



## Women With Disabilities Australia (WWDA)

Submission to the CRPD Committee  
9th Session  
15<sup>th</sup> – 19<sup>th</sup> April 2013

Half Day of General Discussion on Women and  
Girls with Disabilities

PO Box 605, Rosny Park  
Tasmania 7018 AUSTRALIA  
Ph: +61 3 62448288 Fax: +61 3 62448255  
Email: [wwda@wwda.org.au](mailto:wwda@wwda.org.au)  
Web: [www.wwda.org.au](http://www.wwda.org.au)  
Contact: Carolyn Frohmader, Executive Director



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## Submission to the CRPD Committee 9th Session

### Key Issues for Consideration for the Half Day of General Discussion on Women and Girls with Disabilities

1. Women With Disabilities Australia (WWDA)<sup>1</sup> thanks the CRPD Committee for the opportunity to contribute this brief submission to the Committee's 9<sup>th</sup> session half day of general discussion on women and girls with disabilities. Strengthening the protection of human rights of women and girls with disabilities in Australia is a key priority of WWDA.<sup>2</sup> Our work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.
2. As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to gender equality and to disability rights, Australia has committed to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights.<sup>3</sup> However, women and girls with disabilities in Australia have failed to benefit from these provisions in international human rights law. Instead, systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial, and violation of, their human rights and fundamental freedoms.

#### The right to freedom from torture or cruel, inhuman or degrading treatment or punishment: Forced and Coerced Sterilisation of Girls and Women with Disabilities

3. For more than twenty years, women with disabilities and their allies have been asking successive Australian Governments to show national leadership and undertake wide ranging reforms to stop the forced/involuntary and coerced sterilisation of women and girls with disabilities. These recommendations to the Australian Government for action have been echoed, supported and re-iterated by several international human rights treaty monitoring bodies since 2005.<sup>4</sup>
4. Forced/involuntary sterilisation – that is, sterilisation in the absence of the free and informed consent of the individual concerned<sup>5</sup> - is an act of violence, a form of social control, and a clear and documented violation of

<sup>1</sup> Women With Disabilities Australia (WWDA) is the peak non-government organisation (NGO) for women and girls with all types of disabilities in Australia. For more detailed information on WWDA, go to: <http://www.wwda.org.au>

<sup>2</sup> See WWDA's *Strategic Plan 2010 – 2015* at: <http://wwda.org.au/stratplan.htm>

<sup>3</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

<sup>4</sup> See: UN Committee on the Rights of the Child; *Consideration of reports submitted by States parties under article 44 of the Convention; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4; UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10; Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; UN Committee on the Rights of the Child, Fortieth Session, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e); CRC General Comment No.9 [at para.60] states: "The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability."; UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence, 17 February 2011, CRC/C/GC/13 [paras.16, 21]; CESCR General Comment No.5 [at par 31] states: *Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, "persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood"....Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2); See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), General Comment No. 28: Equality of rights between men and women, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].*

<sup>5</sup> Sterilisation which is performed in an emergency situation for life-saving purposes, is not considered to be forced sterilisation.

the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.<sup>6 7 8</sup> The UN Special Rapporteur on Torture has clarified that sterilisation in this context includes instances in which sterilisation has been authorised by a third party, such as a parent or legal guardian, without the individual's consent.<sup>9 10</sup>

