretative Declarations on CRPD Articles 12 and 17 allow for the continuation of guardianship and mental health laws that deprive people of liberty on the basis of disability and subject them to forced medical interventions, both in institutions and in the community. While there have been some reviews and amendments to these laws, there has been no action to end involuntary internment on the basis of disability or to end forced medical interventions. As a result, many people with intellectual, cognitive and psychosocial disability experience serious breaches of their human rights.¹³²
17. The Australian Senate tabled its *Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment* in Australia in 2016.¹³³ The Australian Government is yet to respond to the Report.

Recommendations

That Australia:

- As a matter of urgency, end the unwarranted use of prisons for the management of unconvicted people with disability.
- Consult with people with disability on the *Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment*, and on other measures to address indefinite detention of unconvicted people with disability.
- Implement the recommendations from the 2016 Senate *Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment* in Australia.
- Modify, repeal or nullify any law or policy, and counteract any practice or custom, that enables deprivation of liberty on the basis of disability and forced medical interventions on people with disability.
- Ensure that legislative, administrative and policy frameworks that deprive people with disability of their liberty and impact on their security are fully consistent with the CRPD.

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

18(a) Australia has not withdrawn nor repealed legislation, policies and practices that allow for behaviour modification or restrictive practices against people with disability, including children.

A high number of people with disability, including children, are administered psychotropic medication, physical restraint and seclusion under the guise of 'behaviour management' policies and practices, including in schools, disability and mental health facilities, hospitals, and aged care settings.¹³⁴

There is no regulatory protective framework to protect children with disability from being subjected to behaviour modification and restrictive practices in schools.

Children with disability are being held and restrained in adult detention centres and are experiencing gross violations of their human rights.¹³⁵

The use of forced treatments and restrictive practices on people with psychosocial disability has increased sharply in recent years. Available data about electroconvulsive 'Therapy' (ECT) performed on involuntary patients indicates that women are three times more likely than men to be subject to the practice, across all age cohorts.¹³⁶

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices (2014)*¹³⁷ and the *NDIS (Restrictive Practice and Behaviour Support) Rules 2018*¹³⁸ have significant limitations and permit States and Territories to authorise the use of restrictive practices. The Framework and the NDIS Rules focus more on when and how to use restrictive practices rather than prohibiting their use.¹³⁹

18(b) In 2017 Australia ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and began the establishment of Australia's National Preventive Mechanism (NPM). The Commonwealth Ombudsman has been designated as the NPM Coordinator, responsible for the inspection of Commonwealth places of detention.¹⁴⁰ Implementation is intended to focus on 'primary' places of detention,¹⁴¹ including certain closed psychiatric and disability facilities. However, there is a lack of engagement with people with disability regarding the development and implementation of disability inclusive NPMs.¹⁴²

Australia has not implemented the Concluding Observations relevant to people with disability arising from the Committee Against Torture's 2014 review of the combined fourth and fifth periodic reports of Australia.¹⁴³

Recommendations

That Australia:

- As a matter of urgency, end the practice of detaining and restraining children with disability in adult detention centres.
- Establish a nationally, consistent legislative and administrative framework for the protection of people with disability from behaviour modification and the elimination of restrictive practices across a broad range of settings.
- Establish and resource an engagement mechanism for active participation of people with disability in the design, development, implementation and monitoring of disability inclusive NPMs.

- Implement the Concluding Observations relevant to people with disability arising from the Committee Against Torture's 2014 review of the combined fourth and fifth periodic reports of Australia.

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

19(a) The *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*¹⁴⁴ was announced in April 2019. People with disability welcome the inclusion in the Terms of Reference of all forms of violence and abuse against people with disability, in all settings. However, people with disability have concerns that some appointed Commissioners have held senior positions within service systems that will be investigated resulting in unmanageable conflicts of interest. There is also disappointment that the Terms of Reference do not include provision for a redress scheme.¹⁴⁵

There is no national mechanism that captures the incidence, prevalence, extent, nature, causes and impact of violence, abuse, exploitation and neglect against people with disability.¹⁴⁶ There is no national process to report on available data of the experiences of people with disability, understand data quality issues, or to identify and fill data gaps.¹⁴⁷

More than a third of people with disability report experiencing violence or abuse, and almost 50% of people with disability report feeling unsafe where they live.¹⁴⁸

19(b) There remains no national, accessible, oversight, complaint and redress mechanism for people with disability who have experienced violence, abuse, exploitation and neglect.

The *NDIS Quality and Safeguards Commission*¹⁴⁹ was established in July 2018, but only has responsibility to oversee safeguards for NDIS participants, which equates to less than 10% of the Australian population of people with disability. As at February 2019, the Commission had been notified of 1,459 reportable incidents,¹⁵⁰ 18 providers were under investigation and subject to compliance action, and more than 600 complaints had been handled by the Commission.¹⁵¹

19(c) Specialist trauma counselling services funded by the Australian Government only provide telephone counselling, which are inaccessible for a significant proportion of people with disability, including those exposed to violence or abuse in institutional settings.

Recommendations

That Australia:

- Consistent with the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [A/RES/60/147], ensure provision for a redress scheme in the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*.
- Review the conflicts of interest of Commissioners appointed to the Royal Commission and remove those Commissioners who have worked in service systems that will be investigated.
- Establish a national, accessible, oversight, complaint and redress mechanism for all people with disability who have experienced violence, abuse, exploitation and neglect in all settings.

Integrity of the person (art.17)

20(a) Forced sterilisation of people with disability, particularly women and girls with disability, is an ongoing practice that remains legal and sanctioned by Australian Governments.¹⁵² Since 2005, UN treaty bodies, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia enact national legislation prohibiting forced sterilisation.¹⁵³ The 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.¹⁵⁴

Australia's response¹⁵⁵ to these recommendations retains the focus on regulation and non-binding guidelines rather than prohibition.¹⁵⁶ The Interpretative Declaration to CRPD article 12 means that it is legal to forcibly sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest'.

Forced contraception¹⁵⁷ of women with disability through the use of menstrual suppressant drugs is a widespread, current practice in Australia and is rarely, if ever, subject to independent monitoring or review.¹⁵⁸

Forced anti-androgenic treatment to control sex drive and functioning of men and boys with disability is unregulated and commonly practiced by the medical profession.

20(b) Surgeries and other medical interventions are performed on infants and children with intersex variations without their informed consent or evidence of necessity. These are invasive and often irreversible procedures,¹⁵⁹ and identified in General Comment 3 "as cruel, inhuman or degrading treatment or punishment".¹⁶⁰

A Senate Committee report in 2013¹⁶¹ contained a number of recommendations, including the deferral of irreversible medical treatment on intersex children until personal consent can be given, but these recommendations have not been implemented. Australia has not implemented the 2018 recommendations from the CEDAW Committee 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, implement the recommendations made by the Senate in 2013 on the basis of its inquiry into the involuntary or coerced sterilisation of intersex persons, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures."¹⁶²

Recommendations

That Australia:

- Develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.
- Abolish the practice of non-consensual administration of menstrual suppressant drugs and anti-androgenic treatments.
- Develop and enact national, uniform and legally enforceable legislation prohibiting unnecessary medical interventions, including surgical and hormonal interventions on intersex children and adults without their prior, fully informed and free personal consent.

Liberty of movement and nationality (art.18)

21. The Interpretative Declaration on Article 18 preserves Australia's current legislative and administrative approach to processing visa applications. The DDA provides an exemption for certain provisions within the *Migration Act 1958*, which means that Australia's migration arrangements and treatment of disability are unable to satisfy the equal protection obligations under CRPD Article 5.

Almost all visa applicants must satisfy the health requirement in order to be granted a visa, which has been found to indirectly discriminate against people with disability.¹⁶³ Migration law and processes treat people with disability solely as a cost burden.¹⁶⁴ Children or family members with disability are considered as a health risk preventing the child or family from migrating or remaining in Australia.¹⁶⁵

Asylum seekers and/or people with disability living in Australia on non-permanent visas are ineligible to access the NDIS as they do not meet residency requirements. The Age and Disability Support Pensions have a 10-year qualifying residence period,¹⁶⁶ leaving migrants with disability at an increased risk of a range of human rights violations.

Australia's asylum seeker laws, policies and practices have resulted in institutionalised, severe and routine violations of the prohibition on torture and ill-treatment; have subsequently been found to create serious physical and mental pain and suffering, and continue to cause life-long disability and impairments.¹⁶⁷

More than one third of people held in detention have been diagnosed with psychosocial disability.¹⁶⁸ Female asylum seekers/refugees experience rape and sexual abuse¹⁶⁹ yet there is no independent investigation mechanism in place, and even when incidents are reported, investigation or appropriate sanctions rarely ensue.¹⁷⁰

Recommendations

That Australia:

- Remove the exemption in the DDA as it applies to the *Migration Act* to ensure that Australia's migration arrangements and treatment of disability satisfy the equal protection obligations under CRPD Article 5.
- Enhance consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa.
- Remove the 10-year qualifying period for migrants to access the Age and Disability Support Pensions.
- End mandatory and indefinite detention of asylum seekers as a matter of urgency.

