



Women With Disabilities Australia (WWDA)

Submission to the National Inquiry into Equal Recognition Before the
Law and Legal Capacity for People With Disability

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Submission to the National Inquiry into Equal Recognition Before the Law and Legal Capacity for People With Disability

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About Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) is the peak non-government organisation (NGO) for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities, and represents more than 2 million disabled women in Australia. WWDA's 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. Promoting the reproductive rights of women and girls with disabilities, along with promoting their rights to freedom from violence and exploitation, and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA.

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Contents

Introduction.....	5
Gendering the National Inquiry into Equal Recognition Before the Law & Legal Capacity for People With Disability.....	6
Sexual and Reproductive Rights and Freedoms	8
The Right to Freedom from Violence, Abuse, Exploitation and Neglect.....	19
The Right to Found and Maintain a Family	31
The Right to Work.....	35
The Right to Participate in Political and Public Life	38

Supporting documents formally tabled with this Submission:

Frohman, C (2013) *Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia* - WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia; ISBN: 978-0-9876035-0-0.

DPP v Kumar [20 November 2013] VCC.

Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia.

Women With Disabilities Australia (WWDA), University of New South Wales (UNSW), and People with Disabilities Australia (PWDA) (2013) *Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities*. Hobart: Women with Disabilities Australia.

Frohman, C (2011) *Women With Disabilities Australia (WWDA) Submission to the United Nations Thematic Study on Violence Against Women With Disabilities*. Hobart: Women with Disabilities Australia.

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

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

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

Committee on the Rights of Persons with Disabilities
Concluding observations on the initial report of Australia
Adopted by the Committee at its tenth session (2-13 September 2013)
4th October 2013
UN Doc. CRPD/C/AUS/CO/1

Introduction

1. The determination of capacity is inextricably linked to the exercise of the right to autonomy and self-determination. To make a finding of incapacity results in the restriction of one of the most fundamental rights enshrined in law, the right to autonomy.¹ Yet many women with disabilities throughout Australia are stripped of their legal capacity, due to stigma and discrimination, through judicial declaration of incompetency or merely by a third party's decision that the woman "lacks capacity" to make a decision.
2. 'Incapacity' is very often used as a valid justification for violations of the human rights and fundamental freedoms of women and girls with disabilities. However, the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) clearly mandates States Parties to recognise that persons with disabilities enjoy legal capacity on an equal basis with others and should be supported to exercise their legal capacity. This means that an individual's right to decision-making cannot be substituted by decision-making of a third party, but that each individual without exception has the right to receive the supports they need to make their own choices and to direct their own lives, whether in relation to medical treatment, family, parenthood and relationships, or living arrangements.²
3. The CRPD also requires respect for the evolving capacities of children (CRPD Art 3 and 7) and the provision of support for children with disabilities to express their views, and for these views to be given appropriate weight in the context of their age and maturity.
4. This Submission from Women With Disabilities Australia (WWDA) highlights six key priority areas for women with disabilities that are considered crucial in the context of the *National Inquiry into Equal Recognition Before The Law And Legal Capacity For People With Disability*. These six areas are:
 - Gendering the National Inquiry into Equal Recognition Before the Law and Legal Capacity for People With Disability
 - Sexual and Reproductive Rights and Freedoms
 - The Right to Freedom from Violence, Abuse, Exploitation and Neglect
 - The Right to Found and Maintain a Family
 - The Right to Work
 - The Right to Participate in Political and Public life

This Submission provides several case studies to illustrate these issues as they affect women with disabilities in the context of legal capacity and equal recognition before the law. The case studies provided are actual cases that have come to WWDA's attention during the past few years. For the purposes of confidentiality, the case studies have been de-identified.

¹ Law Reform Commission (Ireland) (2011) *Sexual Offences and Capacity to Consent. A Consultation Paper*. Law Reform Commission, Dublin.

² In Frohmader, C. (2013) *Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*. Women with Disabilities Australia (WWDA), Rosny Park, Australia. At: http://www.wwda.org.au/WWDA_Sub_SenateInquiry_Sterilisation_March2013.pdf

Gendering the National Inquiry into Equal Recognition Before The Law And Legal Capacity For People With Disability

5. In recognition of the fact that women and girls with disabilities in Australia are subject to multiple discrimination and human rights violations, WWDA strongly encourages the ALRC to ensure that a gender analysis be employed in all aspects of the *National Inquiry into Equal Recognition Before The Law And Legal Capacity For People With Disability*. 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 women and girls with disabilities experience full and effective enjoyment of their human rights.³ The CRPD for example, recognises gender as one of the most important categories of social organisation, emphasising the obligation of States Parties to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by people with disabilities. There is, therefore, a clear obligation on States Parties to recognise that the rights of women with disabilities must be addressed when interpreting and implementing every article of the CRPD.
6. Despite the CRPD's clear articulation of the obligation for a gendered perspective in all efforts to promote the human rights of disabled people, people with disabilities are often treated as asexual, genderless human beings. This view is borne out in disability policies and programs the world over, which consistently fail to apply a gender lens. Most proceed as though there are a common set of issues - and that men and women experience disability in the same way.⁴ 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 are reflected in the life experiences of women with disabilities and men with disabilities. For example, women with disabilities:
- experience violence, particularly family/domestic violence, violence in institutions, and violence in the workplace, more often than disabled men,⁵ are often at greater risk than disabled men, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;⁶ and, are more vulnerable as victims of crimes from both strangers and people who are known to them;⁷
 - witness cases involving crimes against them often go unreported, and/or inadequately investigated, remain unsolved or result in minimal sentences;⁸
 - are often denied effective access to justice because violations of their rights are not taken seriously;
 - are more exposed to practices which qualify as torture or inhuman or degrading treatment⁹ (such as forced or coerced sterilisation, forced abortion, forced contraception, gender based violence, chemical restraint, forced psychiatric interventions);
 - are more likely than disabled men to acquire a disability through gender-based violence;¹⁰
 - are much more likely than disabled men, to experience restrictions, negative treatment, and violations of their sexual and reproductive rights;¹¹

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

⁴ Gray, G. (2010 draft) *By Women for Women, the Australian women's health movement and public policy*.

⁵ 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; Meekosha, H. (2004) *Gender and Disability*. Entry for the Sage Encyclopaedia of Disability. Available on line at: <http://wwda.org.au/gendis2001.htm>.

⁶ See Preamble [q] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*; A/RES/61/106.

⁷ Groce, N. (2006) *People with Disabilities*, in Social Justice and Public Health, Barry S. Levy & Victor Sidel (Eds), accessed online April 2011 at: http://www.aidslex.org/site_documents/DB-0018E.pdf

⁸ WWDA (2007b) OpCit; 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; 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.

⁹ Committee of Ministers of the Council of Europe (2009) *Declaration: Making gender equality a reality*. 119th Session of the Committee of Ministers, Madrid, 12 May 2009.

¹⁰ WWDA (2007b) Op Cit; Commonwealth of Australia (2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

- are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,¹² are at higher risk of divorce than disabled men and often experience difficulty maintaining custody of their children post-divorce;¹³
- are up to ten times more likely than other parents to have a child removed from their care by authorities on the basis of the mother's disability, rather than any evidence of child neglect;¹⁴
- are poorer and more likely to be unemployed than men with disabilities,¹⁵ less likely to be in the paid workforce than disabled men, and have lower incomes from employment than men with disabilities;¹⁶
- are more likely to experience gender biases in labour markets, and are more concentrated than disabled men in informal, subsistence and vulnerable employment;¹⁷
- share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, caring for children and relatives;¹⁸
- are more likely than disabled men, to be affected by the lack of affordable housing, due to the major gap in overall economic security across the life-cycle, and to their experience of gender-based violence which leads to housing vulnerability, including homelessness;¹⁹
- are less likely to receive service support than disabled men;²⁰
- face barriers in accessing adequate maternal and related health care and other services for both themselves and their child/ren,²¹ and are more likely than disabled men to face medical interventions to control their fertility;²²
- experience more extreme social categorisation than disabled men, being more likely to be seen either as hypersexual and uncontrollable, or de-sexualised and inert;²³
- are more likely than disabled men to be portrayed in all forms of media as unattractive, asexual and outside the societal ascribed norms of 'beauty';²⁴
- have significantly lower levels of participation in governance and decision making at all levels compared to men with disabilities;²⁵
- from ethnic or indigenous communities are more likely to have to contend with forces that exclude them on the basis of gender as well as disability, culture and heritage.²⁶

¹¹ Manjoo, Rashida (2012) Report of the Special Rapporteur on violence against women, its causes and consequences; UN General Assembly; UN Doc. A/67/227; Grover, A. (2011) *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. United Nations General Assembly; UN Doc. A/66/254.

¹² Meekosha, H. (2004) Op Cit.

¹³ Arnade, S. & Haefner, S. (2006) *Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*. Legal background paper. Published by Disabled Peoples' International (DPI), Berlin.

¹⁴ 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/>

¹⁵ WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Meekosha, H. (2004) Op Cit.

¹⁶ WWDA (2008) *Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Human Rights and Equal Opportunity Commission (HREOC), 2005, *National Inquiry into Employment and Disability*; Issues Paper 1: Employment and Disability - The Statistics; HREOC, Sydney; O'Reilly, A. (2007) *The right to decent work of persons with disabilities*. International Labour Office (ILO), Geneva; Arnade, S. & Haefner, S. (2006) Op Cit.

¹⁷ UN Development Fund for Women (UNIFEM) (2008) *Progress of the World's Women 2008/2009: Who Answers to Women? Gender & Accountability*. Available at: <http://www.unhcr.org/refworld/docid/4a09773a2.html> [accessed 2 August 2009]

¹⁸ Cited in: Australian Human Rights Commission (2010), Op Cit.

¹⁹ Australian Human Rights Commission (2010) *Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Independent Report to the Committee on the Elimination of Discrimination against Women. Accessed online July 2010 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

²⁰ See: Australian Institute of Health & Welfare (AIHW) (2009) *Disability support services 2007 – 08*. National data on services provided under the Commonwealth State/Territory Disability Agreement. Disability series. Cat. no. DIS 56. Canberra: AIHW; Arnade, S. & Haefner, S. (2006) Op Cit.

²¹ World Health Organization (2009) *Promoting sexual and reproductive health for persons with disabilities*, WHO/UNFPA Guidance Note 2009, accessed on line April 2011 at: http://whqlibdoc.who.int/publications/2009/9789241598682_eng.pdf

²² Brady, S., Briton, J. & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress*. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available online at <http://www.wwda.org.au/brady2.htm>; WWDA (2009) *Parenting Issues for Women with Disabilities in Australia: A Policy Paper*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>; Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; *Australian Journal of Family Law*, Vol.22, No.1.

²³ Meekosha, H. (2004) Op Cit.

²⁴ Ortoleva, S. (2011) *Recommendations for Action to Advance the Rights of Women and Girls with Disabilities in the United Nations system*; accessed online April 2011 at: <http://sites.google.com/site/womenenabled/>

²⁵ United Nations Development Programme (UNDP) (2010) *Political Participation of Women with Disabilities in Cambodia: Research Report 2010*, accessed online April 2011 at: <http://www.un.org.kh/undp/knowledge/publications/political-participation-of-women-with-disabilities-in-cambodia>

Sexual and Reproductive Rights and Freedoms

7. No group has ever been as severely restricted, or negatively treated, in respect of their sexual and reproductive rights, as women with disabilities.²⁷ The CRPD Committee has clearly identified that discrimination against women and girls with disabilities in areas of sexual and reproductive rights, including gender-based violence, is in clear violation of multiple provisions of the CRPD. The CRPD Committee has also explicitly articulated the urgent need for States Parties to address these multiple violations.²⁸
8. Sexual and reproductive rights are fundamental human rights. They embrace human rights that are already recognised in international, regional and national legal frameworks, standards and agreements.²⁹ They include the right to bodily integrity, autonomy and self-determination – the right of everyone to make free and informed decisions and have full control over their body, sexuality, health, relationships, and if, when and with whom to partner, marry and have children – without any form of discrimination, stigma, coercion or violence. This includes the right of everyone to experience, enjoy and express their sexuality, to be free from interference in making personal decisions about sexuality and reproductive matters, the right to experience love, intimacy, sexual identity and the right to access sexual and reproductive health information, education, services and support. It also includes the right to be free from torture and from cruel, inhumane or degrading treatment or punishment; and to be free from violence, abuse, exploitation and neglect.³⁰
9. However, women and girls with disabilities in Australia have failed to be afforded, or benefit from, these provisions in international, regional and national legal frameworks, standards and agreements – many of which Australia is a party to. Instead, systemic prejudice and discrimination against women and girls with disabilities continues to result in multiple and extreme violations of their sexual and reproductive rights, through practices such as forced and/or coerced sterilisation, forced contraception and/or limited or no contraceptive choices, a focus on menstrual and sexual suppression, poorly managed pregnancy and birth, forced or coerced abortion, termination of parental rights, denial of/or forced marriage, and other forms of torture and violence, including gender-based violence. They also experience systemic exclusion from sexual and reproductive health care services, information and education. These practices and violations are framed within traditional social attitudes and entrenched disability-based and gender-based stereotypes that continue to characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.³¹

²⁶ Groce, N. (2006), Op Cit.

