



The Status of Women and Girls with Disability in Australia

Position Paper to the Commission on the Status of Women (CSW) Twenty-Fifth Anniversary of The Fourth World Conference on Women and The Beijing Declaration And Platform For Action (1995)

Joint Position Paper from Disabled People's Organisations Australia (DPO Australia) and the National Women's Alliances

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Contact for this Paper

Women with Disabilities Australia (WWDA)
Contact: Carolyn Frohmader, Executive Director
PO Box 407, Lenah Valley, 7008 Tasmania, Australia

Phone: +61 438 535 123

Email: carolyn@wwda.org.au

Web: www.wwda.org.au

Facebook: www.facebook.com/WWDA.Australia

Twitter: www.twitter.com/WWDA_AU

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime &
Violence Prevention Awards 2008
Nominee, National Disability Awards 2017
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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About DPO Australia and the National Women's Alliances

[Disabled People's Organisations Australia](#) (DPO Australia) is an alliance of four national, population specific and cross-disability DPOs in Australia. Disabled People's Organisations (DPOs) are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. DPOs are organisations of people with disability, as opposed to organisations that may represent people with disability. DPO Australia was founded by and is comprised of:

[Women With Disabilities Australia \(WWDA\)](#)
[First Peoples Disability Network Australia \(FPDN\)](#)
[People with Disability Australia \(PWDA\)](#)
[National Ethnic Disability Alliance \(NEDA\)](#)

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. DPO Australia is a recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia. The four member organisations of DPO Australia receive operational funding from the Australian Department of Social Services (DSS).

The Australian Government funds six [National Women's Alliances](#) (the Alliances) which are networks of issues-based and sector-based women's groups. Each Alliance has a distinct focus and capacity for networking and advocacy activities. Their roles are twofold:

- Bring together women's organisations and individuals from

across Australia to share information, identify issues that affect them, and identify solutions.

- Engage actively with the Australian Government on policy issues as part of a better more informed and representative dialogue between women and government.

The Alliances represent over 180 women's organisations. They bring forward the views, voices and issues of Australian women and, in particular, women from marginalised and disadvantaged groups. The Alliances take the lead in ensuring that the voices of as many women as possible are heard, especially those who in the past have found it difficult to engage in advocacy and decision making.

Each alliance is funded through the Department of Prime Minister and Cabinet, Office for Women (OFW). The Alliances each have different governance and corporate structures, and membership bases.

The six currently funded National Women's Alliances are:

[Australian Women Against Violence Alliance \(AWAVA\)](#)
[Equality Rights Alliance \(ERA\)](#)
[Economic Security4Women](#)
[National Aboriginal and Torres Strait Islander Women's Alliance](#)
[National Rural Women's Coalition](#)
[Harmony Alliance](#)

Background and Context

In 1995, the [Fourth World Conference on Women](#) was held by the United Nations in Beijing, China. At that conference, all the governments of all nations attending agreed to the [Beijing Declaration and Platform for Action](#) (BPFA). The BPFA was a landmark agreement. It identified a range of actions that governments, the United Nations and civil society should take to make women's human rights a reality. The BPFA, adopted unanimously by 189 countries, is an agenda for women's empowerment and considered the key global policy document on gender equality. It sets strategic objectives and actions for the advancement of women and the achievement of gender equality in 12 critical areas of concern. It calls on Governments, the international community and civil society, including non-governmental organisations and the private sector, to take strategic action in the following critical areas of concern:

1. The persistent and increasing burden of poverty on women;
2. Inequalities and inadequacies in and unequal access to education and training;
3. Inequalities and inadequacies in and unequal access to health care and related services;
4. Violence against women;
5. The effects of armed or other kinds of conflict on women, including those living under foreign occupation;
6. Inequality in economic structures and policies, in all forms of productive activities and in access to resources;
7. Inequality between men and women in the sharing of power and decision-making at all levels;
8. Insufficient mechanisms at all levels to promote the advancement of women;
9. Lack of respect for and inadequate promotion and

- protection of the human rights of women;
10. Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media;
11. Gender inequalities in the management of natural resources and in the safeguarding of the environment;
12. Persistent discrimination against and violation of the rights of the girl child.

The [Commission on the Status of Women \(CSW\)](#) has been responsible for following up the Fourth World Conference on Women. The [Commission on the Status of Women \(CSW\)](#) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. The CSW is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women.

Over the past two decades, the Commission on the Status of Women has systematically reviewed progress in the implementation of the twelve critical areas of concern identified in the Beijing Platform for Action at its annual sessions, and has adopted action-oriented recommendations, in the form of agreed conclusions, to facilitate increased implementation at all levels.

The Commission acted as the Ad-hoc Preparatory Committee for the [twenty-third special session of the General Assembly](#) (Beijing+5). The outcome identified persistent gaps and challenges and provided new recommendations for action to ensure full implementation of the commitments made in Beijing

The outcome identified persistent gaps and challenges and provided new recommendations for action to ensure full implementation of the commitments made in Beijing in 1995.

The [ten-year review](#) of the Beijing Platform for Action was carried out by the Commission at its forty-ninth session in March 2005. The Commission adopted a Declaration on the occasion of the ten-year review. Member States reaffirmed the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly and pledged to ensure their full and accelerated implementation.

The [fifteen-year review](#) of the Beijing Platform for Action took place during the fifty-fourth session of the CSW in 2010. The [twenty-year review](#) of the BFPA was conducted at the fifty-ninth session of the CSW in 2015. The twenty-year review particularly noted that the overall progress in the implementation of the Platform for Action had been particularly slow for women and girls who experience multiple and intersecting forms of discrimination, including those with disability. In 2020, the global community will mark the twenty-fifth anniversary of the [Fourth World Conference on Women](#) and adoption of the [Beijing Declaration and Platform for Action](#) (1995). A five-year milestone will be reached towards achieving the [Sustainable Development Goals \(SDG's\)](#). 2020 is therefore a pivotal year for the accelerated realisation of gender equality and the empowerment of all women and girls, including women and girls with disability.

The sixty-fourth session of the Commission on the Status of Women will take place at the United Nations Headquarters in New York in March 2020. The main focus of the session will

be on the review and appraisal of the implementation of the [Beijing Declaration and Platform for Action](#) and the outcomes of the [23rd special session of the General Assembly](#). The review will include an assessment of current challenges that affect the implementation of the Platform for Action and the achievement of gender equality and the empowerment of women and its contribution towards the full realization of the 2030 Agenda for Sustainable Development.

