



Women  
With  
Disabilities  
Australia  
(WWDA)

# Gender **Blind** Gender **Neutral**

The effectiveness  
of the National  
Disability Strategy in  
improving the lives  
of women and girls  
with disabilities

A report by Women With Disabilities  
Australia (WWDA) for the Council Of  
Australia Governments (COAG)

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'Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities

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## About Women With Disabilities Australia

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.

WWDA's human rights based approach recognises that the international human rights normative framework, including the international human rights treaties and their optional protocols, and the general comments and recommendations adopted by the bodies monitoring their implementation, provide the framework to delineate the respective obligations and responsibilities of governments and other duty-bearers in relation to the human rights of women and girls with disabilities. It is this framework that WWDA utilises to promote and indeed demand, accountability from Governments and other duty bearers in relation to recognising and addressing the violations of human rights and fundamental freedoms experienced by women and girls with disabilities.



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*'We are all totally committed to trying to ensure genuine and complete equality between men and women.....Our policies aim to assist women to lead happy, productive lives in safe communities, further their economic independence and stability, and improve their work-life balance.'*

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Hon Tony Abbott  
Prime Minister of Australia  
4 March 20141



*'Without addressing gender inequality in all its forms, we cannot expect meaningful progress in other spheres of development. The Australian Government will continue to support and advocate for the rights of women and girls to be fully respected and promoted in a proactive way that reflects Australian values and interests. I am determined that this Government's commitment to gender equality remains resolute and unwavering.'*

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Senator the Hon  
Michaelia Cash  
Minister Assisting the Prime  
Minister for Women  
24 March 20142



*'We recognise that women, children and Indigenous Australians with disabilities face multiple intersecting disadvantage. The Australian Government is taking steps to ensure the specific needs of these vulnerable groups are considered during the development and implementation of relevant policies and programs....'*

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Mr Peter Woolcott  
Australian Ambassador  
Permanent Mission to the  
United Nations  
4 September 20133



*'If those who sign agreements such as the Convention on the Elimination of Discrimination against Women, or who endorse the Beijing Platform for Action, do not translate commitments into actions, and are not held to account for these actions, these texts lose credibility. Accountability is essential if the world is to realise women's rights and gender equality.'*

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Ban Ki-Moon  
Secretary-General of the  
United Nations, 20084

# Overview of this Submission

- 1 The National Disability Strategy (NDS)<sup>5</sup> is the 'foundation of Australia's work to advance disability rights'.<sup>6</sup> It sets out a national policy framework to guide Australian governments to meet their obligations under the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), which entered into force in Australia in 2008. The NDS is a ten-year Strategy that was formally endorsed by the Council of Australian Governments (COAG)<sup>7</sup> in 2011. Its vision is for 'an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. All Australian Governments have agreed that the NDS will ensure that the principles underpinning the CRPD – including equality between men and women – are incorporated into policies and programs affecting people with disability, their families and carers.<sup>8</sup>
- 2 Consistent with Article 29 of the CRPD, the National Disability Strategy (NDS) commits governments to ensure that people with disabilities remain 'actively engaged' during the implementation of the Strategy and that their views are reflected in the two yearly NDS Progress Reports COAG. The first of these two yearly Progress Reports is due to COAG in the second half of 2014.<sup>9</sup>
- 3 As the national NGO representing women and girls with disabilities, the Australian Government has invited WWDA to participate in this engagement process by assessing whether, if and how the NDS is promoting, protecting, respecting and fulfilling the human rights of women and girls with disabilities in Australia. Importantly, this assessment from WWDA includes the provision of a critical analysis of where the NDS appears to be failing women and girls with disabilities. It also includes, for the consideration of COAG, key areas for future directions in order to strengthen the NDS as a mechanism to advance the human rights of women and girls with disabilities. This is particularly important given that the development of the second NDS Implementation Plan - *Driving Action 2015–2018* - will draw on the results of the 2014 progress report to COAG.<sup>10</sup> This analysis from WWDA is also critically important given that to date, despite Australia's international human rights obligations in relation to gender equality - all aspects of the NDS are un-gendered.
- 5 There is no doubt that the NDS is an important framework to guide Australian governments to meet their obligations under the CRPD. From WWDA's research and analysis, it appears that the NDS is having some purchase and success in areas such as:
  - awareness raising (largely due to media and publicity around the National Disability Insurance Scheme);
  - the development of the National Disability Insurance Scheme (NDIS) itself;
  - improved access for people with disabilities in relation to sporting, arts and cultural activities;
  - improvements around access to the built environment through advances in regulatory frameworks, standards, and the promotion of universal design principles.
- 6 There are also examples of some particularly innovative programs, such as the Australian Human Rights Commission (AHRC) funding program to build the capacity of people with disabilities to engage and participate in international human rights fora.<sup>11</sup> In relation to improving access to justice for people with disabilities, an example of a promising state based initiative is the South Australian governments work around amending the *Evidence Act 1929*.<sup>12</sup> Another example of a particularly successful and promising state based initiative is the NSW Intellectual Disability Rights Service (IRDS) *'Criminal Justice Support Network'*<sup>13</sup> which provides support for people with intellectual disabilities involved in any type of criminal matter, regardless of whether the person is a victim, witness or suspected of involvement in a crime. However, as is often the case with a program/service of this type, it is restricted to one State only, is only eligible to people with intellectual disabilities, and only covers certain geographical locations in NSW.
- 7 Although there are areas where the NDS has had, or is having a positive impact on advancing the rights of people with disabilities, there are however, vast gaps and areas of neglect. The fact that all aspects of the NDS are completely un-gendered and ignore gender equality - one of the



most fundamental human rights principles, and indispensable to advancing the human rights of women and girls with disabilities – is shameful.

8 WWDA's research and analysis indicates that NDS Outcome Area 2 [*Rights protection, justice and legislation*] is the area that has seen minimal progress for women and girls with disabilities. For example, all areas of the NDS are completely silent on the sexual and reproductive rights of people with disabilities. Yet this is an area where disabled people, particularly women and girls, experience some of the most grave and horrific breaches of their most fundamental human rights. It is inexcusable that the major policy framework to '*advance the rights of people with disabilities in Australia*' totally ignores and excludes the sexual and reproductive rights of people with disabilities. Similarly, the un-gendered, and extremely limited measures within the NDS to address all forms of violence against people with disabilities, particularly women and girls with disabilities, is deeply concerning.

9 The assessment and analysis in this Submission have been undertaken by WWDA utilising a range of mechanisms and by drawing on WWDA's extensive experience, research, publications, advocacy, and direct engagement with our constituents. This work has been undertaken in the context of WWDA's limited capacity as an organisation with only one paid staff member and no specific funding to undertake this work. This Submission therefore deliberately focuses on the key priority areas and issues affecting women and girls with disabilities in Australia where the NDS appears to be having little purchase on advancing their rights and freedoms. These areas include:

- the right to freedom from violence, abuse, exploitation and neglect;
- the right to sexual and reproductive freedom, including the right to found and maintain a family;
- the right to work and to economic security;
- the right to access to justice, legal capacity and equality before the law;
- the right to decision-making, participation and representation.

10 This Submission from WWDA is structured in four main sections.

**Section One** concentrates on a series of key

areas for future direction for consideration by COAG in the 2014 Progress Review of the implementation of the NDS, and its subsequent work to develop the future NDS Implementation Plans: *Driving Action 2015–2018* and *Measuring Progress 2019–2020*. These key future directions have been developed as a result of WWDA's research and analysis as to whether, if and how the NDS is promoting, protecting, respecting and fulfilling the human rights of women and girls with disabilities in Australia. The key future directions encompass general areas to strengthen the human rights framework of the NDS as the foundation of Australia's work to advance disability rights, and to '*create an Australian society that enables people with disability to fulfil their potential as equal citizens*'. The section also includes more specific key future directions for consideration in relation to priority issues affecting women and girls with disabilities in Australia where the NDS appears to be having little purchase on advancing their rights and freedoms.

11 **Section Two** provides an overview of the National Disability Strategy (NDS). It provides information on the background to the NDS, the principles underpinning the Strategy, along with its vision, goals and objectives. It also provides an overview of how the NDS is being implemented, including mechanisms and processes to monitor and evaluate progress.

12 **Section Three** of this Submission examines issues relating to gender equality in the context of the NDS. It looks at the vital importance of gender as a fundamental tenet in the development of public policy affecting people with disabilities. It highlights the gendered differences in the life experiences and status of women and men with disabilities. It examines Australia's international human rights obligations in relation to gender equality and disability rights and demonstrates the absolute disjuncture between these obligations and their integration into domestic law, policy, strategies and frameworks - including the NDS. Included in this section is an overview of the United Nations assessments of Australia's progress to improve the human rights of women and girls with disabilities. This analysis reveals how successive Australian Governments have demonstrated an apathy and scant regard for the strong recommendations issued by the United Nations for more than a decade, in relation to improving the human rights of women and

girls with disabilities. This section also highlights how the NDS - an un-gendered framework that ignores gender equality - appears to be failing women and girls with disabilities.

- 13 **Section Four** of WWDA's Submission examines a series of priority issues where to date, the NDS appears to have had little purchase in promoting, protecting, respecting and fulfilling the human rights of women and girls with disabilities in Australia. The priority issues analysed in this section include: the right to freedom from violence, abuse, exploitation and neglect; sexual and reproductive rights; economic security and the right to work; access to justice, legal capacity, and equal recognition before the law; and, decision-making, participation, and representation.
  - 14 This Submission uses an extensive number of case studies to illustrate urgent areas where the NDS appears to be largely ineffectual for women and girls with disabilities. Apart from the case studies that are referenced from other sources, all others are actual cases that have come to WWDA's attention in recent times. Most of those cited have come directly from women with disabilities themselves. The case studies represent just a snapshot of the many stories that come to WWDA's attention on a daily basis. For the purposes of confidentiality, the case studies have been de-identified.
  - 15 WWDA's Submission and the case studies it contains, demonstrate that whilst women with disabilities want improved access to the built environment, better accessible transport, more choice around personal support and so on, they also want the right to be recognised as sexual beings, with the right and freedom to experience and express their sexuality, to have control over their own bodies, to experience love, intimacy, sex and desire. For many women with disabilities, particularly those locked in institutions and trapped within restrictive environments, they want the right to sexual freedom, to make their own decisions, to be seen and treated first and foremost, as women. Women with disabilities want all forms of violence perpetrated against them to stop. They want the right to have children and keep their children. They want authorities to stop taking their babies from them solely on the grounds of the woman's disability. They want courts to stop awarding custody of their children to violent ex-partners, just because the woman has a disability. Women with disabilities want access to justice when their rights
- are violated. When they are raped and sexually abused, they want to know that their word and their evidence will be treated as credible. They want the right to work in meaningful employment – in safe workplaces where they are free from violence, harassment and discrimination. Women with disabilities want the right and the opportunity to participate in decision-making about issues that affect their lives and those of their families, community and nation. They want people to understand that just because they are women with disabilities, does not mean they are not entitled to recognition, respect, dignity and rights.
- 16 Women with disabilities want Governments to know that if the National Disability Strategy is *really* about advancing the rights of people with disabilities, then those responsible for its development, implementation, monitoring and review, need to be prepared to recognise, understand, and tackle these issues. They aren't easy issues, or neat and tidy issues, or issues that can easily be 'ticked off' as having been quickly completed or achieved. But they are some of the most serious, pressing human rights issues facing women and girls with disabilities in Australia today. They are in fact not 'new' issues - women and girls with disabilities have endured these issues for decades, but these issues, and women with disabilities - have been ignored and trivialised by successive Australian governments at all levels for far too long. This apathy and indifference cannot continue.
  - 17 Women and girls with disabilities matter. Gender matters. Gender equality matters. WWDA strongly encourages all those with a stake in the NDS – including policy makers responsible for developing the 2014 NDS Progress Report to COAG, and the future NDS Implementation Plans - *Driving Action 2015–2018* and *Measuring Progress 2019–2020* – to read this Submission in its entirety in an endeavour to understand and respect the critical importance of gender as a central consideration in the development of legislation, policy and programs to advance gender equality and to promote the human rights of women and girls with disabilities.

# Future Directions: Key Areas For Consideration

## Future Directions: Broad Areas For Consideration

- 18 The future NDS implementation plans *Driving Action 2015–2018* and *Measuring Progress 2019–2020* should be gendered and contain specific targeted measures to address the following urgent gaps and issues where the NDS is currently failing women and girls with disabilities. These areas include:
- the right to freedom from violence, abuse, exploitation and neglect;
  - the right to sexual and reproductive freedom, including the right to found and maintain a family;
  - the right to work and to economic security;
  - the right to access to justice, legal capacity and equality before the law
  - the right to decision-making, participation and representation.
- 19 Consistent with the NDS as a whole of government framework to advance disability rights, and to ‘create an Australian society that enables people with disability to fulfil their potential as equal citizens’, all aspects of the NDS (including implementation plans) should recognise that advancing disability rights is not just an obligation in relation to the *Convention on the Rights of Persons with Disabilities* (CRPD). It is equally a key obligation relating to civil and political rights; economic, social and cultural rights; child rights; women’s rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination. In this context, future NDS implementation plans should ensure that it is an object of NDS implementation to give effect to the obligations that Australia has as a party to the following additional international human rights instruments:
- the Convention on the Elimination of All Forms of Discrimination against Women on 18 December 1979 ([1983] ATS 9);
  - the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966 ([1980] ATS 23);
  - the International Covenant on Economic, Social and Cultural Rights on 16 December 1966 ([1976] ATS 5);
  - the Convention on the Rights of the Child on 20 November 1989 ([1991] ATS 4);
  - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 10 December 1984 ([1989] ATS 21);
  - the Convention on the Elimination of All Forms of Racial Discrimination on 21 December 1965 ([1975] ATS 40).
- 20 The future NDS implementation plans *Driving Action 2015–2018* and *Measuring Progress 2019–2020* should incorporate and reflect recommendations made to Australian Governments by the international human rights treaty monitoring bodies in respect to Australia’s obligations to improve the human rights of people with disabilities. Specifically, *Driving Action 2015–2018* should address those recommendations arising from the Concluding Observations and Recommendations contained in: CRPD/C/AUS/CO/1 (October 2013); CRC/C/15/Add.268 (June 2012); CEDAW/C/AUS/CO/7 (July 2010); A/HRC/17/10 (Jan 2011). This work should also include addressing the recommendations of the 2013 *Report of the UN Special Rapporteur on Torture* (A/HRC/22/53); the 2012 *Report of the UN Special Rapporteur on Violence against women, its causes and consequences* (A/67/227); along with the *List of Issues Prior to Reporting* (CCPR/C/AUS/Q/6) to Australia’s upcoming review by the Human Rights Committee on Australia’s compliance with the International Covenant on Civil and Political Rights.
- 21 Consistent with recommendations made to successive Australian Government’s by the United Nations treaty monitoring bodies and by civil society organisations, including disabled people’s organisations, the Australian Government should



as a matter of urgency, withdraw its Reservations and Interpretative Declarations to the human rights treaties to which Australia is a party. Specifically, in relation to people with disabilities, the Australian Government should withdraw its Interpretative Declarations on CRPD Article 12 [*Equal recognition before the law*], Article 17 [*Protecting the integrity of the person*] and Article 18 [*Liberty of movement and nationality*]. These Interpretative Declarations, which include allowing for substituted decision-making and compulsory medical treatment, have been found to be hindering Australia's ability to comply with the CRPD and are being used as a justification to deny people with disabilities their human rights. The next NDS Implementation Plan *Driving Action 2015–2018* should include specific intent and measures to review all Reservations and Interpretative Declarations that are inconsistent with the NDS vision of '*enabling people with disability to fulfil their potential as equal citizens*'. As a priority, *Driving Action 2015–2018* should include specific measures to withdraw the Interpretative Declarations on CRPD Articles 12, 17 and 18.

- 22 Reflecting the Australian Government's 2013 acknowledgment that women, children and Indigenous Australians with disabilities face multiple intersecting disadvantage, and its subsequent commitment to '*take steps to ensure the specific needs of these vulnerable groups are considered during the development and implementation of relevant policies and programs*',<sup>14</sup> future NDS Implementation Plans (including priority areas for future action; as well as mechanisms and indicators for monitoring, review and evaluation), should prioritise and provide specific, targeted measures to promote, protect, respect and fulfill the human rights of women, children and Indigenous Australians with disabilities.
- 23 In line with Australia's international obligations to advance gender equality and disability rights, and consistent with the Australian Government's recent commitment to ensure that '*women's issues and gender equality are taken into consideration in all policy and program development and implementation*'<sup>15</sup>, all aspects of the NDS must be gendered. This should include the incorporation of gender perspectives into NDS goals, structures, priorities, specific plans, decisions, processes, practices, projects, activities, monitoring, and resource allocation, as well as participation at all levels. Gender statistics, gender

disaggregated data and the collection of specific information on the situation of women and girls with disabilities must be built into all aspects of the NDS, including monitoring, review and evaluation mechanisms, and should include both quantitative and qualitative approaches and measures.

- 24 Reflecting Australia's international obligations to advance gender equality and disability rights, and in response to consistent recommendations from the UN treaty monitoring bodies [CRPD/C/AUS/CO/1; CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5] the next NDS Implementation Plan - *Driving Action 2015–2018* - should, as an immediate action and priority, commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards compliance with the UN treaties (to which Australia is a party) can be measured and monitored. Such an assessment will also contribute to measuring progress and monitoring the impact and effectiveness of the National Disability Strategy as a mechanism to advance the human rights of women and girls with disabilities.
- 25 The *National Disability Agreement (NDA)*<sup>16</sup>, which provides the national framework and key areas of reform for the provision of government support to services for people with disabilities, should be reviewed and updated to include gender equality as a key principle underpinning the NDA and its five strategic policy priority areas for reform. This is consistent with CRPD Article 6, and Australia's international obligations in relation to gender equality. It is also consistent with, and reflects the agreement of all Australian governments to use the review points of national partnerships and agreements<sup>17</sup> (including the NDA) to assess their consistency with the National Disability Strategy. It further reflects the agreement of all Australian governments to include '*additional strategies and performance indicators to ensure they address the needs of people with disability and embed disability issues into the day-to-day policy and program consideration of government agencies and departments*'.<sup>18</sup>

## Future Directions: Priority Issue Areas For Consideration

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

- 26 Consistent with recommendations from the UN treaty monitoring bodies and special procedures,<sup>19</sup> as well as recommendations from WWDA and other civil society organisations, the future NDS implementation plans *Driving Action 2015–2018* and *Measuring Progress 2019–2020* should include the development of specific, gendered, targeted measures to urgently address the multiple forms and high levels of violence experienced by women and girls with disabilities, as well as the low rates of reporting, prosecutions and convictions, the lack of data, analysis and research; the lack of inclusive legislation, services and support, and the critical need to ensure that women and girls with disabilities experiencing, or at risk of experiencing violence have access to an effective, integrated prevention and response system which is comprehensive, coordinated, consistent, sustained, transparent, adequately resourced, monitored and evaluated.
- 27 NDS Implementation Plans, at national and state/territory government levels, must recognise that the *National Plan to Reduce Violence Against Women and their Children 2010-2022*,<sup>20</sup> (cited within some of these plans as the sole and key strategy to address violence against people with disabilities), is limited in scope in addressing and preventing violence women and girls with disabilities. The *National Plan to Reduce Violence Against Women and their Children 2010-2022* has little emphasis on girls with disabilities, it focuses only on domestic/family violence and sexual assault and fails to address the many other 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). These forms of violence currently fall 'outside' the scope of the National Plan, and remain unaddressed within the NDS. In this context, NDS implementation plans should ensure that relevant legislation, policy, implementation frameworks and strategies to address violence against women, are responsive to the intersections of gender and disability, and address all forms of violence experienced by women and girls with disabilities.
- 28 The next NDS implementation plan *Driving Action 2015–2018* should include the following priority actions to address and prevent violence against women and girls with disabilities:
- commission and fund a national public inquiry into violence against people in institutions, with a specific focus on the gendered nature of such violence, and the multiple forms of violence perpetrated against women and girls with disabilities in these settings. Such an inquiry should address the 2006 and 2010 urgent recommendation of the UN *Committee on the Elimination of All Forms of Discrimination against Women [CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7]* and the 2013 urgent recommendation of the *Committee on the Rights of Persons with Disabilities [CRPD/C/AUS/CO/1]* to 'address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings';
  - ensure implementation of the findings and key recommendations of the COAG national reform project 'Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia'<sup>21</sup>;
  - commission and fund an Inquiry into the application for, and use of forced and/ compulsory medical and psychiatric treatments and interventions on people with disabilities, including research into, and analysis of, the use of electroshock therapy on women and girls in Australia. Such an inquiry should determine why, in contemporary Australia there is a substantial difference in the numbers of men and women receiving both voluntary and involuntary ECT, with three times as many women receiving ECT compared with men;
  - consistent with the recommendations from the United Nations treaty monitoring bodies and special procedures, [CEDAW/C/AUS/CO/7; CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CRPD/C/AUS/CO/1; CCPR/C/AUS/Q/6; A/HRC/22/53; A/67/227], along with the *International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization* (2011);<sup>22</sup> recommendations of the *World Medical Association (WMA)* (2011) and the *International Federation of Health and Human Rights Organisations (IFHHRO)*

(2011),<sup>23</sup> adopt national uniform legislation prohibiting the use of sterilisation of girls and boys with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.

## Sexual and Reproductive Rights and Freedoms

29 Reflecting Australia's obligations to the international human rights treaties to which it is a party - particularly the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities - along with the NDS vision of 'enabling people with disability to fulfil their potential as equal citizens', the future NDS implementation plans Driving Action 2015–2018 and Measuring Progress 2019–2020, must address the fact that all aspects of the NDS are completely silent on the sexual and reproductive rights of people with disabilities. It must be acknowledged that the omission of sexual and reproductive rights from the national policy framework to 'advance the rights of people with disabilities' only serves to perpetuate the stereotype of people with disabilities as asexual, genderless human beings; denies people with disabilities their most fundamental human rights; and gives rise to a policy, program and service vacuum whereby the sexual and reproductive rights of people with disabilities remain violated, denied, ignored and trivialized. In this context, future actions within NDS implementation Plans at national and state/territory levels, must include the development of specific, gendered, targeted measures to urgently address the sexual and reproductive rights violations experienced by people with disabilities.

30 Recognising that sexual and reproductive rights encompass the basic right of all couples and individuals to found and maintain a family, including the right to decide freely and responsibly the number, spacing and timing of their children and to have access to the information and means to do so, the next NDS implementation plan Driving Action 2015–2018, should as a priority action, commission a national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disabilities. The need for this urgent work is consistent with recommendations made over many years, to successive Australian Governments

from human rights organisations, treaty monitoring bodies, civil society organisations, statutory authorities and more. Discrimination against 'potential and actual parents with disabilities' has also been identified by the Australian Council of Human Rights Agencies (ACHRA) as one of three urgent human rights matters requiring national leadership and action.<sup>24</sup> Such an Inquiry should:

- (a) investigate reasons why in Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care;<sup>25</sup>
- (b) address the over-representation of parents with intellectual disabilities in care and protection proceedings;<sup>26</sup>
- (c) address the need for reform in the area of child removal on the basis of parental disability in the family law system;<sup>27</sup>
- (d) address the lack of systematic, gendered data collection and analysis;<sup>28</sup>
- (e) address the lack of comprehensive and intensive gender specific parenting and family support services, programs and measures.<sup>29</sup>

31 Recognising that sexual and reproductive rights are fundamental human rights which include the right to bodily integrity, autonomy and self-determination, and further recognising that women and girls with disabilities are subject to multiple and extreme violations of these rights, ensure implementation of the key recommendations from the 2013 *WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia* [ISBN: 978-0-9876035-0-0].<sup>30</sup>

## The Right to Work and to Economic Security

32 Consistent with recommendations made to successive Australian Governments by UN treaty monitoring bodies and civil society organisations, and in response to recommendations and findings from the 2004 *Senate Inquiry into Poverty and Financial Hardship*,<sup>31</sup> and the 2009 *Parliamentary Inquiry into Pay Equity and female participation in the workforce*,<sup>32</sup> future NDS Implementation Plans at national, state/territory levels, should include concrete, gender-specific, targeted actions and measures to increase employment participation of women with disabilities. This must include definitive measures to address the specific underlying structural barriers to their workforce participation.