²⁷ Manjoo, Rashida (2012) OpCit.

²⁸ See for eg: Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain*. UN Doc. No: CRPD/C/ESP/CO/1; 19 October 2011; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru*. UN Doc. No: CRPD/C/PER/CO/1; 9 May 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: China*. UN Doc. No: CRPD/C/CHN/CO/1; 27 September 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Hungary*. UN Doc. No: CRPD/C/HUN/CO/1; 27 September 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Tunisia*. UN Doc. No: CRPD/C/TUN/CO/1; 13 May 2011.

²⁹ High-Level Task Force for the ICPD (2013) *Policy Recommendations for the ICPD Beyond 2014: Sexual and Reproductive Health & Rights for All*. <http://www.icpdtaskforce.org/pdf/Beyond-2014/policy-recommendations-for-the-ICPD-beyond-2014.pdf>

³⁰ Ibid.

³¹ Frohmader, C. (2013) 'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'; OpCit. See also: Ortoleva, S. & Lewis, H. (2012) 'Forgotten Sisters- A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences'; Northeastern University School of Law Research Paper No. 104-2012. At: <http://ssrn.com/abstract=2133332>

Forced and coerced sterilisation

10. Women and girls with disabilities in Australia are at particular risk of forced and coerced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.³² Forced sterilisation³³ of women and girls with disabilities is a practice that remains legal and sanctioned by Governments in Australia, yet represents grave violations of multiple human rights and breaches every international human rights treaty to which Australia is a party.³⁴ Forced sterilisation is an act of violence,³⁵ a form of social control, and a clear and documented violation of the right to be free from torture.³⁶ Perpetrators³⁷ are seldom held accountable and women and girls with disabilities who have experienced this violent abuse of their rights are rarely, if ever, able to obtain justice.³⁸
11. The monitoring bodies of the core international human rights treaties³⁹ have all found that forced/involuntary and coerced sterilisation clearly breaches multiple provisions of the respective treaties.⁴⁰
12. Since 2005, the United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government 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 prior, fully informed and free consent.⁴¹
13. In October 2013, the Committee on the Rights of Persons with Disabilities released its *Concluding Observations [Australia]* following its September 2013 review of Australia's compliance with the CRPD. The Committee expressed its "deep concern" with the recommendations of the Australian *Senate Inquiry Report into the Involuntary or Coerced Sterilisation of Persons with Disabilities*, (released in July 2013), which would allow the practice of involuntary/forced sterilisation to continue. The Committee also expressed its "regret" regarding the failure of Australia to implement the recommendations from the Committee on the Rights of the Child (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the Human Rights Council (A/HRC/17/10), and the

³² 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*. Available at: http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf. See also: International Federation of Gynecology and Obstetrics (2011) *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf>

³³ 'Forced/involuntary sterilisation' refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure, including instances in which sterilisation has been authorised by a third party, without that individual's consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilisation occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilisation of a child, unless performed as a life-saving measure, is considered a forced sterilisation.

³⁴ 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. See also: Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53.

³⁵ See: Manjoo, Rashida (2012) OpCit. See also: Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].

³⁶ Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53; See also: Nowak, M. (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) *General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence*; UN Doc. CRC/C/GC/13.

³⁷ A State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres. As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors. See: Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53.

³⁸ Frohmader, C. (2013) OpCit.

³⁹ OHCHR, The Core International Human Rights Instruments and their monitoring bodies. See:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

⁴⁰ Frohmader, C. (2013) OpCit.

⁴¹ 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; 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).

Report of the UN Special Rapporteur on Torture (A/HRC/22/53), which addresses concerns regarding sterilisation of children and adults with disabilities. The CRPD Committee subsequently:

“urges the State party to adopt national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.”⁴²

14. In June 2012, the Committee on the Rights of the Child (CRC), in its *Concluding Observations*⁴³ to the Fourth periodic report of Australia,⁴⁴ expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities “is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities.....”. The Committee urged the State party to:

‘Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.’

Furthermore, the CRC Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government:

‘develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.’

15. In January 2011, in follow-up to Australia’s *Universal Periodic Review*,⁴⁵ the UN Human Rights Council endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disabilities. It specified that the Australian Government should enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent.⁴⁶ The Australian Government’s formal response to this recommendation illustrated an apathy and indifference to the urgency of the issue, and a callous disregard of the human rights of women and girls with disabilities, including the right of women and girls with disabilities to retain their fertility on an equal basis as others. The Australian Government’s formal response stated:

‘The Australian Government will work with states and territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability.’⁴⁷

16. However, the human rights treaty monitoring bodies have made it clear that the issue of involuntary/forced/non-therapeutic cannot be left as a matter for State and Territory Governments to regulate, but rather, requires national leadership and a national response.⁴⁸

⁴² Committee on the Rights of Persons with Disabilities; Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013); 4th October 2013, UN Doc. CRPD/C/AUS/CO/1

⁴³ Committee on the Rights of the Child; UN Doc. CRC/C/AUS/CO/4.

⁴⁴ Committee on the Rights of the Child; UN Doc. CRC/C/AUS/4.

⁴⁵ The Universal Periodic Review (UPR) is a process undertaken by the United Nations and involves the review of the human rights records of the 192 Member States once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The ultimate aim of the Review is to improve the human rights situation in all countries and address human rights violations wherever they occur. For more information see:

<http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

⁴⁶ 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;

⁴⁷ On 10 December 2012, International Human Rights Day, the Australian Government released its National Human Rights Action Plan. In releasing the Plan, the then Federal Attorney General, Hon Nicola Roxon MP, stated that: ‘This action plan explains in detail how Australia will implement the recommendations accepted during its Universal Periodic Review at the United Nations in 2011.’ See for eg: Commonwealth of Australia (2012) *Australia’s National Human Rights Action Plan 2012*. Accessed online 10/12/2012 at:

<http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx> See also: Hon Nicola Roxon MP, Attorney-General & Minister for Emergency Management, Media Release ‘National Human Rights Action Plan Released’, 10/12/12.

⁴⁸ 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;

17. In July 2010, at its 46th session, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern in its *Concluding Observations on Australia* at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government:

*'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.'*⁴⁹

18. In 2005, the Committee on the Rights of the Child in considering Australia's combined second and third periodic reports⁵⁰ under Article 44 of the *Convention on the Rights of the Child* (CRC), recommended that *'the State party....prohibit the sterilization of children, with or without disabilities....'*⁵¹ and in 2007 clearly articulated its position on sterilisation of girls with disabilities, clarifying that States parties to the CRC are expected to prohibit by law the forced sterilisation of children with disabilities.⁵²

19. Australia is due to report to the United Nations Human Rights Committee on Australia's compliance with the *International Covenant on Civil and Political Rights* (ICCPR), and is scheduled to appear for review by the Human Rights Committee in 2014. Under the heading of *'Violence Against Women'*, the List of Issues Prior to Reporting (LOIPR),⁵³ (adopted by the Human Rights Committee at its 106th session in late 2012) for Australia contains a question on sterilisation, to which the Australian Government will be expected to respond.⁵⁴ Specifically, it states:

Please provide information on whether sterilization of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilisations.

20. International medical bodies, such as the *International Federation of Gynecology & Obstetrics* (FIGO), have also now developed new protocols and calls for action to put an end to the practice of forced sterilisation, shoring up informed consent protocols and clearly delineating the ethical obligations of health practitioners to ensure that women, and they alone, are giving their voluntary and informed consent to undergo a surgical sterilisation.⁵⁵ The FIGO *'Guidelines on Female Contraceptive Sterilization'* clearly state that:

'It is ethically inappropriate for healthcare providers to initiate judicial proceedings for sterilization of their patients, or to be witnesses in such proceedings inconsistently with Article 23(1) of the Convention on the Rights of Persons with Disabilities.'

21. In calling for an end to the practice of forced sterilisation of women and girls with disabilities, human rights treaty monitoring bodies, international medical bodies, human rights advocates and disability advocates also recognise that adult women with disabilities have the same rights as their non-disabled counterparts to *choose* sterilisation as a means of contraception. In this

⁴⁹ UN Doc. CEDAW/C/AUS/CO/7, Op Cit.

⁵⁰ UN Convention on the Rights of the Child (CRC)(2004) *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention; Second and third periodic reports of States parties due in 1998 and 2003:Australia*; 29 December 2004; CRC/C/129/Add.4.

⁵¹ 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).

⁵² 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.'* See: Committee on the Rights of the Child (CRC), *General Comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, UN Doc.CRC/C/GC/9.

⁵³ Since Australia was last reviewed in 2009, the Human Rights Committee has developed a new optional process for the review of states, known as the List of Issues Prior to Reporting (LOIPR). The Human Rights Committee develops a LOIPR on the basis of previous Concluding Observations and information provided by the Office of the High Commissioner on Human Rights (OHCHR), the Universal Periodic Review (UPR), the UN Special Procedures, NGOs and National Human Rights Institutions. The LOIPR on Australia was adopted by the Human Rights Committee at its 106th session in late 2012.

⁵⁴ Human Rights Committee, *International Covenant on Civil and Political Rights; List of issues prior to the submission of the sixth periodic report of Australia* (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012.

⁵⁵ International Federation of Gynecology and Obstetrics (2011) OpCit.

context, safeguards to prevent forced sterilisation should not infringe the rights of women with disabilities to choose sterilisation voluntarily and be provided with all necessary supports to ensure that they can make and communicate such a choice based on their free and informed consent.⁵⁶

22. In September 2012 the Australian Senate commenced an *Inquiry into the Involuntary or Coerced Sterilisation of People with Disability in Australia*, and released the Inquiry Report in July 2013.⁵⁷ The Senate Committee undertaking the Inquiry worked hard to ensure that people with disabilities, particularly women with disabilities, were able to participate in the Inquiry and express their views. However, as it transpired, the views of women with disabilities – those most affected by forced sterilisation and other denials of reproductive rights – held little weight and had less influence than the views of parents, carers, guardians and a myriad of ‘professionals’ and other ‘experts’, many of whom argued for the practice of sterilisation of girls and women with disabilities to be allowed to continue in Australia.⁵⁸
23. Although several of the Inquiry Report’s recommendations were welcomed and long overdue – particularly those emphasising the need for reproductive and sexual health education, training and support for people with disability, the medical workforce, judicial and legal officers – the Inquiry Report recommends that national uniform legislation be developed to regulate sterilisation of children and adults with disabilities, rather than to prohibit the practice, as has long been recommended to Australia by international human rights treaty bodies, UN special procedures, human rights advocates, disability advocates, and most importantly women with disabilities themselves.
24. The Senate Inquiry Report recommends that for an adult with disability who has the ‘capacity’ to consent, sterilisation should be banned unless undertaken with that consent. However, based on Australia’s Interpretative Declaration in respect of Article 12, the Report also recommends that where a person with disability does not have ‘capacity’ for consent, substitute decision-making laws and procedures may permit the sterilisation of persons with disability. The Report further recommends that the financial costs incurred by parents or guardians in child sterilisation cases be covered by legal aid, which could in fact; make it easier rather than more difficult, for sterilisation procedures to be sought.
25. It is clear that Australia’s Interpretative Declaration to the CRPD (in respect of Articles 12, 17) has in fact exacerbated the pervasive violations of the human rights of disabled women and girls, and been used by successive Australian Government as a justification to deny disabled women and girls their sexual and reproductive rights. Regardless of the fact that the monitoring bodies of the core international human rights treaties⁵⁹ have all found that forced/involuntary and coerced sterilisation clearly breaches multiple provisions of the respective treaties,⁶⁰ the Australian Government has determined that Australia’s obligations are shaped by the Interpretative Declarations made at the time Australia *entered into* the Convention. In entering to the treaty, Australia declared its view that the CRPD allows for substituted decision-making and compulsory medical treatment.
26. During its September 2013 review of Australia’s compliance with the CRPD, the CRPD Committee, repeatedly expressed its concern at the impact of Australia’s Interpretative Declarations to articles 12, 17 and 18 on the implementation of the CRPD. The CRPD Committee stressed to the Australian Government delegation, that these Interpretive Declarations have in fact hindered Australia’s ability to comply with the *Convention on the Rights of Persons with Disabilities* (CRPD). The Committee repeatedly asked the Government delegation what actions would be taken to repeal these Interpretative Declarations. In responding to these concerns, Mr Peter Woolcott (Australian Ambassador to the Permanent Mission to the UN), speaking on behalf of the Australian Government delegation, advised the CRPD Committee that due to ‘caretaker mode’ the

⁵⁶ WWDA, Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) OpCit.

⁵⁷ Community Affairs References Committee, *Involuntary or coerced sterilisation of people with disabilities in Australia*. July 2013, Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/first_report/index.htm

⁵⁸ See the Senate Inquiry Submissions online at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions

⁵⁹ OHCHR, The Core International Human Rights Instruments and their monitoring bodies, OpCit.