Historically, women and girls with disability have not been well represented in the work of the Commission on the Status of Women (CSW), however in recent years the Agreed Conclusions stemming from CSW sessions, have been more inclusive of women and girls with disability. For example, the [Agreed Conclusions](#) adopted by the Commission at its sixty-second session (E/2018/27), expressed the deep concern of the Commission at the situation of women and girls with disability, and urged States parties to, amongst other things, “ensure that the priorities and rights of women and girls with disabilities are fully incorporated into policies and programmes, and that they are closely consulted and actively involved in decision-making processes”.

In the lead up to the historic sixty-fourth session of the Commission on the Status of Women in March 2020, it is therefore critical that women and girls with disability in Australia have the opportunity to participate in all relevant initiatives at the domestic level in preparation for CSW64.

Introduction

Over two-million women and girls with disability live in Australia (approximately 20% of the population of women), including approximately 100,000 girls with disability aged 0-14 and two-million women with disability aged 15 and older.

Disability is a complex, dynamic, multidimensional and evolving concept. How disability is understood is shaped by a complex range of intersecting factors, including individual and social values, contexts, cultures, policy responses, and histories. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) recognises persons with disability as 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. No disabled person is categorically excluded from the protection of the Convention. Critically, contemporary understandings of people with disability now recognise disabled persons as holders of full and equal rights and freedoms, including the right to self-determination and self-representation.

The idea that disability equates to 'abnormality' or inability/incapacity underpins negative attitudes and stigma, both of which lead to discrimination against women and girls with disability and promotes their exclusion from full participation in society. Negative attitudes of others toward women and girls with disability affect the potential for and the quality of participation in their communities, the types and quality of the services they receive, and their ability to live full and complete lives on the same basis as their peers.

Women with disability in Australia come from a range of backgrounds, lifestyles, beliefs and communities. They may be Indigenous or come from culturally and linguistically diverse communities. They may have a faith, or not; be married, divorced, partnered, or single; gay, lesbian, bisexual, transgender or intersex; parents, guardians, carers, and friends. They may or may not be in paid work, or they could be engaged in education and training. Each of these contexts can affect how, when, why, and in what form a woman with disability accesses, receives and/or is denied, services and supports, and how or if they are included in social, political, cultural and economic opportunities and participation in community life.



Although reviews of the Beijing Platform for Action have called on Governments to improve the collection of disaggregated data, including by disability, there remains an acute lack of available, current gender and disability specific data in Australia - at all levels of Government and for any issue. There is also a lack of Australian research on gender and disability issues, despite the multiple discriminations and human rights violations experienced by women and girls with disability in Australia. This neglect in research of women and girls with disability in Australia has been highlighted by several of the international human rights treaty bodies which monitor implementation of the international human rights treaties to which Australia is a party.

Data, research and information about women and girls with disability is necessary for legislative reform; to guide and inform policy, to direct funding, and to inform program and service development. It also enables the monitoring of equality of opportunity and progress towards the achievement of economic, social, political and cultural rights for women and girls with disability. The lack of data, research and information about women and girls with disability results in their invisibility and marginalisation in society, their exclusion and marginalisation

from policies, services and programs, and a critical lack of resources for this group.

This Position Paper provides an overview of the status of women and girls with disability in Australia. It has been developed by Disabled People's Organisations Australia (DPO Australia) and the National Women's Alliances, to contribute to the sixty-fourth session of the Commission on the Status of Women in March 2020.

This document is structured in line with the 12 thematic areas of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly. It provides the most current information available on the status of women and girls with disability in Australia. It also includes key recommendations relating to women and girls with disability from the international human rights treaty bodies which monitor implementation of the international human rights treaties to which Australia is a party.

Women and poverty



1. Women and poverty

The Platform for Action

The Beijing Platform for Action noted that poverty has various manifestations, including, inter alia, lack of income and productive resources, hunger and malnutrition, ill-health, limited access to education and other basic services, homelessness and inadequate housing, unsafe environments, and social discrimination and exclusion. The Platform for Action emphasised that poverty eradication strategies should be comprehensive and that the application of gender analysis to a wide range of economic and social policies and programmes, including macroeconomic, employment and social policies, was critical to the elaboration and successful implementation of poverty reduction strategies. It also called upon governments to collect sex and age-disaggregated data on poverty and all aspects of economic activity as well as to devise suitable statistical means to recognise and make visible the full extent of women's work and all their contributions to the national economy.¹

Women and girls with disability in Australia

In the Australian context, there is minimal gender and disability disaggregated data that enables a clear picture of the situation of women and girls with disability. However, it is recognised that women with disability throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society. They experience, and are at risk of, many of the recognised markers of social exclusion - socioeconomic disadvantage, social isolation, multiple forms of discrimination, poor access to services, inadequate housing, violence, inadequate health care, and a lack of opportunities to contribute to and participate actively in society.

Although there is no gender and disability disaggregated data relating to poverty, available data demonstrates that forty-five

per cent of people with a disability in Australia live in poverty, more than double the OECD average of 22%.² 11.2% of people with disability experience deep and persistent disadvantage, more than twice that of the national prevalence.³ This rate is significantly higher for Indigenous peoples with disability.

Government pensions are the main source of personal income for 42% of people with disability of working age.⁴ By comparison, wages or salary is the main source of personal income for 68% of people of working age without disability.⁵

The median gross weekly personal income of people with disability is half that of people without disability.⁶ Income, welfare and taxation systems in Australia do not recognise the significant costs of disability that women with disability incur throughout their lifetime.⁷ For example, women with disability spend more of their income on medical care and health related expenses than men with disability.⁸ Women with disability 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 disability between the ages of 45 and 64 have more than three times the average yearly health care expenditures of their non-disabled counterparts.⁹ 61% of women with disability report that they cannot afford to cover their basic needs on their current income.¹⁰

The Disability Support Pension (DSP)¹¹ provides financial support to working age Australians who have a permanent physical, intellectual or psychiatric impairment that prevents or limits their capacity to engage in employment. The DSP is inadequate to support women with disability and fails to take account of the non-optional, extra costs experienced by women with disability, as a direct result of their disability and/or impairments.¹² DSP eligibility has been tightened to such a degree that 25-30% of people with disability are now receiving the much lower Newstart

unemployment payment,¹³ which has further entrenched poverty. The rate of successful DSP claims has declined markedly – from 69% in 2011 to 29.8% in 2018.¹⁴ While governments have significantly reduced the number of people receiving the DSP, this has not translated into increased employment and economic security for people with disability, particularly women with disability.¹⁵