- 33 Government funded programs and initiatives, such as the national Job Access Program,<sup>33</sup> as well as Disability Employment Services (DES)<sup>34</sup> must recognise that women with disabilities have a right to a safe workplace, whether in open employment or supported employment, and that the high incidence of violence and other forms of discrimination perpetrated against women with disabilities in the workplace must be addressed as a matter of urgency.
- 34 Policy makers responsible for the development, funding and monitoring of programs, services and initiatives to increase the employment of people with disabilities, should ensure that these programs are gendered and include specific policy measures to address the high incidence of discrimination against women with disabilities in employment.

### The Right to Access to Justice, Legal Capacity & Equal Recognition Before the Law

- 35 Recognising that Australia's Interpretative Declarations on CRPD Articles 12 and 17 are incompatible with the NDS as the framework to advance disability rights and are being used as a justification to deny women with disabilities their human rights and perpetuate discrimination against disabled women and girls, the next NDS Implementation Plan - *Driving Action 2015–2018* - should include specific measures to withdraw the Interpretative Declarations to the CRPD.
- 36 Consistent with the recommendations stemming from the Committee on the Rights of Persons with Disabilities review of Australia's compliance with the CRPD, the 2014 COAG review of the NDS and subsequent Implementation Plans, should incorporate and reflect the specific recommendations made to Australia by the CRPD Committee in relation to access to justice, legal capacity, and equal recognition before the law [CRPD/C/AUS/CO/1 at paras. III A9; B.25 – B.40; B.52].
- 37 The 2014 COAG review of the NDS, and all future NDS Implementation Plans at national, state/territory levels (including action areas, specific initiatives, monitoring and review processes), should ensure they are consistent with and reflect the recently released CRPD *General Comment No 1 (2014): Article 12: Equal Recognition Before the Law*.<sup>35</sup> This General Comment specifically clarifies a States party's obligations in relation to

ensuring equal recognition before the law for people with disabilities, and in so doing, elucidates the imperative of a gendered analysis of legal capacity and equal recognition before the law.

### The Right to Decision Making, Participation, and Representation

- 38 In keeping with recommendations from the Committee on the Elimination of Discrimination Against Women [CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7] and the Committee on the Rights of Persons with Disabilities [CRPD/C/AUS/CO/1], the next NDS Implementation Plan - *Driving Action 2015–2018* - should include urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, and that structures, mechanisms and initiatives are established to enable and foster their participation and engagement. Inherent in this is the urgent need for financial and political support from Commonwealth, State and Territory governments to enable the establishment, recurrent funding and maintenance of an organisation of and for women with disabilities within each State and Territory, and the urgent need to address the lack of funding and staffing of Women With Disabilities Australia (WWDA).

# The National Disability Strategy – An Overview

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*“The government released a National Disability Strategy which was a good and a worthy document..... We need to make sure that there are mechanisms to give life to these documents. The ultimate measure of the value of such publications is really the effect they have on people, the real life change of quality of life and standard of living for the people it was designed to support.”<sup>36</sup>*

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## Background

- 39 In late 2008, the Australian Government released a discussion paper asking the community to respond to a series of questions about their experience of disability. The consultations were intended to inform the development of a National Disability Strategy. More than 750 written submissions were received in response to the discussion paper, more than half of which were from individuals and the remainder from a range of organisations. More than 2,500 people also attended consultations in capital cities in every state and territory of Australia, as well as in regional and remote areas. More than 15 per cent of written submissions focused on particular issues facing women with disabilities. In addition, a number of regional consultations were conducted with women with disabilities.
- 40 The consultations culminated in the 2009 report *Shut Out: The Experience of People with Disabilities and their Families in Australia*.<sup>37</sup> The *Shut Out* Report identified amongst other things that the National Disability Strategy should act as an overarching policy statement, setting the national view, establishing future direction and identifying priorities for people with disabilities. A fundamental priority was to ensure that the National Disability Strategy realise the rights enshrined in the *Convention on the Rights of Persons with Disabilities* (CRPD). The *Shut Out* Report identified four strategic priorities for a National Disability Strategy:

- increasing the social, economic and cultural participation of people with disabilities and their families, friends and carers;
- introducing measures that address discrimination and human rights violations;
- improving disability support and services; and,
- building in major reform to ensure the adequate financing of disability support over time.

## Principles, Vision, Goals & Objectives

- 41 The National Disability Strategy (NDS) was subsequently developed in 2010 and formally endorsed by the Council of Australian Governments (COAG) in February 2011. It is the *‘foundation of Australia’s work to advance disability rights’*<sup>38</sup> and sets out a national policy framework for guiding Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). Australian Governments have agreed that the NDS will *“ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers.”*<sup>39</sup> These **principles** are:
- a. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
  - b. Non-discrimination;
  - c. Full and effective participation and inclusion in society;
  - d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
  - e. Equality of opportunity;
  - f. Accessibility;
  - g. Equality between men and women;
  - h. Respect for the evolving capacities of



children with disabilities and respect for the right of children with disabilities to preserve their identities.

42 The **vision** of the NDS is for 'an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. The NDS explicitly recognises that 'the experiences and needs of people with disability and their families are central to the Strategy, its vision, and its principles'.<sup>40</sup> The **purpose** of the NDS is to:

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

43 The NDS sets out **goals** and **objectives** under **six areas** of mainstream and disability-specific public policy. The six areas are: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and well-being. There are a number of objectives/policy directions under each of the six areas. The Objectives/Policy Directions under each of the 6 outcome areas have been identified to guide actions over the life of the Strategy. The policy directions contain fifty-three areas for future action. These actions are at various stages of development and are intended to be progressed during the life of the Strategy. As these actions are completed or updated additional priorities may be identified or existing ones revised.<sup>41</sup> The Objectives/Policy Directions for each of the six goal areas are outlined in Appendix 1 of this Submission.

44 The NDS is **un-gendered**, however, it does recognise that 'not all people with disability are alike'. It states:

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*People with disability have specific needs, priorities and perspectives based on their personal circumstances, including the type*

*and level of support required, education, sex, age, sexuality, and ethnic or cultural background. Some experience multiple disadvantages. Sex, race and age can significantly impact on the experience of disability. Women and men with disability often face different challenges by reason of their sex, or experience the same issues in different ways. For example, women and men with disability are likely to experience violence in different ways and so need different supports. Recognition of the diversity of experiences of people with disability underpins the six outcome areas of the Strategy.<sup>42</sup>*

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## Implementation

45 The NDS is supported by three **Implementation Plans** developed over its ten-year life span. The first implementation plan - *Laying the Groundwork: 2011–2014*<sup>43</sup> - details actions to be taken in policies and programs across all areas of government. These actions represent the first round commitment to transform the experience of people with disabilities by improving the design and delivery of services and programs to achieve more inclusive communities. The Plan includes six main actions<sup>44</sup> aimed at driving change across each of the Strategy's policy outcomes and directions. The Plan provides detailed information on how the Australian and state and territory governments will respond to the fifty-three areas for future action that sit under the six policy outcome areas of the National Disability Strategy. During the life of the first implementation plan, work will be undertaken to identify gaps in achieving the Strategy's policy outcomes and directions. This work will also involve identifying possible new priorities for consideration.

46 The second implementation plan - *Driving Action 2015–2018* - will outline new priority actions as well as ongoing commitments. It will consolidate actions that are driving improved outcomes and identify where more effort is needed. Development of this plan will draw on the results of the 2014 progress report to the COAG in addition to considering input from consultations with people with disability and their representative organisations. The third and final implementation plan - *Measuring Progress 2019–2020* - will identify new and emerging priority outcomes to

be implemented in the final years of the Strategy. Each implementation plan will be underscored by the need for a change of attitude about disability by governments and the broader community; a change of attitude that promotes dignity and human rights, and supports participation in all aspects of community life.<sup>45</sup>

- 47 As well as the National Implementation Plans, each state and territory government has its own disability planning process to drive improved outcomes through mainstream policies, programs, services and infrastructure. Each jurisdiction has, or is currently developing, an individual plan to translate the Strategy's vision into tangible and achievable service improvements. These plans have been developed in response to the particular circumstances and priorities in each jurisdiction. Actions are locally based and aim to work in parallel with activities under the national implementation plan. State and territory governments will share information about these activities for the progress reports to the Council of Australian Governments.<sup>46</sup>

## Monitoring Progress & Evaluation

- 48 Under the NDS, a high-level **Progress Report** will be submitted to the COAG every two years.<sup>47</sup> These progress reports will monitor progress against the six policy outcomes using independent reporting and analysis of data on trend indicators. (The trend indicators are provided in Appendix 2 of this Submission). The progress reports will also include:

- other evidence of change, such as reporting from the Standing Council on Community and Disability Services about key achievements as well as reporting from disability champion ministers and, where appropriate, other portfolio ministers;
- outcomes of any reviews of national agreements and national partnerships;
- state and territory government information on their disability plans;
- Australian Government agencies' policies and programs that are working towards achieving the Strategy's vision;
- the views of people with disability, their families and carers and their representative organisations on progress.

- 49 In November 2011, the Australian Government released the NDS 'Evidence Base Paper'<sup>48</sup>, a companion document to the National Disability Strategy 2010-2020. The paper draws on statistical and information sources to provide two streams of analysis. The first provides contextual information on the disability population in Australia, including their need for, and access to, informal and formal care. The second stream presents a broad national picture of the nature and extent to which people with disabilities are disadvantaged in Australian society. The analysis presented in the paper is structured around the six areas of policy action under the NDS. The Evidence Base Paper provides data and analysis on 'people with disabilities' and is un-gendered.

- 50 An initial Report to the COAG, endorsed by all Australian Governments, was released in December 2012. This Report contains the plan for first implementation phase (*Laying the Groundwork: 2011–2014*). It outlines the action that governments have taken, or will take, to deliver on the Strategy, including information on the fifty-three areas for future action identified as priorities in 2009. The first high-level Progress Report to COAG is due in 2014. A final evaluation report of the NDS will be prepared in 2021 and will use the evidence gathered through the two-yearly progress reports and will draw on the findings from evaluations of related government initiatives. It will also assess the Strategy's performance in terms of the vision, the six policy outcomes, and the purpose of the Strategy.<sup>49</sup>

# Gender Equality & Disability: The Context

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*'We live in societies that are permeated by gender differences and gender inequalities. There is no country in which the outcomes of public policy are equal for men and women'.<sup>50</sup>*

*"Gender equality has long been recognised both as a human right and a core development goal. Discrimination against women and girls impairs progress in all other areas of development,<sup>51</sup> and remains the single most widespread driver of inequalities in today's world."<sup>52</sup>*

*"States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention."<sup>53</sup>*

*"We remain deeply concerned that women and girls with disabilities in Australia continue to experience widespread denial of their right to make decisions about their own bodies, experience their sexuality, have sexual relationships, and found and maintain families."<sup>54</sup>*

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## Gender Equality & Disability: The Status of Women and Girls with Disabilities

- 51 The Australian Government has, in recent times, clearly articulated its commitment to *'strengthening the provision of gender<sup>55</sup> analysis, advice and mainstreaming across Government, and ensuring that women's issues and gender equality are taken into consideration in policy and program development and implementation'*.<sup>56</sup> Gender equality is a fundamental human rights principle, underpinning not only the *Convention on the Rights of Persons with Disabilities* (CRPD), but every major international human rights instrument. Achieving gender equality is intrinsic to advancing the human rights of women and girls with disabilities.
- 52 Gender equality means that women and men enjoy the same status. It implies a fair distribution of resources between men and women, the redistribution of power and caring responsibilities, and freedom from gender-based violence.<sup>57</sup> The concept of equality acknowledges that different treatment of women and men may sometimes be required to achieve sameness of results, because of different life conditions and/or to compensate for past discrimination. A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives.
- 53 Ensuring that gender is a central consideration in the development and implementation of policy and programs is critical in advancing gender equality and the human rights of women and girls with disabilities in Australia. Public policy has the capacity to either perpetuate or eliminate discrimination and gender inequality.<sup>58</sup> Gender-neutral laws, policies and programs may unintentionally perpetuate the consequences of past discrimination.<sup>59</sup>
- 54 In the Australian policy context, people with disabilities are often treated as asexual, genderless human beings. For example, The *National Disability Agreement* (NDA) is an agreement between the Australian and State/Territory

Governments (signed in 2012) that provides the national framework and key areas of reform for the provision of government support to services for people with disabilities.<sup>60</sup> The NDA identifies a single long-term overarching aspiration that: *“People with disability and their carers have an enhanced quality of life and participate as valued members of the community.”* Under the NDA, all Government Ministers with responsibility for disability services have agreed to pursue five strategic policy priority areas for reform.<sup>61</sup> The NDA is not set in a comprehensive human rights framework, is not gendered, and despite the high incidence and prevalence of violence against people with disabilities, particularly women and girls, the NDA does not contain any initiatives or targets to reduce, prevent and/or address violence and abuse under the five priority areas for reform.<sup>62</sup> Although the CRPD obligates Governments to take special and additional measures to ensure women and girls enjoy the full and equal enjoyment of their human rights, the NDA contains no reference to women and girls with disabilities, even though it specifically states that *“across all policy and reform directions consideration will be given to strategies specific to Indigenous Australians, those from culturally and linguistically diverse backgrounds, and those living in regional, rural and remote communities.”*

55 The fact that the National Disability Agreement (NDA) is un-gendered is not a new phenomenon. Australian disability related policies and programs consistently fail to apply an appropriate gender lens, and gender related policies and programs consistently fail to apply an appropriate disability lens. In reality, most policy and program development proceeds as though there are a common set of issues - and that men and women, girls and boys, experience disability in the same way.<sup>63</sup>

56 However women and girls with disabilities and men and boys 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. Universally, there is systemic inequality between men and women and clear patterns of women’s inferior access to resources and opportunities.<sup>64</sup> Moreover, women are systematically under-represented in decision-making processes that shape their societies and

their own lives. It is widely recognised that women and girls with disabilities have fewer opportunities, lower status and less power and influence than men and boys with disabilities.<sup>65</sup> Gender-based assumptions and expectations place women with disabilities at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.<sup>66</sup> Women with disabilities:

- are poorer and have to work harder than disabled men to secure their livelihoods;
- have less control over income and assets;
- bear the responsibility for unpaid work in the private and social spheres;
- have a smaller share of opportunities for human development;
- are subject to gender-based violence, and other forms of violence, abuse and exploitation;
- have a subordinate social position; and,
- are poorly represented in policy and decision-making.<sup>67</sup>

57 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,<sup>68</sup> 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;<sup>69</sup> and, are more vulnerable as victims of crimes from both strangers and people who are known to them;<sup>70</sup>
- witness cases involving crimes against them often go unreported, and/or inadequately investigated, and/or remain unsolved and/or result in minimal sentences;<sup>71</sup>
- 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

treatment<sup>72</sup> (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;<sup>73</sup>
- are much more likely than disabled men, to experience restrictions, negative treatment, and violations of their sexual and reproductive rights;<sup>74</sup>
- are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,<sup>75</sup> are at higher risk of divorce than disabled men and often experience difficulty maintaining custody of their children post-divorce;<sup>76</sup>
- 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;<sup>77</sup>
- are poorer and more likely to be unemployed than men with disabilities,<sup>78</sup> less likely to be in the paid workforce than disabled men, and have lower incomes from employment than men with disabilities;<sup>79</sup>
- are more likely to experience gender biases in labour markets, and are more concentrated than disabled men in informal, subsistence and vulnerable employment;<sup>80</sup>
- share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, caring for children and relatives;<sup>81</sup>
- 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;<sup>82</sup>
- are less likely to receive service support than disabled men;<sup>83</sup>
- face barriers in accessing adequate maternal and related health care and other services for both themselves and their child/ren,<sup>84</sup> and are more likely than disabled men to face medical interventions to control their fertility;<sup>85</sup>

- experience more extreme social categorisation than disabled men, being more likely to be seen either as hypersexual and uncontrollable, or de-sexualised and inert;<sup>86</sup>
- 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';<sup>87</sup>
- have significantly lower levels of participation in governance and decision making at all levels compared to men with disabilities;<sup>88</sup>
- 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.<sup>89</sup>

### Gender Equality & the NDS: Gender Blind, Gender Neutral

- 58 Australia has indisputable international human rights obligations in relation to gender equality and to disability rights. The Australian Government has committed to meeting its obligations under the human rights treaties to which Australia is a party, and Australia's Prime Minister, Tony Abbott has clearly articulated his Government's commitment to ensuring '*genuine and complete equality between men and women*'.<sup>90</sup> The Minister Assisting the Prime Minister for Women, Senator Michaelia Cash has also recently reaffirmed that the Government's commitment to gender equality remains '*resolute and unwavering*'.<sup>91</sup> Moreover, the Australian Government is working to strengthen the provision of gender analysis, advice and mainstreaming across Government, including by ensuring that women's issues and gender equality are taken into consideration in all policy and program development and implementation.<sup>92</sup> In addition, the Australian Government has recognised and acknowledged that **women**, children and Indigenous Australians with disabilities face multiple intersecting disadvantage, and has committed to '*taking steps to ensure the **specific** needs of these vulnerable groups are considered during the development and implementation of relevant policies and programs*'<sup>93</sup> [emphasis added].
- 59 Despite these commitments, obligations and assertions, the National Disability Strategy, its statistical evidence base Companion document;



its first National Implementation Plan, its fifty-three priority areas for future action; its State/Territory implementation plans, its mechanisms and trend indicators for monitoring, review and evaluation, along with its 2012 High Level Report to the Council of Australian Governments - all remain completely un-gendered. They do not provide for, nor report on any **focused, gender-specific** measures to ensure that women and girls with disabilities experience full and effective enjoyment of their human rights. They do not enable any capacity at any level to address, monitor or evaluate the gender dimensions of any element of the NDS. There is no evidence that the principle of gender equality (a key principle underpinning both the CRPD and the NDS) has been, or will be *'incorporated into policies and programs affecting people with disability, their families and carers'*,<sup>94</sup> as agreed by all nine Australian Governments when formally endorsing the NDS in 2011.

- 60 Both the NDS and its first Implementation Plan *'Laying the Groundwork 2011-2014'* treat men and women with disabilities as a homogenous group. Referring only to *'people with disabilities'* in all elements of the Strategy, assumes and implies that all women and men with disabilities, (or all women with disabilities or all men with disabilities), share the same needs and perspectives, have a common set of issues, and experience disability in the same way. The importance of making the assumptions about aggregate terms explicit, and assessing whether they are valid, has been demonstrated by research for more than two decades. Studies have shown, for example, that "people" respond to economic changes in gender-specific ways because gender is a major influence on their access to resources, responsibilities and alternatives. Research has also shown that resources are not necessarily distributed equitably among household members, nor is there equitable decision-making about the use of these resources.<sup>95</sup> We know for example, that many "people" experience, or are at risk of experiencing violence. Yet there is no dispute that violence is gendered. Gender-based violence involves men and women, in which the female is usually the victim; and which is derived from unequal power relationships between men and women. Violence is directed specifically against a woman because she is a woman, or affects women disproportionately.<sup>96</sup> It is widely acknowledged that violence against women is both a cause and consequence of gender inequality, and that true equality between men

and women will only be achieved when women are able to realise their right to live their lives free from violence.<sup>97</sup> Ignoring such factors often results in misleading analyses of issues and/or inaccurate assessments of likely policy outcomes.

- 61 The NDS and its Implementation Plans *'set the foundation for Australia's work to advance disability rights'*<sup>98</sup>, and are the key mechanisms for Governments to meet their obligations under the *Convention on the Rights of Disabilities* (CRPD). The CRPD is clear on gender equality. It recognises gender as one of the most important categories of social organisation. It expressly states the need to incorporate a gender perspective in all efforts to promote the human rights of people with disabilities, meaning that the rights of women with disabilities must be addressed when interpreting and implementing every article of the Convention. It prioritises women and girls with disabilities as a group warranting specific attention and additional measures. It obliges Governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms. It clarifies the need to ensure that national policies, frameworks and strategies make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and that such policies and frameworks **include** focused, gender-specific measures to ensure that women and girls with disabilities experience full and effective enjoyment of their human rights.<sup>99</sup>
- 62 The collection of **gender statistics, gender disaggregated data and specific information** on the situation of women and girls with disabilities, is a clear and specific obligation under the CRPD and other international human rights treaties to which Australia is a party. As outlined earlier, the NDS does not include, nor provide for, nor report on, any focused, gender-specific measures to ensure that women and girls with disabilities can or will in the future, experience full and effective enjoyment of their human rights. The Strategy makes no provision at any level, to address, monitor or evaluate the gender dimensions of any element of the NDS, including the fifty-three areas for future action as identified in the Strategy's First Implementation Plan.
- 63 The major way of monitoring progress against the NDS six outcome areas and their respective policy directions will occur through *'analysis of data on trend indicators'*.<sup>100</sup> The trend indicators for each

outcome area are provided in Appendix 2. The indicators refer only to “people with disability” and are extremely limiting. For example, the main trend indicator for ascertaining whether ‘people with disability are safe from violence, exploitation and neglect’<sup>101</sup> will be by measuring: ‘Feelings of safety in different situations by disability category’. It is obvious that this indicator is completely ineffective in relation to understanding, monitoring, addressing and preventing the myriad forms of violence experienced by women and girls with disabilities in Australia. Whilst it may be argued that the ‘analysis of data on trend indicators’ could include a gender analysis (should any gender indicators be available), there is no imperative to do so because the NDS itself is silent on gender.

64 Gender disaggregated data, gender indicators and gender analysis<sup>102</sup> are critical to all aspects of the NDS, in order to, for example:

- identify and understand the differences in the lives of women with disabilities and men with disabilities, as well as the diversity among women with disabilities themselves;
- assess the potential of NDS initiatives to empower women with disabilities and transform gender relations;
- identify areas where women with disabilities and men with disabilities may not enjoy the same opportunities or status or where their lives may be affected in different ways (such as domestic/family violence, sexual violence, institutional violence, parenting; violations of sexual and reproductive rights; etc);
- identify where different strategies and measures are necessary to achieve intended results and equitable outcomes for women with disabilities and men with disabilities;
- better understand patterns of disadvantage between women with disabilities and men with disabilities with respect to substantive enjoyment of rights (such as for eg: freedom to act and to be recognised as autonomous; to participate fully in economic, social and political development; to decision-making; to control over resources, assets and benefits);<sup>103</sup>
- identify priority areas for action to promote equality between women with disabilities

and men with disabilities;

- assess differences in participation, benefits and impacts between females with disabilities and males with disabilities, including progress towards gender equality and changes in gender relations;
- ensure that women with disabilities and men with disabilities are not disadvantaged by NDS initiatives.