⁶⁰ In Frohmader, C. (2013) OpCit.

delegation was unable to provide a response to the issue of the Interpretive Declarations, as this “would be a matter for any new incoming federal Government after the election.” However, he did state that he was “unaware of any intention for the Australian Government to repeal its Interpretive Declarations to the CRPD.”⁶¹

27. The Report of the *Senate Inquiry into Involuntary Sterilisation of People with Disabilities in Australia*, used Australia’s Interpretative Declaration to the CRPD to reject the United Nations (and WWDA’s) recommendation that the Australian Government ‘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 prior, fully informed and free consent.’ Instead, the Senate Inquiry Report stipulated that:

*In those cases where there is not capacity for consent, and no reasonable prospect that it may develop, laws and procedures may permit the sterilisation of persons with disabilities, but the circumstances in which this may occur must be narrowly circumscribed, and based on the protection and advancement of the rights of the person.*⁶²

28. In early 2013, the UN Special Rapporteur on Torture [and other cruel, inhuman or degrading treatment or punishment], in addressing reproductive rights violations under the torture framework,⁶³ clarified that forced sterilisation of people with disabilities, regardless of whether the practice is legitimised under national laws or justified by theories of incapacity and therapeutic necessity, violates the absolute prohibition of torture and cruel, inhuman and degrading treatment. The Special Rapporteur further clarified that the grounds on which a medical procedure can be performed without a person’s free and informed consent should be the same for persons with or without a disability. Yet the *Senate Inquiry Report* dismissed this, by arguing that the recommendations contained in the Special Rapporteur’s Report “do not include explicit calls for the prohibition of sterilisation without informed consent.”⁶⁴
29. **In practice, this means that the status quo remains - forced sterilisation of women and girls with disabilities remains legal and sanctioned by Governments in Australia and the Australian Government remains of the view that it is an acceptable practice to sterilise children and adults with disabilities, provided that they ‘lack capacity’ and that the procedure is in their ‘best interest’, as determined by a third party.**
30. Accompanying this Submission is a copy of WWDA’s formal Submission to the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disability in Australia*. WWDA’s detailed and comprehensive Submission examines the rationale used to justify the forced sterilisation of women and girls with disabilities, including themes such as eugenics/genetics; for the good of the State, community or family; incapacity for parenthood; incapacity to develop and evolve; prevention of sexual abuse; and discourses around “best interest”. In doing so, WWDA’s Submission analyses Australian Court and Tribunal applications and authorisations for sterilisation of women and girls with disabilities, and demonstrates that in reality, applications and authorisations for sterilisation have very little to do with the ‘best interests’ of the individual concerned, and more to do with the interests of others. WWDA’s Submission demonstrates that the Australian Government’s current justification of the “best interest approach” in the sterilisation of disabled women and girls, has in effect, been used to perpetuate discriminatory attitudes against women and girls with disabilities, and has only served to facilitate the practice of forced sterilisation. WWDA’s Submission ‘*Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*’ [ISBN: 978-0-9876035-0-0] is formally submitted as an attachment to WWDA’s Submission to the *National Inquiry into Equal Recognition Before the Law and Legal Capacity for People With Disability*.

⁶¹ Frohmader, C. (2013) *Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia, Geneva, 2-13 September 2013*. Available at: http://www.wwda.org.au/WWDA_CRPD_Review_Australia_ReportOct13.pdf

⁶² Community Affairs References Committee, Op Cit.

⁶³ Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53.

⁶⁴ Community Affairs References Committee, OpCit., at: para. 3.31, p61.

31. WWDA's Submission to the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disability in Australia* clearly demonstrates that incapacity is often used as a valid justification for Court authorisation of sterilisation of disabled women and girls, and is a major factor in all applications for authorisation of sterilisation procedures involving women and girls with disabilities. Incapacity in this context, is considered to be a fixed state, with no consideration given to the possibility of capacity evolving over time, as evident in these quotes taken from court and tribunal application transcripts:

"Those who are severely intellectually disabled remain so for the rest of their lives".⁶⁵

"There is no prospect that she will ever show any improvement in her already severely retarded mental state."⁶⁶

"Katie would never be able to contribute to self-care during menstruation..... Katie is unable to understand re-production, contraception, pregnancy and birth and that inability is unlikely to change in the foreseeable future."⁶⁷

"Sarah is unable to understand reproduction, contraception and birth and that inability is permanent.....her condition will not improve."⁶⁸

"HGL is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation."⁶⁹

"There has been no alteration in H's capacity for eighteen months and it has been assessed that there will be no improvement in H in the future."⁷⁰

32. In the case of *Re Katie*,⁷¹ for example, her lack of capacity was a key consideration in the Family Court's decision to approve her sterilisation at the age of 16. Katie was described as *'being able to finger feed, drink out of a cup and use a spoon with assistance'* yet determined as not having *'the cognitive capacity to understand what is required, nor does she have the motor skills necessary to take care of her needs, i.e. to change pads'*. However, it was also stated that it was *'likely that Katie will continue to make some slow progress in her development if able to participate fully in educational therapy programs. Failure to carry out the proposed surgery could significantly reduce her ability to participate in these programs.'* Paradoxically, Katie was sterilised because she had *'lack of capacity to develop'* but also so that she might *'develop capacity'*.

33. The UN Special Rapporteur on Torture has recently re-iterated that the law should **never** distinguish between individuals on the basis of capacity or disability in order to permit sterilisation specifically of people [girls and women] with disabilities.⁷² Yet in the 2009 case of *Re BAH*,⁷³ a 14 year old disabled girl whose mother sought to have her sterilised prior to the onset of menstruation, the NSW Guardianship Tribunal stated:

"Ms BAH's disability is clearly central to the Tribunal's deliberations in this matter. But for Ms BAH's intellectual disability, the Tribunal would not have given consideration to the proposed treatment."

34. The UN Special Rapporteur on Torture has also made it clear that *'best interest'* and *'medical necessity'* are no justification for forced/involuntary sterilisation of disabled women and girls:⁷⁴

⁶⁵ Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

⁶⁶ Ibid.

⁶⁷ Re Katie FamCA 130 (30 November 1995)

⁶⁸ Between: L and GM Applicants and MM Respondent and the Director-General Department of Family Services and Aboriginal and Islander Affairs Respondent/Intervener [1993] FamCA 124; (1994) FLC 92-449 17 Fam Lr 357 Family Law (26 November 1993)

⁶⁹ HGL (No 2) [2011] QCATA 259 (19 September 2011)

⁷⁰ Re H [2004] FamCA 496 (20 May 2004)

⁷¹ Re Katie FamCA 130 (30 November 1995)

⁷² Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

⁷³ BAH [2009] NSWGT 8 (28 July 2009)

⁷⁴ Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

“The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.”

“The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that.....the administration of non-consensual medication or involuntary sterilization, often claimed as being a necessary treatment for the so-called best interest of the person concerned, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of “good intentions” by medical professionals.”

35. In 2011, Mr Anand Grover, UN Special Rapporteur [on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health], in his report⁷⁵ on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health [UN Doc. No: A/66/254], stated:

“The use of.....coercion by the State or non-State actors, such as in cases of forced sterilization, forced abortion, forced contraception and forced pregnancy has long been recognized as an unjustifiable form of State-sanctioned coercion and a violation of the right to health. Similarly, where the.....law is used as a tool by the State to regulate the conduct and decision-making of individuals in the context of the right to sexual and reproductive health the State coercively substitutes its will for that of the individual.....the use by States of criminal and other legal restrictions to regulate sexual and reproductive health may represent serious violations of the right to health of affected persons and are ineffective as public health interventions. These laws must be immediately reconsidered. Their elimination is not subject to progressive realization since no corresponding resource burden, or a de minimis one, is associated with their elimination.”

Forced Contraception

36. Women with disabilities, like all women, have a right to safe and effective contraception. Yet widespread discriminatory attitudes which portray women with disabilities as either asexual or hyper-sexual, often see them denied this most basic right. These pervasive negative attitudes, values and stereotypes about the reproductive capacity of women with disabilities make getting accurate information about contraceptive options very difficult. Although the contraceptive needs of women with disabilities are essentially no different from those of the general population,⁷⁶ the pattern of contraceptive use amongst women with disabilities and non-disabled women, differs widely. Women with disabilities (particularly those with intellectual disabilities) are more likely to be sterilised, more likely to be prescribed long-acting, injectable contraceptives and less likely to be prescribed oral contraceptives. In addition, women with disabilities are much less likely to be involved in choice and decision-making around the type of contraception they use.⁷⁷ In the case

⁷⁵ UN General Assembly, Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Mr Anand Grover; 3 August 2011; UN Doc. No: A/66/254.

⁷⁶ Frohmader, C. (2013) OpCit., Dowse, L. (2004) *Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia*. Available online at: <http://www.wvda.org.au/steril3.htm>; Jones M. & Basser Marks L. (1997) *Female and Disabled: A Human Rights Perspective on Law and Medicine* in K. Petersen (ed) *Intersections: Women on Law, Medicine and Technology* Aldershot, Dartmouth: 49-71.

⁷⁷ O'Connor, J. *Literature Review on Provision of Appropriate and Accessible Support to People with an Intellectual Disability who are Experiencing Crisis Pregnancy*. Available at: <http://www.nda.ie/CntMgmtNew.nsf/DCC524B4546ADB3080256C700071B049/200FC923F86AE299802577A4003355CF?OpenDocument>

of women with intellectual disabilities, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.⁷⁸

37. Forced contraception, recognised as a form of torture,⁷⁹ is commonly used on women and girls with disabilities in Australia 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).⁸⁰ For example, the disproportionate use of Depo-Provera and other long acting contraceptives on women with disabilities (including those who are not sexually active, or who are yet to begin menstruation), has been recognised for some time in a number of different countries, including Australia.⁸¹ It is very much a contemporary and widespread problem, and illustrates that the legacy of past eugenic ideologies and practices has far from disappeared.
38. Forced contraception practices are often undertaken under the guise of 'behaviour management' strategies or treatment for 'unwanted' or 'offending sexual behaviour'. These practices are rarely, if ever, subject to independent monitoring or review. For example, the use of Depo Provera and other long acting contraceptive medications, used to suppress menstruation in women and girls with disabilities living in institutions or other residential settings, often occurs through an 'arrangement' between the institution or residential setting and a doctor.⁸² These types of contraceptives are used to suppress menstruation in women and girls with disabilities as a first and only response to what is deemed by others as 'inappropriate behaviour', such as removing sanitary pads in public or not disposing of them appropriately in a waste-bin. Sex education, menstrual management strategies and supports for the individuals and families concerned are rarely available or even considered.
39. Men and boys with disabilities (particularly those with intellectual disabilities or psychosocial disabilities) also experience violations of their sexual and reproductive rights in a number of ways. They are forced or coerced into undergoing vasectomies before they can enter into marriage or continue sexual relationships; or after they have had a child. Research conducted in the late 1990s in Australia found that it was likely that orchidectomies, or castration by surgical removal of the testes were being performed on boys and young men with disabilities in the absence of disease or health risks. Depo Provera and anti-androgenic medications are being prescribed to boys and men with disabilities to prevent sexual behaviour that is viewed as unwanted or excessive. Although the behaviour may be typical of the sexual behaviour of boys and young men without disabilities, the response is to 'treat' the behaviour as if it is inappropriate. Depo Provera and anti-androgenic medications are being prescribed to boys and men with disabilities to prevent inappropriate sexual behaviour, such as masturbation in public. In many situations, these boys and men may not have received sex education or positive behaviour supports. Rather than consider supports, sex education and counselling for the individuals and families concerned, the first and only response is suppression of sexual functioning.⁸³

⁷⁸ Frohmader, C. and Ortoleva, S. (July 2013) *The Sexual and Reproductive Rights of Women and Girls with Disabilities*; Issues Paper commissioned by the ICPD International Conference on Human Rights, The Hague, July 2013. Available at:

http://www.wvda.org.au/issues_paper_srr_women_and_girls_with_disabilities_final.pdf

⁷⁹ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.

⁸⁰ Frohmader, C. (2013) OpCit.

⁸¹ McCarthy, M. (2009) 'I have the jab so I can't be blamed for getting pregnant': Contraception and women with learning disabilities. *Women's Studies International Forum*, 32, pp. 198-208

⁸² People With Disability Australia (PWDA) (March 2013) *Submission to the Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia*. PWDA, Sydney, Australia.

⁸³ Ibid.