The right to an adequate standard of living includes the right to adequate housing, which includes security of tenure, availability, affordability, habitability, accessibility, location and cultural adequacy.¹⁶ The proportion of people with disability in public housing is double that of the general Australian population.¹⁷ Nationally at June 2018, the proportion of rental stock occupied was 97% for public housing.¹⁸ 29% of people living in public rental housing are on the Disability Support Pension,¹⁹ and spend a third of their income on housing costs.²⁰ Almost 81% of people with disability report living in public housing of an unacceptable standard.²¹

Lack of access to appropriate, available, accessible and affordable housing is a major factor contributing to the poverty of many women with disability in Australia. Women with disability are substantially over-represented in public housing, are less likely to own their own homes than their male counterparts, are in the lowest income earning bracket, yet pay the highest level of their gross income on housing, and are over-represented in the main factors that increase the risk of homelessness.²² Women aged 55 and over, including those with disability, were the fastest growing cohort of homeless Australians between 2011 and 2016, increasing by 31%.²³

More than 5.2% of people with disability in Australia live in cared accommodation such as group homes,²⁴ with a further 2.8% living in supported accommodation facilities.²⁵ This data is not

disaggregated. Many women with disability are forced to live in institutions, residential, congregate care, and aged care facilities²⁶ in order to receive social and personal care supports.²⁷ They are also forced to live further away from services as a result of low incomes and high urban rental costs, including an escalation in the costs of private rental. Many women with disability do not have an adequate standard of living to be able to rent on the private market. There is a severe lack of availability of modified housing and/or housing which adheres to universal design principles. In Australia, there are no mandated national access requirements for housing. The Livable Housing Design Guidelines²⁸ provide aspirational targets for all new homes to be of an agreed liveable housing design standard by 2020.²⁹ However, it is estimated that only 5% of new housing construction will meet the standards by 2020.³⁰

Key recommendations from the international human rights treaty bodies

In 2019, the **Committee on the Rights of Persons with Disabilities** provided its Concluding Observations³¹ on the combined second and third periodic report of Australia.³² The Committee expressed its concern that a significant proportion of people with disability live near or below the poverty line, there are eligibility restrictions for the Disability Support Pension and income support payments are inadequate, and there is limited consideration of people with disability, particularly Indigenous peoples with disability in poverty and homelessness reduction strategies. The Committee also expressed concern that the Specialist Disability Accommodation framework facilitates the establishment of institutional living arrangements, there is a lack of appropriate, affordable and accessible social housing, and a lack of legally mandated national access requirements for housing. The Committee recommended that Australia develop

a national poverty reduction plan inclusive of people with disability, prioritise the right to an adequate standard of living for Indigenous peoples with disability, end the eligibility restrictions on the Disability Support Pension, raise the rate of income support payments, and ensure that people with disability are a priority cohort in the implementation of poverty reduction and public housing programs. The Committee further recommended that Australia amend federal law to include mandatory rules on access for all new and extensively modified housing.

The **Committee on the Elimination of Discrimination against Women** reviewed Australia's implementation of CEDAW³³ in 2018.³⁴ The Committee recommended that Australia take immediate measures to mitigate the effects of budget cuts to social, health, education and justice budgets, undertake a gender-impact analysis of those cuts and implement gender-responsive budgeting in the allocation of public resources. In relation to the right to housing, the Committee recommended that Australia enhance access for women to affordable housing, both public and private, and take measures to ensure that older women have access to adequate housing that meets their specific needs.

In September 2019, the **Committee on the Rights of the Child** reviewed Australia's implementation of the Convention on the Rights of the Child. The Committee reiterated its 2012 recommendation on public budgeting and the allocation of resources to address social disadvantage, and recommended in its Concluding Observations³⁵ that Australia conduct regular assessments of the distributional impact of government investment in sectors addressing disadvantage, with a view to addressing disparities in indicators related to children's rights, particularly the rights of Indigenous children. The Committee also recommended that Australia address the high rate of homelessness among children, particularly focusing on children leaving alternative care.

In 2017, the **Committee on Economic, Social and Cultural Rights** provided its Concluding Observations³⁶ on the fifth periodic report of Australia.³⁷ The Committee expressed its concern at the absence of an adequate poverty measurement tool in Australia, and the limited statistical data on the extent and depth of poverty. The Committee recommended that Australia adopt and implement a comprehensive strategy to combat poverty and promote social inclusion, while paying particular attention to disadvantaged and marginalised individuals and groups. It also recommended that Australia collect disaggregated data on the extent and depth of poverty. In relation to the right to housing, the Committee recommended that Australia develop a comprehensive national housing strategy that takes into account the human rights of those most vulnerable to homelessness and increase its investments in affordable housing and social housing. The Committee further recommended that Australia take effective measures to find alternative living solutions and prioritise community-based living settings for persons with cognitive or psychosocial disability.

In December 2017, the **Committee on the Elimination of Racial Discrimination** released its Concluding Observations³⁸ of Australia's compliance under the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee expressed its deep concern that Indigenous peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, health care, employment and housing. The Committee also expressed its concern that Indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme. The Committee recommended that Australia effectively implement well-resourced policies that aim to improve the socioeconomic situation of Indigenous peoples; adopt and implement other adequately resourced programmes,

including specific programmes for Indigenous peoples with disability; and reconsider the mandatory income-management scheme; maintain only an opt-in income-management scheme and remove discriminatory conditions in access to social security benefits by claimants living in remote areas.

Education and training of women



2. Education and training of women

The Platform for Action

The Platform for Action called on Governments to eliminate disparities between women and men in access to education and educational outcomes at all levels and in all forms of education, including primary, secondary and tertiary education, vocational training, adult literacy and lifelong learning, in line with the outcome of the 1990 World Conference on Education for All.³⁹

Women and girls with disability in Australia

Whilst there has been significant progress globally in girls' participation in formal education, disparities in access to education and educational outcomes for girls and women continue to exist. The 15 year 'Review of the implementation of the Beijing Declaration and Platform for Action'⁴⁰ found that, in relation to education, girls and women with disability are at a greater disadvantage than their non-disabled counterparts. It also found that the lack of disaggregated data remains a significant impediment to measuring progress on realising the right to education for women and girls.