5. Under current laws, for children and adults who have an impaired capacity to consent and are unable to make an independent decision about whether to undergo a sterilisation procedure, Australian laws provide for authorisation by a court or guardianship tribunal. According to the Australian Government, these laws are 'designed to protect the rights of those involved and to ensure procedures are authorised only where they are in the person's best interests'.<sup>11</sup> The Australian Government has to date, argued that it: "*considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations.*"<sup>12</sup> However, the Committee on the Rights of the Child (CRC) has made it clear that the principle of the 'best interests of the child' cannot be used to justify practices which conflict with the child's human dignity and right to physical integrity:  
*"The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."*<sup>13</sup>
6. Successive Australian Governments have shown scant regard for the strong and consistent recommendations from United Nations Treaty bodies to "*enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.*"<sup>14</sup>
7. WWDA, consistent with a number of UN treaty monitoring bodies and special procedures, calls on the Australian Government to: a) prohibit by law, the sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent; b) develop policies and programs that enable disabled women and girls to realise their human rights on an equal basis as others; c) promptly and impartially investigate, prosecute and punish all instances of forced sterilisation; and d) provide adequate redress and compensation, including rehabilitation, to all women and girls with disabilities who have been forcibly sterilised.

### The right to freedom from torture or cruel, inhuman or degrading treatment or punishment: Forced Electroshock, Seclusion, Restraint & Forced Psychiatric Interventions

8. Women and girls with disabilities in Australia continue to be subjected to multiple forms and varying degrees of 'deprivation of liberty' and are subjected to unregulated or under-regulated restrictive interventions and practices.<sup>15 16</sup> This is particularly the case for women and girls with intellectual and/or cognitive disabilities,

<sup>6</sup> United Nations General Assembly, Human Rights Council (2013) *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E Méndez; 1st February 2013; UN Doc. A/HRC/22/53.

<sup>7</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13 [paras.16, 21].

<sup>8</sup> United Nations General Assembly, Human Rights Council (2008) *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, 15 January 2008, UN Doc. A/HRC/7/3.

<sup>9</sup> Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre (2011) *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011.

<sup>10</sup> United Nations General Assembly, Human Rights Council (2013) Op Cit.

<sup>11</sup> Commonwealth of Australia (2012) *Australian Government Response to the United Nations Office of the High Commissioner for Human Rights; Special Rapporteurs' request for information - Allegations of non-therapeutic forced sterilisation of girls and women with disabilities in Australia*, December 16, 2012. Available online at: <http://www.wwda.org.au/sterilise2011.htm>

<sup>12</sup> United Nations General Assembly, Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Australia; Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*. Seventeenth session, A/HRC/17/10/Add.1.

<sup>13</sup> CRC Committee General Comment No. 13 [at para.61] states: "*The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.*"

<sup>14</sup> Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.

<sup>15</sup> Office of the Public Advocate (2010) *Submission to the Victorian Law Reform Commission in Response to the Guardianship Information Paper*. Accessed online October 2011 at: <http://www.publicadvocate.vic.gov.au/file/file/Research/Submissions/2010/OPA-Submission-to-VLRC-May-2010.pdf>

<sup>16</sup> French, P., Dardel, J. & Price-Kelly, S. (2010) *Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment*. People With Disability Australia (PWD), Sydney, NSW.

developmental disabilities and those with psychosocial disabilities.<sup>17</sup> Such practices are often imposed as a means of coercion, discipline, convenience, or retaliation by staff, family members or others providing support.<sup>18</sup> These practices are not limited to institutions such as group homes, but also occur in educational settings (such as schools), hospitals, residential aged care facilities and other types of institutions (such as hostels, boarding houses, psychiatric/mental health community care facilities, prisons, supported residential facilities).

9. All Australian states and territories have provisions for the 'treatment' of people with mental illnesses without consent.<sup>19</sup> Legislation typically allows for involuntary admission to hospital and, in most jurisdictions, pharmacological or other treatments without consent. Data on the use of Electroconvulsive therapy (ECT) on involuntary persons in Australia is difficult to source, however, where it is available, indicates that three times more women than men are subject to the practice.<sup>20</sup> Medicare statistics for 2007-2008 record 203 ECT treatments on children younger than 14 - including 55 aged four and younger.<sup>21</sup> Certain legislation in Australia currently allows for children to undergo ECT provided they, or their parent or guardian have given informed consent.<sup>22</sup>
10. The UN Special Rapporteur on Torture has clarified that *'the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under Article 1 of the Convention against Torture'*.<sup>23</sup> In 2009, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, made it clear that policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including sterilizations, abortions, electro-convulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment.<sup>24</sup>