Systemic Denial of Access to Sexual & Reproductive Health Services, Programs, Information & Education

40. The right to participate in all decision-making processes that affect sexual and reproductive health and development is a basic right of all women, including women and girls with disabilities. Yet, more often than not, many women and girls with disabilities are excluded from participating in decisions that affect their lives on a daily basis, including as active partners in their own sexual and reproductive health care. They are further excluded and ignored in sexual and reproductive health policy, service and program development, including information and education resources.⁸⁴
41. The discrimination experienced by women with disabilities is played out in their access to and use of sexual and reproductive health services and programs. For many, the services and programs they require to realise their sexual and reproductive rights are simply not *available* to them. Even where services and programs are available, many women with disabilities remain excluded due to economic, social, psychological and cultural barriers that impede or preclude their access. For example, support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth, parenting, assisted reproduction, and menopause remain inappropriate, absent or inaccessible. Breast and cervical cancer screening services are often not available or accessible to women with disabilities, yet a disproportionate number of deaths from breast and cervical cancer occur among women with disabilities.⁸⁵ Services and programs for women with disabilities experiencing, or at risk of violence is a further area where women with disabilities experience exclusion and often when a woman with a disability is seen by health care workers, they fail to perform screenings for possible domestic and other forms of violence based on stereotypical attitudes. Even where sexual and reproductive health services and programs are available, women with disabilities are inadequately served, due to a wide range of factors, such as: inaccessible venues; lack of transport; lack of appropriate equipment; non-inclusive and/or inflexible service policies and programs; lack of skilled workers; and pervasive stereotypes and assumptions that women with disabilities are asexual.⁸⁶
42. Health practitioners and workers have long been seen as complicit in denying women with disabilities their sexual and reproductive rights, and in perpetuating myths and negative stereotypes about women with disabilities.⁸⁷ The lack of education and training of health providers has been identified as a major barrier to women with disabilities accessing sexual and reproductive health services. This lack of education and training is borne out in a myriad of ways. For example, many practitioners lack knowledge of disability, hold inaccurate perceptions about women with disabilities, and have a tendency to view women with disabilities solely through the lens of their impairments. Insufficient time to address the full range of needs is a common barrier during encounters with practitioners, as is the general lack of sensitivity, responsiveness, courtesy and support shown to women with disabilities. Health practitioners can have a tendency to treat women with disabilities as objects of treatment rather than rights-holders, and do not always seek their free and informed consent when it comes to interventions.⁸⁸
43. For many women and girls with disabilities, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education limited. Women with disabilities express desires for intimate relationships but report limited opportunities and difficulty negotiating relationships.⁸⁹ For women with intellectual disabilities in particular, attitudes toward sexual expression remain restrictive and laws addressing sexual exploitation may be interpreted by others as prohibition of relationships.⁹⁰ Paternalistic and stereotypical

⁸⁴ WWDA (2010) *Women With Disabilities & The Human Right to Health: A Policy Paper*. Available online at: <http://www.wwda.org.au/health2006.htm>

⁸⁵ Thierry, J. (2000) Increasing breast and cervical cancer screening among women with disabilities. *Journal of Women's Health & Gender-Based Medicine*, Vol. 9, No.1, pp.9-12.

⁸⁶ Frohmader, C. and Ortoleva, S. (July 2013) OpCit.

⁸⁷ Mall, S., & Swartz, L. (2012) Editorial: Sexuality, disability and human rights: Strengthening healthcare for disabled people. *South African Medical Journal*, Vol. 102, No. 10, October 2012.

⁸⁸ Ibid.

⁸⁹ In Frohmader, C. (2013) OpCit.

⁹⁰ Eastgate, G., Scheermeyer, E., van Driel, M. & Lennox, N. (2012) Intellectual disability, sexuality and sexual abuse prevention: A study of family members and support workers. *Australian Family Physician* Vol. 41, No. 3, pp. 135-139.

attitudes towards women and girls with disabilities, often result in others deciding on a disabled woman or girls behalf what is in their 'best interests'. It is clear that negative attitudes, values and stereotypes about the reproductive capacity of women with disabilities influences decisions taken about their sexual and reproductive rights. When these negative attitudes are combined with authority and power, they are a potent combination.⁹¹

Case Examples

Adult male and female residents of a group home run by a religious organisation, are prohibited from having any form of sexual or intimate relationships on the premises (either with each other or anyone else), as this is deemed to breach organisational policy and house rules. Although the residents are part of the local community and participate in activities outside the group home, they are prohibited from bringing a sexual or intimate partner to the home. Instead, the residents are told that if they want to have sex it has to occur off site. Several of the residents confirm that they have had sex in the local park, and the supermarket car park.

A male disability support worker from a government funded group home, boasted that the female residents in the group home where he worked, were all "given the Primolut" without the placebo tablets so that they didn't get their periods. When asked why this was the practice, the disability support worker replied that "It's not our job to deal with periods" and that it "makes it easier for us to look after them."

A mother of a 24 year old woman with a mild intellectual disability seeks information as to whether she can get a restraining order against a man with an intellectual disability who has struck up a friendship with her daughter. She confirms that her daughter is happy in the man's company and wants to spend more time with him. When asked why she wants to take out a restraining order against the young man, the mother advises that she doesn't want her daughter to mix with him in case they want to have sex.

⁹¹ McCarthy, M. (2009) OpCit.

The Right to Freedom from Violence, Abuse, Exploitation and Neglect

44. International human rights law condemns violence against women in all its forms, whether it occurs in the home, schools, in institutions, the workplace, the community or in other public and private institutions, and regardless of who perpetrates it. Human rights standards guarantee the right to be free from violence, torture, and cruel, inhuman, or degrading treatment or punishment, as well as the rights to life, health, liberty, security of person, and non-discrimination. These guarantees create a government duty to respect, protect, fulfil and promote human rights with regard to violence against women including the responsibility to prevent, investigate and prosecute all forms of, and protect all women from such violence and to hold perpetrators accountable.⁹²
45. The Australian Government has consistently articulated its commitment to meeting its obligations under the treaties it has ratified,⁹³ and has made it clear that it views freedom from violence as a pre-requisite to women's exercise and enjoyment of human rights.⁹⁴ It has also conceded that violence against women with disabilities in Australia is 'widespread', that women with disabilities, particularly intellectual disabilities, are extraordinarily vulnerable to violence and abuse, and that disabled women experience significant barriers in accessing domestic/family violence and sexual assault services and support.⁹⁵ 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.
46. Violence against women and girls with disabilities, in all its forms, is widespread and unaddressed in Australia. Women and girls with disabilities experience, and are extraordinarily vulnerable to multiple forms of violence, exploitation and abuse. Although women and girls with disabilities experience many of the same forms of violence that all women experience, when gender and disability intersect, violence has unique causes, takes on unique forms and results in unique consequences. Women and girls with disabilities also experience forms of violence that are particular to their situation of social disadvantage, cultural devaluation and increased dependency on others. Poverty, race, ethnicity, religion, language and other identity status or life experiences can further increase their risk of violence.⁹⁶
47. 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 legislative responses, programs and services for this group either do not exist, are extremely limited, or simply just exclude them. Research shows that:
- women with disabilities experience violence, particularly family/domestic violence, violence in institutions, and violence in the workplace, more often than disabled men,⁹⁷ are often at greater risk than disabled men, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;⁹⁸ and, are more vulnerable as victims of crimes from both strangers and people who are known to them;⁹⁹
 - women with disabilities are more exposed to forms of violence which qualify as torture or inhuman or degrading treatment¹⁰⁰ (such as forced or coerced sterilisation, forced abortion,

⁹² United Nations General Assembly (2006) *In-depth study on all forms of violence against women*. Report of the Secretary-General. A/61/122/Add.1. New York.

⁹³ Commonwealth of Australia (2010) *Australia's Human Rights Framework*, Attorney-General's Department, Canberra.

⁹⁴ Commonwealth of Australia (2012) *Information provided in follow-up to the concluding observations of the CEDAW Committee [Australia]*; Responses by Australia to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh reporting periodic report of Australia on 20 July 2010.

⁹⁵ In Frohmader, C. (2011) Op Cit.

⁹⁶ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia.

⁹⁷ Women With Disabilities Australia (WWDA) (2007b) OpCit.; Meekosha, H. (2004) OpCit.

⁹⁸ See Preamble [q] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*.

⁹⁹ Groce, N. (2006) OpCit.

¹⁰⁰ Committee of Ministers of the Council of Europe (2009) OpCit.

- forced contraception, gender based violence, chemical restraint, forced electro-shock, and other forced psychiatric interventions);
- sexual assault and abuse is a significant and un-addressed problem for girls and women with disabilities, particularly for those in 'institutional' settings;¹⁰¹
 - more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives;¹⁰²
 - the rates of sexual victimisation of girls and women with disabilities ranges from four to 10 times higher than for non-disabled women and girls;¹⁰³
 - 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;¹⁰⁴
 - perpetrators frequently target and select women and girls with disabilities for their perceived powerlessness and vulnerability - and for their seeming limitations;¹⁰⁵
 - crimes of sexual violence committed against girls and women with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences;¹⁰⁶
 - lack of reporting of sexual abuse of girls and women with disabilities in institutions, and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,¹⁰⁷ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators;
 - police are often reluctant to investigate or prosecute when a case involves a girl or woman with a disability in an institutional setting; and they also fail to act on allegations because there is no 'alternative to the abusive situation';¹⁰⁸
 - girls and women with disabilities, particularly those with intellectual and/or cognitive disabilities and/or psychosocial disabilities have less chance of being believed when reporting sexual assault, violence and abuse than non-disabled women and girls.¹⁰⁹

48. These recent examples highlight some of these facts:

In June 2011, the South Australian Health Complaints Commissioner reported that there had been five cases of rape and serious sexual assault against girls and women with disabilities in the past year and, in the worst case of abuse in care, a 15 year old victim had become pregnant with the suspected rapist's child but the man had disappeared before any action could be taken against him. None of the five cases resulted in any serious police action because of a lack of corroboration or the extent of the impairment of the alleged victim.¹¹⁰

In July 2011, authorities in South Australia decided not to proceed with a case claiming sexual abuse of a child with an intellectual disability. The prosecution formed the view that the child could not give reliable evidence. The accused was released. Although it transpired that up to 30 other intellectually disabled children had been abused by the accused (a volunteer bus driver with a school for intellectually disabled children) and introduced into a ring of paedophiles,¹¹¹ the police and the school authorities did not tell all the parents whose children had

¹⁰¹ In Frohmader, C. (2011) Submission to the UN Analytical Study on Violence against Women and Girls with Disabilities. WWDA, Tasmania.

¹⁰² 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.

¹⁰³ Baladerian; Valenti-Hein & Schwartz; cited in Elman, A. (2005) OpCit.

¹⁰⁴ Sobsey & Doe; cited in Elman, A. (2005) OpCit.

¹⁰⁵ Elman, A. (2005) OpCit. See also WWDA (2007b) OpCit.

¹⁰⁶ WWDA (2007b) OpCit. See also: Healey et al (2008) OpCit; See also: French, P., Dardel, J., & Price-Kelly, S. (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

¹⁰⁷ French, P. (2007) 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; See also: Stewart, D. Chapter 11 Institutional culture and people with intellectual disabilities: Experiences of an inquirer. In Hauritz, M. Sampford, C. & Blencowe, S. (Eds) (1998) *Justice for People with Disabilities – Legal and Institutional Issues*. The Federation Press, Leichhardt, NSW; See also: French, P. et al (2010) OpCit.

¹⁰⁸ French, P. (2007) OpCit; See also: French, P. et al (2010) OpCit.

¹⁰⁹ In Frohmader, C. (2011) OpCit.

¹¹⁰ Ibid.

¹¹¹ Australian Broadcasting Corporation (ABC) (2011) *Church denies disabled kids' sex abuse cover-up*. ABC TV 'Four Corners' September 26, 2011. Accessed online October 2011 at: <http://www.abc.net.au/news/2011-09-26/four-corners-child-abuse-claims/2942602>

come into contact with the accused.¹¹² It was only as a result of a chance encounter between the parents, that the full extent of their children's abuse was revealed.

In November 2011, it was reported that a major mental health service in Victoria has been covering up sexual assaults of its patients, and that the same service has been previously investigated for allegedly failing to protect an intellectually disabled teenage girl from being sexually exploited by a 34 year old male patient. The latest allegations involved a 20 year old female mental health patient allegedly sexually assaulted by a male nurse. When the young woman complained to a female staff member, she was told not to tell anyone else about it to avoid it "becoming office gossip". Police investigated the case but did not lay charges on the grounds it would be difficult to prosecute. An internal investigation was conducted and "appropriate disciplinary action implemented" however, it is not known what disciplinary action was taken, and it has been reported that 'soon after the alleged incidents' the male nurse resumed working in mental health services, and 'remains in a role where he interacts with female patients'.¹¹³

In 2010, three intellectually disabled women living in accommodation run by the Victorian Department of Human Services were allegedly raped and assaulted after being left alone with a male carer in the state-run house.¹¹⁴ The mother of one of the women said that her daughter was "covered in bruises" after the alleged attack but did not receive counselling until 10 days later, and even then the women were only given one session of one-on-one counselling.¹¹⁵ It was only after the media reported the story that the Department of Human Services undertook 'an internal investigation' and police became involved. However, the outcome of the 'internal investigation' is unknown, as is the result of the police investigation. This lack of transparency is a familiar theme in cases of violence and abuse against women and girls with disabilities.