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

22(a) There is no national framework for the closure of residential institutions in Australia. More than 5.2% of people with disability live in cared accommodation such as group homes,¹⁷¹ with a further 2.8% living in supported accommodation facilities.¹⁷² This data is not disaggregated. People with disability in residential care die at least 25 years earlier than the general population.¹⁷³

22(b) Many people with disability, including NDIS participants are forced to live in institutions, residential, congregate care, and aged care facilities¹⁷⁴ in order to receive social and personal care supports.¹⁷⁵ More than 1 in 20 younger people in residential aged care who have applied for NDIS funding have been deemed ineligible.¹⁷⁶ Many people with disability do not have access to the supports they need and cannot afford the support they need.¹⁷⁷

Access to appropriate, available, accessible and affordable housing remains a major issue for people with disability, becoming more evident with the roll out of the NDIS.¹⁷⁸ It is estimated that 35,000 to 55,000 NDIS participants will not have their housing needs met in the first decade of the scheme.¹⁷⁹ There are more than 200,000 people on waiting lists for public and social housing across the country.¹⁸⁰

Social participation outcomes for people with disability have worsened since the last reporting period.¹⁸¹ Many people with disability report feelings of significant social isolation.¹⁸² Almost 16% of people with disability are unable to leave their home as often as they would like,¹⁸³ due to discriminatory attitudes and negative assumptions.¹⁸⁴

Recommendations

That Australia:

- Develop a national plan for the closure of residential institutional environments, and develop genuine community based housing and support options for people with disability.
- Significantly increase the range, affordability and accessibility of public and social housing to ensure that people with disability can maximise their level of independence and freedom.
- Allow people with disability to control the resources they require to live with dignity in the community, ensuring that people with disability are able to choose where and with whom they live.

Personal mobility (art.20)

The implementation of the NDIS is making improvements for some NDIS participants to obtain mobility and accessibility supports and equipment, however there is a lack of uniformity in this process.

Whilst Indigenous people with disability in remote areas accessing the NDIS may be able to source aids and equipment, there is no recognition of the broader structural obstacles that can preclude use of such equipment, such as inaccessible houses, lack of footpaths, lack of services and isolation.

More than 50% of people with disability report difficulty in moving throughout Australia and internationally because of their disability.¹⁸⁵ There are limits to how long a person can travel overseas and retain the Disability Support Pension (DSP). Only a third of people with disability are able to access both public and private spaces that they want.¹⁸⁶

Recommendations

That Australia:

- In partnership with Indigenous people with disability, their representative organisations and communities, develop locally relevant solutions to address the underlying structural obstacles that can preclude use of aids and equipment in remote areas.
- Amend the international travel restrictions for people with disability on the DSP.

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

23(a) Australia does not recognise Australian Sign Language (Auslan) as a national language.

23(b) There are no Information and Communication Standards that require information to be fully accessible.¹⁸⁷ There are no mandated minimum standards for government and public sector organisations to ensure web accessibility and usability,¹⁸⁸ and for accessible information and services to be provided to the public.

3(c) Many people with disability are unable to enjoy freedom of expression and opinion due to a lack of communication supports, and inequitable access to information. 67% of people with disability find government information inaccessible and/or difficult to understand.¹⁸⁹

Recommendations

That Australia:

- Act to ensure that Auslan is recognised as a national language, and that Deaf peoples' right to use Auslan is legally recognised.
- Develop Information and Communication Standards that require information to be fully accessible and communication supports to be routinely available.
- Develop a *Plain Writing Act* that requires government agencies to use clear communication that the public can understand.

Respect for home and the family (art.23)

A parent with disability in Australia is up to ten times more likely than other parents to have a child removed from their care,¹⁹⁰ often on the basis of parental disability rather than evidence of neglect or abuse.¹⁹¹ In 2013, the Australian Council of Human Rights Agencies (ACHRA) recommended the Australian Government take urgent action on discrimination against parents with disability, however this recommendation has not been implemented.¹⁹²

More than 15% of people with disability report difficulty accessing services to assist with being a parent.¹⁹³

People with disability in Australia experience gross violations of their sexual and reproductive rights.¹⁹⁴ Women with disability and LGBTIQ+ people with disability experience significant discrimination in accessing assisted reproductive technologies.¹⁹⁵

Recommendations

That Australia:

- Commission a national inquiry into the legal, policy and social support environment that enables the removal of babies and children from parents with disability.
- Act to ensure that women with disability and LGBTIQ+ people with disability have equal access to assisted reproductive technologies.
- Establish comprehensive, intensive gender and culturally specific parenting and family support measures for parents with disability, to assist with maintaining children with their parents and within their own family homes.

Education (art.24)

24. There is no national data on suspension, restraint and seclusion of students with disability. However, the evidence base shows disturbing rates of bullying and restraint and seclusion.¹⁹⁶ 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.¹⁹⁷
25. There is no legislative or policy framework for inclusive education, including the Disability Standards for Education (2005) that fully complies with Article 24 and CRPD General Comment 4.¹⁹⁸

People with disability have significantly lower levels of educational attainment than those without disability. Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.¹⁹⁹ 28% of school aged people with disability do not attend school.²⁰⁰

Students with disability routinely experience discrimination,²⁰¹ lack of supports, inadequately trained teachers, a lack of expertise and an entrenched systemic culture of low expectations.²⁰² Around 3 in 4 students with disability experience difficulties at school, predominately due to fitting in socially, communication difficulties, and learning difficulties.²⁰³

The retention rate to Year 12 for Indigenous students is significantly lower than that for non-Indigenous students.²⁰⁴

26. Segregation of students with disability has increased significantly over the past decade, with a shift towards students with disability attending special schools²⁰⁵ 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.²⁰⁶

The Committee on Economic, Social and Cultural Rights expressed concern about the increase in segregated education in May 2017, and recommended that Australia implement measures to ensure children with disability have access to inclusive education.²⁰⁷

Australia is seeking to reject its human rights obligations by seeking a clarification from the Committee "that States Parties may offer education through specialist classes or schools consistently with article 24".²⁰⁸

Recommendations

That Australia:

- Develop a national Action Plan for Inclusive Education that includes a legislative and policy framework that fully complies with Article 24 and CRPD General Comment 4.
- Address the increasing rate of segregation of students with disability and redirect adequate resources to full inclusion into mainstream schools.
- In consultation with Indigenous people and their representative organisations, establish culturally owned and operated programs and initiatives to increase the education retention rate of Indigenous students.

Health (art.25)

28(a)(b) People with disability are 10 times more likely than people without disability to assess their health as poor.²⁰⁹ 50% of people with disability do not have access to the health care, facilities and treatments they need, and over half report that health care providers do not understand their needs.²¹⁰ 20% of people with disability do not see a doctor due to the cost, and 66% do not see a dentist because of the cost.²¹¹

For people with intellectual disability,²¹² 42% of medical conditions go undiagnosed. There is inadequate workforce training in addressing their health care needs.²¹³

Women with disability experience difficulty in accessing health information and services, particularly sexual and reproductive health and cancer screening services.²¹⁴

The morbidity and mortality rates for Indigenous people with disability are significantly worse than for non-Indigenous people.²¹⁵

More than 700,000 Australians experience a severe mental illness in any one year. However, only 64,000 people with psychosocial disability are expected to be eligible for individual packages in the NDIS.²¹⁶ Mental health services are significantly under-resourced.

People with disability experience human rights violations that result in ill-health, such as forced medical treatments and interventions; deprivation of liberty; restrictive practices; denial of the right to legal capacity; and all other forms of violence.²¹⁷

There is no national mechanism that enables the collection of data on the health of people with disability.²¹⁸ There is a lack of availability of administrative data on the use of mainstream health services by people with disability. Many health-related data collections²¹⁹ do not include a way to identify if a person has disability.²²⁰

Recommendations

That Australia:

- Implement measures to address the poor health outcomes of people with disability, with a particular focus on Indigenous people with disability, people with intellectual disability, people with psychosocial disability and women with disability.
- Resource the creation of a national network of intellectual disability health specialists to enhance the capacity of mainstream services to cater to the specific needs of people with intellectual disability.
- Increase resourcing for peer managed mental health services and programs that ensure alternatives to forced confinement and treatment, and that support people with psychosocial disability regardless of NDIS eligibility.
- Develop a national mechanism that enables the collection of disaggregated data on the health of people with disability.

Access to habilitation and rehabilitation (art.26)

28(a) The implementation of the NDIS is changing significantly how people with disability access services. However, the lack of clarity and effective interface between the NDIS and mainstream service systems has created artificial barriers, which actively work against the provision of integrated and holistic care for people with disability, including habilitation and rehabilitation supports.²²¹

The shifting of Commonwealth, state and territory programs to the NDIS is contributing to emerging service gaps and a decrease in community-based therapy services, particularly for people who are not eligible for the NDIS.²²²

The interactions between the NDIS and mainstream services are guided by the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems*.²²³ However, the Principles are subject to interpretation and lack clarity. This is resulting in boundary issues and funding disputes, which can lead to reduced or no access to services for both NDIS participants and people with disability not eligible for the NDIS.²²⁴ Although the Principles allow for the provision of disability supports to people with disability in prisons and forensic detention, there is still uncertainty about how, or whether, this provision will be supported.

The focus on permanent diagnosis disqualifies many people with disability from the NDIS.²²⁵ People with disability argue that emphasis should be on the assessment of functional capacity and needs to determine eligibility.²²⁶

Access to the NDIS represents an opportunity to decrease incarceration rates for people with a cognitive and/or psychosocial impairment, particularly for Indigenous people with disability who are overrepresented in prison. However, the NDIS is stopped when an individual is in custody,²²⁷ which denies habilitation or rehabilitation support to assist reintegration into the community.