65 For more than a decade, the United Nations has been critical of Australia for its neglect of women and girls with disabilities in all aspects of data collection, information and research,<sup>104</sup> and has called on Australian Governments to address this neglect as a matter of urgency. These strong recommendations from the UN are consistent with recommendations made to successive Australian Governments by civil society organisations, parliamentary inquires and other fora.<sup>105</sup> Yet to date, there has been no progress in this area, and the NDS in its current form, only perpetuates this neglect.

66 The UN has also clarified that Article 31 of the CRPD (Statistics and Data Collection) is not solely concerned with the collection of demographic statistics on prevalence and types of disability or impairment, but also with data on the extent of compliance or otherwise with the requirements of the Convention. It is inherently difficult for States Parties to report on CRPD implementation without benchmarking data on initial levels of compliance. The UN has subsequently made it clear that Australia must develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD, and that all data must be disaggregated by gender. Critically, the UN has repeatedly requested that the Australian Government:

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*“commission and fund 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.”<sup>106</sup>*

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67 Article 33 of the CRPD requires State Parties to designate one or more focal points and coordination mechanisms within government to facilitate and monitor national CRPD

implementation. To fulfil the monitoring obligation, and to do justice to both the CRPD and the NDS as whole of government responsibility, people with disabilities have called on successive Australian Governments to establish a National Office of Disability within the Department of Prime Minister and Cabinet.<sup>107</sup> People with disabilities have long advocated for the need to remove the responsibility for overseeing disability policy from the Commonwealth Department responsible for Social Services. Moving disability policy to the responsibility of the Department of Prime Minister and Cabinet, would provide a strategic policy advisory and coordination function across government, reporting directly to the Prime Minister. Securing high level and cross government involvement and coordination is critical to ensuring that disability does not continue to be conceived of as only being the responsibility of specialist areas of government dealing with specific disability service issues. People with disabilities have also argued for the need to separate disability policy and disability support from family carer policy and support in order to increase the autonomy of people with disabilities and challenge the stereotype of people with disabilities as burdens of care.<sup>108</sup>

68 Although the NDS recognises that *'not all people with disability are alike'* and that *'the diversity of experiences of people with disability underpins the six outcome areas of the Strategy'*,<sup>109</sup> this falls well short of meeting the gender equality obligations set out in the CRPD or the other international human rights treaties to which Australia is a party. In order to give effect to the treaty provisions in relation to gender equality and addressing the rights of women and girls with disabilities, the National Disability Strategy should incorporate gender perspectives into its goals, structures, priorities, specific plans, decisions, processes, practices, projects, activities, monitoring, and resource allocation, as well as participation at all levels. In addition, gender specific measures and women-specific initiatives, programs and projects should be included in order to address the undisputed gender inequalities and ultimately, to achieve the NDS vision of *'an inclusive Australian society*

*that enables people with disability to fulfil their potential as equal citizens'*.

## Gender Equality & Disability: Australia's International Human Rights Obligations

- 69 The principle of the equal rights of men and women forms the core of the human rights vision of the Charter of the United Nations, which states that human rights and fundamental freedoms should be available to all human beings *'without discrimination on the basis of race, sex, language or religion'*. The principle of the equal rights of men and women is therefore, one of the pillars upon which the United Nations (UN) was founded.<sup>110</sup> Australia is a founding member of the UN and has been an active participant in UN institutions for more than 65 years. Successive Australian Governments, including the current Abbott Liberal Government, have articulated Australia's *'enduring commitment to human rights'*,<sup>111</sup> including meeting its obligations under the human rights treaties to which Australia is a party, and ensuring that Australia remains a *'leading proponent of the consistent and comprehensive implementation of the Universal Declaration of Human Rights'*<sup>112</sup>, which Australia helped to draft in the late 1940's.<sup>113</sup> The Universal Declaration of Human Rights, and all subsequent major international human rights instruments, contain the fundamental principle of equality between men and women.
- 70 Australia is a signatory to seven core international human rights treaties, all of which create obligations to promote gender equality and denounce discrimination against women, including women and girls with disabilities. These are: the *Convention on the Rights of Persons with Disabilities* (CRPD); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); the *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Rights of the Child* (CRC); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); and, the *Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). As a party to these treaties, Australia has chosen to be bound by the treaty requirements, and has an international legal obligation to implement the treaty provisions

through its laws and policies.<sup>114</sup> According to Emeritus Professor Ivan Shearer, a recognised expert in international human rights law, Australia's domestic laws and policies to implement a treaty's provisions "should not depart from the views and recommendations of United Nations committees and officials without sound and compelling policy reasons."<sup>115</sup>

- 71 The *Convention on the Rights of Persons with Disabilities* (CRPD) was ratified by Australia on 17 July 2008 and it entered into force for Australia on 16 August 2008. Its fundamental purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.<sup>116</sup> The CRPD recognises gender as one of the most important categories of social organisation and prioritises women and girls with disabilities as a group warranting specific attention, obliging Governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms. This includes ensuring that national policies, frameworks and strategies make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and include focused, gender-specific measures to ensure that women and girls with disabilities experience full and effective enjoyment of their human rights. The need to incorporate a gender perspective in all efforts to promote the human rights of people with disabilities is expressly stated in the CRPD.<sup>117</sup>
- 72 The Australian Government has clearly articulated its commitment to the CRPD, including its commitment to 'removing the barriers that are faced by people with disabilities and accommodating their diverse needs, to enable them to enjoy their rights on an equal basis with all other Australians.'<sup>118</sup> In so doing, the Government has recognised and acknowledged that women, children and Indigenous Australians with disabilities face multiple intersecting disadvantage, and has committed to 'taking steps to ensure the **specific** needs of these vulnerable groups are considered during the development and implementation of relevant policies and programs'<sup>119</sup> [emphasis added].
- 73 By ratifying the *Convention on the Elimination of All Forms of Discrimination against Women*

(CEDAW) in 1983, Australia became obliged to protect women and girls from discrimination and ensure the achievement of equality between men and women. CEDAW further requires States Parties to take additional, special measures for women subjected to multiple forms of discrimination, including women and girls with disabilities.<sup>120</sup> The Australian Government has made it clear that it is 'committed to advancing gender equality both at home and abroad'<sup>121</sup> and states, for example:

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*Australia has been at the forefront of the international community's efforts to empower women to overcome disadvantage and discrimination. We were one of the first countries to sign the UN Convention on the Elimination of All Forms of Discrimination Against Women and we continue to ensure its effective implementation.*<sup>122</sup>

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- 74 The *International Covenant on Civil and Political Rights* (ICCPR) ratified by Australia in 1980, commits its parties to respect the civil and political rights of individuals, including for example, the rights to self-determination; to liberty and security of person; to family; to privacy; and to freedom from torture and cruel, inhuman or degrading treatment. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. Articles 7, 17, and 24 of the ICCPR protect the rights of women from all forms of violence; and from violations of their sexual and reproductive rights; including their right to bodily integrity.<sup>123</sup>
- 75 The *International Covenant on Economic, Social and Cultural Rights* (ICESCR), ratified by Australia in 1975, protects the equal rights of men and women to housing, work, social security, education, the highest attainable standard of health, and the continuous improvement of living conditions. In particular, Article 3 of this Covenant provides for the equal right of men and women to the enjoyment of rights it articulates, and this is a mandatory and immediate obligation of States parties.<sup>124</sup> The ICESCR also calls for special protection for mothers and children,<sup>125</sup> including the right to protection and support in relation to motherhood, pregnancy, sexuality, and bodily integrity.<sup>126</sup>



76. The *Convention on the Rights of the Child* (CRC) was ratified by Australia in 1990.<sup>127</sup> Gender is a key factor in implementation of the Convention, which recognises that policies, programs and other measures should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.<sup>128</sup> The CRC specifically recognises that girls with disabilities are often more vulnerable to discrimination due to gender discrimination, and requires that States parties pay particular attention to girls with disabilities by taking the necessary measures, (and when needed extra measures), in order to ensure that they are well protected, have access to all services and are fully included in society.<sup>129</sup>
77. Australia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) in 1989. CAT emphasises that gender is a key factor in implementation of the Convention.<sup>130</sup> Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.<sup>131</sup>
78. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) was one of the first human rights treaties to be adopted by the United Nations, and was ratified by Australia in 1975.<sup>132</sup> ICERD affirms the equality of all persons' civil, political, economic and social rights without any distinction regarding race, colour, descent, or national or ethnic origin. Regarding the intersectionality of gender, the *Committee on the Elimination of All Forms of Racial Discrimination* (CERD) has emphasised that racial discrimination does not always affect women and men equally or in the same way, and certain forms of racial discrimination directly affect women - such as forced and coerced sterilisation of indigenous women<sup>133</sup> or sexual violation against women of particular racial or ethnic groups. At the same time, racial discrimination may have consequences where women are primarily or exclusively affected (e.g. racial bias-motivated rape). Against this backdrop the Committee has been enhancing its efforts to integrate a gender perspective into its work and also recommending that States parties provide disaggregated data with regard to the gender dimensions of racial discrimination as well as to take necessary actions in this regard.<sup>134</sup>
79. 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 therefore, 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.<sup>135</sup>
- The United Nations Assessment of Australia's Progress to Improve the Human Rights of Women and Girls with Disabilities**
80. International human rights treaties have mechanisms to ensure that States parties protect human rights not only in words but also in practice.<sup>136</sup> For more than a decade, the United Nations treaty monitoring bodies have made strong recommendations to Australia in relation to improving the human rights of women and girls with disabilities, including a number that the UN and civil society organisations have considered 'urgent'. Yet successive Australian Governments have demonstrated an apathy and scant disregard for these recommendations. In practice, this has meant that women and girls with disabilities continue to be excluded and marginalised from policies and programs affecting people with disabilities and from policies and programs affecting women and girls. It also means that many women and girls with disabilities continue to be denied the most fundamental rights and freedoms, 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. Regrettably, they continue to experience multiple forms of discrimination, and widespread, serious violation of their human rights.
81. This section of the paper highlights some of



the key recommendations the United Nations treaty monitoring bodies have made to Australia in relation to improving the human rights of women and girls with disabilities. In so doing, it demonstrates the complete disjuncture between Australia's human rights obligations to women and girls with disabilities and the Australian legislative and policy context – including for example, the National Disability Agreement and the National Disability Strategy.

- 82 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 *Convention on the Rights of Persons with Disabilities* (CRPD).<sup>137</sup> The Committee made more than 27 major recommendations to the Australian Government around the Committee's principal areas of concern in relation to Australia's performance to date in complying with the CRPD. Whilst all of the Concluding Observations made by the Committee are applicable to women and girls with disabilities, the CRPD Committee made a number of specific and urgent recommendations to the Australian Government in relation to the human rights of women and girls with disabilities.
- 83 The Committee expressed its "deep concern" at the high rates of violence perpetrated against women and girls with disabilities 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.
- 84 The Committee emphasised its "deep concern" at the ongoing practice of involuntary sterilisation, including "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 Report of the UN Special Rapporteur on Torture (A/HRC/22/53), which addresses concerns regarding sterilisation of children and adults with disabilities." The Committee urged the Australian Government
- 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.
- 85 In relation to data collection and information on the situation of women and girls with disabilities in Australia, the Committee expressed its regret that "that there is little data about the specific situation of women and girls with disability, in particular indigenous women and girls with disabilities." The Committee recommended that Australia develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations contained in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. Specifically, the Committee recommended that the Australian Government "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."
- 86 In relation to employment and the right to work, the Committee specifically requested the Australian Government to adopt initiatives to increase employment participation of women with disabilities by addressing the specific underlying structural barriers to their workforce participation. The Committee also expressed its concern at the lack of appropriate levels of resourcing for disabled persons organisations, and specifically recommended that the Australian Government take initiatives to increase the resources available for independent organisations of persons with disabilities.
- 87 In June 2012, the **Committee on the Rights of the Child (CRC)**, in its *Concluding Observations*<sup>138</sup> to the Fourth periodic report of Australia,<sup>139</sup> expressed its "grave concern" at the high levels of violence against women and children prevailing in Australia, including domestic violence, lawful corporal punishment, bullying, sterilisation, and other forms of violence. Amongst other things, the Committee urged the Australian Government to prioritise the elimination of all forms of violence against children, paying particular attention to gender.
- 88 The Committee further 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 Australia to enact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability. Furthermore, the 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. This re-iterated the recommendation to the Australian Government in 2005 by the CRC Committee, whereby it urged Australia to *prohibit the sterilization of children, with or without disabilities...*<sup>140</sup> In seeking to provide clarification on sterilisation of children with disabilities for the international community, in 2007 the CRC Committee clearly articulated that States parties to the CRC are expected to prohibit by law the non-therapeutic sterilisation of children with disabilities<sup>141</sup>

- 89 In January 2011, in follow-up to Australia's *Universal Periodic Review*,<sup>142</sup> 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.<sup>143</sup>
- 90 In July 2010, at its 46<sup>th</sup> session, the **Committee on the Elimination of Discrimination against Women (CEDAW)** made very strong recommendations regarding the need for urgent action by Australian governments in relation to women with disabilities<sup>144</sup> The CEDAW Committee expressed its concern that women with disabilities are almost entirely absent from key leadership and decision-making positions and there had been no evidence of progress in this area. The Committee recommended that Australia 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.<sup>145</sup>
- 91 The Committee specifically emphasised its particular concern that non-therapeutic sterilisations of women and girls with disabilities continue to be practiced in some states in

Australia and recommended that the State party 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. The pervasive and high incidence of violence perpetrated against women and girls with disabilities, particularly those living in institutions or supported accommodation, was identified by the Committee as an issue warranting urgent intervention. The Committee subsequently recommended that Australia address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation. The CEDAW Committee also noted with concern, the persistent inequality of women with disabilities' access to education, employment opportunities and health care services.

- 92 The Committee recommended, that in the context of Australia's ratification of the *Convention on the Rights of Persons with Disabilities*, coupled with the human rights violations and disadvantage experienced by women and girls with disabilities, the Australian Government undertake as a matter of urgency, a comprehensive assessment of the situation of women with disabilities in Australia.
- 93 In 2006, at its 34<sup>th</sup> session, the **CEDAW Committee** reviewed Australia's combined fourth and fifth periodic report,<sup>146</sup> covering the efforts of Australia at the Commonwealth, state and territory levels in implementing and complying with the Convention. In its Concluding recommendations from that review, the CEDAW Committee expressed its regret on the complete absence of sufficient information and data on the situation of women with disabilities in Australia. The Committee tabled its further concern over the lack of infrastructure and necessary equipment to effectively meet the health needs of women with disabilities. The CEDAW Committee specifically requested the Australian Government to ensure that adequate statistical data and analysis, disaggregated by sex, ethnicity and disability, be provided in all future periodic reports so as to provide 'a full picture of the implementation of all the provisions of the Convention.' The Committee further urged Australia to develop the necessary infrastructure to ensure that all women with disabilities have access to all health services.<sup>147</sup>
- 94 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). It was required to submit its response to the List of Issues Prior to Reporting (LOIPR),<sup>148</sup> (adopted by the Human Rights Committee at its 106<sup>th</sup> session in late 2012) by 1 April 2013 and is scheduled to appear for review by the Human Rights Committee in 2015. Under the heading of 'Violence Against Women', the LOIPR for Australia contains specific questions relating to a women and girls with disabilities, to which the Australian Government is expected to respond.<sup>149</sup> Specifically, the Human Rights Committee, in its LOIPR, states:

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*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.*

*In the light of the Committee's previous recommendations (CCPR/C/AUS/CO/5, para. 17), and the State party's follow-up responses (CCPR/C/AUS/CO/5/Add.1, Add.2 and Add.3), please provide updated information on the legislative, administrative and other measures taken towards the elimination of all forms of violence against women, especially perpetrated against indigenous women and women with disabilities. Additionally, please provide updated information on the availability and adequacy of legal and social services for women victims of domestic violence and sexual assault, especially in rural and remote areas.*

- 95 Australia is also due to report to the **Committee Against Torture** at its 53<sup>rd</sup> Session in November 2014 on Australia's compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). The LOIPR for Australia<sup>150</sup> includes specific questions on violence against women, including women with disabilities. Specifically, the Committee Against Torture LOIPR states:

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*In view of concerns and recommendations of United Nations human rights treaty bodies*

*(CCPR/C/AUS/CO/5, para. 17; E/C.12/AUS/CO/4, para. 22; CEDAW/C/AUL/CO/5, paras. 18-19), please provide the Committee with information on steps taken to effectively implement and enforce laws on violence against women, particularly domestic violence and marital rape, including by enhancing the capacity of law enforcement agencies and judicial authorities to investigate, prosecute and convict offenders. Please also provide:*

- *Statistical data, disaggregated by crime, ethnicity, age and jurisdiction, on the number of complaints and investigations into allegations of all forms of violence against women, and, as appropriate, prosecutions and convictions of offenders during the reporting period;*
- *Information on measures taken to ensure access to sexual assault services for women in rural and remote areas, especially access to crisis accommodation services, in particular for Indigenous women and women with disabilities.*

- 96 Concluding Observations and recommendations from the UN treaty body monitoring Committees, constitute an authoritative guide for legislative, policy and program development, and are an important accountability mechanism. States Parties are expected to implement the recommendations, in order to fulfill their obligations under the particular human rights treaty and also to accelerate its implementation. However, there is no evidence to date that any aspect of the NDS incorporates any of these recommendations from the United Nations in relation to advancing the human rights of women and girls with disabilities.

# Strengthening the NDS to advance the human rights of women and girls with disabilities

97 This section of WWDA's Submission examines a series of priority issues where to date, the National Disability Strategy (NDS) appears to be having little purchase on advancing the rights and freedoms of women and girls with disabilities in Australia. The priority issues analysed in this section include: the right to freedom from violence, abuse, exploitation and neglect; sexual and reproductive rights; the right to work; access to justice, legal capacity, and equal recognition before the law; and, decision-making, participation, and representation. Case studies accompany each of these issue areas to highlight how these issues affect women and girls with disabilities, why all aspects of the NDS must be gendered, and why these issues need to be addressed as a matter of priority within future NDS Implementation Plans at national, state and territory levels.



Photo courtesy of the Disability Clothesline  
<http://disabilityclothesline.weebly.com>

## The right to freedom from violence, abuse, exploitation and neglect

### [NDS Outcome Area 2: Rights protection, justice and legislation]

*"We disabled people watch as the reports steadily leak in, one by one. Murder, rape, torture, neglect, abuse, brutality by brutality, report by report, inquest by inquest. They fall to the ground softly, unwatched and unheard by bureaucrats and people who are unwilling to watch or listen. Like drops of blood on a shower floor."<sup>151</sup>*

*"It's a well known tradition in the disability sector. Rape a woman, it is an 'incident'. Torture a man, it is a 'breach of compliance'. Drag a girl across the room by her hair, it is a 'case'. Murder, neglect, rape, torture, abuse - reduce those words to the language of the service provider, the language of 'administrative error', and it almost seems acceptable."<sup>152</sup>*

*"No civilised community can countenance such abuse of the disabled for whom the whole community has a responsibility to care. Disabled people are entitled to have their dignity respected, to feel safe in their homes and safe with those who are entrusted with their care."<sup>153</sup>*

*"In one of the most enlightened and wealthiest nations in the world, it is possible for persons with disability to die of starvation in specialist disability services, to have life-sustaining medical treatments denied or withdrawn in health services, to be raped or assaulted without any reasonable prospect of these crimes being detected, investigated or prosecuted by the legal system, and*



*to have their children removed by child protection authorities on the prejudiced assumption that disability simply equates with incompetent parenting.*<sup>154</sup>

98 The Australian Government has made it clear that it views freedom from violence as a pre-requisite to women's exercise and enjoyment of human rights.<sup>155</sup> It has also acknowledged that:

- violence against women with disabilities in Australia is 'widespread';<sup>156</sup>
- women with disabilities are extraordinarily vulnerable to violence and abuse;<sup>157</sup>
- women with disabilities experience significant barriers in accessing domestic/family violence and sexual assault services and support;<sup>158</sup> and;
- violence against women and girls with disabilities is "utterly unacceptable".<sup>159</sup>

99 Violence against women and girls with disabilities, in all its forms, remains widespread and unaddressed in Australia. 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.<sup>160</sup> Compared to non-disabled women, women with disabilities experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators, yet legislative responses, programs and services for this group either do not exist, are extremely limited, or simply just exclude them. There 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.<sup>161</sup>

100 The *Committee on the Rights of Persons with Disabilities*,<sup>162</sup> has consistently expressed its concern at the high rates of violence perpetrated against disabled women and girls. It considers violence against women and girls with disabilities

as an "endemic problem",<sup>163</sup> and has strongly recommended States Parties take urgent action to address and prevent violence against women and girls with disabilities.<sup>164</sup> The UN Special Rapporteur on Violence against Women, its Causes and Consequences, in her 2012 global study on violence against women and girls with disabilities, found that, regardless of country, the inter-connection between violence against women and discrimination on the basis of gender and disability remains unaddressed.<sup>165</sup>

101 A key policy direction of the NDS (under Outcome Area 2: *Rights protection, justice and legislation*) is the right of people with disabilities to be safe from violence, exploitation and neglect. However, the NDS contains limited measures to address the issue, only identifying that there is a need to 'develop strategies to reduce violence, abuse and neglect of people with disability'. The first NDS Implementation plan - *Laying the Groundwork: 2011–2014* identifies 'the development of strategies to reduce violence, abuse and neglect of people with disabilities' as a key area for future action, but identifies only one specific action to achieve this:

**'Develop strategies to reduce violence, abuse and neglect of people with disability'  
[Area for future action 2.3]**

The **key action** to achieve this is: 'Ensure that the *National Plan to Reduce violence against women and their Children 2010–2022* and the *National Framework for Protecting Australia's Children* have priority action to improve the safety and wellbeing of women and children with disability.' [Action 2.3.1.]

The **strategies** to achieve this key action will be by:

- promoting and encouraging young people to think about respectful relationships through The Line website and campaign
- providing grants to support young people's awareness of ethical behaviour, develop protective behaviours, and develop their skills in conducting respectful relationships
- implementing the national standards for children and young people in out-of-home care
- implementing the National Plan to Reduce Violence against Women and Their Children 2010–2022 which includes strategies to assist people with disability



The **indicator for the success** of this action has been identified as: 'The success of this action will be seen through reduced prevalence of domestic violence and sexual assault; increased proportion of women who feel safe in their communities; reduced deaths related to domestic violence and sexual assault; and reduced proportion of children exposed to their mother's or carer's experience of domestic violence.'

- 102 Whilst it is clearly important that the NDS links to other national strategies and initiatives (such as the *National Plan to Reduce violence against women and their Children 2010–2022*)<sup>166</sup>, this sole, un-gendered action as a key strategy to address the epidemic that is violence against women and girls with disabilities, is deeply flawed.
- 103 For example, one of the key ways this action will be achieved is through 'ensuring implementation of the *National Plan to Reduce violence against women and their Children 2010–2022*' (the 'National Plan'). 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 many other 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). These forms of violence currently fall 'outside' the scope of the National Plan, and remain unaddressed within the NDS. 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. This type of policy 'siloeing', and lack of understanding of the gendered nature of violence against people with disabilities, contributes 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.<sup>167</sup>
- 104 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.<sup>168</sup> 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.