49. Many forms of violence perpetrated against women and girls with disabilities (such as violence in institutions; sexual and reproductive rights violations; restrictive practices; seclusion and restraint; deprivation of liberty; forced psychiatric interventions), remain unexplored and unaddressed in the Australian context, and fall outside the scope of Australian family/domestic violence legislation and policy responses to addressing violence against women.
50. 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.¹¹⁶ This is particularly the case for women and girls with intellectual and/or cognitive disabilities, developmental disabilities and those with psychosocial disabilities. A restrictive intervention has been defined as 'any intervention that is used to restrict the rights or freedom of movement of a person with a disability',¹¹⁷ and can include practices such as chemical restraint,¹¹⁸ mechanical restraint,¹¹⁹ physical restraint,¹²⁰ social restraint,¹²¹ seclusion¹²². Such

¹¹² Australian Broadcasting Corporation (ABC) (2011) *St Ann's Secret*. ABC TV 'Four Corners', October 3, 2011. Accessed online October 2011 at: <http://www.abc.net.au/4corners/stories/2011/09/22/3323669.htm>

¹¹³ Baker, R. & McKenzie, N. (2011) Patient 'silenced' after sex abuse. *The Age*, November 21, 2011. Accessed online November 2011 at: <http://www.theage.com.au/victoria/patient-silenced-after-sex-abuse-20111120-1npeh.html>

¹¹⁴ Mickelborough, P. (2010) Mentally disabled women 'raped by carer' in state-run house. *Herald Sun*, October 11, 2010. Accessed online October 2011 at: <http://www.heraldsun.com.au/news/victoria/mentally-disabled-women-raped-by-carer-in-state-run-house/story-e6fif7kx-1225936849896>

¹¹⁵ Grace, R. (2010) Rape claims levelled against DHS worker. *The Age*, October 11, 2010. Accessed online October 2011 at: <http://www.theage.com.au/victoria/rape-claims-levelled-against-dhs-worker-20101011-16erd.html>

¹¹⁶ 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/Research/Submissions/2010/OPA-Submission-to-VLRC-May-2010.pdf> See also: French, P., Dardel, J. & Price-Kelly, S. (2010) OpCit.

¹¹⁷ Office of the Public Advocate (2010) *Supervised Treatment Orders in Practice: How are the Human Rights of People Detained under the Disability Act 2006 Protected?* Accessed online October 2011 at:

<http://www.publicadvocate.vic.gov.au/file/Research/Reports/STOs%20in%20Practice.%20How%20are%20the%20HRs%20of%20People%20Detained%20under%20the%20Disability%20Act%202006%20Protected.pdf>

¹¹⁸ Chemical restraint occurs when medication that is sedative in effect is prescribed and dispensed to control the person's behaviour rather than provide treatment. See in: National Mental Health Consumer & Carer Forum (2009) *Ending Seclusion and Restraint in Australian Mental Health Services*. www.nmhccf.org.au

¹¹⁹ Mechanical restraint is understood as the use of any device to prevent, restrict or subdue movement of a person's body for the primary purpose of behavioural control. See for eg: 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.

practices are often imposed as a means of coercion, discipline, convenience, or retaliation by staff, family members or others providing support.¹²³ 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).

51. The Victorian Government has estimated that between 44-80% of people with disabilities who 'show behaviours of concern' are prescribed chemical restraint.¹²⁴ No controlled studies exist that evaluate the value of seclusion or restraint in those with 'serious mental illness',¹²⁵ although the use of involuntary seclusion and restraint in all forms is an everyday occurrence, particularly in Australia's public acute inpatient facilities.¹²⁶ The widespread, systemic problem of restrictive practices and children with disabilities in Australian schools remains ignored and unaddressed by Governments.¹²⁷
52. All Australian states and territories have provisions for the 'treatment' of people with mental illnesses without consent.¹²⁸ This occurs when the person's illness is believed to impair his or her capacity to understand the need for treatment, or where the person is likely to put themselves or others at risk in some substantial way.¹²⁹ Legislation typically allows for involuntary admission to hospital and, in most jurisdictions, pharmacological or other treatments without consent.
53. In most States and Territories of Australia, involuntary electroconvulsive therapy (ECT) requires the approval of the relevant Mental Health Review Tribunal, except in Tasmania (where approvals are made by the Guardianship and Administration Board) and in Victoria, where current legislation allows treating psychiatrists to administer ECT without consent or external review.¹³⁰ 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.¹³¹ Medicare statistics for 2007-2008 record 203 ECT treatments on children younger than 14 - including 55 aged four and younger.¹³² Certain legislation in Australia currently allows for children to undergo ECT provided they, or their parent or guardian have given informed consent.¹³³
54. In 2009-10 the Queensland Mental Health Tribunal scheduled 462 ECT applications in relation to 355 patients. This was 15.5% higher than the previous year. Of these, 98 (21.2%) were

¹²⁰ Physical restraint is defined as the sustained or prolonged use of any part of a person's body to prevent, restrict, or subdue movement of the body or part of a body of another person. See for eg: McVilly, K. (2008) OpCit.

¹²¹ Social restraint is recognized to include the use of verbal interactions and/or threats of social or other tangible sanctions, which rely on eliciting fear to moderate a person's behavior. See for eg: McVilly, K. (2008) OpCit.

¹²² 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.

¹²³ Cited in McVilly, K. (2008). OpCit.

¹²⁴ Department of Human Services (2008) Positive Solutions in Practice: *Chemical Restraint: What every Disability Support Worker needs to know*. Office of the Senior Practitioner, Melbourne.

¹²⁵ Sailas EES, Fenton M. (2000) *Seclusion and restraint for people with serious mental illnesses*. Cochrane Database of Systematic Reviews 2000, Issue 1. Art. No.: CD001163. DOI: 10.1002/14651858.CD001163.

¹²⁶ National Mental Health Consumer & Carer Forum (2009) OpCit.

¹²⁷ See for eg: Australian Broadcasting Corporation (ABC TV) (17/05/2011) 'Hidden shame'; 7.30 Report. Accessed online October 2011 at: <http://www.abc.net.au/7.30/content/2011/s3219518.htm> See also: Martin, L. (March 11, 2010) 'Outrage over Seven Hills West Public School putting autistic children in cage'; Accessed online October 2011 at: <http://www.news.com.au/national/outrage-over-seven-hills-west-public-school-putting-autistic-kids-in-cage/story-e6frfkvr-1225839691640> See also: Brown, D. (2010) 'Autistic kids 'caged' at school.' *The Mercury Newspaper*, September 13, 2010. Accessed: http://www.themercury.com.au/article/2010/09/13/172495_tasmania-news.html

¹²⁸ 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>

¹²⁹ Fitzgerald, P. (2011) 'It's time to move on from ECT's shocking past.' *The Conversation*; 29 September 2011; Accessed online October 2011 at: <http://theconversation.edu.au/its-time-to-move-on-from-ects-shocking-past-3312>

¹³⁰ Baker, R. & McKenzie, N. (2011) Mental health care inquiry. *The Age*, Accessed online October 2011 at: <http://www.theage.com.au/victoria/mental-health-care-inquiry-20110905-1jujy.html>

¹³¹ In Frohmader, C. (2011) OpCit.; 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>

¹³² '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>

¹³³ 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

applications for patients undergoing emergency ECT.¹³⁴ In 2009-10 in NSW, 716 applications were made to the NSW Mental Health Review Tribunal to administer ECT to involuntary patients (455 or 63.5% of the applications involved female patients). Only 20% of the 716 applications included legal representation for the patient. The NSW Mental Health Act 2007 allows for determinations of more than 12 ECT treatments 'if the Tribunal is satisfied that more are justified, having regard to the special circumstances of the case.' In 2009-10, 5.4% of cases were for more than 12 treatments approved.¹³⁵

55. In Victoria in 2009-10, more than 1100 people received electroconvulsive therapy (ECT), in the public mental health system. Of these, 377 (or about one third) were deemed involuntary patients who did not consent to the ECT. Involuntary mental health patients received more than half of the 12,968 ECT sessions administered in the Victorian public psychiatric system in 2009-10.¹³⁶ The use of ECT in Victoria's public and private psychiatric services has increased sharply in recent years. In public mental health services, its use has increased by 12% since 2003-04, and private ECT sessions in Victoria have increased by 71% during the same period.¹³⁷ An 2011 investigation into Victoria's mental health system reported that:

*'Practices from a previous age appear routine in some hospitals: threatening patients with electroconvulsive therapy (ECT) if they refuse to take medication; locking bathrooms to prevent patients drinking water, which would negate the effect of the ECT; and imposing a form of solitary confinement as punishment for improper behaviour. Such attempts to subdue and control patients are disturbing enough in fiction such as One Flew Over the Cuckoo's Nest; they have no place in hospitals in 21st century Australia.'*¹³⁸

56. In October 2013, the Committee on the Rights of Persons with Disabilities in *Concluding Observations [Australia]* expressed its concern that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraint and seclusion, in environments including schools, mental health facilities and hospitals. The Committee recommended that Australia:

take immediate steps to end such practices including by establishing an independent national preventative mechanism to monitor places of detention including mental health facilities, special schools, hospitals, disability justice centres and prisons, to ensure that persons with disabilities including those with psychosocial disabilities are not subjected to intrusive medical interventions.

57. The Committee also expressed its concern that under Australian law, a person can be subjected to medical interventions against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment. The Committee recommended that:

Australia repeal all legislation that authorises medical interventions without free and informed consent of the persons with disabilities concerned, and legal provisions that authorize commitment of individuals to detention in mental health services, or the imposition of compulsory treatment either in institutions or in the community via Community Treatment Orders (CTOs).

58. The UN Special Rapporteur on Torture, in his ground-breaking report of 2013¹³⁹ which clarified practices that constitute torture and ill-treatment in health-care settings, made it clear that women living with disabilities, with psychiatric labels in particular, are at risk of multiple forms of

¹³⁴ Queensland Government (2010) *Mental Health Review Tribunal Annual Report 2009-10*. Accessed October 2011 at:

<http://www.mhrt.qld.gov.au/wp-content/uploads/2010/12/mhrt-annual-Report-2009-10.pdf>

¹³⁵ NSW Mental Health Review Tribunal (2010) *Annual Report of the Mental Health Review Tribunal*. Accessed online October 2011 at:

<http://www.mhrt.nsw.gov.au/mhrt/pdf/Annualreport200910.pdf>

¹³⁶ Baker, R. & McKenzie, N. (2011) OpCit.

¹³⁷ Ibid.

¹³⁸ The Age Newspaper; *Silence hides shameful neglect of mentally ill*; September 5, 2011; Accessed online October 2011 at:

<http://www.theage.com.au/opinion/editorial/silence-hides-shameful-neglect-of-mentally-ill-20110904-1js7t.html>

¹³⁹ Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit.

discrimination and abuse in health-care settings. He also confirmed that any restraint on people with 'mental disabilities' [sic] for even a short period of time may constitute torture and ill-treatment. His report states:

It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions. The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock procedures.

59. The UN Special Rapporteur on Torture has also made it clear that, as detention in a psychiatric context may lead to non-consensual psychiatric treatment, deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering could fall under the scope of the Convention against Torture (CAT).¹⁴⁰

60. The UN Special Rapporteur on Torture has strongly recommended¹⁴¹ that States Parties (which includes Australia):

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.

Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short-term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation.

Revise the legal provisions that allow detention on mental health grounds or in mental health facilities, and any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned. Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.

61. The Australian Government's primary response to addressing violence against women in Australia, including women with disabilities, is through the twelve year *National Plan to Reduce Violence against Women and their Children 2010-2022*, [the National Plan] and its National and jurisdictional Implementation Plans. However, in relation to addressing violence against women and girls with disabilities, the National Plan has significant limitations, in that there is little emphasis on girls with disabilities, it focuses only on domestic/family violence and sexual assault and fails to address the multiple forms of violence that women and girls with disabilities experience. In addition, although Aboriginal and Torres Strait Islander women are included in the National Plan and other mainstream strategies, there are no clear provisions which address violence and abuse of Aboriginal and Torres Strait Islander women with disabilities, and this remains an unaddressed area of public policy and service provision. A similar situation exists for culturally and linguistically diverse (CALD) women with disabilities. Whilst it could be argued that the *National Disability Strategy* (NDS) might address these forms of violence, most state and

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

territory NDS Implementation Plans (where the NDS is operationalised), rely on, and cite the *National Plan* as the key (and often only) strategy to address violence against people with disabilities. Regrettably, the majority of these NDS Implementation Plans are un-gendered. This type of policy ‘silencing’, and lack of understanding of the gendered nature of violence against people with disabilities, can contribute to women with disabilities who experience, and who are at risk of experiencing violence, falling through violence prevention legislation, policy, program and service delivery gaps.

62. For example, women and girls with disabilities in Australia live in and experience, a vast range of ‘institutional’ settings, such as group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Women and girls with disabilities in institutions are at particular and significant risk of violence, abuse and exploitation due to a range of factors, including: the reinforced demand for compliant behaviours, their perceived lack of credibility, their social isolation and lack of access to learning environments, their dependence upon others, their lack of access to police, support services, lawyers or advocates; the lack of public scrutiny of institutions; and the entrenched sub-culture of violence and abuse prevalent in institutions.¹⁴² Violence perpetrated against women and girls with disabilities in institutions is rarely characterised as domestic/family violence and rarely are domestic/family violence related interventions deployed to deal with this type of violence.
63. Violence against women and girls in institutions in Australia has consistently been identified as an urgent issue requiring national leadership, and a national public policy response. This was recently reinforced by participants and delegates at the *National Symposium on Violence Against Women and Girls with Disabilities*¹⁴³ where there was unanimous and unequivocal consensus calling for urgent action on this issue. For a number of years now, women with disabilities, disabled people’s organisations, human rights organisations, and the United Nations (amongst others), have called for urgent action by Australian governments to address violence, exploitation, and abuse experienced by women and girls with disabilities in institutions. Yet in Australia, this issue remains excluded from public programmes and policies on the prevention of gender-based violence. Recent media reports¹⁴⁴ on the systemic nature of violence against people with disabilities in institutions throughout Australia further demonstrate and reinforce the need for urgent national action on this issue.
64. Most recently, in October 2013, the *Committee on the Rights of Persons with Disabilities* in its Concluding Observations following its Review of Australia’s compliance with the CRPD, expressed its “deep concern” at the high rates of violence perpetrated against women and girls with disabilities¹⁴⁵ and recommended that Australian Governments act urgently to:
- address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings;
 - include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence;
 - ensure access for women with disabilities to an effective, integrated response system; and,
 - commission and fund a comprehensive assessment of the situation of girls and women with disabilities in Australia.