28(b) Forced treatment is allowed under guardianship and mental health laws in Australia.

Recommendations

That Australia:

- Ensure that people with disability in prison and other forms of detention can utilise their NDIS package whilst incarcerated or detained.
- Amend NDIS legislation to address the permanency provisions for NDIS eligibility, and ensure that assessments are based on functional capacity and needs as opposed to medical diagnosis.

Right to work (art.27)

29 The unemployment rate of people with disability is double that of the general population.²²⁸ The number of people with disability in the labour force has fallen by 3.0% in the past decade.²²⁹ At the same time, the number of working age people without disability participating in the labour force increased by 23%.²³⁰ Only 9% of people with disability report they have the same employment opportunities as other people.²³¹ Complaints about discrimination in employment make up a significant proportion of all disability discrimination complaints made to Australian anti-discrimination agencies.²³²

The review of the National Employment Framework was narrowly reduced to only focus on the Disability Employment Services (DES) program and has failed to deliver the comprehensive reform required. *Disability Employment Services (DES)*²³³ continue to deliver poor employment outcomes for people with disability.²³⁴

29(a) Segregated employment for people with disability through Australian Disability Enterprises (ADEs) continues in Australia, enabling employers to pay people with disability lower wages than other people,²³⁵ and with less than 1% having opportunities to move into mainstream employment.

While the BSWAT has been discontinued, there remains a number of similar discriminatory wage assessment tools that are not being addressed. *The Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015*²³⁶ delivered a one-off payment of \$100 or more in certain circumstances to eligible ADE employees with an intellectual disability.²³⁷ However, this Scheme ended in 2018, does not apply to all ADE employees and does not address people with disability paid under the BSWAT after 2014.

29(b) The *Supported Wage System (SWS)*²³⁸ still provides for people with disability to be paid a pro-rata percentage of the minimum wage for their industry according to their assessed capacity.

29(c) There has been no improvement in labour force participation of women with disability in the past two decades.²³⁹ Men with disability are much more likely to be employed than women with disability.²⁴⁰ There are no policies or programs that address the lack of employment participation of women with disability, including addressing the structural barriers to their workforce participation.

30. The recommendations from the 2016 *Willing to Work* report have not been implemented.²⁴¹ The Inquiry made recommendations with respect to Commonwealth laws and actions that could be taken to address employment discrimination.

Recommendations

That Australia:

- Develop a national disability employment strategy that incorporates the recommendations from the Willing to Work Inquiry, and contains targeted gendered measures for increasing workforce participation of people with disability, including addressing structural employment barriers.
- Implement actions for transition away from segregated employment towards genuine work training and skill building opportunities that lead to mainstream employment and equitable remuneration for work.
- Employ measures to ensure that people with disability can access employment services that meet their individualised needs, and which are focused on long-term outcomes.

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

31. Forty-five per cent of people with a disability in Australia live in poverty.²⁴² 11.2% of people with disability experience deep and persistent disadvantage, more than twice that of the national prevalence.²⁴³ 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.²⁴⁴

Government pensions are the main source of personal income for 42% of people with disability of working age.²⁴⁵ By comparison, wages or salary is the main source of personal income for 68% of people of working age without disability.²⁴⁶

The median gross weekly personal income of people with disability is half that of people without disability.²⁴⁷ Income, welfare and taxation systems in Australia do not recognise the significant costs of disability that people with disability incur throughout their lifetime.²⁴⁸

The *Disability Support Pension (DSP)*²⁴⁹ is inadequate to support people with disability.²⁵⁰ 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,²⁵¹ which has further entrenched poverty. The rate of successful DSP claims has declined markedly – from 69% in 2011 to 29.8% in 2018.²⁵² 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.²⁵³

People with psychosocial disability make up the fastest growing client group in the Specialist Homelessness Services²⁵⁴ population, with the rate of service use doubling in the past five years, and the majority being women with psychosocial disability.²⁵⁵ Family violence, and psychosocial disability are now the most common causes of homelessness in Australia.²⁵⁶

Nationally at June 2018, the proportion of rental stock occupied was 97% for public housing.²⁵⁷ 29% of people living in public rental housing are on the DSP,²⁵⁸ and spend a third of their income on housing costs.²⁵⁹ Almost 81% of people with disability report living in public housing of an unacceptable standard.²⁶⁰ Many people with disability do not have an adequate standard of living to be able to rent on the private market or to purchase their own homes.²⁶¹

Recommendations

That Australia:

- End the ongoing eligibility restrictions for the DSP, increase the rate of Newstart and other income support payments to ensure people with disability have access to an adequate standard of living.
- Prioritise the realisation of the right to an adequate standard of living and social protection for Indigenous people with disability.
- Address the root causes of homelessness for people with psychosocial disability and women with disability.

Participation in political and public life (art.29)

32(a) The 'unsound mind' provisions in the Electoral Act, and State, Territory and Local Government electoral legislation denies some people with disability, particularly persons with cognitive impairment and psychosocial disability the right to vote.²⁶²

32(b) The right of people with disability to vote independently and in secret in Federal, State/Territory and Local Government elections is not a reality for many people with disability, due to lack of consistency in provision of electronic voting and access barriers to casting a vote.

Recommendations

That Australia:

- Preserve the right of people with disability to vote in elections on an equal basis with others by removing section 93(8) of the Electoral Act 1918 (Cth) ('unsound mind' provision) and/or enact alternate legislation restoring the presumption of the capacity of people with disability to vote and exercise choice.

Statistics and data collection (art.31)

33(a) There are no nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD.

33(b) Despite recommendations from UN treaty monitoring bodies, Australia is yet to commission and fund a comprehensive assessment of the situation of women with disability,²⁶³ the situation of children and young people with disability,²⁶⁴ and the situation of Indigenous people with disability.

The lack of nationally consistent disaggregated data²⁶⁵ raises serious concerns about the ability of Australia to comply with the CRPD and monitor and evaluate the implementation of the NDS and the Sustainable Development Goals (SDGs).

Recommendations

That Australia:

- Undertake a comprehensive assessment of the situation of women with disability, the situation of children and young people with disability, and the situation of Indigenous people with disability.
- Develop nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD.

International cooperation (art.32)

34. At the Universal Periodic Review (2016) Australia made a voluntary commitment²⁶⁶ to advancing the *2030 Agenda for Sustainable Development*,²⁶⁷ to its *Development for All: 2015-2020 Strategy*,²⁶⁸ and its international *Indigenous Peoples Strategy 2015-2019*.²⁶⁹

An evaluation of *Development for All* in 2018 recommended that Australia should continue to commit to disability-inclusive development as a human rights and aid priority and build on progress to date. There is no information on a third *Development for All Strategy* post 2020.

There is no mechanism for engagement with people with disability and DPOs in the implementation and monitoring of the SDGs in Australia.

Recommendations

That Australia:

- Establish a formal mechanism for engagement with people with disability on the implementation and monitoring of the CRPD and the SDGs.

National implementation and monitoring (art.33)

35. The Department of Social Services (DSS) and the Attorney-General's Department (AGD) act as the 'joint focal point' within the Australian Government to coordinate implementation of the CRPD.²⁷⁰ This largely reduces implementation to the poorly resourced and measured NDS. Recommendations from UN treaty monitoring reviews regarding the rights of people with disability are not incorporated into concrete actions within legislative and policy frameworks, including the NDS.

A UPR monitoring website page²⁷¹ has been developed by AGD which provides progress reporting against UPR recommendations. The progress reporting is collated from information provided from Australian Government agencies, but does not include information from, nor engagement with, people with disability.

The Australian Human Rights Commission lacks adequate resources to fully monitor CRPD implementation.

There is no formal engagement mechanism with DPOs or DROs to ensure the active participation of people with disability in national implementation and monitoring.

Recommendations

That Australia:

- Establish a formal mechanism for meaningful engagement of people with disability in the implementation and monitoring of the CRPD, as well as other human rights treaties and UPR recommendations..
- Adequately resource DPOs and DROs to participate in the implementation and monitoring of CRPD.

References & Notes

¹ In early-mid 2019, the National Civil Society CRPD Shadow Report Working Group conducted an online survey for people with disability in Australia to provide an additional opportunity to contribute to the development of this Report. More than 1,000 people with disability responded to the Survey, and the findings of the Survey have been incorporated into this Report.

² The [Disability Discrimination Act 1992](#) (Cth) (DDA) makes direct and indirect discrimination on the grounds of disability unlawful in relation to employment, education, access to premises, the provision of goods and services, accommodation, membership of clubs, associations, sports and the administration of Australian Federal laws and programs.

³ For example: Victoria, Australian Capital Territory (ACT) and Queensland human rights legislation do not protect economic, social and cultural rights.

⁴ There remain many significant gaps, particularly in relation to fundamental human rights, including freedom from torture and ill-treatment, recognition of legal capacity, institutionalisation, indefinite and arbitrary detention and involuntary treatment.

⁵ UN General Assembly, Human Rights Council Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru; 24 April 2017, UN Doc No. A/HRC/35/25/Add.3. See also: Australian Government, [Australian Government response to the Senate Community Affairs References Committee Reports](#) (May 2015).

⁶ Engagement is usually ad-hoc and/or one-off consultation processes, and do not reflect the Committee on the Rights of Persons with Disabilities, 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. See: UN Doc No. CRPD/C/GC/7.