There is no disaggregated data available in Australia on the educational experiences of women and girls with disability.

However, the current education system in Australia is failing to adequately meet the needs of students with disability, and it is rare for students with disability to be provided with a genuine inclusive educational experience.⁴¹ Only 27% of people with disability believe they have the same education opportunities as non-disabled people.⁴²

Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.⁴³ 28% of school aged people with disability do not attend school.⁴⁴ Students with disability report that their disability

is the main reason they cannot attend school.⁴⁵ Further, there is no data on part time attendance of students with disability despite the frequently reported direct experience of many children not being "allowed" to attend school on a full time basis.

Many mainstream schools are inaccessible. Principals and/or personnel of mainstream schools often use exclusion practices referred to as "gatekeeping", whereby school personnel suggest to parents that another school could better support their child.⁴⁶ This means that many students with disability are re-directed to 'special' schools instead. 'Special schools' in Australia are those that "only enrol students with special needs."⁴⁷ Segregation of students with disability has increased significantly over the past decade, with a shift towards students with disability attending special schools and away from attending mainstream schools. The number of students with disability attending a special school increased by 35% between 2003 and 2015. This increase is supported by a funding incentive, whereby a child with disability receives higher funding if they attend a special school rather than a mainstream school.⁴⁸

Students with disability routinely experience discrimination, lack of supports, inadequately trained teachers, a lack of expertise and an entrenched systemic culture of low expectations.⁴⁹ Around 3 in 4 students with disability experience difficulties at school, predominately due to fitting in socially, communication difficulties, and learning difficulties.⁵⁰ 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination.⁵¹

Students with disability experience disturbing rates of bullying and situations of restraint and seclusion.⁵² There are an increasing number of incidents being reported of children with disability being placed in 'withdrawal spaces', which effectively amount

Education and training of women

to restraint and seclusion in fenced off spaces, cages and cupboards.⁵³ There is no government data on these experiences. However, a national survey of education experiences of students with disability undertaken in 2017 by the national representative organisation, Children and Young People with Disability Australia (CYDA)⁵⁴ found that in the preceding 12 months, 19% of students with disability experienced restraint at school and 21% reported experiences of seclusion. The survey also found that in the same period, 56% of students with disability had experienced bullying, which is more than twice the rate of bullying estimated to occur in the general population of school aged children.

The national survey found that bullying incidents reported included students with disability being attacked, punched, kicked, head butted, having food or rocks thrown at them, being teased, mimicked and spat on, cyberbullied and even being told to commit suicide. One student reportedly had a skipping rope wrapped around her neck and an attempt was made to strangle her.⁵⁵

The rate of disability for Indigenous peoples, including children⁵⁶ is twice as high as that among the general population.⁵⁷ The retention rate to Year 12 for Indigenous students is significantly lower than that for non-Indigenous students. Although the retention rate to Year 12 for Indigenous students has increased steadily, from 47% in 2010 to 60% in 2016, it is still significantly lower than the non-Indigenous rate (79% in 2010 and 86% in 2016).⁵⁸ While most students with disability struggle in the education system, it is much worse for Indigenous students with disability. Many Indigenous students with disability fall through the cracks because educators lack sufficient training to recognise when children have a disability and require support.⁵⁹ Some of these issues also impact upon students from culturally and linguistically diverse (CALD) backgrounds. Evidence has shown that parents from CALD backgrounds are often unaware of the

rights of, and supports available to, students with disability. Families from these backgrounds also suffer from a lack of a voice in decision-making processes about the education of their child.⁶⁰

Students with disability in remote or regional areas are likely to have considerably fewer options than their city-based counterparts. Research has shown that in Australia, some students with disability in regional areas are spending up to four hours per day in transit to and from school. Aside from missing out on time with family and friends or playing, for some students with disability, this can cut sharply into their available time for therapies and supports. Students are often frequently unable to use the toilet or eat during those hours on school buses, causing further distress or illness.⁶¹

Both girls and boys remain influenced by traditional gender norms and stereotypes throughout all levels of education. While efforts have been undertaken to reduce gender biases in curricula, textbooks and teacher attitudes, the scale of such measures varies greatly, and their impact remains insufficiently documented.⁶² For girls and women with disability, however, there remains almost no positive portrayal of disabled girls and women in curricula, books, media, popular culture and so on. Girls and women with disability are still stereotyped as burdens and recipients of care, as 'child-like, asexual or over-sexed, dependent, incompetent, passive, and genderless'.⁶³ This can have an effect on a girl's self-esteem, and on her expectations. Further, it has an effect on her experience, and on the expectations of those around her.⁶⁴

Key recommendations from the international human rights treaty bodies

In September 2019, the **Committee on the Rights of Persons**

with Disabilities adopted its Concluding Observations following its review of Australia's compliance with the Convention on the Rights of Persons with Disabilities.⁶⁵ The Committee expressed its concern about the lack of implementation of recommendations of the 2015 review of the Disability Standards for Education, the significant increase in students with disability experiencing segregated education, seclusion and isolation, insufficient funding for inclusive education in mainstream schools, and the lack of national disaggregated data on students with disability, including on the use of restrictive practices and cases of bullying. The Committee reiterated previous observations from its 2013 initial review of Australia and recommended that a robust review of the Disability Standards for Education be undertaken with implementation of recommendations, that a national action plan for inclusive education be developed, that the increasing rate of segregation, seclusion and isolation be addressed particularly for Indigenous students with disability, and that adequate resources be redirected to a nationwide inclusive education system for all students. The Committee further recommended the expansion of data collection on the number of students with disability who do not qualify for adjustments, who are unable to enrol in local mainstream schools, and on educational attainment, suspension and expulsion rates, and on the use of restrictive practices and on cases of bullying.

The **CEDAW Committee** made a series of recommendations regarding education in its 2018 Concluding Observations of Australia.⁶⁶ The Committee expressed its concern at the inconsistent data collection on educational enrolment, achievement and attrition rates with regard to women and girls with disability, women and girls belonging to Indigenous communities, and migrant women and their daughters. It also expressed its concern at the impact of harassment and bullying in school environments on women and girls who are exposed

to intersecting forms of discrimination. The Committee recommended, amongst other things, that Australia improve its data on the educational enrolment and attainment of girls and women at all levels of education, disaggregated by age, ethnicity, disability and migration status; and, build the capacities of educational staff to create safer and more inclusive learning environments, including for Indigenous women and girls, women and girls with disability, migrant women and their daughters, lesbian, bisexual and transgender women and intersex persons.