- 105 Attached in Appendix 3 of this Paper is a document that highlights some of these issues. The document 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.
- 106 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 reinforced by participants at the 2013 National Symposium 'Stop the Violence Against Women and Girls with Disabilities',<sup>169</sup> 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. Recent media reports<sup>170</sup> on the systemic and gendered nature of violence against people with disabilities in institutions throughout Australia further demonstrate and reinforce the need for urgent national action on this issue. Yet in Australia, this urgent issue remains excluded from public programs and policies on the prevention of gender-based violence, and is equally excluded and ignored within all aspects of the NDS.

- 107 A further key strategy to address the NDS Area for Future Action (*'Develop strategies to reduce violence, abuse and neglect of people with disability'*) is by promoting *'The Line'* website and campaign<sup>171</sup> for young people. *'The Line'* website includes specific elements to help ensure it is accessible and relevant to young Indigenous people and Culturally and Linguistically Diverse young people, but no such focus is afforded to young people with disabilities. There is no information at all about the intersection of violence and disability, in any context. A search of the *'The Line'* website using search terms such as 'disabilities', 'disability', 'disabled', returns only one 'hit', which is related to the sites accessibility standards. The site contains only two resources aimed at young people, which relate to 'disability'. One of these is entitled *'Living with a disability'*.<sup>172</sup> It is poorly written, framed in a medical model, contains inaccuracies, is patronising, is inconsistent with the CRPD, and contains no information about at all about violence and abuse. Examples of the information provided in the *'Living with a disability'* resource include:

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*'Having a disability means that a person is not able to do something that other people of their age and community can do because of something about their body..... Having a disability can mean extra challenges and sometimes difficulties to overcome, but people who have a disability can also have as many joys and achievements like other people.'*

*'Many people find it hard to make good friends, even if they do not have a disability. People who have a disability can find it even harder to make close friends. That does not mean it's impossible. It may mean looking for the right groups and working harder at it than others have to.'*

- 108 The other resource aimed at youth provided on *The Line* website, is entitled *'Dealing with Discrimination'* however clicking on this link takes the user to an external page called *'Living with a physical disability'*.<sup>173</sup> The information in this resource makes no mention of violence and abuse in any context, and once again is medicalised and frames disability as a 'burden':
- 
- 'Understandably, it can be frustrating and overwhelming to understand why you have to deal with something that can be so difficult and seem so unfair.'*
- 'Do something for yourself each day, even if it's just watching your favourite TV show. Remember that disabilities shouldn't define your life or your enjoyment – work with what you've got.'*
- 109 It is very difficult to see how *'The Line'* will contribute in any way to the reduction of violence, abuse, exploitation and neglect of women and girls with disabilities, and, in its current form is a questionable strategy to *'ensure the right of people with disabilities to be safe from violence, exploitation and neglect'*.
- 110 Monitoring progress on the NDS policy direction *'people with disabilities are safe from violence, exploitation and neglect'* (under Outcome Area 2: *Rights protection, justice and legislation*) will be undertaken through analysis of data on the NDS trend indicator *'Feelings of safety in different situations by disability category'*. As outlined earlier in this paper, this indicator is completely ineffective in relation to understanding, monitoring and addressing the myriad forms of violence experienced by women and girls with disabilities. Similarly, the 'indicators for success' for the NDS Area for Future Action (*'Develop strategies to reduce violence, abuse and neglect of people with disability'*) are identified in the first NDS Implementation Plan as: *'reduced prevalence of domestic violence and sexual assault; increased*

*proportion of women who feel safe in their communities; reduced deaths related to domestic violence and sexual assault; and reduced proportion of children exposed to their mother's or carer's experience of domestic violence.'*

- 111 Whilst it may be possible to capture data on these indicators as they relate to women generally, it is unclear how these indicators could be (or whether they would be) disaggregated by disability. For example, the main indicators on incidence of violence against women in the Australian context come from the *National Personal Safety Survey* (PSS) which collects information about both women's and men's experiences of violence.<sup>174</sup> This survey has traditionally provided limited information about the extent and forms of violence against women and girls with disabilities,<sup>175</sup> and has not included women with disabilities in institutional environments. The 2009 *National Community Attitudes towards Violence against Women Survey* (NCAS), for the first time, included a limited number of questions on violence against women with disabilities. The findings from this survey suggest that community awareness of violence against women and girls with disabilities is very poor.<sup>176</sup> The 2014 NCAS includes better coverage of questions on violence against women and girls with disabilities, but again is limited in the information it is able to provide, and does not report on incidence and prevalence data in relation to violence against women and girls with disabilities.
- 112 Other potential sources of data on violence against women and girls with disabilities such as that collected through the National Disability Abuse and Neglect Hotline<sup>177</sup> (The 'Hotline') are not publicly available for analysis.<sup>178</sup> The failure to utilise these types of data constitutes a missed opportunity for the development of informed policy and programs related to violence against women and girls with disabilities.<sup>179</sup> The Hotline itself is particularly limited as a mechanism in detecting, reporting and responding to violence against women with disabilities. There is no legislative base for the Hotline and it therefore has no statutory functions, powers and immunities. It has no investigative powers, no power to compel any other agency to investigate a complaint, and no power to formally review complaint investigation processes and outcomes. The Hotline does not have any systemic investigation, inquiry or review powers, and is unable to initiate action at its own motion. There
- is a lack of transparency relating to outcomes of notifications; there are a number of service types that are excluded from its mandate (such as licenced boarding houses), and definitions which set the scope of its work fail to incorporate a domestic context.<sup>180</sup>
- 113 It is incomprehensible that there are no gender specific indicators and/or measurements and/or data collection and/or qualitative monitoring processes built into the NDS to identify, address and monitor violence perpetrated against women and girls with disabilities, given that:
- women with disabilities experience violence, particularly family/domestic violence, violence in institutions, and violence in the workplace, more often than disabled men,<sup>181</sup> 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;<sup>182</sup> and, are more vulnerable as victims of crimes from both strangers and people who are known to them;<sup>183</sup> women with disabilities are more exposed to forms of violence which qualify as torture or inhuman or degrading treatment<sup>184</sup> (such as forced or coerced sterilisation, forced abortion, forced contraception, gender based violence, chemical restraint, forced electro-shock, and other forced psychiatric interventions);
  - there is a significant increase in the use of forced/involuntary electroshock (ECT) on women. Reports and available data indicate that there is a substantial difference in the numbers of men and women receiving both voluntary and involuntary ECT, with nearly three times as many women receiving ECT compared with men;<sup>185</sup>
  - sexual assault and abuse is a significant and un-addressed problem for girls and women with disabilities, particularly for those in 'institutional' settings;<sup>186</sup>
  - more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives;<sup>187</sup>
  - 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;<sup>188</sup>

- the overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a significant portion of whom are paid service providers who commit their crimes in disability service settings, and other forms of institutional settings;<sup>189</sup>
  - perpetrators frequently target and select women and girls with disabilities for their perceived powerlessness and vulnerability - and for their seeming limitations;<sup>190</sup>
  - 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;<sup>191</sup>
  - 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,<sup>192</sup> 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';<sup>193</sup>
  - 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 both disabled men and boys and non-disabled women and girls;<sup>194</sup>
  - 50% of Indigenous Australians aged 15 years and over have a disability or long-term health condition. Over half are female (51%).<sup>195</sup> Indigenous women are 35 times more likely to suffer family violence<sup>196</sup> and sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women.<sup>197</sup>
- 114 The lack of national studies or research on all aspects of violence against women and girls with disabilities makes it difficult to establish the true prevalence, extent, nature, causes and impact of violence against women and girls with disabilities in different settings. The lack of accurate data at all levels of government is one of the greatest difficulties in determining and substantiating the needs and human rights violations of women and girls with disabilities in Australia.<sup>198</sup>
- 115 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.<sup>199</sup>
- 116 Preventing violence against women and girls with disabilities is a key obligation of the Australian Government under the international human rights treaties, declarations and other instruments to which it is a party. Prevention of violence against women is not just an obligation in relation to gender discrimination. It is equally a key obligation relating to civil and political rights; economic, social and cultural rights; disability rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination.
- 117 In this context, future NDS Implementation Plans should incorporate and reflect the recommendations made to Australia by the human rights treaty monitoring bodies in relation to violence against women with disabilities – particularly those that have been determined as urgent.
- 118 For example, several of the human rights treaty monitoring bodies have repeatedly expressed their deep concern about the high levels of violence experienced by women and girls with disabilities, as well as the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, services and support, and lack of targeted measures to prevent and address violence

against disabled women and girls. The monitoring bodies have called on Australian Governments to take urgent measures to address the violence and abuse experienced by women and girls with disabilities, particularly those living in institutions or supported accommodation. They have urged Australian Governments to ensure access for women with disabilities to an effective, integrated response system. Importantly, the treaty monitoring bodies have recognized the multiple forms of violence experienced by women and girls with disabilities, and called on Australian Governments to take immediate steps to address such violence. This includes for example, the urgent need to adopt national uniform legislation prohibiting the use of sterilisation of girls and boys with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent. It also includes the need to repeal all legislation that authorises medical interventions without free and informed consent, and take immediate steps to end unregulated behaviour modification or restrictive practices.<sup>200</sup>

- 119 Australia has ratified and endorsed a number of other key international and regional human rights instruments which clearly articulate the human rights context and imperative to prevent and address violence against women and girls with disabilities, including the structural causes of such violence.
- 120 For example, the *Agreed Conclusions*<sup>201</sup> of the 57<sup>th</sup> session of the UN Commission of Women (CSW),<sup>202</sup> which Australia helped to develop and subsequently endorsed, reaffirmed that the core international human rights treaties provide the international legal framework and a comprehensive set of measures for the elimination and prevention of all forms of discrimination and violence against women and girls. The *CSW57 Agreed Conclusions* make strong reference to the multiple forms of violence perpetrated against women and girls with disabilities, and call on governments the world over to take all appropriate legislative, administrative, social, educational and other measures to address these multiple forms of violence forms of exploitation, including in the workplace, educational institutions, in health care settings, the home, and other settings.<sup>203</sup> The *Agreed Conclusions* further recognise that progress to address such violence is hampered by:

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*'insufficient gender-sensitive policies; inadequate implementation of legal and policy frameworks; inadequate collection of data, analysis and research; lack of financial and human resources and insufficient allocation of such resources; and that existing efforts are not always comprehensive, coordinated, consistent, sustained, transparent and adequately monitored and evaluated.'*

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- 121 By endorsing a number of other specific UN resolutions, declarations and regional instruments to accelerate efforts to prevent and address violence against women and girls with disabilities, Australia has further committed to:
- ensure that mechanisms, services and procedures set up to protect women and girls facing violence are designed in a manner that addresses the targeted, compounded and structural discrimination that combines to increase the vulnerability of women and girls with disabilities;<sup>204</sup>
  - collect, analyse and disseminate data (specifically disaggregated by gender and disability) and other relevant information on the extent, nature and consequences of violence against women and girls, and on the impact and effectiveness of policies and programmes for protecting women and girls with disabilities who have been subjected to violence;<sup>205</sup>
  - ensure that legal guarantees and implementation frameworks and strategies, are responsive to the intersections of gender and disability, and also integrate special measures to reach women and girls with disabilities;<sup>206</sup>
  - ensure that legal guarantees and implementation frameworks and strategies adopt a comprehensive and coherent human rights-based approach that ensures that women with disabilities are at the centre of efforts to hold principally States accountable for implementing international standards guaranteeing civil, cultural, economic, political and social rights;<sup>207</sup>
  - develop and implement specific programs aimed at eliminating violence, including sexual abuse and exploitation, perpetrated against girls and women with disabilities;<sup>208</sup>



- develop and implement specific programs of care and support, including rehabilitation, for women and girls with disabilities who are victims of any form of violence and abuse.<sup>209</sup>

- 122 The fact that the NDS is silent on gender and contains no significant initiatives to address violence against women – widely recognised as one of the most pressing human rights issues in Australia and indeed the world – is negligent and only serves to perpetuate the denial of one of the most fundamental rights for all women: the right to freedom from violence, in all its forms.
- 123 The following case studies are provided to highlight the urgent need to ensure the right to freedom from violence is included as a priority in future NDS Implementation Plans.

### Case Studies: The right to freedom from violence, abuse, exploitation and neglect

- 124 Josie is 39. She has an intellectual disability and she lives in a group home ‘village’ complex where she has her own unit and lives independently with 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 others share. Josie 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 Josie is not offered any support or counselling.<sup>210</sup>
- 125 A disabled woman in her 50s was “digitally raped” by a staff member while showering in a government-owned group home in Victoria. An incident report was made after the woman told another worker what happened, but that report was later rewritten by a supervisor. The worker who allegedly raped the woman was then transferred to another home and the matter was not referred to police.<sup>211</sup>
- 126 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.<sup>212</sup>
- 127 A 12 year old intellectually disabled girl experiences violence, including sexual violence, by boys in her class at school. The parents are provided with a certain number of counselling sessions for their daughter, but she needs on-going counselling and other interventions, which the parents are now having to pay for.<sup>213</sup>
- 128 Sandra is 34 years old. She lives in government funded group home, run by a non-government organisation. Sandra cooks for herself, does her own washing, catches buses independently, and attends a day centre three days a week. Sandra is not allowed to have any access to her own finances. She has no money to buy herself a coffee or purchase something she might like. Her money is controlled by the staff of the group home. The staff are of the view that Sandra is not capable of managing money. Sandra engages in sex with

strangers in the local park and elsewhere, in exchange for lollies, food and cigarettes. Sandra also has sex with other residents of the group home in exchange for items such as laundry powder and hair shampoo.<sup>214</sup>

129. In April 2014, a 36 year old Victorian man was sentenced to 11 years jail after pleading guilty to raping an intellectually disabled woman and an 86 year old disabled woman. He was also found to have threatened and harassed a number of other women. The intellectually disabled woman said she had lost her freedom after being raped by the perpetrator and was now effectively housebound: "I get scared, I can't go out so I just stay at home," she said.<sup>215</sup>
- 130 Justine is 33 years old. She acquired her disability as a result of a random home invasion by a gang of unknown men when she was in her 20's. She was held against her will for a week and repeatedly raped and brutalised. As a result, she was hospitalized for an extended period of time with an acquired brain injury and multiple other injuries. She developed Complex PTSD, a number of other chronic conditions, and was not able to work again. In her early 30's she entered into a relationship with a man who also became her full time carer. Over time, the relationship deteriorated and her partner became increasingly violent. Justine said the violence became worse as his substance abuse escalated. One day, in a rage, he bashed her so badly he fractured several of her bones. He then left their unit leaving Justine lying on the floor. Justine managed to seek help from a domestic violence service, who helped her change the locks on the door and issued her with an emergency alarm. She was assessed as being at extremely high risk of future violence from her ex-partner and his associates. Justine was advised by doctors that she needed urgent surgery to fix her broken bones. But Justine was unable to have the surgery she so badly needed. Instead she found herself trapped in a bureaucratic nightmare. Justine couldn't afford to pay the rent on her 2 bedroom unit by herself. Her sole income was now the Disability Support Pension (DSP). She sought assistance from the Housing Department. She

was assessed as being eligible for, and qualified for the private rental subsidy scheme, whereby clients contribute 25% of their income to rent in the private rental market. The private rental subsidy scheme is usually approved for a period of 6 months but sometimes longer in "exceptional circumstances". Justine's circumstances were assessed as 'exceptional'. But after more than a year of forms, documents, assessments, re-assessments, medical evidence, and appeals, Justine is still waiting for the private rental subsidy assistance. She can't have the surgery she needs until she has security of tenure. She is paying more than 90% of her DSP on rent. She is racking up huge debts. She can't afford to eat properly. She can't afford to pay for medications or the treatments she needs to manage her multiple chronic conditions. She is not in a position to move from her unit as it is in a secure complex, is accessible, is close to her doctors and support networks, helps her live with Complex PTSD, provides a second bedroom for a carer to stay overnight if required. Importantly, it is Justine's home. The Housing Department won't approve the private rental subsidy because Justine can't prove that her surgery and rehabilitation will be completed within 6 months – the usual period of assistance through the private rental subsidy scheme. Justine's physical and mental health is deteriorating. She is becoming more disabled due to the untreated fractures and chronic health conditions.<sup>216</sup>

- 131 Sarah has cerebral palsy and lives in a group home with 5 other people. Sarah is regularly targeted by a male co-resident, who charges at her in his wheelchair and is constantly abusive to her. Sarah is very frightened of him. The management of the group home are reluctant to view this situation as domestic violence because Sarah and her perpetrator are not intimately involved but 'merely house mates'.<sup>217</sup>
- 132 Natalie is 50 years old and is a resident at a psychiatric hospital. She has been diagnosed with intellectual disability, schizophrenia, epilepsy, and she is deaf. She lived with her family until her parents were unable to care for her personal needs, and then moved into a residential care

facility. During the first three years, Natalie complained that a night worker was hurting her. She also began to experience delusions during this time. Her complaints were not taken seriously and Natalie eventually stopped talking about the abuse. However, she began to have violent outbursts and staff reports reveal that she was restrained, sometimes for several hours, due to these outbursts. When the violence escalated to endanger other residents, Natalie was moved to the psychiatric hospital where she could be placed under stricter medical supervision. At the hospital Natalie began to wet her bed at night and to pull out large sections of her hair. She was also heavily medicated. A new case manager experienced in working with survivors of sexual assault began to suspect that Natalie had been sexually abused. With the help of an interpreter, Natalie disclosed that for over three years, a night worker at the residential care facility had regularly come into her room and sexually assaulted her. The case manager scheduled a medical exam where it was discovered that Natalie had a sexually transmitted disease.<sup>218</sup>

133 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.<sup>219</sup>

134 Trudy is 40 years old. She has a degenerative disability and is wheelchair bound. She lives with her husband in a rural area. Her husband, who is Trudy's sole carer, runs his own business which is attached to their house. Trudy has experienced repeated physical, sexual, and psychological violence from her husband for over a decade. Her husband controls every aspect of her life. She is socially and geographically isolated, there is no public transport and she is completely reliant on

her husband for everything. She has no friends because her husband doesn't allow her to have friends. Her husband refuses any service support even though Trudy's GP suggested district nursing might remove some of the "burden" for Trudy's husband. One day when Trudy's husband goes to the regional shopping centre, Trudy decides to ring the Domestic Violence Crisis Service. She is terrified in case her husband comes back and catches her on the phone. Trudy is advised that the service can't assist her directly as they don't have accessible transport and Trudy lives several hundred miles away from the closest metropolitan area. The Crisis Service tells Trudy that there are no women's refuges that take "women in wheelchairs". Trudy is instead advised to ring a women's legal service. Trudy ends up making phone contact with a women's NGO and keeps in contact for a couple of months, but eventually decides she is too scared to leave her husband. She ceases contacting the women's NGO.<sup>220</sup>

135 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, the police and the school authorities did not tell all the parents whose children had come into contact with the accused. It was only as a result of a chance encounter between the parents, that the full extent of their children's abuse was revealed.<sup>221</sup>

136 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'.<sup>222</sup>

137 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.<sup>223</sup> 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. 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.<sup>224</sup>

138 In February 2014, a Perth maxi-taxi driver was charged with (and pleaded guilty to) more than 33 charges of rape and sexual assault of several women with disabilities who had been passengers in his taxi. The mother of one of his victims, said the incident had "shattered her family unit" and says her daughter has become a prisoner since the attack, feels totally helpless and wakes up most nights having nightmares about her ordeal:

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*"Throughout her life my daughter has endeavoured with our support and encouragement to live an active and as normal life as possible within the limits of her disability. She has attended regular mainstream schools, had a job, been socially active. This event has completely shattered our family unit. She is struggling to get*

*through this emotionally and psychologically. When the police were initially taking statements we had to interpret for her which was heartbreaking. It is crushing for siblings to hear what was done to their sister. My daughter remarked to her sister that she hasn't really felt disabled throughout her life because of our love and support but since her attack she feels totally disabled and helpless. She wakes most nights with nightmares and as she can't just hop out of bed and come and have a cuddle with me. We all feel badly that this is a situation that we can't fix." The mother said her daughter was being treated for Post Traumatic Stress Disorder (PTSD) and was now too frightened to use taxis. "The lack of any transport for her electric wheelchair is significant and a complete restriction to her getting back to her life. She has been using multipurpose taxis since she was about 12, one of her great achievements was she could get to and from places on her own by using them. She cannot get to work or anywhere else in her electric wheelchair because she is too frightened to use a multipurpose taxi. What has happened is unfathomable and despicable - but where is the support? We looked at hiring a van for her carers to drive but at \$1000 per week this is too prohibitive to access. Not only is my daughter dealing with the attack and trapped in a body that is not functioning how she wants it too, dealing with the psychological issues ... she is spending most days at home because she can't access transport to go to work, movies and social gatherings." The woman's mother said she hoped the "full weight of the law" was brought against the perpetrator at his sentencing in a few months. "I hope that he is given the maximum sentence available. He should not be given any consideration just as he gave no consideration for his victims..... he obviously doesn't care about the lives he has shattered his victims and their families. I hope the judicial system sets an example that people with disabilities should be treated with compassion and understanding and that the full weight of the law is used against him."<sup>225</sup>*

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140 In 2012-13, the Victorian Department of Human Services received 1790 category one incident reports in disability services, up 5 per cent from the year before. Category One incidents include death, serious injury and serious sexual or physical assault. Between July 2012 and December 2013, there were more than 300 separate reports to the Victorian Department of Human Services of disability services staff assaulting clients in their care.<sup>226</sup>

## Sexual and Reproductive Rights and Freedoms

### NDS Outcome Area 2: Rights protection, justice and legislation

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*"I'm not allowed to have a boyfriend."*<sup>227</sup>

*"Almost every person with a disability can tell you of a time when they sought to express themselves sexually, only to be thwarted by those around them."*<sup>228</sup>

*"I think there should be an Act that should go through Parliament, it must be a Sterilisation Act that stops girls and women with intellectual disabilities being sterilised."*<sup>229</sup>

*"The staff told me I'm not allowed to have sex in my unit. They said I will be in really big trouble if they find out that I had sex. Once I sneaked sex with another resident at his unit."*<sup>230</sup>

*"Our sexuality is as much a part of us as our clothes-sense, our favourite foods and our personal style. Our need to love and be loved is as vital to our wellbeing as our need to eat, drink and breathe. To deny our sexuality is to deny that we are whole human beings."*<sup>231</sup>

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141 According to the Australian Government, the NDS is the 'foundation of Australia's work to advance disability rights'<sup>232</sup> and sets out a national policy framework for guiding Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The NDS explicitly recognises that 'the experiences and needs of people with disability and their families are central to the Strategy, its vision, and its principles'.<sup>233</sup>

142 However, all aspects of the National Disability Strategy - its first National Implementation Plan, its policy priorities; its fifty-three priority areas for future action; its mechanisms and trend indicators for monitoring, review and evaluation, along with its 2012 High Level Report to the Council of Australian Governments - are completely silent on the sexual and reproductive rights of people with disabilities. It is inexcusable that the major policy



framework to advance the rights of people with disabilities in Australia totally ignores and excludes the sexual and reproductive rights of people with disabilities.