### The right to freedom from exploitation, violence and abuse: Violence Against Girls and Women with Disabilities

11. Women and girls with disabilities experience alarmingly high rates of all forms of violence, exploitation and abuse from a range of perpetrators yet remain largely excluded from violence prevention legislation, policies, services and supports. They continue to be assaulted, raped and abused at a rate of at least two times greater than other women, and are at greater risk of severe forms of intimate partner and other forms of violence. More than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives.<sup>25</sup> Women and girls with disabilities who live in institutions are at particular and significant risk of violence. The overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a significant portion of whom are paid service providers who commit their crimes in disability service settings, and other forms of institutional settings.<sup>26</sup> Compared to non-disabled women, women with disabilities experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators, yet programs and services for this group either do not exist or are extremely limited.
12. The Australian Government concedes that violence against women with disabilities in Australia is 'widespread', that women with disabilities, particularly intellectual disabilities, are extraordinarily vulnerable

<sup>17</sup> In Australia the definition of seclusion is both legislated and policy driven. Seclusion can be understood as 'the confinement of a person alone at any hour of the day or night in a room, the door(s) and window(s) of which cannot be opened by the person from the inside; or the confinement of a person alone at any hour of the day or night in a room in which the door(s) or window(s) are locked from the outside or their opening is prevented by any other means, such as a person holding the door shut; or where exit from a place is prevented by the presence of another person.

<sup>18</sup> Cited in McVilly, K. (2008). *Physical restraint in disability services: current practices; contemporary concerns and future directions*. A report commissioned by the Office of the Senior Practitioner, Department of Human Services, Victoria, Australia.

<sup>19</sup> For a detailed analysis of forced psychiatric interventions and practices, see the *Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP)* at: <http://www.chrusp.org>

<sup>20</sup> In Frohmader, C. (2011) Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://www.wwda.org.au/WWDAsubUNStudyViolenceWWDDec2011.pdf> See Also: 'Child shock therapy'; *Herald Sun Newspaper*, January 25, 2009. Accessed online December 2012 at: <http://www.heraldsun.com.au/news/victoria/child-shock-therapy/story-e6frf7kx-111118657718>

<sup>21</sup> 'Child shock therapy'; *Herald Sun Newspaper*, January 25, 2009. Accessed online December 2012 at: <http://www.heraldsun.com.au/news/victoria/child-shock-therapy/story-e6frf7kx-111118657718>

<sup>22</sup> See for example: *Western Australia [Draft] Mental Health Bill 2012*. Accessed online December 2011 at: [http://www.mentalhealth.wa.gov.au/Libraries/pdf\\_docs/Green\\_paper-Mental\\_Health\\_Bill\\_2012\\_325-1.sflb.ashx](http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/Green_paper-Mental_Health_Bill_2012_325-1.sflb.ashx)

<sup>23</sup> United Nations General Assembly, Human Rights Council (2013) Op Cit.

<sup>24</sup> UN General Assembly (2009), *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*; UN Doc. A/64/272, August 2009.

<sup>25</sup> Stimpson & Best; cited in Elman, A. (2005). *Confronting the Sexual Abuse of Women with Disabilities*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence.

<sup>26</sup> Sobsey & Doe; cited in Elman, A. (2005) OpCit.

to violence and abuse, and that disabled women experience significant barriers in accessing domestic violence services and support.<sup>27</sup> Yet successive Australian Governments have shown little interest in, and taken minimal action to address violence against women and girls with disabilities. There have been, and remain, significant systemic failures in legislation, regulatory frameworks, policy, administrative procedures, availability and accessibility of services and support, to prevent and address violence against women and girls with disabilities.