⁷ DPOs and DROs are only funded for a two year period, indexation is not applied to funding and there are restrictions on how this funding can be used. DPO and DRO funding contracts specify that funding cannot be used for international travel, including for CRPD related and other international human rights events.

⁸ [The National Disability Advocacy Program \(NDAP\)](#) provides people with disability with access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation. See also: Australian Department of Social Services (DSS) [Fact Sheet: Disability advocacy and the NDIS](#).

⁹ [The National Disability Insurance Scheme \(NDIS\)](#) is a universal scheme that funds 'reasonable and necessary' supports for Australians with permanent and significant disability, and which is expected to be fully rolled out across Australia by 2020.

¹⁰ This is particularly the case for Aboriginal and Torres Strait Islander peoples in rural and remote areas.

¹¹ The [Productivity Commission](#) is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.

¹² Productivity Commission (2017) [National Disability Insurance Scheme \(NDIS\) Costs](#), Study Report, Canberra.

¹³ Australian Government, [National Disability Strategy 2010-2020](#). Department of Social Services, Canberra.

¹⁴ The [National Disability Strategy \(NDS\)](#) sets out goals and objectives under six areas of mainstream and disability-specific public policy. The six areas are: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and well-being. The NDS is being delivered in three phases through the following four-year implementation plans: 'Laying the Groundwork' (2011-2014) set the foundation for each State and Territory Government to have its own disability plan to improve outcomes through mainstream policies, programs, services and infrastructure. 'Driving Action' (2015-2018) outlines new priority actions as well as ongoing commitments to consolidate actions that are driving improved outcomes and identify where more effort is needed. Measuring Progress (2019-2022) will identify new and emerging outcomes to be implemented in order to ensure the objectives of the NDS are met.

¹⁵ Commonwealth of Australia, National Disability Strategy Implementation Plan, 'Measuring Progress (2019-2020)'.

¹⁶ Commonwealth of Australia (2017) Senate Standing Committee on Community Affairs, Report: [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#).

¹⁷ Women with Disabilities Australia (WWDA), (2014) ['Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities](#). WWDA, Hobart, Tasmania, ISBN: 978-0-9585268-2-1.

¹⁸ Disabled People's Organisations Australia (DPO Australia) (2017) [Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020](#) (NDS).

¹⁹ Commonwealth of Australia (2017) Senate Standing Committee on Community Affairs, Report: [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#).

²⁰ Commonwealth of Australia (2018) [Australian Government Response](#) to the Senate Standing Committee on Community Affairs, Report: Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities.

²¹ A person satisfies the [Assessment criteria for the NDIS](#) if: (a) They are under the age of 65; (b) They have a disability that is due to an impairment likely to be permanent and life long; (c) Their impairment substantially reduces their ability to participate effectively in everyday life; (d) They are an Australian citizen or permanent resident; and (e) They require reasonable and necessary supports to live an ordinary life.

²² The legislation is not well drafted and has resulted in contradictory interpretations by the NDIA and the Administrative Appeals Tribunal. There is not yet an established body of case law from the Federal Court to provide authoritative guidance on many issues. See the NDIS Act at: <https://www.legislation.gov.au/Details/C2013A00020>

²³ At full Scheme, approximately 460,000 people are expected to be supported by the NDIS. People identifying as Aboriginal or Torres Strait Islander make up 5.4% of participants. More than half of NDIS participants (52%) are aged 18 and under; the majority of participants are male (63%). Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. See also: Productivity Commission (2019), [Report on Government Services 2019](#)

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- ²⁴ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ²⁵ Limited information is publicly available to help Scheme participants and their families, carers and advocates to navigate the planning system.
- ²⁶ Such as their entitlement to request a face to face meeting or have an advocate present during the planning meeting.
- ²⁷ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#); Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).
- ²⁸ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ²⁹ People from CALD backgrounds are 7.7 percent of participants, despite a stated NDIA goal of 20 per cent CALD participants. Aboriginal and Torres Strait Islander people are 5.4 percent of participants or about 9000, despite around 60,000 Aboriginal and Torres Strait Islander people in Australia having a severe or profound disability.
- ³⁰ Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).
- ³¹ The insufficient funding allocated by the Federal Government for NDIS advocacy has resulted in inequality and significant unmet need. In addition, the paucity of funded advocacy has resulted in a significant rise in fraudulent activities by providers and fee for service for reviews and appeals by the same services creating serious conflicts of interest. See also: Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).
- ³² Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ³³ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ³⁴ The Federal Government also spent \$3.8 billion less on the NDIS in 2018-19 than they estimated in the previous year's budget.
- ³⁵ The NDIS rollout has been plagued by issues around participant plans, unrealistic pricing, providers struggling to enter the scheme and a poorly functioning IT system. See: Michael, Luke (3rd April 2019) [Advocates ask, why are NDIS funds not being used to fix the scheme?](#) In ProbonoAustralia. See also: Michael, Luke (28th March 2019) [Advocates fight plan to use surplus NDIS funds to boost budget](#); In ProbonoAustralia. The Australian National Audit Office (ANAO) released an NDIA Performance Report in October 2017. The Australian National Audit Office (ANAO) assessed the effectiveness of controls being implemented and developed by the NDIA to ensure Scheme access decisions are consistent with legislative and other requirements. The Audit found among other things, that, while the NDIA had implemented some controls, these were inconsistently applied, data integrity and reporting issues had limited the Agency's ability to monitor training completion by decision-makers, and the access process was not well supported by ICT systems. See: Australian National Audit Office (ANAO) (October 2017), [Decision-making Controls for Sustainability - NDIS Access](#).
- ³⁶ Joint Standing Committee on the National Disability Insurance Scheme (September 2018) [Market readiness for provision of services under the NDIS](#).
- ³⁷ Disabled People's Organisations Australia, "Building a Disability Inclusive Australia", [Election Policy Platform 2016](#)
- ³⁸ The National Mental Health Commission's report on Mental Health Programs and Services estimated that about 700,000 Australians experience a severe mental illness in any one year. According to the NDIA, about 64 000 people with primary psychosocial disability are expected to be eligible for individual packages in the NDIS at full scheme. See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017. A national inquiry undertaken by the Joint Standing Committee on the National Disability Insurance Scheme in 2018 found that the lack of clarity around eligibility criteria, the apparent reliance on diagnosis rather than functional needs, the absence of a validated assessment tool for planners, and reported lack of skills and expertise of planners in the psychosocial disability field were key contributors to inconsistencies in eligibility and planning outcomes for people with psychosocial disability. See: Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#). See also: National Mental Health Commission (2018) [Monitoring mental health and suicide prevention reform: National Report 2018](#). Published by: National Mental Health Commission, Sydney.
- ³⁹ Including those not eligible for the NDIS.
- ⁴⁰ This has resulted in some quality providers already leaving the market. Some new market entrants and existing providers are exploiting the pricing structure established by the [NDIS Price Guide](#).
- ⁴¹ Joint Standing Committee on the National Disability Insurance Scheme (September 2017) [Progress Report](#).
- ⁴² The [ILC program](#) is a key component of the NDIS and has been set up to provide information, linkages and referrals to people with disability, their families and carers, with the appropriate community and mainstream supports. Funding for ILC will gradually increase over transition (from \$33 million in 2016-17 to \$131 million in 2019-20). The focus of ILC is on community inclusion.
- ⁴³ Australia's Productivity Commission has recommended that ILC funding should be increased to the full scheme amount (\$131 million) for each year during the transition and be focused on national ILC activities. See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017.
- ⁴⁴ The NDIS quarterly reports provide the COAG Disability Reform Council with information (including statistics) about participants in each jurisdiction and the funding or provision of supports by the NDIA in each jurisdiction. Available at: <https://www.ndis.gov.au/about-us/publications/quarterly-reports>
- ⁴⁵ Including the numbers of reviews, review timeframes, outcomes of reviews, and participant satisfaction with the review process. See: Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017.
- ⁴⁶ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ⁴⁷ National CRPD Survey (2019) Findings.
- ⁴⁸ See for example: [Concluding observations of the Committee on the Elimination of Discrimination against Women \[Australia\]](#) (2010) at para. 25 "The Committee further urges the State party to give due consideration, with a view to further protecting women's human rights, to the adoption of a Human Rights Act encompassing the full range of civil, cultural, economic, political and social rights." UN Doc. No. CEDAW/C/AUS/CO/7.
- ⁴⁹ The rights of people with disability to non-discrimination are limited in six key areas: (a) failure to address intersectional discrimination; (b) ineffective complaints process; (c) lack of protection for systemic discrimination; (d) a lack of protection against vilification; (e) exemption clauses

that allow discrimination on grounds of disability in migration, insurance and infectious diseases, pensions and allowances and combat and peacekeeping duties; and (f) a lack of community legal education outreach regarding individuals' rights and protections under the DDA, in particular the lack of outreach to Aboriginal and Torres Strait Islander communities and people with disability from non-English speaking backgrounds.

⁵⁰ Federal Court of Australia, [Sklavos v Australasian College of Dermatologists](#) [2017] FCAFC 128.

⁵¹ In late 2018, a number of disability, human rights and community legal centres wrote to the Federal Attorney-General to request an urgent amendment to the DDA to fix the significant problem with the law that stops discrimination in employment, education, transport and more. The response received from the Attorney-General noted that this was not a priority for the Government. See: People With Disability Australia (PWDA) (February 2019) [Federal Government Must Fix Gaping Hole In The Disability Discrimination Act](#).