- 143 People with disabilities have typically been perceived as sub-human - lacking such basic human needs as the need for love, intimacy, sexual identity and freedoms. Dehumanising conditions - such as those which still pervade many of our state institutions - have been rationalised on the basis that people with disabilities do not have the same needs and feelings as the "fully human", and hence that they do not need privacy, recognition, respect, intimacy or freedom of choice.<sup>234</sup>
- 144 Yet sexual and reproductive rights are fundamental human rights.<sup>235</sup> 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.<sup>236</sup>
- 145 However, no group has ever been as severely restricted, or negatively treated, in respect of their sexual and reproductive rights, as women with disabilities.<sup>237</sup> 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.<sup>238</sup>
- 146 The CRPD Committee has clearly identified that discrimination against women and girls with disabilities in areas of sexual and reproductive rights 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.<sup>239</sup>
- 147 For example, forced sterilisation<sup>240</sup> 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.<sup>241</sup> The monitoring bodies of the core international human rights treaties<sup>242</sup> have all found that forced/ involuntary and coerced sterilisation clearly breaches multiple provisions of the respective treaties.<sup>243</sup> 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.<sup>244</sup>
- 148 Yet the first NDS Implementation Plan - *Laying the Groundwork: 2011–2014* – ignores these recommendations, and makes only one reference to the issue of sterilisation of women and girls with disabilities. Under NDS Outcome Area 2: (*Rights protection, justice and legislation*), a key area for future action is to "Monitor and ensure compliance with international human rights obligations". The main (and only strategy) to achieve this is to: 'Develop a National Human Rights Action Plan'. The National Human Rights Action Plan was developed in 2012 and will be implemented over five years. It identifies a number of specific actions for people with disability including: "working with the states on the regime governing the sterilisation of women and girls with disability". However, the human rights treaty monitoring bodies have made it clear that the issue of sterilisation cannot be left as a matter for State and Territory Governments to regulate, but rather, requires national leadership and a national response, including national legislation prohibiting the practice.<sup>245</sup> "Working with the states on the regime governing the sterilisation of women and girls with disability" is not consistent with the NDS vision of 'an inclusive Australian society that enables people with disability to fulfil their

*potential as equal citizens*’. ‘Regulating’ the bodies of disabled women and girls is hardly in keeping with the CRPD principles underpinning the NDS.

- 149 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.<sup>246</sup> 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.<sup>247</sup> Paternalistic and stereotypical 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.<sup>248</sup>
- 150 Sexual and reproductive rights also rest on the recognition of the basic right of all couples and individuals to found and maintain a family, including the right to decide freely and responsibly the number, spacing and timing of their children and to have access to the information and means to do so.<sup>249</sup> Although the right to ‘found a family’ and to ‘reproductive freedom’ is clearly articulated in a number of international human rights instruments to which Australia is a party,<sup>250</sup> for many women with disabilities in Australia, such fundamental human rights are simply not realisable.
- 151 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.<sup>251</sup> 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.<sup>252</sup> Alternatively, women with intellectual disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies, often a justification for their sterilisation.<sup>253</sup> These perceptions, although very different, result in women with disabilities being denied the right to reproductive autonomy and self-determination.
- 152 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.<sup>254</sup> 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.<sup>255</sup> 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.<sup>256</sup>
- 153 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.<sup>257</sup> 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.<sup>258</sup>
- 154 WWDA regularly deals with mothers with disabilities who are experiencing discrimination in the justice system in relation to their rights to parenting.<sup>259</sup> These reports to WWDA include many instances whereby children are removed from the care of disabled parents (usually mothers) through the family law system. Under the *Family Law Act*, orders are made about parenting responsibility, residence and contact between a child and the adults who have a parenting relationship with the child. This will usually be in the context of a dispute between separated parents. The Office of the Public Advocate (OPA) in Victoria, has found that in these cases, the disability of one parent can be used by the parent without a disability to argue that the child’s residence and contact with the disabled parent should be changed or limited. In the case

of a single parent with a disability, the dispute may be between the parent and another member of the child's extended family, such as a grandparent, with similar outcomes.<sup>260</sup> Research undertaken by the OPA has found that *"the provisions of the Act in relation to parenting place parents with a disability at a significant disadvantage, with a greater likelihood that they will lose the primary care of their child compared to parents without a disability."*<sup>261</sup>

- 155 For a number of years now, human rights organisations, treaty monitoring bodies, disabled peoples organisations and more, have called on successive Australian governments to commission and adequately resource a National Public Inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disabilities. Advocates have called on governments to ensure that such an Inquiry address the over-representation of parents with intellectual disabilities in care and protection proceedings.<sup>262</sup> It is also clear that there needs to be urgent reform in the area of child removal on the basis of parental disability in the family law system.
- 156 In March 2013, the Australian Council of Human Rights Agencies (ACHRA) identified discrimination against 'potential and actual parents with disability' as one of three urgent matters requiring national leadership and action. ACHRA's official Communique states:

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*"Having regard to evidence:*

*(a) that parents with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity to be effective parents; (b) that there is a lack of systematic data collection and analysis; (c) that there is a lack of appropriate supports to potential and actual parents with disability; ACHRA calls for better data collection and better research into negative presumptions being made about people with disabilities being able to effectively parent. ACHRA calls for better support for these parents to fulfil their parenting roles and has identified that this as a priority given the discriminatory impact of negative presumptions."*<sup>263</sup>

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- 157 The following case studies are provided to highlight the urgent need to ensure the sexual and reproductive rights of women and girls with disabilities are addressed in future NDS Implementation Plans.

### Case Studies: Sexual and reproductive rights and freedoms

- 158 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.<sup>264</sup>
- 159 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 sex in the local park, and the supermarket car park.<sup>265</sup>
- 160 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."<sup>266</sup>
- 161 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.<sup>267</sup>

162 Toni is 40 years old. She has a mild intellectual disability. She lives in a supported accommodation facility with approximately 20 other residents. Toni is unhappy in the facility. She wants to make her own decisions. She is not allowed to have a sexual relationship, either with another resident, or anyone else. She is not able to manage her own finances. Toni sometimes packs her bags and "runs away" from the facility. Because she has no money, she hitchhikes. On four separate occasions within the space of a year, Toni has been raped by men who have 'offered her a lift'.<sup>268</sup>

163 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.<sup>269</sup>

164 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 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.<sup>270</sup>

165 Madu's family moved to Australia from Sri Lanka when Madu was young. In her late teens, Madu was diagnosed with a mental health disability and spent a short time in hospital. In the 20 years since that time, Madu's disability has been stable and successfully managed with medication. When Madu was of marriagable age, her parents returned



to Sri Lanka to find their daughter a 'suitable' husband. The marriage was arranged. Madu's parents purchased a home for the couple which was subsequently transferred into the husband's name as part of the dowry arrangements. The couple had two children, who are now aged 7 and 12 years of age. Madu experienced extensive violence from her husband during their marriage. On 6 separate occasions police responded to reports of family violence at the home. On one of these occasions, Madu was hospitalized as a result of the violence. Each time the police attended, Madu would downplay the violence because her husband said he would kill her and the children if she told the police the truth. Madu's husband would not let her work outside the home, nor attend any training courses. Madu's husband told her that she was his "slave". One day Madu's husband arrived home with another woman. He told Madu the woman was his going to be his 'new' wife and that she was moving into the family home immediately. Madu's husband told her to leave and take the children with her. Madu left with her children and moved into a small flat owned by her parents. Property settlement proceedings commenced. Madu's husband told her that he didn't want their children, but that he was going to seek shared custody so that Madu would not be awarded a higher percentage of the property settlement. Madu was subsequently interviewed by a Family Consultant employed by the Family Court. Madu was advised that her husband had claimed she had a psychiatric disability and wasn't a fit mother. He also claimed that their 7 year old son had a "social skills deficit" because Madu's psychiatric disability "prevented her from imparting proper social skills" to their son. Although Madu had evidence to demonstrate her disability had been stabilized for more than 20 years, the Court ordered an investigation and subpoenaed her hospital records from 20 years earlier. Although ample evidence was provided by her son's school, sporting clubs, relatives, and doctor, the Court ordered an independent assessment of the child. Although extensive evidence was provided relating to the family violence, including police records, the Family Consultant accused Madu

of "exaggerating" these claims, and told Madu she agreed with the husband's claims that these incidents were "nothing more than normal family arguments." Madu was given two days notice of the Court hearing date and time for the determination of parenting orders. The Court did not provide her with any independent advocacy support or information. Madu and her parents were of the view that the Family Consultant "believed" the allegations made by the husband. Madu's parents sought urgent independent advocacy support for their daughter but every service and agency they contacted said they couldn't help. WWDA was eventually able to find an independent advocate from a disability organisation who agreed to assist. The advocate had less than 24 hours to prepare to support the family at the hearing.<sup>271</sup>

- 166 Kate lives in a regional city. She eventually left her partner after their child was born, saying that the relationship had been violent. He holds a responsible position and is well-regarded in the community. Both Kate and her partner are well-educated, however Kate had a period of depression fifteen years ago. Her former partner successfully argued in court that Kate's medical history meant that she was mentally unstable and would be a risk to her child. He also denied that he had ever been violent towards her and presented as a credible witness. Their child now lives with his father. Kate has sought to take the issue back to court over a number of years. However, she does not have the financial resources to do so and is unable to obtain legal aid to make an application.<sup>272</sup>
- 167 Rebecca (who has a borderline intellectual disability) and her daughter, Melinda, lived with Rebecca's grandparents for almost five years before moving to live with Rebecca's mother. Melinda commenced school at her new home and was doing well. There had been no reports to child protection authorities and no concerns that Melinda was being abused or neglected. All professionals acknowledge that there was a strong maternal bond between mother and daughter. Rebecca's grandparents argued that there was an equally strong bond between them and Melinda. They made an application to the Federal Circuit



Court for Melinda to live with them, spending time with her mother during holidays and weekends. Rebecca eventually lost the care of her daughter to her grandparents under consent orders even though there were no protective concerns about Melinda's well-being.<sup>273</sup>

168 Cassie and her partner both have a mild intellectual disability. They live together in their own unit and both work in open employment. They have been trying for three years to have a baby. Cassie has had two miscarriages. Eventually Cassie becomes pregnant again and gives birth to a healthy baby girl. Cassie is over the moon and is looking forward to being with her baby while she is on 6 months maternity leave from her job. Whilst Cassie and her baby are still in hospital, only days after the birth, the baby is removed from her by the Child Welfare authorities. It has been decided (prior to the baby's birth) that the baby is "likely to be at risk" because Cassie and her partner have an intellectual disability. The baby is given to the paternal grandparents, who intend to formally adopt the child. Cassie and her partner are only allowed minimal supervised access visits to see their baby.

169 In 2009, the mother of a 14 year old girl with an intellectual disability, applied to the NSW Guardianship Tribunal to have her daughter sterilised prior to the onset of menstruation. Although the application was rejected, the NSW Guardianship Tribunal stated that: *"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."*<sup>274</sup>

170 Julie's son was removed from her care when he was born by the department of child safety. Julie states:

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*"They hadn't assessed my abilities as a parent nor did they tell me they were going to take away my son before I gave birth. They didn't trust me and said that they wanted to prevent me from harming my baby, even when I had done nothing wrong. No support has ever been provided to help me be a parent of my son. We got an independent assessment done and it showed that even though I have a mild intellectual impairment, my behavioural functioning is normal. Even now, I only see him every Friday and he stays overnight once a fortnight."*<sup>275</sup>

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## The right to work

### NDS Outcome Area 3: Economic Security

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*"If women with disabilities do not have access to transport, safe accommodation, meaningful work, freedom from violence and abuse, access to education and information - we will continue to be dependent on community services and government payments. We will continue to experience ourselves as living on the edge of our society, as being of less worth than other human beings - and our society will continue to have that perception of us."*<sup>276</sup>

*"I want a real job where I can get paid proper money that can go into my bank account."*<sup>277</sup>

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- 171 Although the first NDS Implementation Plan - *Laying the Groundwork: 2011–2014* – contains a number of initiatives to 'increase access to employment opportunities as a key to improving economic security', there is no recognition of the fact that women with disabilities face significantly poorer economic outcomes than men with disabilities, nor any gender-specific measures to address this disparity. There is also no recognition or implicit understanding of the critical need to address the specific underlying structural barriers to the workforce participation of women with disabilities.
- 172 Women with disabilities throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society. The Disability Support Pension (DSP) is inadequate to support women with disabilities and fails to take account of the non-optional, extra costs experienced by women with disabilities, as a direct result of their disability and/or impairments. For example, women with disabilities spend more of their income on medical care and health related expenses than men with disabilities.<sup>278</sup> Women with disabilities between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of women who are not disabled. Women with disabilities between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.<sup>279</sup>
- 173 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.<sup>280</sup> 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.<sup>281</sup>
- 174 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 signaled 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<sup>282</sup>) appear ignorant to the structural barriers to the workforce participation of women with disabilities (such as sexual and other forms of violence), and subsequently fail to address these issues, including whether they occur in open employment settings or supported employment settings. For example, 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'.<sup>283</sup> As a mechanism to prevent and address violence against women and girls with disabilities, the

Disability Services Standards are considered to be grossly ineffective.<sup>284</sup> 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.<sup>285</sup>

- 175 In February 2014, a Perth maxi-taxi driver was charged with (and pleaded guilty to) more than 33 charges of rape and sexual assault of several women with disabilities who had been passengers in his taxi. One of the victims, a 30 year woman who has cerebral palsy, was reliant on the maxi-taxi to get to and from work each day. She is now being treated for Post Traumatic Stress Disorder and is "too frightened" to use taxis. She now has no way of getting to work. As her mother explains:

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*"What has happened is unfathomable and despicable - but where is the support? We looked at hiring a van for her carers to drive but at \$1000 per week this is too prohibitive to access. Not only is my daughter dealing with the attack and trapped in a body that is not functioning how she wants it too, dealing with the psychological issues ... she is spending most days at home because she can't access transport to go to work."*<sup>286</sup>

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- 176 In 2009 the Parliament of the Commonwealth of Australia undertook a national inquiry into Pay Equity and associated issues relating to female participation in the workforce. The Report of the Inquiry 'Making It Fair'<sup>287</sup> recommended, amongst other things that 'the Government as a matter of priority collect relevant information on workforce participation of women with disabilities to provide a basis for pay equity analysis and inform future policy direction.' This recommendation has never been enacted.
- 177 A number of the international human rights treaty monitoring bodies have urged Australian Governments to address the limited access to job opportunities for disabled women; and adopt initiatives to increase employment participation of women with disabilities by addressing the specific underlying structural barriers to their workforce participation.<sup>288</sup>
- 178 These recommendations have not been taken up by the Australian Government, and women with disabilities continue to experience marginalisation

and exclusion in the Australian labour market – a situation that has remained unchanged for more than two decades.<sup>289</sup>

- 179 Until such time as the NDS embraces a serious and committed gendered approach to its goals, policy directions, areas for future action, data collection, monitoring and review processes – women with disabilities will continue to experience discrimination in employment and labour force participation. It is naïve and ignorant to assume that women with disabilities can have equal access to the labour market without addressing some of the fundamental, underlying structural barriers that prevent and/or deny women with disabilities from realising their right to work and to economic security.<sup>290</sup>
- 180 The following case studies are provided to highlight the urgent need to ensure that discrimination in employment and labour force participation experienced by women with disabilities is prioritised in future NDS Implementation Plans.

#### Case Studies: The right to work

- 181 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.<sup>291</sup>

- 182 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 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 Manager. 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 reiterates 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.<sup>292</sup>

- 183 Gina is 42 years old. She is also a qualified social worker and has 3 post graduate degrees. Gina is married and lives with her husband in their own home which they are slowly paying off. Gina is also blind. She has a guide dog and is independent in utilising public transport and accessing her local community. Gina has experienced enormous difficulties in securing meaningful employment. Despite her qualifications and volunteer work, she never seems to make it past the interview stage when she applies for jobs. Eventually, Gina manages to secure a permanent position within the Public Service. It is a full time Project Officer position. However, Gina's experience of her "job" soon becomes disheartening. She is given a desk, an accessible computer, a petitioned office – but no meaningful work. For more than 12 months, Gina turns up to her job every day, sits at her desk and does nothing. She repeatedly asks her manager for some work to do. She is eventually given a task – to update the phone numbers on a pamphlet. It is the only piece of work Gina is given in more than a year. Gina is too frightened to lodge a formal complaint. She becomes severely depressed and is hospitalized. Her "position" is reclassified whilst she is in hospital, and she is made redundant.<sup>293</sup>

184 Sally is 38 years old. She has a mild intellectual disability. She resides in a supported accommodation residential facility where she has her own unit. She is very independent. She cooks for herself, does her own washing and ironing, cleans her own unit, landscapes and tends her small garden, uses public transport independently, and is very proficient on her computer. Sally has never had a paid job of any description. Sally badly wants to work in paid employment. Sally doesn't understand why she isn't allowed to have a paid job. But Sally is told by her family and her support staff that she is not capable of having a paid job. Instead, Sally is sent to a day support program 5 days a week where she undertakes craft and other activities. Sally says she is "bored shitless".<sup>294</sup>

## Access to Justice, Legal Capacity & Equal Recognition Before the Law

### NDS Outcome Area 2: Rights protection, justice and legislation

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*"Women with disabilities are at increased risk of violence and yet don't have equal protection under the law. We are often not seen as credible witnesses in criminal cases and conviction rates for crimes against us are generally much lower."<sup>295</sup>*

*"Equality under and equal protection of the law is nothing more than a fairy tale for people with cognitive and intellectual disabilities."<sup>296</sup>*

*"It is impossible to navigate the legal system. I couldn't use the DDA complaints process because I couldn't find anyone who was prepared to help me and support me through the process. Every service I contacted just passed me on to somewhere else. No one would help."<sup>297</sup>*

*"There is a lack of appropriate information for women with disabilities about their rights, about what constitutes a crime, and about legal remedies available to them."<sup>298</sup>*

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185 The right of access to justice is among the most important civil and political rights as it determines the extent to which individuals can secure and enforce their other substantive human rights.<sup>299</sup> 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.<sup>300</sup> 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. In various ways the justice system itself (and therefore the state) perpetrates and/or condones the discrimination and violence women and girls with



disabilities experience through various barriers. Women and girls with disabilities, particularly those with intellectual, cognitive, and/or psychosocial disabilities are often denied effective access to justice because they do not receive assistance to report violations of their rights or to participate in legal processes; they are often not believed or are viewed as unreliable or not credible witnesses; and violations of their rights are often accepted and condoned as 'behaviour management' practices, such as forced administration of medication.<sup>301</sup>

186 For example, despite high levels of violence against women with disabilities in Australia, few cases are prosecuted. Many cases involving crimes committed against women and girls with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.<sup>302</sup> It has been well documented for decades that police are reluctant to investigate and report cases of violence against women and girls with disabilities.<sup>303</sup> This is in part due to the stereotypical perceptions of women with disabilities that have been found to be operating at almost all levels of the criminal justice system, including police and courts – ie: that women with disabilities are sexually promiscuous, provocative, unlikely to tell the truth, asexual, childlike, or unable to be a reliable witness.<sup>304</sup>

187 '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 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.<sup>305</sup> 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.

188 The CRPD Committee has recently published a General Comment<sup>306</sup> to further clarify a States party's obligations arising from CRPD Article 12 [Equal recognition before the law].<sup>307</sup> The General Comment makes it clear that '*the right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others.*' It clarifies that there are "*no circumstances permissible under international human rights law in which a person may be deprived of the right to recognition as a person before the law, or in which this right may be limited. No derogation from this right is permissible even in times of public emergency.*" The General Comment also clearly recognises the imperative of a gendered analysis of legal capacity and equal recognition before the law, acknowledging that:

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*"women with disabilities may be subject to multiple and intersectional forms of discrimination based on gender and disability. Women with disabilities are subjected to high rates of forced sterilization, and are often denied control of their reproductive health and decision-making, the assumption being that they are not capable of consenting to sex. Certain jurisdictions also have higher rates of imposing substitute decision-makers on women than on men. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with others."<sup>308</sup>*

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189 When Australia ratified the CRPD, it did so with three 'Interpretative Declarations',<sup>309</sup> to CRPD Article 12 [Equal recognition before the law], Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].<sup>310</sup> In respect of Articles 12 and 17, it is clear that Australia's Interpretative Declarations have 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 human rights, including their sexual and reproductive rights. For example, 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:

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*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.*<sup>311</sup>

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- 190 Regardless of the fact that the monitoring bodies of the core international human rights treaties<sup>312</sup> have all found that forced/involuntary and coerced sterilisation clearly breaches multiple provisions of the respective treaties,<sup>313</sup> 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 into the treaty, Australia declared its view that the CRPD allows for substituted decision-making and compulsory medical treatment.
- 191 However, 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 and stressed that these Declarations have in fact hindered Australia's ability to comply with the CRPD. The Committee's Concluding Observations [Australia], released in October 2013, makes a number of clear recommendations regarding equal recognition before the law, legal capacity and access to justice. For example, the Committee recommended, amongst other things, that Australia:
- incorporate all rights under the Convention into domestic law and review the interpretative declarations on art.12, 17 and 18 in order to withdraw them;

- 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 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;
- provide training 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;
- ensure that persons with psychosocial disabilities are ensured equal substantive and procedural guarantees as others in the context of criminal proceedings;
- ensure that all persons with disabilities who are accused of crimes and are currently detained in jails and institutions without a trial are promptly allowed to defend themselves against criminal charges and are provided with required support and accommodation to facilitate their effective participation.
- end the unwarranted use of prisons for the management of un-convicted persons with disabilities;
- establish mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate supports and accommodation;
- reviews laws that allow for the deprivation of liberty on the basis of disability, including psychosocial or intellectual disabilities, and repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability;
- 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).

192 The NDS identifies 'People with disability have access to justice' as a key policy priority under Outcome Area 2 [Rights protection, justice and legislation]. The first NDS Implementation plan - *Laying the Groundwork: 2011–2014* - identifies two main measures for future action to address this policy priority, including:

**Area for future action 2.7. Provide greater support for people with disability with heightened vulnerabilities to participate in legal processes on an equal basis with others.**

The **key action** to achieve this will be to: *Fund selected community legal centres* [Action 2.7.1.]

The **main strategy** to achieve this is by 'providing funding to nine community legal centres, including two specialist disability discrimination legal centres, to assist people who are pursuing outcomes and remedies through the Australian Human Rights Commission, the Federal Magistrates Court, Fair Work Australia or state jurisdictions using the Anti-Discrimination Commissions and Tribunals.'

The **success indicator** for this action is identified as: 'This action will result in people with disability being better supported when they seek to pursue legal remedies for discrimination matters. They will be given priority when seeking grants of aid from legal aid commissions.'

**Area for future action 2.9. Support people with disability with heightened vulnerabilities in any contacts with the criminal justice system, with an emphasis on early identification, diversion and support.**

The **key action** to achieve this will be to: *Develop strategies to improve the experience of people with disability with heightened vulnerabilities who come into contact, or are at risk of contact, with the criminal justice system, as alleged offenders, victims and witnesses of crime* [Action 2.9.1].

The **main strategy** to achieve this is through the following complimentary inter-jurisdictional working groups: the National Justice Chief Executive Officers' Group; the Corrective Services Administrators' Council; the National Forensic Disability Working Group; and, the Disability and Policy Research Working Groups 'People with

Disability and the Criminal Justice System Working Group'.<sup>314</sup>

The **success indicator** for this action is identified as: 'This action will be successful if experiences for people with a mental illness or cognitive disability who come into contact, or are at risk of coming into contact, with the criminal justice system are improved.'