13. It is widely acknowledged that Indigenous Australians have rates of ill-health and disability substantially higher than other Australians.<sup>28</sup> Australian Bureau of Statistics data shows that nationally, 50% of Indigenous Australians aged 15 years and over have a disability or long-term health condition. Over half are female (51%).<sup>29</sup> Indigenous women are 35 times more likely to suffer family violence<sup>30</sup> and sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women.<sup>31</sup>
14. Human rights treaty monitoring bodies and special procedures have urged States Parties to address all forms of violence against women and girls with disabilities.<sup>32</sup> In 2010, the CEDAW Committee made very strong recommendations regarding the need for urgent action by Australian governments to address the abuse and violence experienced by women with disabilities living in institutions or supported accommodation.<sup>33</sup> Yet violence against women and girls with disabilities in institutions remains largely outside the increasing public debate and policy responses to violence against women.

### The right to found a family and to reproductive freedom: Removal of Children from Disabled Mothers

15. Although the right to 'found a family' and to 'reproductive freedom' is clearly articulated in a number of international human rights instruments to which Australia is a party,<sup>34</sup> for many women with disabilities in Australia, such fundamental human rights are not realisable. Instead, women with disabilities remain discouraged or denied the opportunity, to bear and raise children.<sup>35</sup> They have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and generally incapable of looking after children.<sup>36</sup> Alternatively, women with intellectual disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies, often a justification for their sterilisation.<sup>37</sup> These perceptions, although very different, often result in women with disabilities being denied the right to participate in decision-making processes that affect their lives. According to the UN Special Rapporteur on Violence Against Women, *'although society's fear that women with disabilities will produce so-called "defective" children is for the most part groundless, such erroneous concerns have resulted in discrimination against women with disabilities from having children.'*<sup>38</sup>
16. Australia has a history of removing children from their natural parents based on the personal characteristic of the parents, such as indigenous background or marital status. In Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care.<sup>39</sup> Courts and child protection authorities are removing children from their parents on the basis of the parent's disability rather

<sup>27</sup> In Frohmader, C. (2011) Op Cit.

<sup>28</sup> Australian Institute of Health and Welfare (2011) *Aboriginal and Torres Strait Islander people with disability: wellbeing, participation and support*; IHW 45. Canberra: AIHW.

<sup>29</sup> Australian Bureau of Statistics (ABS) (2010) *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander People: Prevalence of Disability*. 4704.0. Accessed online October 2011 at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter510Oct+2010#CWNIP>

<sup>30</sup> The nature of violence from an Indigenous perspective is impacted by numerous systemic factors including dispossession from land and traditional culture, breakdown of community kinship systems, racism and vilification, entrenched poverty, overcrowding and inadequate housing, child removal policies and the loss of traditional Aboriginal female roles, male roles and status. See: Family Law Council (2009) OpCit.

<sup>31</sup> Family Law Council (2009) *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*. Family Violence Committee, Family Law Council, Canberra.

<sup>32</sup> See for example: UN General Assembly, Secretary General (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*. UN Doc No. A/67/227. See also: UN General Assembly, Human Rights Council (2012) Thematic study on the issue of violence against women and girls and disability; Report of the Office of the United Nations High Commissioner for Human Rights. UN Doc No. A/HRC/20/5.

<sup>33</sup> Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.

<sup>34</sup> See for eg: International Covenant on Economic, Social and Cultural Rights (Article 10); International Covenant on Civil and Political Rights (Article 23); Convention on the Elimination of All Forms of Discrimination against Women (Article 16); Convention on the Rights of Persons with Disabilities (Article 23).

<sup>35</sup> Women With Disabilities Australia: *'Parenting Issues for Women with Disabilities in Australia' - A Policy Paper* (May 2009). Available at:

[www.wwda.org.au/motherhd2006.htm](http://www.wwda.org.au/motherhd2006.htm)

<sup>36</sup> Ibid.

<sup>37</sup> Women With Disabilities Australia (WWDA) (2007b) *'Forgotten Sisters - A global review of violence against women with disabilities'*. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia.