⁵² See: UN Doc. CRPD/C/AUS/CO/1. See also: CRPD General Comment on Women with Disabilities (CRPD/C/GC/3).

⁵³ In its 2018 review of Australia's eighth periodic report under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the CEDAW Committee expressed its concern at the lack of national legislation prohibiting all forms of gender-based violence against women. The CEDAW Committee recommended that the Australian Government: "Adopt commonwealth legislation that is in line with the Convention and prohibits all forms of gender-based violence against women and girls, and shift the power to legislate on this matter to the Commonwealth Parliament" See UN Doc No: CEDAW/C/AUS/CO/8. See also: CCPR/C/AUS/CO/6; E/C.12/AUS/CO/5; CAT/C/AUS/CO/4-5.

⁵⁴ Committee on the Elimination of Discrimination against Women (14 July 2017); General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. UN Doc No: CEDAW/C/GC/35.

⁵⁵ Council of Australian Governments (2011) [National Plan to Reduce Violence against Women and their Children 2010-2022](#), Canberra.

⁵⁶ The exclusion and neglect of women and girls with disability in the [National Plan](#) has been identified in a number of reviews and inquiries at both national and international levels. For example, the report from the [Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#), released in November 2015, recommended that the Australian Government amend the National Plan to ensure that women with disability are afforded the full range of rights protections that are available to women without disability. The recommendation also specified that the National Plan must be updated to include institutional and disability accommodation settings, and that in order to give effect to the National Plan, there must be increased funding to support women with disability escaping domestic violence.

⁵⁷ Such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage.

⁵⁸ Including for eg: prisons, segregated settings, detention centres, and other forms of institutional settings.

⁵⁹ See: [1800RESPECT](#); See also [The Line](#).

⁶⁰ The Australian Government cites the [Personal Safety Survey \(PSS\)](#) as "the most comprehensive prevalence data source available in Australia". The PSS is a national survey conducted by the [Australian Bureau of Statistics \(ABS\)](#). The PSS collects detailed information from men and women about the nature of violence experienced since the age of 15. However, it is widely recognised that the PSS has significant methodological restrictions and limitations. For example, the PSS systematically excludes people with disability living in institutional settings (i.e. not in a private home), and those who live in remote areas, where Aboriginal and Torres Strait Islander people with disability are over-represented. The [National Aboriginal and Torres Strait Islander Social Survey \(NATSISS\)](#) also operates within these sampling parameters. The PSS data collection methods do not involve inclusive research practices. The PSS is performed by an interviewer and a specific requirement of the survey is that all interviews are conducted alone in a private setting. Interpreters and support persons are excluded, and where a respondent requires the assistance of another person to communicate with the interviewer, the interview is not conducted. See: (<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Explanatory%20Notes12012?OpenDocument>). These methodological restrictions mean that the PSS not only misses (and excludes) a very significant proportion of people with disability, but it also means that reported data from the PSS relating to women with disability is inherently misleading.

⁶¹ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW. See also: Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

⁶² See: [1800RESPECT](#)

⁶³ Women With Disabilities Australia (WWDA) (August 2016) ['Improving Service Responses for Women with Disability Experiencing Violence': Final Report](#). WWDA, Hobart, Tasmania. ISBN: 978-0-9585268-5-2.

⁶⁴ See for eg: <https://www.1800respect.org.au/sunny/> <https://www.dvalert.org.au/education-and-training/2-day-workshops/disabilities-workshops> <https://www.anrows.org.au/project/evaluation-of-the-1800respect-disability-referral-pathways-project/>

⁶⁵ For example: [Medibank Health Solutions](#), [e-safety Commission](#)

⁶⁶ A significant majority of domestic violence shelters are not accessible for women or children with disability, and there are additional barriers where there are also language or cultural requirements.

⁶⁷ Committee on the Rights of Persons with Disabilities, 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, UN Doc No. CRPD/C/GC/7.

⁶⁸ See: United Nations General Assembly (2017); Pillar one: advance the rights of women and girls; [Note verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly](#); 24 July 2017; UN Doc. No: A/72/212.

⁶⁹ Department of Social Services 2014, [National Framework for Protecting Australia's Children, 2009-2020](#), Commonwealth of Australia, Canberra, viewed 29 July 2014.

⁷⁰ Robinson 2012, [Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability](#), p. 12; Children and Young People with Disability Australia, Melbourne.

⁷¹ As of February 2019, the [National Principles for Child Safe Organisations](#) have been endorsed by members of the Council of Australian Governments, including the Prime Minister and state and territory First Ministers. The principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing.

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- ⁷² Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW
- ⁷³ Even where services are available, parents may have to deal with as many as six or seven different government departments during the early years of the life of the child. Many parents are reluctant to seek assistance from the service sector because of lack of trust and the trauma resulting from the well-documented removal of children from Aboriginal families. See for eg: Disability Rights Now (2012) CRPD Civil Society Report on Australia. Available at: <https://pwd.org.au/our-work/human-rights-campaigns/united-nations-convention-on-the-rights-of-persons-with-disabilities/crpd-civil-society-shadow-report>
- ⁷⁴ See: International Day of People with Disability, [Former National Disability Awards](#)
- ⁷⁵ People with disability and their representative organisations subsequently conducted their own online Awards with minimal resources and tight timeframes. See: [National Awards for Disability Leadership](#).
- ⁷⁶ 'Ramp Up', a portal on the ABC website specifically dedicated to disability issues, was de-commissioned in late 2014. See archived site at: <http://www.abc.net.au/rampup/>
- ⁷⁷ Department of Social Services (DSS) [National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018](#).
- ⁷⁸ The four 'priority areas' of the National Disability Strategy Second Implementation Plan (2015–2018) are: 1) NDIS transition to full scheme; 2) improving employment outcomes for people with disability 3) improving outcomes for Aboriginal and Torres Strait Islander people with disability; 4) communication activities to promote the intent of the strategy throughout the community. It also prioritises the development of an 'Australian Government Action Plan' to drive implementation of the NDS across Commonwealth portfolios between 2015 and 2018. See: Department of Social Services (DSS) [National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018](#).
- ⁷⁹ 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.
- ⁸⁰ The [Disability Standards for Accessible Public Transport 2002](#) (Transport Standards) seek to provide certainty to providers and operators of public transport services and infrastructure about their responsibilities under the Disability Discrimination Act (DDA). These standards are subject to a statutory five-yearly review. Recommendations from these reviews are not implemented or consistent; there is no coordinated mechanism for monitoring the implementation of the standards; and there is a lack of enforcement of compliance with the standards.
- ⁸¹ In the absence of a national reporting framework, it is difficult to monitor the effectiveness of the Standards and enforce compliance targets.
- ⁸² People with disability are often forced to shoulder the financial burden of inaccessible public transport by using taxis or expensive private transport options. Changes to the mobility allowance under the NDIS have exacerbated this burden. See: Senate Standing Committee on Community Affairs (29 November 2017) [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#). Commonwealth of Australia.
- ⁸³ Australian Government (April 2016) [Review of the Disability \(Access to Premises –Buildings\) Standards 2010 First Review](#), Department of Industry, Innovation and Science.
- ⁸⁴ Senate Standing Committee on Community Affairs (29 November 2017) [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#). Commonwealth of Australia.
- ⁸⁵ The [National Standards for Disability Services](#) (2013) cover Disability Advocacy and Employment Services.
- ⁸⁶ Australian Government, [Quality Assurance for Disability Advocacy and Employment Services](#). Department of Social Services.
- ⁸⁷ Disabled People's Organisations Australia, "Building a Disability Inclusive Australia", [Election Policy Platform 2016](#)
- ⁸⁸ Senate Standing Committee on Community Affairs (29 November 2017) [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#). Commonwealth of Australia.
- ⁸⁹ Australian Government, [Livable Housing Design Guidelines](#), Department of Social Services.
- ⁹⁰ Australian Government, [Livable Housing Design Guidelines](#), Department of Social Services.
- ⁹¹ This is due to the voluntary nature of the target and the number of compliant houses currently being produced. See: Senate Standing Committee on Community Affairs (29 November 2017) [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#). Commonwealth of Australia.
- ⁹² The Building Code of Australia, in conjunction with the Plumbing Code of Australia, forms the [National Construction Code](#) issued by Australian Building Codes Board.
- ⁹³ Australian Government (2016) National Disability Strategy 2010-2020: Progress Report to COAG.
- ⁹⁴ Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ⁹⁵ Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015: [Aboriginal and Torres Strait Islander People with Disability](#).
- ⁹⁶ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ⁹⁷ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ⁹⁸ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ⁹⁹ Dudgeon, P., Hirvonen, T. & McPhee, R. (March 29, 2019) [Why are we losing so many Indigenous children to suicide?](#) The Conversation.
- ¹⁰⁰ Australian Bureau of Statistics, 3303.0 - Causes of Death, Australia, 2017: [Intentional self-harm in Aboriginal and Torres Strait Islander People](#). See also: Adbusson, K. (March 20, 2019) [Leaders urged to declare Aboriginal child suicides a 'national crisis'](#). The Sydney Morning Herald.