193 It is unclear whether the main strategies identified for these two measures remain current, or if they have had any impact. It is not known how the key actions have been, or will be measured. There is no evidence that women with disabilities have seen any benefit to date from these two key actions. In fact, it is WWDA's experience that access to justice and equal recognition before the law remains one of the most apparent areas of inequality between men and women with disabilities. WWDA is regularly contacted by women with disabilities who are desperate for assistance and support in relation to all aspects of the justice system. Yet it is an all too common experience that women with disabilities cannot access the support they need; find themselves on a 'referral roundabout'; are often denied service support as their circumstances are deemed "too complex"; cannot report crimes against them because they are not believed; cannot access assistance to report violations of their rights; and cannot navigate the many complex avenues and processes associated with accessing the justice system.

194 It is difficult to comprehend how the NDS can have a goal that states: 'People with disability have their rights promoted, upheld and protected' (and a clear policy priority direction of *People with disability have access to justice*), when Australia persists with an Interpretative Declaration to Article 12 of the CRPD. The NDS is supposedly the framework to guide Australian governments to meet their obligations under the CRPD, yet is premised on a position that supports and endorses substituted decision-making and compulsory medical treatment.

195 The following case studies are provided to highlight the urgent need to address the inequality in access to justice and equal recognition before the law experienced by women with disabilities in future NDS Implementation Plans.

## Case Studies: Access to justice, legal capacity & equal recognition before the law

- 196 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."<sup>315</sup>
- 197 Donna is 34 years old. She has a mild intellectual disability. She lives at home with her parents. Her parents control her money and give her \$20 per week. Donna is also given sleep medication by her parents as they deem some of her behaviour as inappropriate, such as staying up late and using the internet.<sup>316</sup>
- 198 When Mary, a woman with intellectual disability and episodic mental health issues, felt vulnerable, lonely or was hearing voices, she would spend time trying to seek help from the police or local hospital. For this reason Mary was well known to the local police and hospital emergency staff who mostly considered her an eccentric or a nuisance. When Mary approached the Police saying she had been drugged by her partner, locked up in their house and repeatedly raped, they did not believe her. When she approached domestic violence services they were ill equipped to be able to respond to her due to her intellectual disability and communication style. She had no friends, family or connections with disability services. Eventually a staff member of a homeless person's service put Mary in touch with a pro bono legal service that assisted her to take out an AVO against her partner and to find alternative housing. Mary was in her mid-thirties before she was assessed to receive any disability services and support.<sup>317</sup>
- 199 Cara is 57 years old. She lives on a small farm on the outskirts of a remote country town. Cara has a physical and psychosocial disability, and a raft of chronic health issues. She is repeatedly targeted by a gang of young men from town. They think it is fun to victimize Cara. They jump on the bonnet of her car. They write graffiti on her home. They smash her windows. They spit on her. They yell abuse at her when she is in town. They call her a 'retard'. Cara is frightened to leave her house. Cara has repeatedly tried to report the violence to the local police. The local police say she is exaggerating. They say that the youth are just "high spirited kids" who are a "bit bored". After a particular frightening incident, Cara attends the local police station and begs them to help her. The policeman on duty tells Cara: "You're mental. Everyone in this town knows you're a mental case. Even people who've never met you know you're mental."<sup>318</sup>
- 200 In 2010, the Family Court of Australia gave permission for a hysterectomy to be performed on an 11 year old girl who has Retts syndrome and is unable to communicate. The application was made by the young girl's mother to prevent menstruation. The Court did not provide for an independent children's lawyer, and/or independent human rights or advocacy advice or evidence on this matter, as the judge determined it would be of 'no benefit'. In accepting "without hesitation" the evidence of an Obstetrician and Gynaecologist, the judge said the procedure was "urgent and necessary" and stated that: "Undoubtedly and certainly of significant

relevance is that there are hygiene issues which must fall to the responsibility of her mother because A. cannot provide for herself..... the operation would certainly be a social improvement for A's. mother which in itself must improve the quality of A's. life. The longer term consequences are less relevant despite the irreversibility of the procedure because A is never going to have the benefits of a normal teenage and adult life."<sup>319</sup>

201 Courtney has a physical disability. She is 53 years old and lives alone. She was married for 27 years but her husband left her for another woman. Courtney was in a relationship with a man for 15 months, but ends the relationship due to the man's violent and controlling behavior. He starts to stalk her and send her abusive text messages. He tells her he can't live without her. The situation escalates and one night, in an intoxicated state, he leaves a message on her voicemail telling her he is going to kill her and then kill himself. Courtney rings a DV crisis service who advises her to leave her house immediately and go to the police station. Courtney's friend accompanies her to the local police station. They report the incident and show the policeman on duty all the abusive text messages and the voicemail messages. The policeman tells them he isn't going to report it as a 'family violence matter' because that involves "too much paperwork" and they are "short staffed." Instead, he reports the incident as a "concern for the man's welfare." He tells Courtney and her friend that he will send a police car round to the man's house but if he isn't home, "there's not much more that can be done". The policeman tells Courtney and her friend to go home and keep the doors locked.<sup>320</sup>

202 Maree has cerebral palsy and has a speech impairment. However, she can be understood if the person to whom she is speaking concentrates. She recognizes that some people have difficulty understanding her speech, so she uses an Ipad text to speech application when required. Maree was sexually abused on two separate occasions when she was younger. She decides to report the abuse, even though the abuse occurred several

years ago. Maree finds she is well supported by the police in the reporting stage. However, when the matter progresses to the Court processes, the Court Liaison Officer tells Maree that she will not be able to give her own testimony in Court and that it would not be considered "valid" unless she uses an interpreter. Maree said that she felt "demoralized and disempowered" at this decision.<sup>321</sup>

203 Frances lives in a supported accommodation facility. She is 38 years old. She has her own small apartment within the facility. Frances doesn't have control of her finances. She is unable to access any of her money because the staff of the facility say that she is "obese" and will spend her money on food. Frances likes cleaning her apartment. One day she runs out of dishwashing liquid and cleaning products for her bathroom. She asks the staff of the facility if they will take her to the supermarket to get some more. The staff tell her that 'supermarket day' is still a week away and she will just have to wait. So Frances walks up to the local shopping complex and steals the products she needs from one of the shops in the complex. The police are called. The shop owner agrees not to press charges on the proviso that Frances never enters the shop again.<sup>322</sup>



## Decision Making, Participation, and Representation

### NDS Outcome Area 2: Rights protection, justice and legislation

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*"Rules, rules, rules.....they tell me what time I have to get up, what time I have to eat, what time I have to go to bed. They tell me who I can and can't have in my own unit. They tell me what I can and can't eat. They take my radio off me at night-time. Everywhere you look there's lists of rules pinned on the walls. Well, I can tell you this: I have had a bloody gutful of all their rules. They give me the shits. I just want to be able to make my own decisions."<sup>323</sup>*

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- 204 Participation of women with disabilities as citizens is at the basis of the recognition of their dignity. Access to decision-making, political participation and representation are essential markers of gender equality. 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. For women and girls with disabilities, participation in social and political life is dependent on ensuring an adequate standard of living and on their access to fundamental social structures such as education, employment, health care, housing, accessible transport, and free enjoyment of the most fundamental human rights, such as the right to sexuality and reproduction and freedom from all forms of violence. 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.
- 205 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. Women with disabilities are denied access to information as to how their human rights and freedoms can be enforced and violations remedied. They have limited, if any, input into the development of relevant policies, services and programs, including information and education resources. For example, it is WWDA's experience that instead of providing the comprehensive services and supports to ensure that women and girls with disabilities can make informed decisions about sexual and reproductive issues, the focus remains on controlling, preventing or ignoring the sexual and reproductive lives of women and girls with disabilities, thereby denying them their sexual and reproductive rights.<sup>324</sup>

- 206 Australia has clear obligations under the international human rights treaties it has ratified 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. It is widely recognised however, that this requires capacity-building and human rights education and information 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.
- 207 For example, women with disabilities have made it clear that in order to increase their active, free, informed and meaningful participation and decision-making, capacity building is required around issues such as self-esteem, confidence, assertiveness, leadership, as well as human rights. It must be recognised that for many women with disabilities, low self-esteem, lack of confidence, lack of awareness about their rights, experiences of violence, abuse, harassment, exploitation, sexual violence, and discrimination - all act as barriers to them 'participating' in their communities, or having decision-making power in their day to day lives. Women with disabilities have also made it clear that one of the best ways for them to develop knowledge, confidence, self-esteem and skills, is to work together with

other women with disabilities on common issues. This promotes the development of personal identities, where women with disabilities are able to recognise the need for personal autonomy, and importantly, develop a sense of personal worth. At the broader level, it enables the formation of a collective identity, where women with disabilities are able to speak out about their experiences and take action to collectively improve their lives.<sup>325</sup>

208 Clearly, organisations, groups and networks of women with disabilities play a critical role in addressing the many barriers that women and girls with disabilities face in terms of effective participation and decision-making. Yet in Australia, WWDA is the only national representative civil society organisation (CSO) for women and girls with disabilities. 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. Only one state government (Victoria) funds an organisation of and for women with disabilities.

209 For almost a decade, international human rights treaty monitoring bodies have expressed concern at Australia's slow progress in ensuring the equal participation of women with disabilities in leadership and decision-making positions in public and political life, and have urged successive Australian governments to address this issue. Importantly, the treaty bodies have 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, and have called on Australian Governments to specifically address these issues. 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. It recommended that, in partnership with people with disabilities through their representative organisations, Australian Governments establish engagement mechanisms for ensuring meaningful participation in the development and implementation of legislation and policies to implement the CRPD. The Committee further recommended that Australian Governments

take initiatives to increase the resources available for independent organisations of persons with disabilities in order enable meaningful participation, consultation and engagement between Government and persons with disabilities.<sup>326</sup>

210 The first NDS Implementation Plan - *Laying the Groundwork: 2011–2014* – clearly states that: “Each implementation plan will be underscored by the need for a change of attitude about disability by governments and the broader community; a change of attitude that promotes dignity and human rights, and supports participation in all aspects of community life.” However, given that all aspects of the NDS are un-gendered, the NDS offers little to address the inequality that exists between men and women with disabilities in relation to access to decision-making, political participation and representation. It is unacceptable that the NDS promotes the language of “engagement” and “participation” of people with disabilities, without an understanding of the gender dimensions of these terms and the complexity of the underlying structures that severely limit and restrict the participation, decision-making and representation opportunities for women and girls with disabilities.

### Case Studies: Decision-making, political participation and representation

211 Raelene is 34 years old, and resides in a semi-independent supported accommodation facility. She has no access to, or control over her finances. Her money is managed and controlled by the support staff of the facility in conjunction with Raelene's parents – even though Raelene is under no form of guardianship. Raelene would like to go to the hairdresser to have her hair cut and coloured. She would also like to have the occasional facial, manicure and maybe even a massage. She would also really like to wear makeup and have her eyebrows and her chin waxed. However, Raelene is “not allowed” to do any of these things. Raelene's parents have given a clear directive to the support staff of the facility that “under no circumstances” is Raelene to do any of these things, as they consider them to be “a waste of Raelene's money”. Raelene says she just wants to be like other women. Raelene says she wants

to be able to make her own decisions about her personal care, including being able to go shopping to choose her own clothes.<sup>327</sup>

212 As a member of Australia's delegation to the Commission on the Status of Women in New York in 2013, WWDA President Karin Swift is invited (along with other NGO members of the delegation) to give a presentation about her CSW experience to the Parliamentary Group on Population and Development (PGPD), at an evening function at Parliament House in Canberra. The event is being organised on behalf of the PGPD by a large NGO. As Karin lives in Brisbane, her attendance and participation at the event is dependant on her and her support worker, staying overnight in Canberra following the event. Karin requires accessible accommodation. The NGO organising the event advises Karin (and WWDA) that they are having difficulty finding accessible accommodation for Karin. WWDA CEO offers to assist by trying to source accessible accommodation in Canberra for Karin and her support worker on the night of the PGPD event. It transpires that there is a large sporting event being held on the same night and the only accommodation of any description available in Canberra on the night in question, is a caravan in a caravan park, which is available for \$1100.00 for one night. In order for Karin to participate and give her presentation, the only option is for her to fly from Brisbane to Canberra, attend and participate in the PGPD event, leave the event early in order to catch the last flight out of Canberra to Melbourne where she has been able to secure an accessible room for her and her support worker at the Melbourne airport hotel (she is unable to fly back to Brisbane after the event, as there are no flights from Canberra to Brisbane at that time of night). Karin's flight from Brisbane to Canberra is arranged a week in advance of the PGPD event, and a wheelchair accessible taxi is also booked and confirmed in writing a week in advance. Karin arrives at Canberra airport more than 2 hours before the PGPD event is to start. But the booked (and confirmed) wheelchair accessible taxi fails to arrive. The call centre that manages the bookings for all wheelchair accessible taxis in

Canberra, says there is "nothing they can do about it – they just make the bookings." Karin, with the help of the WWDA CEO, tries frantically to order and find another wheelchair accessible taxi. Karin has to wait more than 2 hours for a taxi to arrive. She misses the first half of the PGPD event. She gives a quickly edited version of her presentation. She then has to leave the event immediately so she can get back to the airport in time to catch the last plane to Melbourne, where she will be staying overnight in the accessible hotel room at the Melbourne airport.<sup>328</sup>

213 Margie, a WWDA delegate from Adelaide, attends a two day forum in Canberra to represent the views of women with disabilities. She misses her return flight to Adelaide because her booked (and confirmed) wheelchair accessible taxi arrives to pick her up to take her to the airport, but chooses instead to take a group of able-bodied women (as the taxi fare will be higher for a group). As there are no other flights that evening to Adelaide, Margie is forced to find accessible accommodation for an extra night. WWDA pays the cost of the extra accommodation and the new return flight to Adelaide the following day. Margie says the continued issues with taxis in Canberra meant disability advocates were being excluded from the nation's capital. She said as a result the disabled were not being given equal treatment and equal rights to participate in policy-making processes. "We know that women with disabilities are already on the fringes of society," Margie said. "Being able to speak to ministers and those in positions of power is the only way to begin to bring these women onto a level playing field. "WWDA is the voice we need, but how can we get to where we need to be when the transport system is woeful?"<sup>329</sup>

214 WWDA is invited to attend and participate in the 2012 Attorney General's Forum on Domestic Human Rights, a forum WWDA has been represented on for more than a decade. The Forum is held in Canberra. WWDA delegate, Associate Professor Helen Meekosha, is representing WWDA at the Forum and in order to attend, requires

two nights accommodation in Canberra for herself and her support worker - one the night before the Forum, and one night after the Forum. WWDA organises and covers all costs associated with Ms Meekosha's representation, including flights, taxis, and accommodation for her and her support worker. This amounts to \$1225.88. Ms Meekosha's wheelchair accessible taxis are booked and confirmed well in advance of the Forum. Ms Meekosha's flight from Sydney to Canberra the evening before the Forum, is delayed. The taxi booking company is notified and they reassure Ms Meekosha that the wheelchair accessible taxi will be there to meet her when her flight arrives in Canberra. Ms Meekosha arrives at Canberra airport at 10pm but there is no taxi waiting. Ms Meekosha is told that she has to wait outside the airport itself for the taxi. Ms Meekosha waits more than 2 hours, and despite repeated calls and attempts to find an accessible taxi, none arrive. The temperature is minus 3 degrees. In desperation Ms Meekosha asks her support worker to completely dismantle her electric wheelchair and then finds a standard taxi that is prepared to transport her, her support worker and her dismantled wheelchair, to the hotel. Ms Meekosha arrives at the hotel but her support worker has to reassemble her wheelchair before she can get to her hotel room. Ms Meekosha finally makes it to her hotel room at almost 2am. The next day, Ms Meekosha (who has multiple sclerosis and a number of other impairments) was so tired from the arduous journey that she abandoned her roundtable meeting with the Attorney-General, the reason for her visit to Canberra. But Ms Meekosha's ordeal did not end there. She missed her 9.15am flight to Sydney the following day after her booked (and confirmed) wheelchair accessible taxi arrived more than 45 minutes late. Associate Professor Meekosha said the experience was humiliating. "The disrespect gets me, feeling like you're nobody of consequence while everyone else files into ordinary taxis," she said. "You're made to feel like you're asking for something completely out of the ordinary." WWDA subsequently wrote to the ACT Chief Minister, requesting that WWDA's \$1225.88 be refunded to WWDA by the ACT Government. The

ACT Government refused. After media coverage of Ms Meekosha's ordeal, including coverage of the fact that the ACT Government had refused to reimburse WWDA's funds, a Canberra citizen sent WWDA a cheque for the exact amount. The citizen said that he was ashamed of the ACT Government's response to WWDA, and deeply offended by what Ms Meekosha had had to endure in the nation's capital.<sup>330</sup>

# NDS Goals and Objectives

## Outcome Area 1

### Inclusive and accessible communities

**Goal:** People with disability live in accessible and well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life.

#### Objectives/Policy Directions:

- 1 Increased participation of people with disability, their families and carers in the social, cultural, religious, recreational and sporting life of the community.
- 2 Improved accessibility of the built and natural environment through planning and regulatory systems, maximising the participation and inclusion of every member of the community.
- 3 Improved provision of accessible and well-designed housing with choice for people with disability about where they live.
- 4 A public, private and community transport system that is accessible for the whole community.
- 5 Communication and information systems that are accessible, reliable and responsive to the needs of people with disability, their families and carers.

## Outcome Area 2

### Rights protection, justice and legislation

**Goal:** People with disability have their rights promoted, upheld and protected.

#### Objectives/Policy Directions:

- 1 Increase awareness and acceptance of the rights of people with disability.
- 2 Remove societal barriers preventing people with disability from participating as equal citizens.
- 3 People with disability have access to justice.
- 4 People with disability to be safe from violence, exploitation and neglect.
- 5 More effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities.



### Outcome Area 3

#### Economic security

**Goal:** People with disability, their families and carers have economic security, enabling them to plan for the future and exercise choice and control over their lives.

#### Objectives/Policy Directions:

- 1 Increase access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability, their families and carers.
- 2 Income support and tax systems to provide an adequate standard of living for people with disability, their families and carers, while fostering personal financial independence and employment.
- 3 Improve access to housing options that are affordable and provide security of tenure.

### Outcome Area 4

#### Personal and community support

**Goal:** People with disability, their families and carers have access to a range of supports to assist them to live independently and actively engage in their communities.

#### Objectives/Policy Directions:

- 1 A sustainable disability support system which is person-centred and self-directed, maximising opportunities for independence and participation in the economic, social and cultural life of the community.
- 2 A disability support system which is responsive to the particular needs and circumstances of people with complex and high needs for support.
- 3 Universal personal and community support services are available to meet the needs of people with disability, their families and carers.
- 4 The role of families and carers is acknowledged and supported.

## Outcome Area 5

### Learning and skills

**Goal:** People with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs. People with disability have opportunities to continue learning throughout their lives.

#### Objectives/Policy Directions:

- 1 Strengthen the capability of all education providers to deliver inclusive high-quality educational programs for people with all abilities from early childhood through adulthood.
- 2 Focus on reducing the disparity in educational outcomes for people with disability and others.
- 3 Ensure that government reforms and initiatives for early childhood, education, training and skills development are responsive to the needs of people with disability.
- 4 Improve pathways for students with disability from school to further education, employment and lifelong learning.

## Outcome Area 6

### Health and well-being

**Goal:** People with disability attain highest possible health and wellbeing outcomes throughout their lives.

#### Objectives/Policy Directions:

- 1 All health service providers (including hospitals, general practices, specialist services, allied health, dental health, mental health, population health programs and ambulance services) have the capabilities to meet the needs of people with disability.
- 2 Timely, comprehensive and effective prevention and early intervention health services for people with disability.
- 3 Universal health reforms and initiatives to address the needs of people with disability, their families and carers.
- 4 Factors fundamental to wellbeing and health status such as choice and control, social participation and relationships, to be supported in government policy and program design.

# NDS Trend Indicators

NDS Outcome Area	Trend Indicator
<p><b>Inclusive and accessible communities</b> People with disability live in accessible and well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life.</p>	<ul style="list-style-type: none"> <li>• Proportion of people with disability reporting difficulty using public transport</li> <li>• Proportion of people with disability participating in common cultural and recreational activities</li> </ul>
<p><b>Rights protection, justice and legislation</b> People with disability have their rights promoted, upheld and protected.</p>	<ul style="list-style-type: none"> <li>• Feelings of safety in different situations by disability category</li> <li>• Proportion of people with disability participating in civic life</li> <li>• Proportion of complaints under the Disability Discrimination Act 1992 (or subsequent legislation that may replace it), by sub- category</li> </ul>
<p><b>Economic security</b> People with disability, their families and carers have economic security, enabling them to plan for the future and exercise choice and control over their lives.</p>	<ul style="list-style-type: none"> <li>• Proportion of people with disability participating in the labour force</li> <li>• Proportion of people with disability in both private and public sector employment</li> <li>• Difference between the average income of people with disability and the average income for all Australians</li> <li>• Proportion of people with disability experiencing housing stress</li> </ul>
<p><b>Personal and community support</b> People with disability, their families and carers have access to a range of supports to assist them to live independently and actively engage in their communities.</p>	<ul style="list-style-type: none"> <li>• Proportion of the potential population accessing disability services</li> <li>• Proportion of the potential population expressing unmet demand for disability support services</li> <li>• Proportion of carers of people with disability accessing support services to assist in their caring role</li> <li>• Proportion of Indigenous people receiving disability services</li> </ul>
<p><b>Learning and Skills</b> People with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs. People with disability have opportunities to continue learning throughout their lives.</p>	<p>Educational achievement of people with disability</p> <ul style="list-style-type: none"> <li>• proportion of people with disability in mainstream schools</li> <li>• proportion of people aged 19–25 with disability who have attained at least Year 12 or equivalent qualification</li> <li>• proportion of people with disability with post-school qualifications</li> </ul>
<p><b>Health and Wellbeing</b> People with disability attain highest possible health and wellbeing outcomes throughout their lives.</p>	<ul style="list-style-type: none"> <li>• Proportion of people with disability who report their health status as good or better</li> <li>• Access to general practitioners, dental and other primary healthcare professionals for people with disability</li> <li>• Risk factors for preventable disease in people with disability</li> </ul>

# DPP v Kumar

IN THE COUNTY COURT OF VICTORIA

Revised  
Not Restricted  
Suitable for Publication

AT MELBOURNE

**CRIMINAL DIVISION**

Case No. CR-13-00419

DIRECTOR OF PUBLIC PROSECUTIONS

v

VINOD JOHNNY KUMAR

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<b>JUDGE:</b>	HER HONOUR JUDGE HAMPEL
<b>WHERE HELD:</b>	Melbourne
<b>DATE OF HEARING:</b>	6 November 2013
<b>DATE OF SENTENCE:</b>	20 November 2013
<b>CASE MAY BE CITED AS:</b>	DPP v Kumar
<b>MEDIUM NEUTRAL CITATION:</b>	[2013] VCC

REASONS FOR SENTENCE

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Subject:  
Catchwords:  
Legislation Cited:  
Cases Cited:  
Sentence:

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**APPEARANCES:**

For the DPP  
For the Accused

**Counsel**

Dr N. Rogers SC  
Mr P. Kilduff

**Solicitors**

Office of Public Prosecutions  
Robert Stary Lawyers

VICTORIAN GOVERNMENT REPORTING SERVICE  
565 Lonsdale Street, Melbourne - Telephone: 9603 2403

## HER HONOUR:

- 1 Vinod Johnny Kumar, on 21 March 2012 you were charged with multiple counts of rape and other sexual offences alleged to have been committed by you on a number of profoundly disabled people who were in your care at supported accommodation provided by Yooralla. You denied those charges. A year later, in March 2013, three days into a contested committal and whilst the third of the complainants was undergoing cross-examination, you instructed your counsel to offer pleas of guilty to all charges. After receiving advice, orally and in writing from your lawyers about the significance and consequences of entering guilty pleas, and signing an acknowledgement you had received and understood that advice, there was no further cross-examination of witnesses, and you entered pleas of guilty to all charges. You were then committed to this court for the matter to proceed by way of guilty plea.
- 2 On 17 April this year you were arraigned in this court and pleaded guilty to the same charges you had pleaded guilty to at committal, namely eight charges of rape, two of sexual penetration and one of indecent act on a person with a cognitive impairment committed by a worker at a facility designed to meet her needs, and one charge of indecent assault.
- 3 Four months later on 19 August 2013, you applied for leave before Her Honour Judge Sexton to withdraw your guilty pleas and to proceed to trial on all charges. You gave evidence you pleaded guilty because you thought you would receive a substantially reduced sentence, and as you had since become aware that the sentence was likely to be significantly higher than what you had thought, you wished to proceed to trial. On 18 September 2013, Her Honour Judge Sexton refused the application to withdraw the guilty pleas, and refused your subsequent application for certification, a necessary step if you were to institute an interlocutory appeal to the Court of Appeal. You applied to the Court of Appeal nonetheless for a review of the refusal to certify.
- 4 Her Honour Judge Sexton's findings of fact were not challenged in the Court of Appeal. Her Honour was satisfied that you had been carefully and properly advised by your lawyers before the entry of pleas of guilty when committed by the magistrate to this court, and again before being arraigned on the same charges in this court about the effect of entering guilty pleas. She was satisfied on the evidence that your pleas of guilty were unequivocal, and that you understood that by pleading guilty, you were making a true admission of guilt.
- 5 As the Court of Appeal confirmed, she correctly applied the principles in the High Court decisions of Meissner<sup>331</sup> and Maxwell,<sup>332</sup> namely that a plea of guilty constitutes an admission of all of the elements of an offence, and that is so whether the plea is entered because of a belief or recognition of guilt, or for other reasons, including to avoid worry, inconvenience, expense, or publicity, to protect family or friends, or in the hope of obtaining a more lenient sentence. Because a plea of guilty is taken to be a true admission of guilt, it will not be set aside unless it could be shown that a miscarriage of justice would occur if it were allowed to stand. Her Honour Judge Sexton found that your belief about the length of the likely sentence to be imposed was a self-induced misconception. Your lawyers had not suggested a sentence of the order that you thought might be imposed. Your belief about the likely length of sentence if you pleaded guilty was based purely on your own supposition, uninfluenced by anything they had said or done.