<sup>38</sup> UN General Assembly, Secretary General (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*. UN Doc No. A/67/227.

<sup>39</sup> 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*. <http://www.publicadvocate.vic.gov.au/research/302/>

actual neglect or abuse. A parent's capacity to parent his or her child, even with full community support is not properly assessed.<sup>40</sup>

17. In Australia, the denial of the right to reproductive freedom and the right to found and maintain a family takes many forms for women with disabilities, including for example: systematic exclusion from comprehensive reproductive and sexual health education and care, limited voluntary contraceptive choices, a focus on menstrual suppression and control, poorly managed pregnancy and birth, involuntary abortion, forced sterilisation, and the denial of rights to parenting. Disabled women experience a range of restrictions to realising their right to found and raise a family. These economic, social and environmental barriers and restrictions are many, varied, and entrenched – yet remain largely ignored in Australian family related research.<sup>41</sup> The UN Special Rapporteur on Violence Against Women has recently reported that '*research shows that no group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.*'<sup>42</sup>

### The right to the enjoyment of the highest attainable standard of physical and mental health: Inadequate and Inequitable Access to Healthcare

18. Women with disabilities in Australia not only represent one of the groups with the highest risk of poor health, but also experience socioeconomic disadvantage, social isolation, multiple forms of discrimination, poor access to services and inadequate health care. For many women and girls with disabilities, the services and programs they require to realise their right to health are simply not available to them. For example, support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth, parenting and menopause remain inappropriate, absent or inaccessible. In many areas of Australia, breast and cervical cancer screening services are not available to women with disabilities, despite the fact that breast cancer is one of the most common cancers for females in Australia and one of the leading causes of death from cancer in females.<sup>43</sup> Women and girls with disabilities experience direct human rights violations that result in ill-health; experience significant disadvantage in the social determinants necessary for health; and are largely absent in the health promotion agenda.
19. Women with disabilities spend more of their income on medical care and health related expenses than men with disabilities.<sup>44</sup> Women with disabilities between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of women who are not disabled. Women with disabilities between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.<sup>45</sup>
20. In its 2006 Concluding Observations [Australia], the CEDAW Committee expressed its regret at the absence of sufficient information and data on women with disabilities in Australia's combined fourth and fifth periodic report. The Committee also expressed its concern at the lack of access to healthcare for women with disabilities, and called on the Australian Government to develop the necessary infrastructure to ensure that disabled women have access to all health services.<sup>46</sup> Yet in 2013, the situation remains largely unchanged. Successive Australian governments have to date, failed consistently in their obligations to respect, protect, and fulfil the rights of women with disabilities, and in doing so, have denied women with disabilities the freedoms and the entitlements for health.

### The right to work: Discrimination in Employment

21. Women with disabilities in Australia are significantly disadvantaged in employment in relation to access to jobs, in regard to remuneration for the work they perform, and in the types of jobs they gain. Working-age women with disabilities who are in the labour force are half as likely to find full-time employment (20%) as men with disabilities (42%); twice as likely to be in part-time employment (24%) as men with disabilities

<sup>40</sup> Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability.* <http://www.publicadvocate.vic.gov.au/research/302/>

<sup>41</sup> Frohmader, C., Meekosha, H., & Sodatic, K. (forthcoming) *Unruly Mothers or Unruly Practices? Disabled Mothers Surviving oppressive state practices in Australia.*

<sup>42</sup> UN General Assembly, Secretary General (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences.* UN Doc No. A/67/227.

<sup>43</sup> Women With Disabilities Australia (WWDA) (2009) *Submission to the National Human Rights Consultation.* WWDA, Rosny Park, Tasmania. Available online at: [www.wwda.org.au/subs2006.htm](http://www.wwda.org.au/subs2006.htm)

<sup>44</sup> Salthouse, S. & Howe, K. (2004) *Lack of Data Means Lack of Action - A clinical examination of access to health services for women with disabilities.* A paper presented on behalf of Women With Disabilities Australia (WWDA) to the Human Rights and Equal Opportunity Commission (HREOC) National Summit: 'Access to Health Services for People with Disabilities'. Sydney, 28 May 2004.