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- ¹⁰¹ Australian Bureau of Statistics, 3303.0 - Causes of Death, Australia, 2015: [Australia's Leading Causes of Death, 2015](#). See also: Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW. See also: Lifeline, [Statistics on Suicide in Australia](#).
- ¹⁰² Lifeline, [Statistics on Suicide in Australia](#).
- ¹⁰³ The suicide rate amongst Aboriginal and Torres Strait Islander peoples is more than double the national rate. In 2015, suicide accounted for 5.2% of all Indigenous deaths compared to 1.8% for non-Indigenous people. See: Lifeline, [Statistics on Suicide in Australia](#).
- ¹⁰⁴ National Survey on the CRPD, (2019) Findings.
- ¹⁰⁵ Worthington, E. (2017) [People with intellectual disabilities twice as likely to suffer preventable death, study finds](#). ABC News.
- ¹⁰⁶ Worthington, E. (2017) [People with intellectual disabilities twice as likely to suffer preventable death, study finds](#). ABC News.
- ¹⁰⁷ See: Office of the Public Advocate (February 2016) [Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland](#). See also: NSW Ombudsman (2018) [Report of Reviewable Deaths in: 2014 and 2015, 2016 and 2017, Deaths of people with disability in residential care](#). NSW Ombudsman, Sydney.
- ¹⁰⁸ There has been insufficient attention to engaging with people with disability about their functional capabilities and support needs in emergency situations. While the Australian Accessible Emergency Response System ensures any emergency messages issued during an emergency are accompanied by messages in Auslan for people who are deaf or hearing-impaired, they do not include messages with audio description for people who are vision impaired. See: Australian Blindness Forum, cited in Senate Standing Committee on Community Affairs (29 November 2017) [Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities](#). Commonwealth of Australia.
- ¹⁰⁹ The [Sendai Framework for Disaster Risk Reduction 2015-2030](#) (Sendai Framework) is the first major agreement of the post-2015 development agenda, with seven targets and four priorities for action. It was endorsed by the UN General Assembly following the 2015 Third UN World Conference on Disaster Risk Reduction (WCDRR).
- ¹¹⁰ See: Commonwealth of Australia 2018, [National Disaster Risk Reduction Framework](#).
- ¹¹¹ Sweet, M. (14 May 2019) [Inequality and climate change: the perfect storm threatening the health of Australia's poorest](#). The Guardian.
- ¹¹² Australian Law Reform Commission, [Equality, Capacity and Disability in Commonwealth Laws](#) (ALRC Report 124); tabled on 24 November 2014.
- ¹¹³ Including guardianship and administration laws.
- ¹¹⁴ Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ¹¹⁵ Productivity Commission, [Report on Government Services 2019](#), Chapter 17: Youth justice services.
- ¹¹⁶ Since 2004 there has been a 95% increase in the number of Aboriginal and Torres Strait Islander people in custody. 27% of the total prison population are Aboriginal and Torres Strait Islander people. See: Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW. See also: Australian Institute of Health and Welfare (2019) [The health of Australia's prisoners 2018](#). Cat. no. PHE 246. Canberra: AIHW. See also: Commonwealth of Australia (2013) Senate Legal and Constitutional Affairs References Committee, Report of the Senate Inquiry into 'Value of a justice reinvestment approach to criminal justice in Australia'; See also: Commonwealth of Australia (2016) Senate Standing Committee on Community Affairs, Report: [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#).
- ¹¹⁷ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ¹¹⁸ Australian Institute of Health and Welfare (2019) [The health of Australia's prisoners 2018](#). Cat. no. PHE 246. Canberra: AIHW.
- ¹¹⁹ Australian Institute of Health and Welfare (2019) [The health of Australia's prisoners 2018](#). Cat. no. PHE 246. Canberra: AIHW. See also: Commonwealth of Australia (2013) Senate Legal and Constitutional Affairs References Committee, Report of the Senate Inquiry into 'Value of a justice reinvestment approach to criminal justice in Australia'
- ¹²⁰ Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).
- ¹²¹ Commonwealth of Australia (2013) Senate Legal and Constitutional Affairs References Committee, Report of the Senate Inquiry into 'Value of a justice reinvestment approach to criminal justice in Australia'
- ¹²² National CRPD Survey (2019) Findings.
- ¹²³ [Lyons v State of Queensland \[2016\] HCA 38](#); See also: Guest, A. (5 Oct 2016) [Deaf jurors serve in US and New Zealand, but High Court blocks Australian Gale Lyons' bid](#). ABC News.
- ¹²⁴ Disabled People's Organisations Australia (DPOA)(2017) Submission to the Committee on the Rights of Persons with Disabilities; [List of issues \[Australia\] to be adopted during the 18th Session of the Committee on the Rights of Persons with Disabilities](#). See also: Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ¹²⁵ Australian Law Reform Commission (December 2017) [Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report](#). ALRC Report 133.
- ¹²⁶ Australia has not withdrawn nor repealed legislation, policies and practices that allow for arbitrary and indefinite detention of people with disability, including those deemed unfit to plead.
- ¹²⁷ Commonwealth of Australia (2016) Senate Standing Committee on Community Affairs, Report: [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#).
- ¹²⁸ 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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- ¹²⁹ See: [Australia's Universal Periodic Review](#); Attorney-General's Department.
- ¹³⁰ See: Human Rights Law Centre, Australia's 2nd Universal Periodic Review: [Voluntary Commitments](#). See also: Law Council of Australia, [Australia's International Human Rights Obligations](#).
- ¹³¹ The former Law, Crime and Community Safety Council (LCCSC) consisted of ministers with responsibilities for law and justice, police and emergency management. As a result of a Council of Australian Governments (COAG) review conducted in 2016-17, COAG decided to replace the LCCSC with a separate Councils for [Attorneys-General](#), and a separate Council for [Police and Emergency Management](#).
- ¹³² Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ¹³³ Commonwealth of Australia (2016) Senate Standing Committee on Community Affairs, Report: [Indefinite detention of people with cognitive and psychiatric impairment in Australia](#).
- ¹³⁴ For a discussion on Psychotropic polypharmacy in people with disability, see: Victorian Department of Human Services (2010) [Disability, mental health and medication: Implications for practice and policy](#). A report prepared for the Office of the Senior Practitioner by: Dr Stuart Thomas, Kaisha Corkery-Lavender, Dr Michael Daffern, Dr Danny Sullivan; Centre for Forensic Behavioural Science, School of Psychology & Psychiatry, Monash University, Australia. See also: Dillon, M. (22 Feb 2019) [What have we heard at the Royal Commission into Aged Care Quality and Safety so far?](#) ABC News.
- ¹³⁵ Willacy, M. & Blucher, A. (18 Jun 2019) [Boy kept 'completely naked' in Brisbane watch house for days](#). ABC Investigations.
- ¹³⁶ See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia.
- ¹³⁷ Australian Government, [National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector](#). Department of Social Services.
- ¹³⁸ National Disability Insurance Scheme ([Restrictive Practices and Behaviour Support](#)) Rules 2018
- ¹³⁹ The Framework only applies to disability services and the NDIS (Restrictive Practice and Behaviour Support) Rules 2018 only apply to NDIS participants.
- ¹⁴⁰ States and Territories will have NPM bodies for their respective jurisdictions.
- ¹⁴¹ Such as prisons, juvenile detention, police cells, closed psychiatric institutions and immigration facilities.
- ¹⁴² Disabled People's Organisations Australia (DPOA), [Position Paper: Disability Inclusive National Preventive Mechanism \(NPM\)](#). DPOA, Sydney.
- ¹⁴³ See: CAT/C/AUS/CO/4-5.
- ¹⁴⁴ [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#).
- ¹⁴⁵ Reflecting Australia's obligations under the international human rights treaties to which Australia is a party, and the United Nations '[Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#)', remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms. UN Doc. No A/RES/60/147.
- ¹⁴⁶ See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia.
- ¹⁴⁷ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ¹⁴⁸ National CRPD Survey (2019) Findings.
- ¹⁴⁹ National Disability Insurance Scheme (NDIS) [Quality and Safeguards Commission](#)
- ¹⁵⁰ Including for example: e.g. allegations of abuse and neglect, unauthorised use of a restrictive practice, serious injury, and sexual misconduct.
- ¹⁵¹ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ¹⁵² People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, The Involuntary or Coerced Sterilisation of People with Disabilities in Australia, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, The Involuntary or Coerced Sterilisation of People with Disabilities in Australia, March 2013. Submissions available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions
- ¹⁵³ 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.
- ¹⁵⁴ See for eg: Committee on the Elimination of Discrimination against Women (1991) General recommendation No. 18: Disabled women. UN Doc. No. A/46/38.
- ¹⁵⁵ Australian Government (May 2015), [Australian Government response](#) to the Senate Standing Committee on Community Affairs Reports: [The involuntary or coerced sterilisation of people with disabilities in Australia](#) (17 July 2013) and the [Involuntary or coerced sterilisation of intersex people in Australia](#) (25 October 2013).
- ¹⁵⁶ Australian Governments remain of the view that it is an acceptable practice to sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party. See: Senate Standing Committee on Community Affairs, (17 July 2013) [The involuntary or coerced sterilisation of people with disabilities in Australia](#)

¹⁵⁷ Forced contraception is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse. It is a practice widely used in group homes and other forms of institutional settings, and is often justified as a way of reducing the 'burden' on staff/carers who have to 'deal with' managing menstruation of disabled women and girls. In the case of persons with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.

¹⁵⁸ Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW): [Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#). 29 August 2018.

¹⁵⁹ See: The Darlington Statement [para 7] [Darlington Statement](#): Joint consensus statement from the intersex community retreat in Darlington, March 2017.