¹⁴² SafePlace Institute (2000) *Stop the Violence, Break the Silence Training Guide & Resource Kit*. Austin, Texas.

¹⁴³ The ‘*National Symposium on Violence Against Women and Girls with Disabilities*’ was held in Sydney on October 25th 2013, as a component of WWDA’s National COAG Reform Project on Violence Against Women and Girls with Disabilities. See: www.stvp.org.au

¹⁴⁴ The Age Newspaper (November 20, 2013) ‘*Former Yooralla worker Vinod Kumar jailed for attacking vulnerable women in his care*’; at: <http://www.theage.com.au/victoria/former-yooralla-worker-vinod-kumar-jailed-for-attacking-vulnerable-women-in-his-care-20131120-2xuh3.html> See also: The Age Newspaper (November 21, 2013) ‘*Yooralla senior executives accused of ignoring warning signs on rape claims*’; at: <http://www.theage.com.au/victoria/yooralla-senior-executives-accused-of-ignoring-warning-signs-on-rape-claims-20131120-2xvin.html> See also: ABC 7.30 Report (May 2013) ‘*Report reveals psychiatric care’s shocking sexual assault statistics*’; at: <http://www.abc.net.au/7.30/content/2013/s3758227.htm>; See also: ABC 7.30 Report (December 2013) ‘*Protecting disabled people in group homes*’; at: <http://www.abc.net.au/7.30/content/2013/s3915884.htm>

¹⁴⁵ Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)*; UN Doc. CRPD/C/AUS/CO/1; Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FCO%2FAUS%2FCO%2F1&Lang=en

65. These recommendations echo, and build on similar recommendations made to Australia in recent years from the *Committee on the Elimination of Discrimination Against Women* (CEDAW) (2010); the *Human Rights Council* (2011);¹⁴⁶ the *Committee on the Rights of the Child* (CRC) (2013);¹⁴⁷ and the *Committee on Economic, Social and Cultural Rights* (CESCR) (2012).¹⁴⁸ In addition, the *Commission on the Status of Women (CSW) Agreed Conclusions* (2013),¹⁴⁹ which the Australian government delegation helped to formulate and subsequently endorsed, acknowledge that women with disabilities are more vulnerable to all forms of violence, exploitation and abuse, and call on Governments the world over to prevent and address violence against women and girls with disabilities.
66. Provided as a formal attachment to this Submission, is a copy of the sentencing comments from a recent Australian court case, *DPP v Kumar* (20 November 2013), whereby a casual worker employed at a supported accommodation facility in Victoria, was sentenced to 18 years jail for multiple counts of rape and other sexual offences perpetrated against three disabled women and one disabled man. This document illustrates the nature of violence perpetrated against women and girls with disabilities in institutions, and is just one example of this widespread, unaddressed national issue. Although harrowing reading, the transcript highlights (amongst other things) the extreme powerlessness and vulnerability of women with disabilities in institutions, the lack of credibility they are given when trying to report violence, the existence of, and culture within institutions as breeding grounds for the perpetration of violence, and the tendency of staff and management to minimise and essentially cover up, acts of violence perpetrated against people with disabilities. It is highly likely that the main reason this particular case proceeded to a successful conviction was because the perpetrator pleaded guilty to the charges. Despite high levels of violence against women with disabilities in Australia, evidence shows that few cases are prosecuted. It has been well documented for decades that police are reluctant to investigate and report cases of violence against women with disabilities, particularly women with intellectual, cognitive, developmental, psychosocial disabilities.¹⁵⁰ 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.¹⁵¹
67. Comprehensive, inclusive and coherent human rights-based legislation is fundamental for an effective and coordinated response to violence against women and girls with disabilities. Australia has clear obligations under international human rights law to enact, implement and monitor legislation addressing all forms of violence against women and girls with disabilities, including those to which they are more vulnerable, such as forced sterilisation, forced institutionalisation and forced abortion.¹⁵² This is important not only to ensure legal protection but also to promote a culture where no form of violence against women and girls with disabilities is tolerated.¹⁵³
68. In Australia, there is no national, coordinated legislation to prevent and address all forms of violence against women, including family/domestic violence.¹⁵⁴ Legislation in federal and State and Territory jurisdictions sets the foundation for the rights of women to be protected against violence, and the States and territories carry primary responsibility for legislative measures to

¹⁴⁶ UN General Assembly, Human Rights Council (2011) OpCit.

¹⁴⁷ Committee on the Rights of the Child (2012) UN Doc. CRC/C/AUS/CO/4, OpCit.

¹⁴⁸ Committee on Economic, Social and Cultural Rights (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*; 12 June 2009; UN Doc. E/C.12/AUS/CO/4

¹⁴⁹ UN Women (2013) *Elimination and Prevention of All Forms of Violence Against Women and Girls: 2013 Commission on the Status of Women Agreed Conclusions*. Available at: <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/57/CSW57-AgreedConclusions-A4-en.pdf>

¹⁵⁰ WWDA (2007b) OpCit.. See also: 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 See also: French, P., Dardel, J. & Price-Kelly, S. (2010) OpCit..

¹⁵¹ WWDA (2007b) OpCit. See also: Healey, L., Howe, K., Humphreys, C., Jennings, C. & Julian, F. (2008) OpCit.

¹⁵² United Nations General Assembly (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. A/HRC/20/5.

¹⁵³ Ibid.

¹⁵⁴ Commonwealth of Australia (2012) *Information provided in follow-up to the concluding observations of the CEDAW Committee [Australia]*: Responses by Australia to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh reporting periodic report of Australia on 20 July 2010.

criminalise, prosecute and punish perpetrators for acts of domestic violence. According to the Australian Government:

this foundation is augmented by a range of integrated support services.... which respond to the needs of women who have experienced violence at the time of crisis and recovery. All women in Australia have the protection of the law and the right to access support services. Every state and territory has enacted strong legislative measures and established competent tribunals and other law enforcement agencies to ensure the effective protection of women against any act of violence.....¹⁵⁵[emphasis added]

69. However, it is clear that women with disabilities In Australia do not enjoy the “*effective protection of women against any act of violence*”. There is no *specific* legal, administrative or policy framework for the prevention, protection, investigation and prosecution of violence, exploitation, and abuse of women with disabilities. No existing Commonwealth or State/Territory domestic and/or family violence is framed in a comprehensive human rights framework setting it in the context of Australia’s obligations to the core international human rights treaties it has ratified, each of which creates obligations to prevent and address violence against women, including women with disabilities.
70. The Commonwealth *Family Law Act 1975*, amended in 2011 through the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, contains no over-arching objects or principles, and is not set in a human rights framework. The only amendment made in 2011 relating to human rights was the inclusion of an object at sub section 60B (relating to children), which states “*an additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989*”.¹⁵⁶
71. The Australian Law Reform Commission (ALRC) in its 2010 *National Inquiry into Family Violence*,¹⁵⁷ recommended that Commonwealth, State, and Territory Family Violence legislation should contain guiding principles and objects that clearly reference a human rights framework, in order to: give effect to Australia’s international human rights obligations, serve as an educative function and aid in interpretation of the legislation. The principles should refer to or draw upon all applicable international human rights instruments.¹⁵⁸ In addition, human rights based family violence legislation should acknowledge the gendered-nature of violence¹⁵⁹ and that family violence has a particular impact on marginalised and vulnerable groups, including people with disabilities, Indigenous persons; those from a CALD background; those from the gay, lesbian, bisexual, transgender and intersex communities; and older persons. Yet most of the existing family violence legislation in Australia does not recognise all these dimensions. As pointed out by the ALRC:

highlighting the impact of violence on these groups complements the Commissions’ recommendation that family violence legislation include examples of emotional or psychological abuse that would affect diverse groups in the community. The combined effect of these recommendations may assist in the challenging task of ensuring that experiences of family violence of such groups are properly recognised across the legal system.

72. Without appropriate and inclusive legislation, there are limited legal means to fight violence against women with disabilities. Legislation has the potential to demonstrate that violence against women with disabilities is a public issue, not a private concern. In order to accomplish any appreciable reduction of violence against women with disabilities, it is necessary to understand its complexity. Causes, interventions and prevention strategies are contingent upon the validity of definitions available.¹⁶⁰ Definitions in family violence legislation are critical, because they set the

¹⁵⁵ Ibid.

¹⁵⁶ Family Law Act 1975, at sub section 60B. See at: http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/

¹⁵⁷ Australian Law Reform Commission (ALRC) (2010) *Family Violence — A National Legal Response*. ALRC Final Report 114. Accessed online January 2013 at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ WWDA (2007b) OpCit.

scope for who is covered by the legislation and under what circumstances. They also provide the benchmark for translation into relevant policy frameworks, policies and service responses.

73. In Australia, domestic and family violence legislation differs across States and Territories providing different levels of protection and definitions of what constitutes 'family violence' and what constitutes a 'domestic relationship'. Broader definitions include residential settings, such as group homes and institutions, where women with disabilities often live and interact domestically with co-residents, support workers and service managers.¹⁶¹ However, even where there are broader definitions, domestic and family violence legislation is rarely utilised, largely because violence perpetrated against disabled women and girls in residential settings, as outlined earlier, is not characterised or conceptualised as domestic/family violence.¹⁶² Where narrower definitions apply, women with disabilities who live in residential settings are entirely excluded from these protections.
74. The Commonwealth *Family Law Act 1975*, for example, provides non-exhaustive examples of what constitutes 'family violence' thereby providing scope to cover some of the forms of violence experienced by women and girls with disabilities. However, the examples provided in the Act are still relatively limiting for addressing the dimensions of domestic and family violence as experienced by women and girls with disabilities. For example, although the ALRC has interpreted the definition of family violence in the amended Act to include forced sterilisation and abortion,¹⁶³ it remains unclear as to whether the Act could or would be utilised to address these particular forms of violence. The definition of 'family member' and 'relative' in the amended *Family Law Act 1975* does not appear to be broad enough to encompass the range of 'domestic relationships' that many women with disabilities may be in, such those living in residential settings. The limiting definition does not cover paid and/or unpaid carers, which makes it problematic in providing protection and or redress for women with disabilities who experience domestic/family violence at the hands of carers.
75. Family violence legislation in some jurisdictions recognises violence between persons who live together in the same household (that is, without being in a relationship) as family violence. Other jurisdictions recognise meaningful personal relationships between people outside conventional definitions. Some legislation protects persons in carer relationships, including paid carers; some cover relationships with paid and unpaid carers as long as the relationship is 'family like'; whilst others cover unpaid carers only. Other family violence legislation, however (such as in Tasmania and Western Australia) does not address relationships with carers at all.¹⁶⁴ This is just one example that highlights the inconsistent approach taken in family violence legislation across Australia in relation to violence perpetrated against women and girls with disabilities.
76. It is clear that most family violence legislation in Australia is not set in a human rights framework, is piecemeal and inconsistent in definitions and scope, and focuses largely on protection from domestic/family violence. For women with disabilities, this means, in effect, that their experiences of violence, including domestic/family are not properly recognised across the legal system, they are given less protection than their non-disabled counterparts, and the likelihood of them benefiting from integrated and coordinated responses, including prevention, is compromised.
77. The *Committee on the Elimination of All Forms of Discrimination against Women* (CEDAW) has consistently expressed its concern at lack of federal legislation or minimum standards for protection of women against violence and domestic violence in Australia, and has repeatedly recommended that Australia develop national legislation to prevent and address violence against women, in all its forms.¹⁶⁵ Australia however, still does not have uniform, comprehensive, human rights based national legislation to prevent and address all forms of violence against women.

¹⁶¹ 'Disability Rights Now' Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities; August 2012.

¹⁶² Frohmader, C. & Swift, K. (2012) Opening minds & opening doors: Re- conceptualising 'domestic violence' to be inclusive of women with disabilities in institutions. *CDFVRe@der*, Vol. 11, No. 2, pp. 7-8. Available at: <http://www.noviolence.com.au/public/reader/readerdec2012.pdf>
See also: 'Disability Rights Now' OpCit.

¹⁶³ Australian Law Reform Commission (ALRC)(2012) *Family Violence and Commonwealth Laws Information Sheet: People With Disability*; at: <http://www.alrc.gov.au/CFV-disability>

¹⁶⁴ Australian Law Reform Commission (ALRC) (2010) OpCit.

¹⁶⁵ 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.