<sup>45</sup> Blanchard, J. & Hosek, S. (2003) *Financing Health Care for Women with Disabilities.* A RAND White Paper. Prepared for the FISA Foundation. Accessed online April 2009 at: [www.wwda.org.au/health2001.htm](http://www.wwda.org.au/health2001.htm)

<sup>46</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, 3 February 2006, CEDAW/C/AUL/CO/5.

(12%); and regardless of full-time or part-time status, are likely to be in lower paid jobs than men with disabilities.<sup>47</sup>

22. In 2009 the Parliament of the Commonwealth of Australia undertook a national inquiry into Pay Equity and associated issues relating to female participation in the workforce. The Report of the Inquiry *'Making It Fair'*<sup>48</sup> recommended, amongst other things that *'the Government as a matter of priority collect relevant information on workforce participation of women with disabilities to provide a basis for pay equity analysis and inform future policy direction.'* This recommendation has never been enacted.
23. In 2010, the UN CEDAW Committee expressed its concern at the continued disadvantage experienced by women with disabilities with regard to educational and employment opportunities; including the limited access to job opportunities for disabled women. The Committee recommended, both in its 2006 and 2010 Concluding Observations [Australia] that *'the State Party adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets, in accordance with article 4, paragraph 1 of the Convention and the Committee's general recommendation No. 25.'* These recommendations have not been taken up by the Australian Government, and disabled women continue to experience marginalisation and exclusion in the Australian labour market – a situation that has remained unchanged for almost two decades.<sup>49</sup>

### The right to participation in political and public life: Citizenship, Leadership and decision-making

24. The CEDAW Committee in both its 2006 and 2010 Concluding Observations [Australia] has expressed its concerns at the slow progress in ensuring the equal participation of women with disabilities in leadership and decision-making positions, in public and political life as well as their equal access to education, employment and health. The Committee has re-iterated that the measures taken by the Australian Government to enhance the participation of women with disabilities in public life remains inadequate. The Committee continues to be concerned that the State party does not favour adoption of temporary special measures in the form of compulsory targets and quotas to address the under- representation of women with disabilities in decision-making bodies, in political and public life and the persistent inequality of their access to education, employment opportunities and health care services.
25. The CEDAW Committee has re-iterated its recommendation that the State party adopt targeted measures, including temporary special measures with clear time frames, in accordance with article 4, paragraph 1 of the Convention and the Committee's general recommendation No. 25, to ensure the equal participation and representation of women with disabilities in public and political life.

### The right to liberty and security of person: Overrepresentation and Treatment in the Prison System

26. Women with disabilities are over-represented in the prison system in Australia. Women with disabilities represent between 30% and 50% of the prison population. Research also indicates that the percentage of women with disabilities in prisons is greater than men with disabilities and that rates for women with disabilities from Aboriginal and Torres Strait Islander background is also higher than equivalent figures for men.<sup>50</sup>

### The right to an adequate standard of living, including adequate housing

27. Women with disabilities throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society. The Disability Support Pension is inadequate to support women with disabilities and fails to take account of the non-optional, extra costs associated with disability. An adequate standard of living includes the right to adequate housing, which is universally viewed as one of the most basic human needs. Women with disabilities in Australia continue to experience serious violations

<sup>47</sup> Australian Bureau of Statistics, *'Labour Force Characteristics of People with a Disability'* in *Year Book Australia* (2006); Sue Salthouse, *'Jumping Through Hoops – Welfare and Industrial Relations Reform Implications for Women with Disabilities'* (Paper presented at the What Women Want Workshop – A Workshop on the Effect of the Federal Government's Recent Policy Changes on Women of Working Age, Canberra, 12 July 2005) [www.wda.org.au/w2wJuly05.htm](http://www.wda.org.au/w2wJuly05.htm).