¹⁶⁰ Committee on the Rights of Persons with Disabilities (2016), General Comment No. 3: Women and Girls with Disabilities, UN Doc. CRPD/C/GC/6, para 32.

¹⁶¹ Senate Standing Committee on Community Affairs (25 October 2013) [Involuntary or coerced sterilisation of intersex people in Australia](#)

¹⁶² Committee on the Elimination of Discrimination against Women (2018) Concluding Observations on the Eighth Periodic Report of Australia, UN Doc. CEDAW/C/AUS/CO/8, para 26.

¹⁶³ UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

¹⁶⁴ This devalues the important economic and social contributions that migrants and refugees with disability and their families might make to Australia See: National Ethnic Disability Alliance (NEDA) (2009) [No Right to Discriminate: Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability](#).

¹⁶⁵ UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

¹⁶⁶ beginning from the date the person starts residing in Australia as a permanent visa holder

¹⁶⁷ Legislation permits children with disability from asylum seeker backgrounds to be held indefinitely in immigration detention facilities. UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

¹⁶⁸ Which is directly attributed to the harsh conditions, the protracted periods of closed detention, sexual and other forms of violence, overcrowding, inadequate health care, and fear for and about the future. See: Disabled People's Organisations Australia (DPOA)(2017) Submission to the Committee on the Rights of Persons with Disabilities; [List of issues \[Australia\] to be adopted during the 18th Session of the Committee on the Rights of Persons with Disabilities](#).

¹⁶⁹ UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

¹⁷⁰ UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

¹⁷¹ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. See also: Australian Government, [Australia's Combined Second and Third Periodic Report under the Convention on the Rights of Persons with Disabilities](#), 1 September 2018.

¹⁷² Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. See also: Australian Government, [Australia's Combined Second and Third Periodic Report under the Convention on the Rights of Persons with Disabilities](#), 1 September 2018.

¹⁷³ NSW Ombudsman (2018) [Report of Reviewable Deaths in: 2014 and 2015, 2016 and 2017, Deaths of people with disability in residential care](#). NSW Ombudsman, Sydney.

¹⁷⁴ For eg: In June 2015, there were 6,252 young people in nursing homes around Australia, comprising of 555 young people aged 0-49 years and 5,697 aged 50-64 years. See: Senate Community Affairs References Committee (2015) [Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia](#). See also: Norman, J. (24 Mar 2019) [The young people forced to live in aged care homes and the push to get them out](#). ABC News.

¹⁷⁵ Including the right to choose freely where and with whom they live.

¹⁷⁶ Aged Care Guide, [The issue facing younger people with disability in aged care](#).

¹⁷⁷ National CRPD Survey (2019) Findings.

¹⁷⁸ For example: The Joint Standing Committee on the NDIS recommended greater regulation to ensure all new housing is compliant with an updated Building Code of Australia. See: Joint Standing Committee on the National Disability Insurance Scheme (May 2016) [Accommodation for people with disabilities and the NDIS](#).

¹⁷⁹ Supported Independent Living (SIL) under the NDIS is ingraining an institutionalised approach, undermining the NDIS vision of choice and control. See also: Joint Standing Committee on the National Disability Insurance Scheme (May 2016) [Accommodation for people with disabilities and the NDIS](#).

¹⁸⁰ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

¹⁸¹ Productivity Commission, [Report on Government Services 2019](#)

¹⁸² National CRPD Survey (2019) Findings.

¹⁸³ Productivity Commission, [Report on Government Services 2019](#)

¹⁸⁴ National CRPD Survey (2019) Findings.

¹⁸⁵ Reasons include lack of access to services, inaccessibility of public transport, lack of support from airline staff when flying, and international travel restrictions for those on the DSP. National CRPD Survey (2019) Findings.

¹⁸⁶ National CRPD Survey (2019) Findings.

¹⁸⁷ Although the Australian Government has developed the [Digital Service Standard](#), this is a set of best-practice principles for designing and delivering digital government services and does not apply to state, territory or local government services.

¹⁸⁸ For example, in addition to WCAG 2.0 adherence, web content should include Easy English, Large Print, Rich Text Format, Auslan, audio and other community languages.

¹⁸⁹ National CRPD Survey (2019) Findings.

¹⁹⁰ 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](#)

¹⁹¹ For eg: Approximately one in six children in alternative or out of home care has a parent with disability. See: [Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights](#) (May 2017). In addition, in some jurisdictions engaging in sexual relations with a person with intellectual is a criminal offence (eg s 216 Criminal Code (Qld)).

¹⁹² The Australian Council of Human Rights Authorities (ACHRA), comprises the State, Territory and Federal human rights and discrimination authorities. Over 6 years ago, ACHRA identified discrimination against 'potential and actual parents with disability' as one of three most urgent and pressing human rights issues in Australia today. The Communiqué from the ACHRA 2013 annual meeting stated: "Finally, having regard to evidence: (a) that parents with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity to be effective parents; (b) that there is a lack of systematic data collection and analysis; (c) that there is a lack of appropriate supports to potential and actual parents with disability, - ACHRA calls for better data collection and better research into negative presumptions being made about people with disabilities being able to effectively parent. ACHRA calls for better support for these parents to fulfil their parenting roles and has identified that this as a priority given the discriminatory impact of negative presumptions." See: Australian Council of Human Rights (ACHRA) [Communiqué from Australian Council of Human Rights Agencies meeting](#), 18-19 March 2013. There are few long-term and intensive parenting support programs for parents with disability, despite indications that these programs are very successful. See: [Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights](#) (May 2017). See also: Victorian Office of the Public Advocate (OPA) (2012) [OPA Position Statement: The removal of children from their parent with a disability](#)

¹⁹³ National CRPD Survey (2019) Findings.

¹⁹⁴ People with disability in Australia continue to experience, and be at risk of, gross violations of their sexual and reproductive rights including denial of the right to sexual and reproductive autonomy and self-determination, and through practices such as forced sterilisation, forced abortion and forced contraception - often wrongfully justified by theories of incapacity and therapeutic necessity and often performed under the auspices of legitimate medical care or the consent of others in their name. See for eg: Women With Disabilities Australia (WWDA)(2016) ['WWDA Position Statement 4: Sexual and Reproductive Rights'](#). WWDA, Hobart, Tasmania. See also: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings'](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia. See also: Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) [Sterilization of Women and Girls with Disabilities: A Briefing Paper](#). See also: International Federation of Gynaecology and Obstetrics (2011) [Female Contraceptive Sterilization](#).

¹⁹⁵ Women with disability continue to experience significant discrimination in accessing assisted reproductive technologies, including for eg: in-vitro fertilisation (IVF), assisted insemination, surrogacy, Oocyte cryopreservation. Many women with disability are deemed by fertility clinics as ineligible for assisted reproductive services. Australia's universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed 'medically infertile', but not for women who are deemed to be 'socially infertile' (including single people and same-sex couples). See: Women With Disabilities Australia (2009): ['Parenting Issues for Women with Disabilities in Australia' - A Policy Paper](#). See also: Fyfe, M. and Davies, J. (6 June 2015) [Motherhood on ice](#); Sydney Morning Herald Good Weekend Magazine. See also: Mather, A. (October 6, 2015) [Motherhood a precious gift many can't afford](#); The Mercury Newspaper.

¹⁹⁶ The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) [Bullying and abuse of school students with disability at alarming levels: Media Release 9 August 2016](#). See: Australian Broadcasting Corporation (ABC) (16 August 2016) [School investigated after claims boy with autism locked in 'cage'](#). Australian Broadcasting Corporation (ABC) (31 August 2016) [School accused of leaving teen with autism outside on beanbag for whole term](#). The Canberra Times (11 August 2016) [Autism cage details emerge as United Nations investigates abuse of children](#). 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: Senate Education and Employment References Committee (2016) [Final Report: Access to real learning: the impact of policy, funding and culture on students with disability](#)

¹⁹⁷ See e.g., See: Australian Broadcasting Corporation (ABC) (16 August 2016) [School investigated after claims boy with autism locked in 'cage'](#). Australian Broadcasting Corporation (ABC) (31 August 2016) [School accused of leaving teen with autism outside on beanbag for whole term](#). The Canberra Times (11 August 2016) [Autism cage details emerge as United Nations investigates abuse of children](#).

¹⁹⁸ CRPD/G/GC/4

¹⁹⁹ Sands, T. (2017), Disabled People's Organisations Australia (DPO Australia) [Submission to the 2017/2018 Federal Budget](#).

²⁰⁰ Students with disability report that their disability is the main reason they do not attend school. See: Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](#). AIHW, Canberra.

²⁰¹ 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. See: Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](#). AIHW, Canberra.