In its 2019 Concluding Observations⁶⁷ of Australia, the **Committee on the Rights of the Child** recommended that more investment was needed to improve education at the early childhood, primary and secondary levels, particularly for children with disability, Indigenous children, children living in remote areas, children in marginalised and disadvantaged situations, children in alternative care and children from refugee and migrant backgrounds. The Committee further recommended that Australia ensure that all children with disability have access to inclusive education in mainstream schools and that they are provided with the support they need, including supports to end the use of restraints and seclusion.

In its 2017 Concluding observations⁶⁸ on the fifth periodic report of Australia,⁶⁹ the **Committee on Economic, Social and Cultural Rights** expressed its concern at the segregation of students with disability into special schools. It recommended that Australia take effective steps to ensure that children with disability, including those with cognitive impairments, can access inclusive education.

Women and health



2. Women and health

The Platform for Action

The Platform for Action called for the realization of women's right to the highest attainable standard of physical and mental health. It acknowledged that women's health is determined by the social, political and economic context of their lives as well as by their biological characteristics. It emphasized that gender as well as other inequalities based on ethnicity, class and geographic location were important barriers for the achievement of women's health and that gender-responsive health policy and programming required a thorough analysis of these factors.⁷⁰

Women and girls with disability in Australia

There is no national mechanism in Australia that enables the collection of data on the health of people with disability, including women and girls with disability.⁷¹ Many health-related data collections⁷² do not include a way to identify if a person has disability.⁷³

However, available data demonstrates that in Australia, people with disability have a life expectancy up to 20 years lower than those without disability.⁷⁴ Compared to the general population, people with intellectual disability have an average life expectancy up to 26 years shorter,⁷⁵ and are twice as likely to suffer a potentially avoidable death.⁷⁶ Lower life expectancy has a greater impact on Indigenous peoples with disability. The rate of disability for Indigenous peoples, including children⁷⁷ is twice as high as that among the general population.⁷⁸ The gap in life expectancy between Indigenous and non-Indigenous Australians is around 10.6 years for males and 9.5 years for females.⁷⁹

Indigenous children, including those with disability, are twice as likely as non-Indigenous children to die before the age of five.⁸⁰ In 2017 suicide was the leading cause of death among Indigenous children aged 5-17.⁸¹ Indigenous children aged 10-14 die of

suicide at 8.4 times the rate of non-Indigenous children.⁸² The suicide rate amongst Indigenous peoples is more than double the national rate.⁸³ An alarming number of people with disability, particularly women with disability, express suicidal ideation, largely due to lack of supports, poverty, and isolation.⁸⁴

People with disability are 10 times more likely than people without disability to assess their health as poor.⁸⁵ 50% of people with disability do not have access to the health care, facilities and treatments they need, and over half report that health care providers do not understand their needs.⁸⁶ 20% of people with disability do not see a doctor due to the cost, and 66% do not see a dentist because of the cost.⁸⁷ For people with intellectual disability,⁸⁸ 42% of medical conditions go undiagnosed.

Women and girls with disability in Australia continue to experience a wide range of barriers and discriminatory practices⁸⁹ that prevent them from realising their right to health.⁹⁰ They experience significant disadvantage in the social determinants necessary for health⁹¹ and are largely absent in the health promotion agenda.⁹²

The poor health of women with disability is due to a number of factors, such as the cost of health care, limited financial resources, lack of adequate, available, accessible health services, communication difficulties, the complexity of health problems, experiences of violence, misconceptions as to the sexuality of women with disability, lack of adequately trained health professionals, a lack of multidisciplinary focus and specialist skill in the health care system and a lack of research into the health needs of women with disability.⁹³ For example, support for choices and services in menstrual management, contraception, abortion, sexual health management, pregnancy, birth, parenting and menopause remain inappropriate, absent or inaccessible for many women and girls with disability. In many situations, breast and cervical cancer screening services are not easily available to

women with disability, despite the fact that breast cancer is one of the most common cancers for females.⁹⁴

Many women and girls with disability in Australia are not afforded their fundamental rights to sexual and reproductive health and rights. Many are denied the right to experience their sexuality, to have sexual relationships and to found and maintain a family. They experience discriminatory attitudes and widely held prejudicial assumptions which question their ability and their right to experience parenthood. A parent with disability in Australia – most often a mother - is up to ten times more likely than other parents to have a child removed from their care,⁹⁵ often on the basis of parental disability rather than evidence of neglect or abuse.⁹⁶ Women with disability also often lose their children in custody disputes simply because the woman has a disability. Women with disability also battle against political agendas and social commentaries which cast their children as ‘young carers’ at risk of parentification and themselves as burdens of care.⁹⁷

Women with disability are often invisible in maternity, obstetric, parenting and related health care policies, programs and services, and face overt discrimination and inequitable access to assisted reproductive technologies (such as in-vitro fertilisation (IVF) and assisted insemination). Many women with disability - particularly single women with disability and women with disability in same-sex relationships - report being deemed by fertility consultants/clinics as ineligible for assisted reproductive services.⁹⁸ Australia’s universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed ‘medically infertile’, but not for women who are deemed ‘socially infertile’ (such as single women and lesbian couples).⁹⁹

Women and girls with disability self-identify according to a range of sex, sexuality and gender identifications,¹⁰⁰ but are often denied their fundamental right to express and explore these

identities in ways that are meaningful to them. Their sexuality, gender identity and expressions are often heavily policed, denied or restricted - either directly or indirectly - by those in their lives, through attitudes or structural barriers.¹⁰¹ Women and girls with disability express desires for romantic, sexual and intimate relationships but report limited opportunities and difficulty negotiating relationships, often due to lack of support and paternalistic, over-protective attitudes.¹⁰² Attitudes toward women and girls with disabilities’ expression of their sexualities remain restrictive and laws against sexual exploitation are often interpreted as a prohibition of consensual relationships.¹⁰³ Health professionals, families, carers and guardians can be complicit in denying women and girls with disability their sexual and reproductive rights. Many health professionals lack knowledge of disability, hold inaccurate perceptions about women and girls with disability, and have a tendency to view women and girls with disability solely through the lens of their impairments.¹⁰⁴