<sup>48</sup> Commonwealth of Australia (2009) *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce*. Report of the House of Representatives Standing Committee on Employment and Workplace Relations. Accessed online December 2012 at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=sewr/payequity/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=sewr/payequity/report.htm)

<sup>49</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, 3 February 2006, CEDAW/C/AUL/CO/5.

<sup>50</sup> See: [www.sistersinside.com.au](http://www.sistersinside.com.au)

of their right to adequate housing, as well as failures to promote and fulfil this most basic human right. Issues for women with disabilities include: lack of affordable, safe, and secure housing; lack of low cost housing; severe lack of appropriately modified housing; lack of availability of housing which adheres to universal design principles; escalation in the cost of private rental; forced to live further away from services as a result of low income and high urban rental costs; discrimination in both the public and private rental markets; lack of supports available in the community; additional costs of disability, which compound lack of options in the housing market; higher risk of homelessness as a result of violence; ignored in homelessness and violence policy responses; lack of access to women's refuges and other crisis and post-crisis accommodation services.<sup>51</sup>

### The need to incorporate a gender perspective in all efforts to promote the human rights of persons with disabilities: the National Disability Insurance Scheme (NDIS)

28. As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to *gender equality*, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women. In recognition of the fact that women with disabilities face multiple discriminations and human rights violations and are often profoundly more disadvantaged than disabled men, Australia has also agreed to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights. The need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities is expressly stated in the CRPD.<sup>52</sup>
29. The Australian Government is currently introducing a new disability care and support scheme, the National Disability Insurance Scheme (NDIS), in which all Australians with a 'significant and ongoing' disability (around 410,000 people) would get long-term care and support.<sup>53</sup> The Draft NDIS Legislation has recently been developed and a Senate Inquiry is currently being undertaken to review the Draft Bill.<sup>54</sup>
30. For more than 2 years, WWDA has expressed concern at the lack of a gender perspective and analysis in all aspects of the NDIS developments to date. In its current form, the NDIS Legislation assumes that people with disabilities are a homogenous group who share a common set of issues - and that men and women experience disability in the same way. However women with disabilities and men with disabilities have different life experiences due to biological, psychological, economic, social, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with the differences in the social position of women and men. These gendered differences and gender inequalities are ignored in the NDIS, despite the fact that successive Australian Governments have committed, internationally and domestically, to enshrine gender equality into legislative and policy frameworks, and implement parallel strategies in order to promote gender equality and denounce discrimination against women.

### Statistics and data collection

31. Data, research and information about women and girls with disabilities is necessary to develop and inform policy, direct resources, inform service development, and design and monitor specific programs. It also enables the monitoring of equality of opportunity and progress towards the achievement of economic, social, political and cultural rights for women with disabilities. It is critical as a tool for accountability and for enhancing the participation of women with disabilities. Good quality data and research are especially necessary for a sound evidence base to improve the effectiveness of mainstream systems for women with disabilities.<sup>55</sup> The lack of data, research and information about women and girls with disabilities results in invisibility and marginalisation in society, which invariably leads to a critical lack of resources, and perpetuates violation of their human rights and fundamental freedoms.

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<sup>51</sup> Women With Disabilities Australia (WWDA) (2009) *Submission to the National Human Rights Consultation*. WWDA, Rosny Park, Tasmania. Available online at: [www.wwda.org.au/subs2006.htm](http://www.wwda.org.au/subs2006.htm)

<sup>52</sup> See for example: UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106, Preamble at [s].