- 6 On 18 October 2013 the Court of Appeal, comprising Weinberg and Coghlan JJA and Lasry AJA heard and dismissed your application, holding there was no error in Her Honour Judge Sexton's decision, refusing leave to change your pleas.
- 7 Her Honour found, correctly as the Court of Appeal held, that a realisation a self-induced belief about the likely length of sentence was wrong did not render your considered decision to plead guilty one which, if allowed to stand, would amount to a miscarriage of justice.
- 8 The effect of that was to hold you to the guilty pleas that you had entered, and the matter was set down for a plea hearing on 6 November 2013. On that day, you filed an affidavit containing a bald denial of the offences.
- 9 The prosecution presented a detailed summary of the evidence contained in the depositions in respect of the charges. It was unchallenged by you, save for that bald denial I have referred to.
- 10 Having taken into account the evidence contained in the depositions, and your affidavit denying the offences, and the materials placed before Her Honour Judge Sexton and the Court of Appeal, I am satisfied beyond reasonable doubt the circumstances of the offending is as set out in the prosecution summary relied upon in the plea hearing.
- 11 The evidence I accept therefore establishes that the 12 offences to which you had pleaded guilty were committed by you on four people who, because of their severe levels of physical or intellectual impairment, required assistance for the most basic activities of daily living. They all lived in supported accommodation with 24 hour care, provided by Yooralla. Three of your victims lived together in a house which accommodated a total of six residents. The other victim lived in a nearby house which also had six residents.
- 12 In March 2009 you had begun working on a casual basis for Yooralla as a disability support worker. In August 2011 you were counselled, following two reported instances of inappropriate behaviour. One involved use of inappropriate language to a staff member. The other was more serious, and involved inappropriate, sexualised behaviour with a resident, namely twisting the nipple of a male resident. You were told you would no longer be working at a particular residence, I think the one where that resident lived.
- 13 Nonetheless, Yooralla continued to employ you as a casual employee. In late 2011, only months after having been counselled, you applied for a permanent position, but according to the prosecution summary, you were unsuccessful because of what was described as "rumours" of inappropriate behaviour with residents and staff. Despite that, it continued to engage you on a casual basis, but working practically full time hours, and you were often rostered on at times when you would be the only support worker at a residence. This, then, is the background I am satisfied of against which the offending occurred.
- 14 Charges 1 to 4 are all charges of raping a woman who I shall call Ruth.<sup>333</sup> Ruth has cerebral palsy resulting in spastic quadriplegia. She is confined to a motorised wheelchair. She is unable to speak but able to communicate with gestures and spelling out words on her wheelchair tray, although she has trouble controlling her hand to point to the letters. She has some vocalisations that can be slowly understood by those who are familiar with her. She has been assessed as having borderline intellectual capacity and is vision impaired.

- 15 Ruth requires full assistance with toileting, feeding, showering and other personal care. She requires manual handling and must be hoisted from her bed to her chair. She must also be hoisted into a commode chair for toilet and showering. She was 40 at the time of the offending. All of the acts that I am about to recount occurred when you were the only person on duty in her home. All occurred between October 2011 and mid-January 2012.
- 16 Between those dates, on each of the occasions you gave Ruth a shower or put her to bed, that is about 20 times, you penetrated her vagina with your fingers. On occasions, you would also touch her breasts. Sometimes you would laugh while you were sexually assaulting her in this manner. You did not wear gloves as you were supposed to when showering a resident. This conduct is relied upon as uncharged acts.
- 17 In mid-January 2012, you committed the rape the subject of Charge 1. It is a discrete act of digital penetration of Ruth's vagina. On this occasion, Ruth said, it went on for longer, five minutes she estimates, instead of two. You also touched her breasts, laughed, and called her a whore.
- 18 Charge 2 is rape using an object, a bottle containing hair product, to penetrate Ruth's vagina. You made Ruth lick the bottle before penetrating her with it, and taunted her, saying she would not be able to say what you had done, as well as comparing the size of your penis to the size of the bottle, and speaking of the effect on her were you to penetrate her with your penis. This charge is representative of like conduct occurring approximately ten times.
- 19 Charge 3 is also a charge of rape using an object. All staff were required to use a pager, which was activated when residents rang the bell by their bed. You put the pager clip in Ruth's vagina and placed the pager between her legs, then made her ring her bell, which caused the pager to vibrate. Again, this charge is representative of like conduct occurring approximately ten times.
- 20 The final charge again is a discrete act of rape which occurred on the night of the residents' 2011 Christmas party. You showered Ruth, speaking to her in a sexual way, and then penetrated her vagina with your fingers. She said it was really painful. You told her to stop moving around, when, as you well knew, her movements were involuntary, the product of the cerebral palsy from which she suffers. You told her to behave herself, accused her of acting like a whore, a tart and a slag. You also touched her on her breasts. She told you to stop but you did not.
- 21 The offending against Ruth stopped in mid-January 2012, about six weeks before you were sacked. Ruth did not tell anyone about it whilst you were employed at her residence because she was scared of you and afraid you might hurt her. She said she thought you would be angry with her if she complained about your conduct. She described you as being aggressive, bossy and a bully.
- 22 Charges 5 to 8 are all charges of raping a woman who I shall call Jacqueline.<sup>334</sup> Jacqueline suffers from cerebral palsy and is confined to a wheelchair. She has also been diagnosed with depression with psychotic tendencies which emerged in 1993 when she began to hear voices. She has not heard voices for many years. She also suffers from congenital scoliosis of the back and Buerger's disease, a disease involving acute inflammation and thrombosis of the arteries and veins in her feet. Jacqueline requires full time care in the same manner as Ruth. She too was 40. She lived in the same residence as Ruth. Until November 2011 you had not acted improperly towards her. On an occasion in November you made a deeply offensive comment to her, telling her to clean her cunt. She reported you to another staff member. It was after this that the sexual offending against her began.
- 23 Charge 5 is one of rape by digital penetration. As with Ruth, this occurred when you were showering Jacqueline. You did not wear work gloves as you were supposed to. She said to you "what are you doing? Stop that please". You did not stop instead saying "don't you like this? You know you do". This

charge is representative of like conduct on 10 to 12 occasions. Jacqueline said you would often say to her before you penetrated her "you want it, I know you do". You implied she was a prostitute, suggesting she wanted money in return for what you were doing to her. At times you would call her a whore or other pejorative names. She would say to you "please don't do it anymore". You would promise not to do it again, but continued to do so. She said you would often place your hand over her mouth so she could not call out.

- 24 Jacqueline said that almost every time you were rostered on you would, as she described it, harass her with comments such as "I'm doing a night shift. You won't get much sleep. I'll wake you up and have my way with you all night. I feel horny. I've got something that wants to come and say hello, do you want to see it". You called her names, and caused her deep distress by threatening to put her pet bird on the barbecue. She called it harassment. Properly speaking it is a cruel demonstration to her by you of her powerlessness, subjecting her to debasing and degrading words and conduct, and cruel threats to sexually assault her when you had her at your mercy.
- 25 Charge 6 is a charge of penile anal rape. On an occasion when you were showering Jacqueline and she was suspended in the hoist, you digitally penetrated her and then attempted to insert your penis into her anus. You moved her to her bedroom and whilst still in the hoist again attempted to insert your penis into her anus. You lowered her into her bed and placed her on her side. She is unable to change position in bed. You again tried to penetrate her anus with your penis and were again unsuccessful. You rolled her over onto her stomach, a position in which she never lies, and this time succeeded in anally penetrating her with your penis.
- 26 Charge 7 is a charge of penile vaginal rape. It occurred on an occasion when you had put Jacqueline into her bed for the night. You then penetrated her, continuing until you ejaculated. She remonstrated with you, telling you you were hurting her. When you finished you said to her "if you tell anyone about this I could lose my job. If you say anything I'm just going to say that it was consensual the whole way".
- 27 Charge 8 is a charge of penetrating Jacqueline's mouth with your penis. She needed to go to the toilet. Once the hoist had been used to place her on the toilet she was able to be left alone. She would use her pager to buzz when she had finished. Instead of leaving her alone until she paged you, you entered the toilet on three separate occasions, saying to her "have you finished yet? I'm feeling that way again. Do you want to see it? It's only you and me here. You'll regret it if you don't". On the third occasion you asked her for oral sex. You pushed your penis into her mouth, and then complained, saying she was biting you. You instructed her to open her mouth wider so you could get it all in. She told you she could not do it anymore but you ignored her, instead forcing her head forward and down onto your penis. When you had finished you simply left her there.
- 28 Jacqueline remained in the toilet for an hour and a half until your shift finished and the night staff arrived. The following day when you were again on duty she told you that she had stayed in the toilet so long because she did not know what to do, that she did not want you to come and get her off the toilet even though she had finished.
- 29 Jacqueline did not complain to anyone at the time. She did not think she would be believed as it was her word against yours. She did however say to the team leader on a number of occasions, and to other carers, that she did not want you to assist her, saying that you were rude and bossy.
- 30 Charges 9 to 11 concern a woman who I shall call Kimberley.<sup>335</sup> Kimberley suffers from cerebral palsy as a result of hypoxic brain injury at birth. She is difficult to understand without the assistance of a person who is familiar with her. Her visuomotor ability is impaired. She suffers from depression and has a history of epilepsy. She has a cognitive impairment such that she falls within the definition

of s.50 of the Crimes Act 1958. She also requires full time care in a similar manner to Ruth and Jacqueline. Kimberley was 38.

- 31 She lived in a different house to the one that Jacqueline and Ruth were in. The acts the subject of these charges occurred on a single occasion, 21 December 2011. You had taken Kimberley to the toilet, pulling her pants down and transferring her to a commode chair which was then placed over the toilet. As was customary she was left there with a towel covering her genitals. She could not wipe herself, and she would call out when she was ready to be wiped, and re-dressed. On this occasion, she called out when she was finished and ready to be assisted out of the toilet. You came in and placed your hand over her mouth and your finger to your lips, telling her to be quiet. You exposed your penis to her and tried to grab her hand but she pulled away.
- 32 You then wiped her, but in the course of wiping her bottom you inserted your ungloved finger into her anus. It is that that constitutes Charge 9 of sexual penetration. You then penetrated her vagina with your fingers, saying to her "I know you want to do it". It is that that constitutes Charge 10 of sexual penetration. You then took Kimberley back to her room and transferred her from the commode chair back to her wheelchair. Her pants were still down. You then stood Kimberly up against you and rubbed her vagina against your jeans. It is this that constitutes Charge 11 of indecent act.
- 33 Later that day Kimberley needed to go to the toilet again. You took her to the toilet and back to her room when she had finished. Back in her room your hand moved towards her vagina and she said "don't do that".
- 34 About an hour later you came back to her room and apologised for your behaviour. You said "don't tell anyone about it or my mum will drop dead". You offered to give her money. She asked you to ring her counsellor. You told her she could tell her counsellor and nobody else. You threatened to come back an hour later and go to bed with her.
- 35 Kimberley may be intellectually impaired but she knew what you were doing was wrong and she did not want you to touch her. She had pulled her hand away when you first exposed your penis to her and tried to grab her hand. She said that when you penetrated her vagina, that she had wanted to swear at you and tell you to "fuck off", but it is a measure of her level of cognitive functioning that she felt unable to say that because there was a rule against swearing in the residence.
- 36 You, however, must have been aware that there was a risk that Kimberley would complain. You told another resident a false story: that you had said something rude to Kimberley, that you were going to apologise to her, and that Kimberly had falsely alleged that you had showed your private parts to her. Kimberley spoke to that same resident later that evening and told him that you had shown your private parts to her and touched her where you should not have. That resident told Kimberley she should tell someone in authority.
- 37 Meanwhile, you left a note for the team leader at the residence who was due on duty the following morning. You gave a more detailed version of the false story you had told Kimberley's co-resident about saying something rude to Kimberley. You alleged that you had apologised to Kimberley but that she had sworn at you, which you said had so upset you that you were unable to concentrate at work. You asked the team leader to call you.
- 38 The team leader appeared to accept your story, because she immediately went and remonstrated with Kimberley for swearing in breach of the house rules. Kimberley was crying when she went into her room, but the team leader did not ask her why before she remonstrated with her, and told her that her behaviour with a staff member had been inappropriate. It is a measure of Kimberley's strength, or maybe of the impact that your behaviour had had on her, that despite the unfairness

of the team leader reprimanding her without first ascertaining her side of the story, that Kimberly immediately responded to the remonstrations by alleging that you had touched her private parts and exposed yourself to her.

- 39 Unfortunately for Kimberly, the Yooralla response was less than adequate. Kimberly's complaint was described in a client incident report as "a sexual harassment allegation made by Kimberly against casual staff member Johnny Kumar".
- 40 Kimberly was taken to the police station but when she said she did not want to have a medical examination and did not want to make a statement until she had spoken to her sister she was returned to the residence. These concerns of hers about not being subjected to a medical examination and wanting to speak to her sister before speaking to the police, appear to me to be reasonable concerns given her level of intellectual disability and what she said had happened to her. Although Kimberly's sister was told of the allegations that same day and came that day to see her, it appears no attempt was made to follow up and to take a statement from Kimberly or to launch a formal police complaint or investigation after Kimberly had, as she had wanted to, spoken to her sister. It was not until a report was made to police in respect of other residents that Kimberly's complaint was followed up.
- 41 Meanwhile, you were stood down and three weeks later attended a meeting with Yooralla senior management. You maintained the false account that you had given your team leader and in fact demanded better support from management when faced with residents breaching the code of conduct by swearing. Management decided that Kimberly's allegation was not substantiated as you denied it and there were no independent witnesses. You were given a formal warning and allowed to return to work the following day. The warning was not in respect of Kimberly's allegation, but in respect of the way you described your conduct. You apparently had not filled in an incident report properly or reported the matter properly and on your own account you had made an inappropriate comment to Kimberly.
- 42 You were rostered to work shifts at the residence where Jacqueline and Ruth lived. Two weeks after your return to work, Jacqueline told another carer that she did not want you to shower or toilet her. Ruth then said the same. They both said you were rude and bossy. You were asked to apologise to Jacqueline and Ruth for your rudeness and you did so. Jacqueline in response said "you know why I don't want you to toilet me". She maintained, despite the apology, that she did not want you to bathe or toilet her. It was only after that that the sexual assaults on Jacqueline stopped.
- 43 It was after the formal warning that I have just referred to following the complaint by Kimberly, and just before Jacqueline made her disclosure, that the event the subject of Charge 12 occurred.
- 44 Charge 12 concerns a man who I shall call Phillip.<sup>336</sup> Phillip, who was 27 at the time, has cerebral palsy and has an intellectual functioning in the borderline range. He walks with the aid of a walking frame. He has limited ability to speak. He is able to say basic words such as yes, no, and can say greetings and name food items. His speech is unmodulated and loud. He mostly uses a light writer to communicate where he types letters into a machine which then sounds out or speaks out what he has written. Phillip lived in the same residence as Jacqueline and Ruth.
- 45 In mid-February 2012, Phillip had been out for the day, and when he returned you locked him out of the residence and teased him when he tried to gain admission. Every time he knocked on the door or rang the bell, you would open it and then close it in his face. Eventually you let him in and, as he walked down the hall, you walked behind him repeatedly pulling his pants down, exposing the top cleft of his buttocks and saying "oh your pants are falling down here they go again". Phillip kept pulling his pants up and trying to get away. This was witnessed by Jacqueline.



- 46 It was about a month after you had been told to apologise to Jacqueline and Ruth for your rudeness, and about two weeks after you treated Phillip in this way that Jacqueline made a disclosure to people she could trust about what you had done to her.
- 47 Coincidentally, at the same time you made some inappropriate comments about the residents and a staff member to a co-worker. Amongst other things you described the residents as "easy" and volunteered to this co-worker that you had put your pager between Ruth's legs. Still nothing was done to investigate or to protect the residents.
- 48 Matters came to a head a short time later when the staff member about whom you had made an inappropriate comment to a co-worker complained about your sexual harassment of her. Consistently with the manner in which you had sought to pre-empt matters after Kimberley had remonstrated with you for sexually assaulting her, you gave notice, stating as your reason unhappiness about the way you were being treated.
- 49 It was not until your resignation became effective that further disclosures were made by the residents to other Yooralla staff and it was following that that the police were contacted and a formal investigation commenced.
- 50 On 21 March 2012, about a month after your resignation, you were arrested and interviewed. You denied any wrongdoing in that interview and in the further interview that was conducted with you in August 2012 following the receipt of further complaints by the police about your conduct.
- 51 Victim impact statements were provided by all four victims. Philip used his lightbox to read his victim impact statement himself. In doing so he provided a very powerful indication of how vulnerable he and the other complainants were. Each of them articulated in their victim impact statements that they knew that what you were doing was wrong, and that they did not want to be touched and abused by you in the way they were. They were unable, by reason of their disability, to escape, and unable, by reason of their disability, to vocalise their lack of consent, or to call for help. However their disabilities did not extend to a failure to appreciate that what you were doing was wrong. Each of them in their own way articulated the sense of violation and powerlessness they felt, and each expressed the same range of responses that we in the courts are only too used to hearing from victims of sexual assault: anger, shame, guilt, fear and powerlessness. As Dr Rogers said in the course of the plea, each of your victims were trapped within their own bodies.
- 52 This is offending of the greatest order and greatest gravity. It was a gross breach of trust. You were employed as a carer for these people whose vulnerability was increased because of the physical and intellectual disabilities they suffered. They were powerless to defend themselves or to physically remonstrate with you. So far as the charges of penile penetration are concerned, there is the added aggravating feature that you did not use a condom.
- 53 This was not opportunistic or spontaneous offending. Except perhaps in the case of Philip, it was clear that you were careful to choose your time and place, when you were the only person on duty and when your three female victims were at their most vulnerable. The offending against them occurred in the bathroom where they were dependent upon you for toileting, or at least for assistance onto and off the toilet, or in their bedrooms where again they were dependent upon you because they could not move without assistance.
- 54 The objective gravity of your offending is very high. The language you used to all three female victims as you sexually assaulted them was disparaging, degrading and belittling, and indicates a serious disrespect for their dignity, their rights and their autonomy. It is impossible on the materials before me to know whether it is indicative of a more pervasive misogyny, or was confined to a contemptuous disrespect for these three profoundly disabled women.

- 55 Although the offending so far as Philip is concerned may have been more spontaneous, it was also very cruel. He was, because of his limited mobility and his need to use a walking frame, unable to get away from you or to stop you doing what you did. That you did it to him in public in front of somebody else clearly added to the sense of humiliation and powerlessness.
- 56 It is clear therefore that, subject to considerations personal to you, denunciation, deterrence both general and specific, and protection of the community are significant sentencing considerations in determining what is the just punishment for this offending. No civilised community can countenance such abuse of the disabled for whom the whole community has a responsibility to care. Disabled people are entitled to have their dignity respected, to feel safe in their homes and safe with those who are entrusted with their care. The people who have had to take responsibility for making the decisions to place them in care, or to assist the disabled people to make such a decision, should be able to trust that they are safe and that they will be safe in care. The parents, families and friends of your disabled victims and of disabled people generally should be able to feel that they are safe and will be treated at all times with dignity and respect. Those who breach that trust in the manner that you have must understand that their conduct will be condemned, and that they will be sternly punished.
- 57 Dealing then with matters personal to you. You are 31, and first arrived in Australia in early 2007, aged 25. By the end of that year you had completed a Certificate IV in English and a Diploma in Community Welfare Work. After a short return to India, you came back to Australia in 2008. In March 2009 you began working at Yooralla on a casual basis. You continued to be employed by Yooralla until you resigned in February 2012. Following your arrest in March 2012 you have been remanded in custody. Since your remand it has been discovered that your visa had expired. Your right to remain in Australia is therefore uncertain, and I am told you have expressed a desire to return to India on the expiration of your sentence.
- 58 You have no other convictions in this country. As your counsel acknowledged, it was in part the absence of convictions which enabled you to obtain the employment which you exploited so shamelessly and, in the circumstances, past good character or evidence of it by absence of previous convictions does not carry as much weight as it may in other cases.
- 59 You told your counsel Mr Kilduff that you were born in the Punjab in India to a wealthy family, sent to a boarding school at the age of six, and had almost no contact with your family for the next ten years. You said that you had misbehaved at school, and as punishment your father made you stay at school during the holidays. I was told you then spent a year in the cadets, which you enjoyed, and where you excelled at shooting, before being recruited at the age of 16 into an elite secret military force, where you remained for a year. You reported you wanted to train as a fighter pilot, but that your father insisted you undertake a homeopathic medicine course in New Delhi. You completed that course in four years and at the age of 21 were ordered to return to military service. You reported you were posted to Kashmir, where you narrowly escaped death when a landmine blew up. At the age of 25, I was told, you were dismissed after you were court martialled following an incident where you shot some terrorists.
- 60 I was told you had met a young woman when studying in New Delhi, who you wanted to marry. She too, you said, came from a wealthy family, but her parents did not approve of your marriage. Whilst you were in military service, she was diagnosed with leukaemia and, if I understood correctly, that apparently brought the relationship to an end. After your military service ended, your father arranged a marriage for you, but you refused to accept the bride chosen for you. As a result, your father disowned you and it was then that you came to Australia.
- 61 After obtaining your diploma in 2007, you returned to India for two weeks before returning to

Australia and have been here ever since. In June 2012, after your remand in custody, your parents and brother were murdered in India by a sniper. You believe it was a case of mistaken identity and that you were the actual target. The only family therefore left in India is a sister.