In Australia, women have higher rates of psychosocial disability.¹⁰⁵ Women and girls have higher rates of depression, anxiety and eating disorders than males, while also being more likely to engage in self-harming behaviour. Research indicates that the inequality of social circumstances is a leading reason why women are at increased risk of experiencing psychosocial disability compared to men. Women are more likely to be less well-off economically, more likely to experience gender-based violence, more likely to have low paying or low skill work, more likely to take on the burden of housework, childcare and other caring roles.¹⁰⁶

Australian data suggests that up to 75% of homeless adults have psychosocial disability.¹⁰⁷ People with psychosocial disability make up the fastest growing client group in the Specialist Homelessness Services¹⁰⁸ population, with the rate of service use doubling in the past five years, and the majority being women

with psychosocial disability.¹⁰⁹ Family violence and psychosocial disability are now the most common causes of homelessness in Australia.¹¹⁰

More than one third of people held in immigration detention have been diagnosed with psychosocial disability,¹¹¹ which is directly attributed to the harsh conditions, the protracted periods of closed detention, sexual and other forms of violence, overcrowding, inadequate health care, and fear for and about the future.

Research shows that women living in rural, regional and remote areas of Australia have poorer health status than women in major cities. They also experience much more difficulty in accessing health services, and are often forced to travel long distances in order to access services.¹¹² Women and girls with disability living in rural and remote communities have been found to experience high levels of gender-based violence with limited options to find a pathway to safety.¹¹³

In Australia, the National Disability Insurance Scheme (NDIS)¹¹⁴ is a universal scheme that funds 'reasonable and necessary' supports for Australians with permanent and significant disability. At full implementation of the Scheme in 2020, approximately 460,000 people (10% of the population of people with disability in Australia) are expected to be supported by the NDIS. However, the focus on permanent diagnosis disqualifies many people with disability from eligibility for the NDIS.¹¹⁵ For example, the NDIS eligibility criteria do not adequately consider the episodic nature of psychosocial disability and the focus on diagnosis - rather than physical and psychosocial impact - disqualifies many with a demonstrable need for assistance under the Scheme.

Not all eligible participants are benefiting from the NDIS. Women and children with disability, people with psychosocial disability,

Indigenous peoples with disability, culturally and linguistically diverse (CALD) people with disability, LGBTIQ+ people with disability, people with intellectual disability, and those in remote areas, are not only experiencing difficulty accessing the Scheme, but are also most at risk of experiencing poor outcomes.¹¹⁶ People from CALD backgrounds make up 7.7% of participants, despite a stated goal by the National Disability Insurance Agency (NDIA) of 20% of CALD participants. Indigenous peoples with disability make up 5.4% of NDIS participants (or about 9,000 people), despite around 60,000 Indigenous peoples in Australia having a severe or profound disability. More than half of NDIS participants (52%) are aged 18 and under. People with disability over the age of 65 years are ineligible for the NDIS and reliant on an age care system that does not provide equity of support and lacks expertise in specialist disability support.¹¹⁷ Asylum seekers and/or people with disability living in Australia on non-permanent visas are ineligible to access the National Disability Insurance Scheme (NDIS) as they do not meet residency requirements.

There is clear gender inequity in the NDIS. Nationally, the percentage of female NDIS participants remains at less than 37%,¹¹⁸ with some jurisdictions having much lower figures. Men with disability have been found to be more likely to successfully secure NDIS services than women, which allows them to negotiate better deals and services from their allocated funds. Research has found that the structure of the NDIS may be exacerbating existing social inequities, and that women, rural and regional Australians, and those from poor households are more likely to miss out on disability care than their peers.¹¹⁹

In Australia, women and girls with disability experience direct human rights violations that result in ill-health, through practices such as forced medical treatments and interventions; deprivation of liberty; restrictive practices; denial of the right to legal capacity; as well as egregious forms of violence which women and girls

with disability experience or are at increased risk of, including for example: forced sterilisation, forced abortion, forced contraception; female genital mutilation; menstrual suppression; chemical and physical restraint; forced institutionalisation; forced isolation and segregation; withholding of medications; indefinite detention; forced marriage; sexual slavery.¹²⁰

Key recommendations from the international human rights treaty bodies

In 2019, the **Committee on the Rights of Persons with Disabilities** provided its Concluding Observations¹²¹ on the combined second and third periodic report of Australia.¹²² The Committee expressed concern about: the significantly lower life expectancy of people with disability; the significant number of people with disability expressing suicidal ideation, particularly within Indigenous communities; the high rate of premature, unexpected and avoidable deaths among people with disability in care settings; the significantly poorer health status of people with disability; and the limited access to adequate, affordable and accessible health services and equipment, in particular for women and children with disability, Indigenous peoples with disability, people with disability living in institutions and in remote areas, and those with intellectual or psychosocial disability. The Committee also expressed its concern that: parents with disability are more likely to have their children removed from their care on the basis of disability; the lack of support to parents with disability to exercise parental responsibilities; and the discrimination experienced by women with disability, lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons with disability in accessing assisted reproductive technologies. Further, the Committee expressed concern about: the medical model assessment to determine eligibility for the National Disability Insurance Scheme (NDIS); the lack of equal opportunities in the

NDIS particularly for older persons with disability, Indigenous peoples with disability, people with disability from culturally and linguistically diverse backgrounds and people with intellectual or psychosocial disability; and the low percentage of women and girls with disability that have access to services under the NDIS. The Committee recommended that Australia: address the low life expectancy of people with disability; ensure that national mental health and suicide prevention plans include measures for people with disability; develop culturally appropriate measures to prevent, identify and address the high rate of suicide among Indigenous populations; ensure training of professionals working with people with disability including health, social, education and community workers; ensure equitable access to affordable, accessible, quality and culturally sensitive medical equipment and health services, including sexual, reproductive and mental health services; ensure that the free and informed consent of the person concerned is provided prior to any medical treatment; and that health care practitioners receive training on the human rights model of disability. The Committee also recommended that Australia: ensure that no child is separated from parents because of the disability of one or both parents; adopt comprehensive gender and culturally specific parenting and family support measures for parents with disability; and that women with disability and LGBTIQ people with disability have equal access to assisted reproductive technologies. Further, the Committee recommended that: the NDIS be aligned with the human rights model of disability; there is equal access to services under the NDIS for women and girls with disability, particularly those of Indigenous backgrounds; NDIS procedures are simplified, transparent, publicly available and accessible; the NDIS meets the diverse and intersecting requirements of persons with disability in all areas; and provide adequate support and equal opportunities to specific groups of people with disability who are disadvantaged or not eligible for the NDIS.