<sup>53</sup> See [www.ndis.gov.au](http://www.ndis.gov.au)

<sup>54</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_ctte/ndis/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/ndis/index.htm)

<sup>55</sup> Commonwealth of Australia (2010) *National Disability Strategy 2010-2020*; an initiative of the Council of Australian Governments (COAG); available online at: [http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds\\_2010\\_2020/Pages/default.aspx](http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Pages/default.aspx)



32. The deep-rooted exclusion experienced by women with disabilities in Australia continues unabated due in part to the dearth of information available on its extent or impact, and the apathy of successive Governments in acknowledging the need for such information.
33. This aspect of neglect of disabled women in Australia was specifically identified by the CEDAW Committee in 2010 as an area warranting immediate and urgent attention by the Australian Government,<sup>56</sup> including through the undertaking of a comprehensive assessment of the situation of women with disabilities in Australia. This recommendation has not been taken up by the Australian Government.

### Legal capacity, access to justice & equal representation before the law

34. The right of access to justice is among the most important civil and political rights as it determines the extent to which individuals can secure and enforce their other substantive human rights.<sup>57</sup> Women and girls with disabilities, particularly those with intellectual, cognitive, and/or psychosocial disabilities are often denied effective access to justice because violations of their rights are often not taken seriously.
35. For example, despite high levels of violence against women with disabilities in Australia, few cases are prosecuted. Many cases involving crimes committed against women and girls with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.<sup>58 59 60</sup> It has been well documented for decades that police are reluctant to investigate and report cases of violence against women and girls with disabilities.<sup>61 62 63</sup> This is in part due to the stereotypical perceptions of women with disabilities that have been found to be operating at almost all levels of the criminal justice system, including police and courts – ie: that women with disabilities are sexually promiscuous, provocative, unlikely to tell the truth, asexual, childlike, or unable to be a reliable witness.<sup>64 65</sup>
36. Article 12 of the CRPD mandates States Parties to recognise that persons with disabilities enjoy legal capacity on an equal basis with others. This means that an individual's right to decision-making should not be replaced by decision-making of a third party, but that each individual without exception has the right to make their own choices and to direct their own lives, whether in relation to living arrangements, medical treatment, or family relationships. Yet women with disabilities in Australia are often denied these choices – due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctors decision that the individual 'lacks capacity' to make a decision.<sup>66</sup> The UN Special Rapporteur on Torture, in his 2013 Report to the Human Rights Council<sup>67</sup> has recently called upon all States to:

*Safeguard free and informed consent on an equal basis for all individuals without any exception, through legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. Any legal provisions to the contrary, such as provisions allowing confinement or compulsory treatment in mental health settings, including through guardianship and other substituted decision-making, must be revised. Adopt policies and protocols that uphold autonomy, self-determination and human dignity..... Instances of treatment without informed consent should be investigated; redress to victims of such treatment should be provided.*

<sup>56</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, 30 July 2010, CEDAW/C/AUS/CO/7 [paras. 42, 43]

<sup>57</sup> Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre (2011) *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011.

<sup>58</sup> Women With Disabilities Australia (WWDA) (2007b) OpCit.

<sup>59</sup> Healey, L., Howe, K., Humphreys, C., Jennings, C. & Julian, F. (2008) *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria*. Published by the Victorian Women with Disabilities Network Advocacy Information Service, Melbourne.

<sup>60</sup> French, P., Dardel, J., & Price-Kelly, S. (2010) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

<sup>61</sup> Women With Disabilities Australia (WWDA) (2007b) OpCit.

<sup>62</sup> French, P. (2007) *Disabled Justice: The barriers to justice for persons with disability in Queensland*. Queensland Advocacy Incorporated (QAI), Brisbane. Accessed online October 2011 at: [http://www.qai.org.au/images/stories/docs/1987-2007/doc\\_199.pdf](http://www.qai.org.au/images/stories/docs/1987-2007/doc_199.pdf)

<sup>63</sup> French, P. et al (2010) OpCit.

<sup>64</sup> Women With Disabilities Australia (WWDA) (2007b) OpCit.

<sup>65</sup> Healey et al (2008) OpCit.

<sup>66</sup> United Nations General Assembly, Human Rights Council (2013) *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E Méndez; 1st February 2013; UN Doc. A/HRC/22/53.

<sup>67</sup> Ibid.