78. Accompanying this Submission are three specific documents which WWDA is formally submitting as attachments to WWDA's Submission to the *National Inquiry into Equal Recognition Before the Law and Legal Capacity for People With Disability*. These three documents are extremely relevant and timely for this National Inquiry, and they explore and detail a range of issues regarding equal recognition before the law and legal capacity for women with disabilities in relation to the right to freedom from violence, abuse, exploitation and neglect. These three documents are:

Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper. Hobart: Women with Disabilities Australia.

This background paper provides information on the National COAG Reform project 'Stop the Violence: Improving Service Delivery for Women and Girls with Disabilities'. This national Project, implemented by WWDA and supported by a research team at the University of New South Wales (UNSW) in conjunction with a project team from People with Disabilities Australia (PWDA), is intended to lay the groundwork for improved service provision by building the evidence-base for future reforms so that the service system is more responsive to the needs of women and girls with disabilities. The Background Paper provides information on the project context, activities and outcomes, highlighting six key issues and their implications that are considered a priority in addressing reform in the area of violence against women and girls with disabilities.

Women With Disabilities Australia (WWDA), University of New South Wales (UNSW), and People with Disabilities Australia (PWDA) (2013) Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities. Hobart: Women with Disabilities Australia.

The National Symposium on Violence against Women and Girls with Disabilities was part of the activities of the National COAG Reform project 'Stop the Violence Project (STVP)'. The purpose of the National Symposium was to engage high-level stakeholders and decision-makers to address issues of violence against women and girls with disabilities in Australia in order to develop measures for longer term sustainability for change relating to the National Plan to Reduce Violence against Women and their Children, 2010-2022. The National Symposium sought to foster collaborative approaches to policy development by strengthening cross-sector relationships and leadership for sustaining change in the identification and implementation of better practice models to prevent violence against women and girls with disabilities.

Women With Disabilities Australia (WWDA) Submission to the United Nations Thematic Study on Violence Against Women With Disabilities (December 2011) Hobart: Women with Disabilities Australia.

In mid June 2011, at its 17th session, the United Nations Human Rights Council adopted a Resolution to accelerate efforts to eliminate all forms of violence against women. The Resolution called for a study to be conducted on the issue of violence against women and girls and disabilities, with the report of the study to be presented to the 20th session of the Human Rights Council in 2012. WWDA's Submission to the preparation phase of the UN Analytical Study on Violence Against Women and Girls with Disabilities, provides an overview of the legislation, regulatory frameworks, policy, administrative procedures, services and support available within Australia to prevent and address violence against women and girls with disabilities. It provides detailed information under the following themes: data and statistics; legislation and policies; prevention and protection; prosecution and punishment, and recovery, rehabilitation and social integration.

Case Examples

A 39 year old woman with an intellectual disability resides in a group home 'village' complex where she has her own unit and lives independently which some support provided by the on site support worker staff. There are a number of other residents with intellectual disabilities living in other units on the site – some live in units on their own, whilst other share. The 39 year old woman is raped by a male co-resident within the grounds of the 'village' complex. She immediately discloses the rape to an on-site support worker who advises her to "try to keep out of his way" and that "if he does it again" the staff will "cut his penis off". The rape is not reported to the police and the woman is not offered any support or counselling.

A 38 year old woman with a mild intellectual disability lives on a farm in a rural and isolated location with her violent husband who is 20 years her senior. They have been married for three years. They have a 12 month old child who has been taken into care by authorities due to the ongoing family violence. Local police are aware of the violence and have visited the property on a number of occasions. The woman's husband tells the police his wife is "mental and retarded". The police do not intervene. The woman eventually decides to try to leave her husband and escapes during the night. She goes to a nearby country town where she has access to an unoccupied house owned by a relative. She seeks support via phone from a domestic violence outreach service, only to be told she can't get an appointment for 2 months. Her husband reports her to the police as a 'missing person' telling them she is not safe to be on her own because she has an intellectual disability. The police subsequently arrive at the house where she is staying, and take her back to her violent husband. She is not offered any alternative. She says: "The police don't believe me; they think I'm mental and he tells them I'm mental."

Linda is a 22 year old woman with a psychosocial and intellectual disability. She resides in a government funded group home with five other women with disabilities. Most of the other women are older – ranging in age between 40-60 years. The organisation managing the group home also runs several other group homes in the area. Linda is told by the support workers that she is being taken to visit "Jack" – a young man with an intellectual disability who resides in one of the other group homes run by the organisation. Jack is considered to have significant 'behavioural issues' and is 'difficult for staff to manage'. Jack is considered easier to 'manage' if he is not 'sexually frustrated'. Linda is told by the support workers that Jack is her "boyfriend". Linda is taken to the group home where Jack resides and sent into his bedroom. Linda is raped by Jack but Linda thinks that she has to let Jack have sex with her (even though she doesn't want to) because she has been told that Jack is her "boyfriend". This 'arrangement' continues for many months until Linda eventually discloses to a neighbour that Jack "hurts her" when he makes her have sex. Linda shows her neighbour the cuts and bruises on her genitalia and inner thighs. Linda is eventually taken to a sexual assault support service, accompanied by an independent advocate. After one session, the sexual assault support service says they can no longer assist, because Linda won't "open up" to them, and they don't have the resources or the capacity to work with her.

The Right to Found and Maintain a Family

79. 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,¹⁶⁶ for many women with disabilities in Australia, such fundamental human rights are not realisable.
80. Parenting remains an attitudinal minefield for women with disabilities and an area in which they experience widespread violations of their human rights. Women with disabilities the world over are discouraged or denied the opportunity, to bear and raise children.¹⁶⁷ The situation in Australia is no different. Women with disabilities have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and generally incapable of looking after children.¹⁶⁸ 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.¹⁶⁹ These perceptions, although very different, result in women with disabilities being denied the right to reproductive autonomy and self-determination.
81. Recent data demonstrates that a parent with a disability (usually a mother) is up to ten times more likely than other parents to have a child removed from their care, with the child removed by authorities on the basis of the parents disability, rather than any evidence of child neglect.¹⁷⁰ Women with disabilities are also coerced to have hysterectomies after they have given birth to one or more children, who have usually been taken from their care; or as a condition of having access to their child who has been taken from their care.¹⁷¹
82. Fears of women with disabilities as parents persist although evidence demonstrates that parents with disabilities are no more likely to maltreat children or to raise so-called “defective” children than non-disabled parents.¹⁷² Statutes in many countries on termination of parental rights, child custody and divorce include disability-related grounds for termination of parental rights or loss of custody and may emphasise and focus on disability status rather than actual parenting skill or behaviour, implicitly equating parental disability with parental unfitness.¹⁷³ Because of such legal definitions and societal prejudices, mothers with disabilities are often subjected to greater scrutiny by social service agencies than non-disabled women. Fear of being incorrectly perceived as an unfit mother by a court on the basis of disability, and the breakdown of their relationship with children, has frequently discouraged mothers with disabilities from separating from an abusive partner.¹⁷⁴
83. A recently released report¹⁷⁵ by the Victorian Office of the Public Advocate (OPA) which examines the removal of children from the care of parents with a disability through the family law system, asserts that in relation to people with disabilities and their right to parent, current policy in Australia appears to be based on the following broad propositions:
- people with disabilities cannot be competent parents;
 - it is rarely in the best interests of a child to be raised by parents with a disability;

¹⁶⁶ 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).

¹⁶⁷ 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

¹⁶⁸ Ibid.

¹⁶⁹ WWDA (2007b) OpCit.

¹⁷⁰ 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/>

¹⁷¹ People With Disabilities Australia (PWDA) (2013) *Submission to the Senate Standing Committee on Community Affairs: Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia*. See: www.pwd.org.au

¹⁷² 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.

¹⁷³ See: Disability and Parental Rights Legislative Change Project, ‘Guide for Creating Legislative Change’; University of Minnesota, <http://www.cehd.umn.edu/ssw/CASCW/attributes/PDF/LegislativeChange.pdf>

¹⁷⁴ Frohmader, C. & Ortoleva, S. (2013) OpCit.

¹⁷⁵ Office of the Public Advocate (December 2013) *Whatever happened to the village? The removal of children from parents with a disability*. Report 1: Family law – the hidden issues. OPA, Victoria.

- if a case has been made for removal of a child, then alternative care is seen as better for the child and a less risky solution for the child and for the decision-maker. It also requires no follow-up supervision;
 - a child is an individual bearer of rights whose rights and interests are not necessarily embedded within his or her family;
 - within both family law and child protection legislation and policy in Australia, only the child who is the subject of the application has rights. Parents have duties and responsibilities. Siblings who are not the subject of the application do not have rights and their interests are only relevant to the extent that they concur with those of the child who is the subject of the application;
 - the impact on a family of removing a child from his/her parents is not a consideration in family law or child protection legislation and practice and is not a factor in deciding the best interests of the child in either jurisdiction.
84. The OPA Report includes a series of recommendations calling for significant reforms to be made to the Commonwealth Family Law Act (1975), family law policy and practice that would assist Australia to comply with the conventions to which it is signatory in relation to parents with a disability and their children in family law.¹⁷⁶
85. Although there is no known published research in Australia on the issue of access to assisted reproductive technologies (ARTs) (such as in vitro fertilisation (IVF) and assisted insemination) for women with disabilities, anecdotal information to Women With Disabilities Australia (WWDA) from women with disabilities in Australia suggests that they face discrimination and inequitable access to ART's.
86. The predominance of white, middle class, able-bodied women living as heterosexual couples is evident across private IVF clientele. This is, in part, due to the costs to the client associated with the procedure.¹⁷⁷ In Australia, Medicare covers the treatment of IVF for medical infertility, but for women who are deemed not to be 'medically infertile' (such as single women and lesbian couples), then no Medicare rebate is available. This fact alone would prevent many disabled women (particularly single disabled women, or women with disabilities who are in a lesbian relationship) from accessing ART's.
87. There is no Commonwealth legislation in respect of ART practice. In Australia, the eight State and Territory governments control assisted reproduction services, with SA, NSW, VIC, and WA having enacted legislation to control the procedures involved (although the nature of the governance regimes in each of these states varies), while the States and territories without specific legislation rely on the Reproductive Technology Accreditation Committee accreditation scheme which sets standards for practice and requires compliance with the National Health and Medical Research Council (NHMRC) *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (2007).¹⁷⁸ These guidelines, revised in 2007, effectively ignore access and eligibility issues by failing to address them. Instead, the guidelines recommend that each assisted reproduction clinic should develop a 'protocol' around access to, and eligibility for, treatment. Whilst some individual clinics specify that assisted reproductive treatment procedures are not denied to women on the basis of marital status or sexual orientation, none mention disability. The decision for eligibility for assisted reproductive services therefore rests with the individual clinics/fertility consultants.
88. In 2007, the Victorian Law Reform Commission (VLRC) released its final report on ART and adoption.¹⁷⁹ The VLRC had been commissioned by the Victorian Government to enquire into and report on the desirability and feasibility of changes to the *Infertility Treatment Act 1995* [Vic] and the *Adoption Act 1984* [Vic] to expand eligibility criteria in respect of all or any forms of assisted

¹⁷⁶ Ibid.

¹⁷⁷ Petersen, M. M. (2005) Assisted reproductive technologies and equity of access issues; *Journal of Medical Ethics*; 31; pp. 280-285.

¹⁷⁸ National Health and Medical Research Council (NHMRC) (2004) (Revised 2007) *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research*. NHMRC, Canberra, ACT.

¹⁷⁹ Victorian Law Reform Commission (VLRC) (2007) *Assisted Reproductive Technology & Adoption: Final Report*. Victorian Law Reform Commission, Melbourne, Victoria.

reproduction and adoption. In relation to access to assisted reproductive technology, the VLRC decided:

“not to include impairment or disability as one of the grounds on which discrimination in relation to access to ART should be prohibited. This is because in some cases there is a nexus between disability and risk of harm to a child (for example, some forms of severe mental illness). Such a nexus does not exist in relation to marital status or sexual orientation. This does not mean that people with a disability or impairment should be refused treatment, but that in some cases a different approach is justified. Such an approach should involve making enquiries about any potential risk to the health and wellbeing of a prospective child”.

The resulting amended legislation, renamed the *Assisted Reproductive Treatment Bill 2008*, omits disability from its non-discrimination clause: ‘persons seeking to undergo treatment procedures must not be discriminated against on the basis of their sexual orientation, marital status, race or religion’.¹⁸⁰ In practice, this means that women with disabilities could be discriminated against on the basis of disability if seeking to access ART in Victoria.

Case Examples

Lucy has been married for five years to her husband who is 25 years her senior. Lucy’s husband has been married before and has children from two former relationships. Lucy’s husband has a long history of violence, including domestic violence, and has been imprisoned in the past for violence offences and breach of Apprehended Violence Orders. Lucy and her husband have a three year old daughter. Lucy has a past history of mental illness but has been non-episodic for more than 10 years. The marriage eventually breaks down due to the domestic violence perpetrated against Lucy by her husband. A custody dispute ensues. The Court awards full custody of the child to Lucy’s husband, on the grounds that Lucy has a “mental illness”. Lucy spends the next 12 years fighting to get her daughter back, to no avail.