In its 2018 review¹²³ of Australia's eighth periodic report¹²⁴ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee recommended that Australia increase its efforts and resources to address the deteriorating mental health situation of women and girls, in particular young mothers, Indigenous women, women with disability, women in detention, migrant women and their daughters, lesbian, bisexual and transgender women and intersex persons, and reinforce preventive measures. The Committee also recommended that Australia allocate sufficient funding to the National Disability Insurance Scheme (NDIS) to extend coverage for mental health services to women and girls with all types of mental health conditions and disabilities. The Committee further recommended that Australia finalise the national strategic framework for the mental health and social and emotional well-being of Indigenous peoples, guarantee appropriate resources for its implementation and address intergenerational trauma in culturally appropriate and effective ways. In relation to refugee and asylum-seeking women and girls, the Committee recommended that Australia ensure they have access to comprehensive, adequate and accessible sexual and reproductive health services and information, including to emergency contraception and abortion services.

In its 2019 Concluding Observations¹²⁵ of Australia, the **Committee on the Rights of the Child** expressed its serious concern about the increase in numbers of children with mental health problems, that suicide is the leading cause of death among those aged 15-24, children under 14 years of age have limited access to mental health services, and the limited child-specific measures in the Fifth National Mental Health and Suicide Prevention Plan. The Committee also expressed concern that Australia has one of the highest rates of children aged 5-14 years diagnosed with attention deficit hyperactivity disorder (ADHD) with a dramatic increase in the number of psychostimulant drug

prescriptions. The Committee recommended that Australia: invest in the underlying causes of suicide and poor mental health among children; ensure that the Fifth National Mental Health and Suicide Prevention Plan includes a clear focus on children; that mental health service delivery to children in vulnerable situations, including children with disability, is prioritised; strengthen measures to ensure that psychostimulant drugs are only prescribed to children with ADHD as a last resort and only after an individualised assessment of the child's best interests; inform children with ADHD and their parents about the side effects of psychostimulant drugs and about non-medical alternatives; increase the availability of child-friendly mental health services including to children under 14 years. The Committee also recommended that Australia promptly address the disparities in health status for children with disability, Indigenous children, children living in remote or rural areas and children in alternative care; to strengthen measures to prevent teenage pregnancies among Indigenous girls; and to continue to provide sexual and reproductive health as part of the mandatory school curriculum.

In its 2017 Concluding observations¹²⁶ on the fifth periodic report of Australia,¹²⁷ the **Committee on Economic, Social and Cultural Rights** expressed its concern at the poor health status of Indigenous peoples, refugees and asylum seekers. The Committee recommended that Australia redouble its efforts to achieve the health targets outlined in the Closing the Gap strategy, and take effective steps to ensure refugees and asylum seekers are able to exercise their right to the highest attainable standard of health, with particular attention to mental health services. The Committee articulated its extreme concern with regard to the negative impact on mental health of the prolonged detention of children in the regional processing centres, and recommended that Australia ensure access to appropriate child and family psychiatric care by asylum seekers and support for their social integration.

In 2017, the Human Rights Committee released its Concluding Observations¹²⁸ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.¹²⁹ The Committee recommended that Australia address the conditions of detention in immigration facilities, provide adequate mental health care, refrain from applying force or physical restraints against migrants and ensure that all allegations of use of force against them are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are offered reparation.

In December 2017, the **Committee on the Elimination of Racial Discrimination** released its Concluding Observations¹³⁰ of Australia's compliance under the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee expressed its concern at the high rate of suicide among Indigenous peoples, and the lack of specific programmes for Indigenous peoples with disability. The Committee recommended, amongst other things, that Australia adopt and implement other adequately resourced programmes, including specific programmes for Indigenous peoples with disability, in consultation with them, and increase support for, and investment in, Indigenous community- controlled health services and programmes. The Committee further recommended that Australia collect data disaggregated by ethnicity, indigenous peoples, age, gender, disability, sexual orientation and gender identity, on the extent of suicide and report on the measures adopted to address it.

Violence against women



4. Violence against women

The Platform for Action

The Platform for Action recognised violence against women as a violation of women's human rights and fundamental freedoms and as an obstacle to the achievement of equality, development and peace. The Platform for Action called on States to take integrated measures to prevent and eliminate violence against women; to study the causes and consequences of violence against women and to eliminate trafficking in women.¹³¹

Women and girls with disability in Australia

There remains a lack of data on gender-based violence in Australia in relation to particular cohorts of women, particularly at-risk population groups, including women with disability, Indigenous women, women from culturally and linguistically diverse (CALD) backgrounds, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, including those in same-sex relationships.¹³²

However, it is now well established that people with disability experience, and are at a far greater risk of violence than others in the population and that this violence often goes un-recognised and un-addressed.¹³³ More than a third of women with disability report experiencing violence or abuse, and almost 50% of women with disability report feeling unsafe where they live.¹³⁴

Compared to their peers, women and girls with disability experience significantly higher levels of all forms of violence more intensely and frequently and are subjected to violence by a greater number of perpetrators. Their experiences of violence last longer, more severe injuries result, they are far less likely to receive service support to address violence,¹³⁵ they are often not believed when reporting sexual assault and other forms of violence,¹³⁶ are often denied the right to legal capacity¹³⁷ and effective access to justice,¹³⁸ and they have considerably fewer pathways to safety.¹³⁹ There is a lack of expertise and a range of

structural barriers within domestic violence, sexual assault and women's crisis services that prevent appropriate responses to support women with disability.¹⁴⁰ Women and girls with disability in Australia are more exposed to practices which qualify as torture or inhuman or degrading treatment, including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.¹⁴¹

Research has found that discriminatory attitudes and negative police culture, including the tendency to blame the victim; refusal to investigate allegations of violence; treating crimes of violence as 'service incidents'; failing to make reasonable adjustments; assuming that a prosecution will not succeed because the court may think the woman lacks credibility; along with negative or paternalistic stereotypes of women with disability – all contribute to the pervasive and extensive violence perpetrated against women and girls with disability.¹⁴²