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- ²⁰² See for eg: Children with Disability Australia (CDA) (2013) [Inclusion in education: Towards equality for students with disability](#). Written by Dr Kathy Cologon for CDA. See also: [Australian schools failing children with disabilities, Senate report finds](#); ABC TV (15/01/2016)
- ²⁰³ Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](#). AIHW, Canberra.
- ²⁰⁴ Although the retention rate to Year 12 for Indigenous students has increased steadily, from 47% in 2010 to 60% in 2016, it is still lower than the non-Indigenous rate (79% in 2010 and 86% in 2016). See: Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW..
- ²⁰⁵ Schools that only enrol students with special needs. Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](#). AIHW, Canberra.
- ²⁰⁶ Students with disability at a mainstream school attract a students with disability loading of 186 per cent of the base per student amount; those at a special school attract a students with disability loading of 223 per cent. See: Senate Standing Committees on Education and Employment (15 January 2016) [Chapter 5: How to better support students with disabilities in schools](#) in '[Access to real learning: the impact of policy, funding and culture on students with disability](#)'.
- ²⁰⁷ Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Australia, UN Doc E/C.12/AUS/CO/5, paras 55-56.
- ²⁰⁸ Australia government response to LOIPR, para 275 (b).
- ²⁰⁹ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²¹⁰ National CRPD Survey (2019) Findings.
- ²¹¹ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²¹² Approximately 450,000 people in Australia have intellectual disability. See: Council for Intellectual Disability (February 2019) [The Health of People with Intellectual Disability](#).
- ²¹³ Council for Intellectual Disability (February 2019) [The Health of People with Intellectual Disability](#).
- ²¹⁴ For eg: People with disability detained under Forensic Orders are often not provided with access to medical and dental care. See also: Women With Disabilities Australia (WWDA)(2016) [WWDA Position Statement 4: Sexual and Reproductive Rights](#). WWDA, Hobart, Tasmania. National CRPD Survey Findings.
- ²¹⁵ Indigenous people with disability experience severe levels of psychological distress at a rate three times higher than for non-Indigenous people. See: Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²¹⁶ Productivity Commission, [National Disability Insurance Scheme \(NDIS\) Costs](#), 19 October 2017.
- ²¹⁷ Including for eg: forced sterilisation, forced abortion, forced contraception; female genital mutilation; menstrual suppression; chemical and physical restraint; forced institutionalisation; forced isolation and segregation; withholding of medications; indefinite detention; forced marriage; sexual slavery. See: Women With Disabilities Australia (WWDA) (August 2016) [Improving Service Responses for Women with Disability Experiencing Violence: Final Report](#). WWDA, Hobart, Tasmania. ISBN: 978-0-9585268-5-2.
- ²¹⁸ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²¹⁹ Such as those on hospitals, the Medicare Benefits Schedule, and the Pharmaceutical Benefits Scheme.
- ²²⁰ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²²¹ Joint Standing Committee on the National Disability Insurance Scheme (March 2019) [Progress Report](#).
- ²²² The lack of community based therapy services seriously inhibits the ability of these services to meet the needs of those needing assistance to improve, maintain or minimise deterioration in their level of functioning.
- ²²³ Council of Australian Governments; [Principles to Determine the Responsibilities of the NDIS and other Service Systems](#).
- ²²⁴ Joint Standing Committee on the National Disability Insurance Scheme (September 2018) [Market readiness for provision of services under the NDIS](#).
- ²²⁵ For example, the NDIS eligibility criteria do not adequately consider the episodic nature of psychosocial disability/mental illness, and the focus on diagnosis rather than physical and psychosocial impact disqualifies many with a demonstrable need for assistance under the Scheme. See: Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).
- ²²⁶ Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).
- ²²⁷ Commonwealth of Australia (2017) Joint Standing Committee on the National Disability Insurance Scheme; [Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition](#).
- ²²⁸ 39.8% for people with a disability compared to 79.4% for people without a disability. Compared with other OECD countries, Australia has one of the lowest employment participation rates for people with a disability. See: Price Waterhouse Coopers (2011) [Disability Expectations: Investing in a better life, a stronger Australia](#). See also: Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. Many young people with disability do not enter the labour force over the first seven post-school years and are more likely to experience long-term unemployment than those without a disability. See: Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney.
- ²²⁹ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²³⁰ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

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- ²³¹ National CRPD Survey (2019) Findings.
- ²³² Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney.
- ²³³ Australian Government, [Disability Employment Services](#). Department of Social Services.
- ²³⁴ Disabled People's Organisations Australia (DPOA) [Factsheet: Employment of Persons with Disability](#). DPOA, Sydney.
- ²³⁵ The Committee on Economic, Social and Cultural Rights has specifically addressed segregated employment of people with disability, and clarified that segregated employment and wage discrimination is in contravention of the Covenant on Economic, Social and Cultural Rights (ICESCR).
- ²³⁶ The scheme was established by the Australian Government following the Federal Court finding in December 2012 that the BSWAT indirectly discriminated against two Australian Disability Enterprises (ADEs) employees with an intellectual disability. See: The [Business Services Wage Assessment Tool \(BSWAT\) Payment Scheme](#).
- ²³⁷ Who met a range of criteria and whose wages were assessed and paid using the BSWAT between 2004 and 2014. See: The [Business Services Wage Assessment Tool \(BSWAT\) Payment Scheme](#).
- ²³⁸ The [Supported Wage System](#) is a process that allows employers to pay a productivity-based wage for people with disability that matches an independently assessed productivity rate.
- ²³⁹ Productivity Commission (July 2018) National Disability Agreement Review, [Issues Paper](#).
- ²⁴⁰ Working-age women with disability who are in the labour force have lower incomes from employment; are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment, and are much more likely to be in lower paid jobs than men with disability. See: Women with Disabilities Australia (WWDA), (2014) '[Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities](#)'. WWDA, Hobart, Tasmania, ISBN: 978-0-9585268-2-1.
- ²⁴¹ Department of Social Services (DSS) [National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018](#).
- ²⁴² More than double the OECD average of 22%. See for eg: Price Waterhouse Coopers (PWC) (2011) [Disability expectations: Investing in a better life, a stronger Australia](#).
- ²⁴³ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁴⁴ National CRPD Survey (2019) Findings.
- ²⁴⁵ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁴⁶ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁴⁷ Australian Government (2016) National Disability Strategy 2010-2020: Progress Report to COAG.
- ²⁴⁸ The Disability Support Pension (DSP) provides financial support to working age Australians who are permanently blind or have a permanent physical, intellectual or psychiatric impairment that prevents or limits their capacity to work. See: Australian National Audit Office (2016) [Qualifying for the Disability Support Pension](#). The Disability Support Pension (DSP) is inadequate to support people with disability and consequently leads to a lower standard of living, poverty, and the inability to realise other fundamental human rights. Changes to the DSP eligibility since 2013 have already left many people with disability struggling to survive on the Newstart or Youth Allowance, payments that are below the poverty line and in no way accounts for the additional costs associated with disability. Income support pensions have fallen significantly relative to average and minimum wages over the last two decades. See: Disabled People's Organisations Australia (DPOA)(2016) [Election Platform 2016: Building a Disability Inclusive Australia](#). See also: Australian NGO Coalition Submission (2017) [Review of Australia Fifth Periodic Report under the International Covenant on Economic, Social and Cultural Rights](#).
- ²⁴⁹ See: Australian National Audit Office (2016) [Qualifying for the Disability Support Pension](#).
- ²⁵⁰ Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ²⁵¹ National Social Security Rights Network (Jan 02, 2017), [1-in-4 on Newstart has a significant disability](#).
- ²⁵² Henriques-Gomes, L. (10 Apr 2019) [Record number of sick or disabled Newstart recipients as Coalition seeks savings](#). The Guardian.
- ²⁵³ Naujokas, N. (7 May 2019) [Ask a policy expert: why is it so hard to get on the disability support pension?](#) The Guardian.
- ²⁵⁴ The [Specialist Homelessness Services \(SHS\)](#) collection obtains information about people, adults and children, who seek assistance from specialist homelessness agencies.
- ²⁵⁵ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁵⁶ See: Australia's 2nd Universal Periodic Review, [Joint NGO Submission on behalf of Australian NGO Coalition](#), March 2015.
- ²⁵⁷ Productivity Commission, [Report on Government Services 2019](#)
- ²⁵⁸ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁵⁹ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- ²⁶⁰ Productivity Commission, [Report on Government Services 2019](#); National CRPD Survey (2019) Findings.
- ²⁶¹ Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).
- ²⁶² Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).

²⁶³ As recommended in the CRPD/C/AUS/CO/1 [para.54] and also recommended in CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5.

²⁶⁴ As recommended in the CRPD/C/AUS/CO/1 [para.56]

²⁶⁵ Including a comprehensive data collection mechanism for children and young people with disability.

²⁶⁶ At the Universal Period Review [Australia] 2016, the Australian Government gave a voluntary commitment to “supporting the protection and promotion of human rights through its foreign aid programme by promoting prosperity, reducing poverty and enhancing stability. The delegation welcomed the adoption of the 2030 Agenda for Sustainable Development and affirmed its commitment to advancing this agenda. The Government committed to applying its Development for All: 2015-2020 strategy to strengthen disability-inclusive development and its international Indigenous Peoples Strategy 2015-2019 to advance the interests of indigenous peoples in Australia and around the world.” See: United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Australia; 2016, UN Doc. No: A/HRC/31/14 [para 145].

²⁶⁷ Transforming our world: the [2030 Agenda for Sustainable Development](#). See also: [Sustainable Development Goals](#).

²⁶⁸ Department of Foreign Affairs and Trade (2105) [Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program](#).

²⁶⁹ Department of Foreign Affairs and Trade (2105) DFAT [Indigenous Peoples Strategy 2015-2019](#): A framework for action.

²⁷⁰ The Department of Social Services (DSS) and the Attorney-General's Department (AGD) have been designated as the 'joint focal point' within the Australian Government to coordinate implementation of the CRPD. However, operational responsibility for implementation of the CRPD through the National Disability Strategy 2010-2020 (NDS) rests with DSS, and appears to be confined to a disability policy responsibility.

²⁷¹ Australian Government, [Universal Periodic Review monitoring](#). Attorney-General's Department, Canberra.