- 62 I have no way of knowing whether this quite remarkable account of your circumstances is a truthful one. If true, you have had little experience of family life or family relationships, and have little family support to call on. Nothing was put to suggest that any of this bears on the assessment of your moral culpability, or on the weight to be given to deterrence, or, save for the matters that I have mentioned - that is, lack of family support - to hardship in custody.
- 63 I must sentence you therefore on the basis that you are a 31 year old man born overseas with no family or friends here and little family support in India to fall back on. Imprisonment will be more onerous for you than for a person who is supported by family and friends.
- 64 Your pleas of guilty have utilitarian value and I reduce the sentence otherwise appropriate on that basis. As your counsel acknowledged, the pleas do not in the circumstances provide evidence of remorse, and there is no other evidence before me indicating remorse.
- 65 As was acknowledged, the seriousness of the offences calls for a substantial term of imprisonment. In determining the appropriate sentences for each charge, I have imposed higher sentences for the representative charges. The charges concerning Kimberley carry a lesser maximum than those concerning Ruth and Jacqueline. They are bad examples of their type, and so bear a proportionately higher relationship to the maximum sentence than do the sentences I have fixed for the charges concerning Ruth and Jacqueline. Although each of the charges concerning Kimberley occurred as part of a single episode, there should in my view be a degree of cumulation between them because of the discrete acts involved. The sentence for the charge concerning Philip reflects its less invasive but nonetheless degrading nature. I have sought to impose periods of partial cumulation which reflects the totality of the offending concerning each victim, and reflects the totality of the overall criminality.
- 66 Although I know nothing of your reasons for committing these offences and no material has been put before me which bears on the risk of reoffending or your prospects for rehabilitation, I will fix a non-parole period which will allow for the prospect of supervised release at a time when those matters may be better able to be assessed.
- 67 You come to be sentenced as a serious sexual offender in respect of Charges 3 to 12. I accept the prosecution submission it is not necessary to impose a disproportionate sentence to achieve the paramount sentencing consideration of protection of the community that flows from that serious sexual offender declaration.
- 68 Can you now please stand.
- 69 Vinod Johnny Kumar, on the 12 charges to which you have pleaded guilty, you are convicted.
- 70 On Charge 1, you are sentenced to be imprisoned for a period of six years. On Charge 2, you are sentenced to be imprisoned for a period of eight years. On Charge 3, you are sentenced to be imprisoned for a period of eight years. On Charge 4, you are sentenced to be imprisoned for a period of six years. On Charge 5, you are sentenced to be imprisoned for a period of eight years. On Charge 6, you are sentenced to be imprisoned for a period of six years. On Charge 7, you are sentenced to be imprisoned for a period of six years. On Charge 8, you are sentenced to be imprisoned for a period of six years. On Charge 9, you are sentenced to be imprisoned for a period of five years. On Charge 10, you are sentenced to be imprisoned for a period of five years. On Charge 11, you are sentenced to be imprisoned for a period of two years and six months. On Charge 12, you are sentenced to be imprisoned for a period of one year.

- 71 I declare that the sentence on Charge 2 of eight years is the base sentence and I make the following cumulation orders. On Charge 1, six months cumulative upon the base sentence and the other partial cumulation orders. Charge 3, one year. Charge 4, six months. Charge 5, three years and six months. Charge 6, six months. Charge 7, six months. Charge 8, six months. Charge 9, one year. Charge 10, one year. Charge 11, six months. Charge 12, six months. That makes a total effective sentence of 18 years and I fix a period of 15 years as the time you must serve before being eligible for parole.
- 72 I declare pursuant to s.6AAA of the Sentencing Act, that but for your pleas of guilty, I would have sentenced you to be imprisoned for a period of 24 years and I would have fixed a period of 21 years as the time that you would have had to have served before being eligible for parole.
- 73 I declare that you have spent 609 days in pre-sentence detention and direct that that be reckoned as part of the sentence already served.
- 74 Pursuant to the *Sex Offender Registration Act 2004*, the nature of these offences requires to report for life.
- 75 I have been asked to make a forensic sample order and I propose to do so. That requires you to make that by way of provision of a buccal sample. That requires you to provide a sample from a rubbing on the inside of your mouth. If you do not cooperate in the provision of that sample, then the police are authorised to use reasonable force and it is at least likely that they will use the more invasive method of obtaining that sample, namely the taking of a blood sample. Do you understand that?
- 76 OFFENDER: Yes.
- 77 HER HONOUR: I have been asked to make a disposal order in respect of the hair product bottle and I will make that order. I am required to have the reporting conditions under the Sex Offender Registration Act provided to you and I will ask my associate to give those reporting conditions now to Mr Kilduff and for him to give them to you. You are asked to sign a receipt acknowledging that you have received those reporting conditions. You are not required to sign the receipt. The court record will note in any event that you have been given the notice of reporting conditions. Whilst that is being done, Dr Rogers, can you check the arithmetic and make sure that it is correct?
- 78 MR KILDUFF: I have checked mine, Your Honour - - -
- 79 HER HONOUR: You have checked the arithmetic and that is - you are satisfied it is correct?
- 80 MR KILDUFF: Yes.
- 81 HER HONOUR: Thank you, Mr Kilduff.
- 82 DR ROGERS: I have checked that and it appears to be correct.
- 83 HER HONOUR: Thank you. You are actually required to leave those reporting conditions with him, not take them yourself.
- 84 MR KILDUFF: I was going to take them down to him, Your Honour? I was going to go and see him after this.
- 85 HER HONOUR: My understanding under the Act is that I have got to make sure they are physically handed to him in my presence.
- 86 MR KILDUFF: I will do that, Your Honour.
- 87 HER HONOUR: Thank you. I note that the receipt has been signed. Any further orders?
- 88 COUNSEL No, Your Honour.
- 89 HER HONOUR: Thank you. Remove Mr Kumar please.

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# Footnotes

- 1 Hon Tony Abbott MP, Prime Minister of Australia, Address to the International Women's Day Parliamentary Breakfast, 4 March 2014. Accessed online March 2014 at: <https://www.pm.gov.au/media/2014-03-04/address-international-womens-day-parliamentary-breakfast> See also: The Coalitions Policy for Women (September 2013) accessed online March 2014 at: <http://lpaweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20E2%80%93%20Women%20E2%80%93%20final.pdf>
- 2 Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, Ministerial Statement tabled in the Australian Parliament following the 58th Session of the United Nations Commission on the Status of Women, 24 March 2014.
- 3 Woolcott, P. (2013) Australia's appearance before the Committee on the Rights of Persons with Disabilities: Australia's Closing Statement, 4 September 2013. In: Frohmader, C. (2013) Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia. Available online at: <http://wwda.org.au/papers/confpaps/confpaps2011/>
- 4 Cited in: UN Development Fund for Women (UNIFEM), (2008) Progress of the World's Women 2008/2009: Who Answers to Women? Gender & Accountability, Accessed 2 August 2009 at: <http://www.unhcr.org/refworld/docid/4a09773a2.html>
- 5 A copy of the NDS can be downloaded from: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>
- 6 Woolcott, P. (2013) Australia's appearance before the Committee on the Rights of Persons with Disabilities: Australia's Opening Statement, 3 September 2013. In: Frohmader, C. (2013) Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia. Available online at: <http://wwda.org.au/papers/confpaps/confpaps2011/>
- 7 The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. The members of COAG are the Prime Minister, State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). The Prime Minister chairs COAG. The role of COAG is to promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments. COAG meets as needed, usually once or twice a year, though at times it has met up to four times in a year. COAG may also settle issues out-of-session by correspondence. The outcomes of COAG meetings are contained in communiqués released at the end of each meeting. Where formal agreements are reached, these may be embodied in intergovernmental agreements, including National Agreements and National Partnership Agreements. See: [www.coag.gov.au](http://www.coag.gov.au)
- 8 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2013) *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*. Accessed online at: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012>
- 9 Senator the Hon Mitch Fifield, COAG Disability Reform Council Communiqué. 21 March 2014. <http://mitchfifield.dss.gov.au/media-releases/76>
- 10 The second NDS Implementation Plan - *Driving Action 2015–2018* - will also consider input from consultations with people with disabilities and their representative organisations. See National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012, OpCit.
- 11 For more information see: *AHRC Disability international participation funding program*; <https://www.humanrights.gov.au/disability-international-participation-funding-program-faq>
- 12 This work aims to allow for a special exception to the hearsay rule, to permit the Court to admit evidence from another person of what a person with an intellectual disability said to them out of court to provide the truth of what the person with an intellectual disability said. Cited in: *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*, OpCit.
- 13 For more information see: <http://www.idrs.org.au/home/index.php#sthash.vts4qX7h.dpbs>
- 14 Woolcott, P. (2013) OpCit.
- 15 Australian Government, Department of Prime Minister and Cabinet, 'Whole of Australian Government'; Office for Women; accessed online April 2014 at: <http://www.dpmc.gov.au/women/woag/index.cfm>
- 16 A copy of the NDA can be downloaded from: <http://www.federalfinancialrelations.gov.au/content/npa/disability/national-agreement.pdf>
- 17 National agreements and national partnerships, agreed through the Council of Australian Governments, are central to achieving government service delivery improvements and reforms. They contain objectives, outcomes, outputs and performance indicators, and clarify the roles and responsibilities that guide the Australian, state and territory governments in the funding and delivery of services across relevant sectors. National partnerships also establish the financial arrangements for specific projects and support and reward state and territory governments that deliver on nationally significant reforms. Both national agreements and national partnerships are both subject to periodic review to ensure they remain relevant and effective in meeting objectives. The Council of Australian Governments' Reform Council is the principal body for reporting on the performance of governments against the outcomes agreed in national agreements. For more information see: [http://www.federalfinancialrelations.gov.au/content/national\\_agreements.aspx](http://www.federalfinancialrelations.gov.au/content/national_agreements.aspx)
- 18 See p.7 of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2013) *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*. OpCit.
- 19 See for example: 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; 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*, 20 October 2005. UN Doc. CRC/C/15/Add.268; Committee on the Elimination of Discrimination against Women (2010) *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; UN General Assembly; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*; 24 March 2011; UN Doc. No. A/HRC/17/10; 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; Manjoo, Rashida (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*; UN General Assembly; UN Doc. A/67/227; 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); 9 November 2012; UN Doc No. CCPR/C/AUS/Q/6; UN Economic and Social Council, Committee on Economic, Social and Cultural Rights; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*; 22 May 2009, UN Doc. E/C.12/AUS/CO/4; Committee against Torture, *List of issues prior to the submission of the fifth periodic report of Australia*, 15 February 2011, UN Doc. No. CAT/C/AUS/Q/5; United Nations General Assembly (2000) Resolution adopted by the General Assembly: *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. Twenty-third special session, UN Doc. A/RES/S-23/3; 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.
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- 21 Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) *Stop the Violence: Addressing Violence Against Women and Girls with*



- Disabilities in Australia*; Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities; Sydney, 25 October 2013. WWDA, Hobart, Tasmania. See also: 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.
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- 25 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/>
- 26 Frohmader, C. (2013) OpCit; See also: Women With Disabilities Australia: *'Parenting Issues for Women with Disabilities in Australia' - A Policy Paper* (May 2009). Available at: [www.wwda.org.au/motherhd2006.htm](http://www.wwda.org.au/motherhd2006.htm) See also: *'Disability Rights Now'* Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities; August 2012.
- 27 See also: 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.
- 28 Ibid.
- 29 Ibid.
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- 33 For more information, see: See: <http://www.jobaccess.gov.au/>
- 34 More information about Disability Employment Services and Programs for People with Disabilities, can be found at: <http://www.wwda.org.au/govtdis/govtdisprogram/employprog1/>
- 35 Committee on the Rights of Persons With Disabilities; *General Comment No 1 (2014): Article 12: equal recognition before the law*. UN Doc.No: CRPD/C/GC/1; 11 April 2014.
- 36 Senator Mitch Fifield; Address to the National Disability Services Conference: *'Preparing for the New World'*; Hilton Hotel, Adelaide; 4 May 2012. Accessed on line March 2014 at: <http://www.mitchfifield.com/Media/Speeches/tabid/71/ArticleType/ArticleView/ArticleID/566/Default.aspx>
- 37 A copy of the *Shut Out Report* can be downloaded from: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/shut-out-the-experience-of-people-with-disabilities-and-their-families-in-australia>
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- 39 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2013) *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*. OpCit.
- 40 Commonwealth of Australia (2011) *National Disability Strategy 2010-2020*; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.
- 41 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2013) *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*. OpCit.
- 42 See page 14, Commonwealth of Australia (2011) *National Disability Strategy 2010-2020*; OpCit.
- 43 The National Disability Strategy 2010-2020 Report to COAG 2012 incorporates the first implementation plan *'Laying the Groundwork 2011-2014'* and the evaluation framework for the life of the Strategy. Available online at: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international-national-disability-strategy-2010-2020-report-to-coag-2012>
- 44 The six main actions are: 1) influencing the mainstream support system through periodic reviews of Council of Australian Governments national agreements and partnerships - including specific strategies and performance indicators to address outcomes as appropriate; 2) focusing on outcomes through the appointment of disability champion ministers; 3) improving the evidence base; 4) developing, reviewing and implementing state and territory government disability plans and/or initiatives; 5) involving people with disability in the development and implementation of government policies and programs, not just disability-specific policies and programs; 6) embedding change through areas of national cooperation.
- 45 FaHCSIA (2013) *National Disability Strategy 2010 – 2020 Report to the Council of Australian Governments 2012*. OpCit.
- 46 Ibid.
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- 52 UNICEF and UN Women (February 2013) *Global Thematic Consultation on the Post-2015 Development Agenda: Addressing Inequalities. Synthesis Report of Global Public Consultation*. Available at: <http://www.worldwewant2015.org/node/299198>
- 53 Convention on the Rights of Persons with Disabilities (CRPD) [Article 6].
- 54 Frohmader, C. (2013) *Statement to the Committee on the Rights of Persons with Disabilities*; Civil Society Delegation Side Event; 3<sup>rd</sup> September 2013, Geneva.
- 55 The term 'gender' refers to the socially determined differences between women and men such as roles, attitudes, behaviors and values, as opposed to sex that identifies the biological differences between women and men. Whilst sex is genetically determined, gender roles are learned, vary across cultures and change over time. The fact that gender attributes are socially constructed means that they are also amenable to change in ways that can make a society more just and equitable. Like the concepts of class, race and ethnicity, gender is an analytical tool for understanding social processes. See for example: Asia-Pacific Economic Cooperation (1999) *Framework for Integration of Women in APEC*. APEC Secretariat, Singapore.
- 56 Australian Government, Department of Prime Minister and Cabinet, *'Whole of Australian Government'*; Office for Women; accessed online April 2014 at: <http://www.dpmc.gov.au/women/woag/index.cfm>
- 57 The attainment of gender equality requires equal representation and

- participation of both men and women in the economy, decision-making, as well as in social, cultural and civil life. It means that women and men have equal conditions for realising their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefit from the results. Gender equality does not mean that men and women become the same; only that access to opportunities and life changes is neither dependent on, nor constrained by, their sex. Achieving gender equality requires women's empowerment to ensure that decision-making at private and public levels, and access to resources are no longer weighted in men's favour, so that both women and men can fully participate as equal partners in productive and reproductive life. See for example: UNFPA; *Promoting Gender Equality*. Accessed online March 2014 at: [https://www.unfpa.org/gender/resources\\_faq.htm](https://www.unfpa.org/gender/resources_faq.htm); See also: Asia-Pacific Economic Cooperation (1999) OpCit. See also: Status of Women Canada (1996) *Gender-based analysis: a guide for policy-making*. Ottawa, Ontario.
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- 59 Gender-neutral laws and policies may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men. See para 7 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*. See also: UN Committee on Economic, Social and Cultural Rights (CESCR). *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 2 June 2010]
- 60 *National Disability Agreement*, accessed on line April 2014 at: <http://www.federalfinancialrelations.gov.au/content/npa/disability/national-agreement.pdf>
- 61 The five priorities are: 1) Build the evidence base for disability policies and strategies; 2) Enhancing Family and Carer Capacity; 3) Strategies for Increased Choice, Control and Self-directed Decision-making; 4) Maintain innovative and flexible support models for people with high and complex needs; 5) Develop employment opportunities for people with disability.
- 62 The National Disability Agreement originally commenced on 1 January 2009 for a five year period. The revised National Disability Agreement between the Australian Government and State and Territory Governments was signed at COAG on 25 July 2012. Changes were made to reflect the policy direction concerning basic community care outlined in the National Health Reform Agreement, adding in five new reform priority areas and improving the performance framework. For more information on the NDA see: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international-national-disability-agreement>
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- 131 Méndez, Juan, E. (2013) UN.Doc A/HRC/22/53, Op Cit.; The right to be free from torture and cruel, inhuman or degrading treatment or punishment carries with it non-derogable state obligations to prevent, punish, and redress violations of this right.
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- 141 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.
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- 143 UN General Assembly Human Rights Council (2011) UN Doc A/HRC/17/10, Op Cit.
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- 145 In accordance with article 4, paragraph 1 of the CEDAW Convention and the Committee's general recommendation No. 25.
- 146 Committee on the Elimination of Discrimination against Women; Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; *Combined fourth and fifth periodic reports of States parties: Australia*. 3 February 2004; UN Doc. CEDAW/C/AUL/4-5. Accessed online March 2014 at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/233/71/PDF/N0423371.pdf?OpenElement>
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- 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.
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- 153 Her Honour Judge Hampel; *DPP v Kumar*; Case No: CR-13-00419; County Court of Victoria; 20<sup>th</sup> November 2013.
- 154 Cited in: Commonwealth of Australia (2009) *Shut Out: The Experience of People with Disabilities and their Families in Australia – National Disability Strategy Consultation Report*; National People with Disabilities and Carer Council, Canberra.
- 155 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.
- 156 In Frohmader, C. (2011) *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities*, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://wwda.org.au/issues/viol/viol2011/>
- 157 Ibid.
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- 159 Senator the Hon Michaelia Cash, Correspondence to WWDA, 8<sup>th</sup> April 2014.
- 160 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.
- 161 In Frohmader, C. (2011) Op Cit.
- 162 The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention by the States Parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. See: <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>
- 163 On 17th April 2013 the CRPD Committee held a half-day general discussion on women and girls with disabilities, focusing on the themes of the intersectionality of gender and discrimination, violence against women and girls with disabilities and their and sexual and reproductive rights. In his opening address, Professor Ron McCallum (Committee Member and Outgoing Chairperson of the Committee) said that all countries with which the Committee had dialogued in recent years had noted that violence against women and girls with disabilities was a major problem in their respective countries, and that the CRPD Committee considered violence against women and girls with disabilities as an "endemic problem". For a summary of proceedings, go to: [http://unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/C954B61FABAFB9AEC1257B5000598D4E?OpenDocument](http://unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/C954B61FABAFB9AEC1257B5000598D4E?OpenDocument). For more information see: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGD17April2013.aspx>
- 164 See: 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.
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- 168 SafePlace Institute (2000) *Stop the Violence, Break the Silence Training Guide & Resource Kit*. Austin, Texas.
- 169 The 'National Symposium on Violence Against Women and Girls with Disabilities' was held in Sydney on October 25<sup>th</sup> 2013, as a component of WWDA's National COAG Reform Project on Violence Against Women and Girls with Disabilities. See: [www.stvp.org.au](http://www.stvp.org.au)
- 170 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> See also: *The Disability Clothesline*: <https://www.facebook.com/groups/disabilityclothesline> and/or <http://disabilityclothesline.weebly.com/> See also: Dow, A. *State dealing with 300 cases of disabled abuse by carers*. The Age Newspaper; April 2, 2014; accessed online at: <http://www.theage.com.au/victoria/state-dealing-with-300-cases-of-disabled-abuse-by-carers-20140401-35wgs.html>
- 171 *The Line* is the Australian Government's social marketing initiative for young people, focusing on violence prevention and encouraging respectful relationships. It includes a website and Facebook page and a 24 hour free, phone counselling service. See: [www.theline.gov.au](http://www.theline.gov.au)
- 172 Government of South Australia, Women and Children's Health Network 'Living with a Disability'. Accessed online March 2014 at: <http://www.cyh.com/HealthTopics/HealthTopicDetails.aspx?p=243&np=292&id=2336>
- 173 Inspire Foundation; *Living with a physical disability*. Accessed online March 2014at: <http://au.reachout.com/Living-with-a-physical-disability>
- 174 Dowse, L. et al (2013) OpCit; Frohmader, C. (2011) OpCit.
- 175 Cited in Dowse, L. et al (2013).
- 176 Dowse, L. et al (2013) OpCit; Frohmader, C. (2011) OpCit.
- 177 The *National Disability Abuse and Neglect Hotline* (the Hotline) is an Australia-wide telephone hotline for reporting abuse and neglect of people with disability. It is fully funded by the Australian government and operated on behalf of the government by WorkFocus Australia. If a caller reports abuse or neglect in a government-funded service, the Hotline will refer the report to the government body that funds the service. The funding body will investigate the report. If a caller reports abuse or neglect in any other situation, the Hotline will refer the report to an agency able to investigate or otherwise address the report, such as an ombudsman or complaints-handling body. See: <http://www.disabilityhotline.net.au/>
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- 184 Committee of Ministers of the Council of Europe (2009) OpCit.
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- the Corrective Services Administrators' Council has established a national working group, coordinated by the Victorian Department of Justice to address Outcome 2: Policy Direction 5 - More effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities. The working group is currently identifying priorities for 2012.
  - the National Forensic Disability Working Group, established by the Corrective Services Administrators' Conference in April 2010 and made up of senior officers within Corrections Portfolios, is furthering the objective of facilitating best practice for offenders with disability across Australia and New Zealand with the view of reducing the overall impact of crime and recidivism.
  - the Disability and Policy Research Working Group of the Standing Committee of the Community and Disability Services Ministers' Advisory Council has established the People with Disability and the Criminal Justice System Working Group on jurisdictional responses to people with cognitive disabilities in the criminal justice system. The working group has identified a number of areas for future action that could be pursued either at an individual jurisdictional level or through national collaborative activities to respond to the over-representation of people with cognitive impairment in the criminal justice system.
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