A 40 year old woman with a psychosocial disability goes into labour and is in the labour ward of a public hospital about to give birth to her first child. She has been having difficulty stabilising her disability during her pregnancy, as she has been unable to take her standard medications due to the potential effect on the unborn child. Whilst she is giving birth, a senior nurse involved in her care makes an urgent phone call to WWDA. The nurse asks for urgent help. She advises WWDA that authorities have already made the decision to remove the child from the mother, as soon as the child is born. She says the paperwork is all done and the hospital social worker is no help, because she supports the removal of the child from her mother. The nurse advises that the woman has not been told and has no idea that her child is to be taken from her as soon as it is born. The nurse says she didn’t know who else she could ring for help. WWDA makes a series of calls to seek urgent intervention. The Office of the Public Advocate is able to assist and intervenes.

Jasmine is 21 years old. She and her husband both have a mild intellectual disability, and both are Aboriginal. Jasmine and her husband decided they wanted to have a child, and Jasmine soon became pregnant. Jasmine’s pregnancy was uneventful, and she gave birth to a healthy baby girl, Tameka. Four days after Tameka was born, child welfare authorities arrived at the hospital and removed her from her parents care. Jasmine, her husband, and their parents (Tameka’s grandparents) had been given no indication that Tameka was going to be removed by child welfare authorities. It was almost a month later that Jasmine and her family were told why Tameka had been removed. The reasons given were that Jasmine had a past history of mental health issues (which had been undiagnosed until not long before her pregnancy when she was finally diagnosed with a specific type of mental health impairment

¹⁸⁰ [Victoria] *Assisted Reproductive Treatment Bill 2008* (Part 1, 5, p.8).

and subsequently stabilised with medication). Other reasons given were that Jasmine had displayed 'poor parenting skills' and that she was deliberately 'starving her baby'. In actual fact, Jasmine's relatives advised that she had experienced severe difficulties with breastfeeding her baby, had repeatedly asked for guidance and help from the nurses, but had either been ignored or told to 'just persist'. A lawyer was engaged by Jasmine's mother and father to have Tameka returned to her parents care. Although the lawyer felt that this was a clear case of disability discrimination and that the allegations could easily be proven as false, the lawyer warned it could take up to a year for the case to be resolved. Jasmine and her husband are now only able to see their daughter twice a week for an hour at a time. These visits are supervised and Jasmine's relatives also believe that the sessions have been secretly video taped with smart phones. Jasmine's great grandmother was part of the Stolen Generation.

The Right to Work

89. 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 (12%); and regardless of full-time or part-time status, are likely to be in lower paid jobs than men with disabilities.¹⁸¹ A 2004 *Senate Inquiry into Poverty and Financial Hardship* concluded that women with disabilities are also affected by the lower wages paid to women relative to men and are more likely to be in casual jobs with little job security.¹⁸²
90. Although the *National Disability Strategy* recognises that women with disabilities ‘face poorer economic outcomes than men with disabilities’, the Strategy contains no gender-specific measures to address this disparity.
91. 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*’¹⁸³ 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.
92. In October 2013, the *Committee on the Rights of Persons with Disabilities* in its Concluding Observations following its Review of Australia’s compliance with the CRPD, recommended that the Australian Government:

*‘adopt initiatives to increase employment participation of women with disabilities by addressing the specific underlying structural barriers to their workforce participation.’*¹⁸⁴

93. 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 more than two decades.¹⁸⁵

¹⁸¹ 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.

¹⁸² In ‘Disability Rights Now’ OpCit.

¹⁸³ 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=ewr/payequity/report.htm

¹⁸⁴ Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session* (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1; Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FAUS%2FCO%2F1&Lang=en

¹⁸⁵ 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.

94. Successive Australian Governments have increased focus on getting people with disabilities into employment, including into open employment and/or supported employment. The current Federal Government has signalled its intent to reduce the number of persons on 'welfare', including those in receipt of the Disability Support Pension (DSP). Whilst WWDA supports initiatives that enable women with disabilities to find, secure and maintain meaningful employment, WWDA remains deeply concerned at the high incidence of violence, abuse, exploitation, bullying and harassment perpetrated against women with disabilities in the workplace. There would appear to be no national policy response to this widespread issue. Commonwealth Government funded initiatives (such as the Job Access Program) fail to address violence and abuse (including sexual violence) perpetrated against women with disabilities in employment settings. Disability Employment Services (DES), funded by the Federal Government and which are one of the primary mechanisms to get people with disabilities into the workforce, are required to comply with the Disability Services Standards, which contain a standard on 'Protection of human rights and freedom from abuse'. In reporting against this Standard, funded agencies 'may provide evidence' that staff have the knowledge to 'report criminal activities, abuse and neglect', and can provide 'practical examples of how they act to prevent abuse and neglect'.¹⁸⁶ As a mechanism to prevent and address violence against women and girls with disabilities, the Disability Services Standards are grossly ineffective. They are un-gendered, they focus only on 'abuse and neglect', they rely on service providers possessing the knowledge of what constitutes violence against women and girls with disabilities, they are essentially adult focused, and are concerned primarily with the collection of quantitative data.

Case Examples

Fran is a young woman in her mid 20's. Fran has a cognitive disability. She has always wanted a job that pays her proper wages and that is interesting. She hasn't ever had much success at getting a job. She finally gets some help from a Disability Employment Service (DES), which finds her a job in open employment. Fran is over the moon. The DES support worker visits Fran at work every few weeks to see how she is getting on. Fran loves her job and for the first few months everything goes well. Over a period of several weeks, Fran's demeanour changes. She appears withdrawn and sad. She is having trouble sleeping and suddenly wont go to bed without the lights on. Fran finally discloses to her DES support worker, that she is being repeatedly raped in the workplace by an employee. The perpetrator told Fran that if she told anyone she would get into lots of trouble and would lose her job. Fran's parents are notified and they call in the police. An investigation commences. The manager of the company where Fran works thinks Fran might be 'making it up'. He suggests that Fran might not be able to accurately identify the perpetrator, that she might 'inadvertently get him mixed up with someone else'. Already, seeds of doubt are being sown about Fran's credibility. Fran's parents decide that they will not access advocacy support to go through the police investigation process. They want to do it on their own. Fran doesn't get a choice about this. Fran's parents ask the DES support worker where they can access specialist counselling support for the daughter. The DES worker doesn't know. WWDA is contacted for help. WWDA sources and organises a sexual assault crisis support service for Fran and her family. The police investigation continues.

Mia is 40 and lives in a regional and remote area of Australia. Mia is desperate to work in paid employment. She loves working and feels she has a lot to contribute. She stayed in her last job for 10 years and was a highly valued employee. She only left her job because her [then] partner had secured a good job in regional Australia. Mia has a disability which affects her vision at times, however, with appropriate aids and equipment, she is a productive employee. Mia has difficulty finding a job in her new area. She seeks the help of a Disability Employment Service (DES), which helps her to apply for a job in a call centre. At interview, Mia advises the manager that she has a disability which affects her vision but that

¹⁸⁶ Department of Families, Housing, Community Services & Indigenous Affairs (FaHCSIA) (2011) *Disability Services Standards Self-Assessment Guide*; National Disability Advocacy Program. FaHCSIA, Canberra.

it will not affect her work performance. Mia gets the job. Mia requests an orientation to her new job, but the Manager says she doesn't have time and Mia will just have to figure it out. Within days of commencing her new job, Mia starts to experience bullying from the Manager. Mia is placed in a dark corner of the office space where she has difficulty seeing. She is given a chair that doesn't allow her to get close enough to the desk to see the computer screen. Mia's request for minor adjustments to her work station (including a light) are denied by the Manager. The discrimination intensifies. Mia is frightened of going to work but she wants to keep her job and doesn't understand why she is being treated so cruelly. Mia doesn't take any time off, despite her doctors concerns at the effect the discrimination is having on her. Mia keeps her DES support worker updated about all the incidents she is experiencing. Her DES support worker agrees Mia is experiencing disability discrimination but says there is nothing that she or the DES can do about it. One day Mia goes to work and is introduced to a young man who has been employed by the Manager. He is in the process of receiving an orientation from the Manger. Later that day, Mia is told by the manager that she is being sacked. Mia is not given any reasons why her employment is being terminated. She is given one day's notice. When Mia advises her DES support worker what has happened, the DES worker re-iterates that there is nothing the DES can do about it. The DES worker gives Mia WWDA's phone number and tells her to contact WWDA to see if WWDA can help her. WWDA is able to find Mia a solicitor who is currently working with Mia to lodge a formal disability discrimination complaint against the call centre.

The Right to Participate in Political and Public Life

95. Participation of women with disabilities as citizens is at the basis of the recognition of their dignity. For women and girls with disabilities, participation in social and political life and ensuring an adequate standard of living depends on their access to fundamental social structures such as education, employment, health care, housing, and free enjoyment of the most fundamental human rights, such as the right to sexuality and reproduction and freedom from all forms of violence. However, regardless of country or culture, disabled women and girls all over the world, do not have access to the social structures to enable them to enjoy their human rights. Many are denied the most fundamental rights and freedoms to enable their participation in social and political life on an equal basis as others. They are not treated with dignity and respect, they remain profoundly more disadvantaged than their male counterparts; and are systematically denied opportunities to develop, gain an education and live a full and meaningful life. Instead, they continue to experience multiple forms of discrimination, and widespread, serious violation of their human rights.¹⁸⁷
96. Access to decision-making, political participation and representation are essential markers of gender equality. Although there has been progress in women's participation in decision-making globally, the participation of women with disabilities in all areas of public life in Australia remains woefully inadequate. Women and girls with disabilities in Australia are often excluded from, and denied opportunities to participate in decision-making about issues that affect their lives and those of their families, community and nation.
97. Australia has clear obligations under the international human rights treaties it has ratified, including CEDAW and the CRPD, to ensure the active, free, informed and meaningful participation of women and girls with disabilities at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them, including for example, those relating to sexual and reproductive rights, and prevention of violence. This requires capacity-building and human rights education for women and girls with disabilities, and the establishment of specific mechanisms and institutional arrangements, at various levels of decision-making, to overcome the obstacles that women and girls with disabilities face in terms of effective participation.
98. The empowerment of women with disabilities is achieved principally through women with disabilities coming together to share their experiences, gaining strength from one another and providing positive role models. Women and girls with disabilities, their representative organisations and networks, must be empowered with sufficient resources, training and opportunities to effectively participate in shaping and monitoring the policies that affect them, at the national, regional and international levels.
99. Organisations and groups of women with disabilities play a critical role in raising awareness of, and working to address the violations, denials and infringements of their human rights. In Australia, WWDA is the only national representative civil society organisation (CSO) for women and girls with disabilities, but with a total workforce of one paid employee and an annual budget of \$163,000, WWDA's capacity to promote the participation and inclusion of disabled women and girls, is obviously significantly hampered. Financial and political support is therefore urgently needed for the establishment and maintenance of organisations, groups and networks of women with disabilities at the national and state/territory levels.
99. Fulfilling the right to information is a key prerequisite for the active, free, informed, relevant and meaningful participation of women and girls with disabilities. Yet many women and girls with disabilities are denied the right to seek, receive and impart information about decisions affecting their lives. They are far less likely than their non-disabled counterparts to receive general information or information that is gender and disability-specific, particularly relating to issues such as sexual and reproductive rights, and prevention of violence. They are denied access to information as to how their human rights and freedoms can be enforced and violations remedied. Women with disabilities have limited, if any, input into the development of relevant policies, services and programs, including information and education resources.

¹⁸⁷ Frohmader, C. (2013) OpCit.

100. The *Committee on the Rights of Persons with Disabilities* (CRPD), in its *Concluding Observations (Australia)*, released in October 2013, expressed its regret at the lack of mechanisms for consultation and engagement between Government and persons with disabilities and their organisations in all matters of Convention policy development and legislative reform, and recommended that:

the State party, in partnership with persons with disabilities through their representative organisations, establish engagement mechanisms for ensuring meaningful participation in the development and implementation of legislation and policies to implement the Convention.

101. The Committee has also recommended that the State party take initiatives to increase the resources available for independent organisations of persons with disabilities (including organisations representing children with disabilities) in order enable meaningful participation, consultation and engagement between Government and persons with disabilities.¹⁸⁸

102. The CRPD Committee further recommended that Australia:

*take immediate steps to replace substitute decision-making with supported decision-making and provide a wide range of measures which respect the person's autonomy, will and preferences and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, and to work.*¹⁸⁹

103. In addition, the CRPD Committee expressed its concern that Australia lacks a participatory and responsive structure for the implementation and monitoring of the Convention in line with Article 33, and recommended the State party immediately set up a monitoring system that would be fully in line with the provisions of Article 33 of the Convention.¹⁹⁰

104. Furthermore, the CRPD expressly recommended that Australia:

*commissions and funds a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the Convention can be measured.*¹⁹¹

105. 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 CEDAW 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 Australia 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. The CEDAW Committee has also explicitly recognised that violence against disabled women and girls, and denial of their sexual and reproductive rights, severely limit the opportunities for the participation of women and girls with disabilities in public life. In so doing, the Committee has called on the Australian Government to address these issues.

¹⁸⁸ Committee on the Rights of Persons with Disabilities; *Concluding observations on the initial report of Australia*. Adopted by the Committee at its tenth session (2–13 September 2013); 4th October 2013; UN Doc. CRPD/C/AUS/CO/1.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.