The gendered nature of violence against people with disability sees more than 70% of women with disability having been victims of violent sexual encounters at some time in their lives.¹⁴³ Twenty per cent of women with disability report a history of unwanted sex compared to 8.2% of women without disability,¹⁴⁴ and the rates of sexual victimisation of women with disability range from four to 10 times higher than for other women.¹⁴⁵ More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.¹⁴⁶ Women with disability who live in institutional and residential settings are highly susceptible to violence (particularly sexual violence) from numerous perpetrators and frequently experience sustained and multiple episodes.¹⁴⁷

Women with disability are also 40% more likely to be the victims of domestic violence than women without disability.¹⁴⁸ Evidence indicates that every week in Australia, three women

are hospitalised with a brain injury as a direct result of family violence.¹⁴⁹ 85% of women with psychosocial disability report feeling unsafe during hospitalisation, 67% per cent report experiencing sexual or other forms of harassment during hospitalisation and almost half (45%) report experiencing sexual assault during an in-patient admission.¹⁵⁰ Women comprise 74% of all elder abuse victims,¹⁵¹ and are more likely to experience elder abuse than males, at a rate two and a half times higher.¹⁵²

Women with disability represent more than 50% of the female prison population in Australia. More than half of all women incarcerated in Australian prisons have a diagnosed psychosocial disability and a history of sexual victimisation.¹⁵³ The percentage of women with disability in prisons is greater than for men with disability. The rate of incarceration of women with disability from Indigenous backgrounds is also higher than equivalent figures for men.¹⁵⁴ Indigenous women are the fastest growing prison population in Australia. A significant proportion have cognitive impairment as well as an undiagnosed psychosocial disability.¹⁵⁵

The rate of disability for Indigenous peoples, including children¹⁵⁶ is twice as high as that among the general population.¹⁵⁷ Violence against Indigenous Australians is approximately 10 times higher than against non-Indigenous people.¹⁵⁸ Indigenous women are 35 times more likely to suffer family violence and 80 times more likely to sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women.¹⁵⁹ Indigenous women are also less likely than non-Indigenous women to disclose their experiences of violence, with studies showing that around 90 per cent of violence is not disclosed.¹⁶⁰ Violence against Indigenous women, including those with disability, needs to be understood in the context of a history of colonisation, dispossession of land, forced child removal, racism and discrimination and the resulting intergenerational trauma that has arisen from this history.¹⁶¹

Children and young people with disability experience violence and abuse at approximately three times the rate of children without disability.¹⁶² Violence and abuse perpetrated against children and young people with disability in schools, educational and child-care settings, including out-of-home care, remains a widespread, unaddressed problem in Australia.¹⁶³

Although there is no known prevalence data on violence against women and girls from culturally and linguistically diverse (CALD) backgrounds, research has found that immigrant and refugee women are more likely to be murdered as a result of domestic/family violence,¹⁶⁴ and that cultural values and immigration status enhance the complexities normally involved in domestic/family violence cases.¹⁶⁵ It is recognised that CALD women with disability are less likely than other women to report acts of violence, particularly domestic violence and sexual assault, due to multiple and intersecting barriers, which include linguistic barriers, cultural barriers and lack of knowledge or awareness of the criminal justice system.¹⁶⁶

It is globally recognised that refugees and asylum seekers with disability are at heightened risk of violence, including sexual and domestic violence.¹⁶⁷ Australia's migration laws, policies and practices have resulted in institutionalised, severe and routine violations of the prohibition on torture and ill-treatment; have subsequently been found to create serious physical and mental pain and suffering and continue to cause life-long disability and impairments.¹⁶⁸ More than one third of people held in detention have been diagnosed with psychosocial disability.¹⁶⁹ Female asylum seekers/refugees experience rape and sexual abuse¹⁷⁰ yet there is no independent investigation mechanism in place, and even when incidents are reported, investigation or appropriate sanctions rarely ensue.¹⁷¹

Women and girls with disability living in rural and remote

communities are more susceptible to violence, exploitation and abuse with few supports available to seek redress.¹⁷² Although there is evidence of a higher reported incidence of sexual assault and domestic and family violence in rural and remote communities than in urban Australia,¹⁷³ research has found that violence, particularly domestic violence, is common in the lives of women with disability in rural areas of Australia, with many 'suffering in silence', 'trapped' within their homes, with the perception they have no alternative but to remain in violent relationships.¹⁷⁴

The National Plan to Reduce Violence Against Women and their Children 2010-2022,¹⁷⁵ is Australia's main policy framework designed to prevent violence against women. The National Plan focuses only on sexual assault and domestic/family violence in the context of intimate partner violence.¹⁷⁶ Although the most recent Fourth Action Plan of the National Plan mentions some other forms of violence against women with disability, the National Plan as a whole has concealed and rendered invisible, structural and institutional forms of gender-based violence related to law, the state and culture that women and girls with disability not only experience, but are more at risk of, such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage. It excludes reproductive rights violations and many of the settings and spaces in which women and girls with disability experience violence.¹⁷⁷

Key recommendations from the international human rights treaty bodies

In September 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia's compliance with the Convention on the

Rights of Persons with Disabilities.¹⁷⁸ The Committee expressed concern about: the lack of oversight, complaint and redress mechanisms for people who are not eligible for the NDIS and who experience violence, particularly women with disability; the lack of resources and redress mechanisms available for people with disability to participate in the Royal Commission into Violence, Abuse, Neglect and Exploitation of Persons with Disabilities; the non-implementation of recommendations in the report from the Australian Human Rights Commission (AHRC), "A Future without Violence"; the lack of explicit reference to women and girls with disability in the National Plan to Reduce Violence against Women and their Children 2010-2020; the insufficient expertise and structural barriers within services dealing with domestic violence, sexual assault and related crises to adequately support women and girls with disability; and the limited number and scope of instruments to collect data on violence against women and girls with disability. The Committee recommended that Australia: establish a national accessible oversight, complaint and redress mechanism for all people with disability in all settings, particularly older women with disability; ensure adequate resources and a redress mechanism for the Royal Commission; implement the recommendations contained in the AHRC report; ensure inclusion of women and girls with disability in the National Plan; ensure accessible gender and age sensitive services that are inclusive of women and girls with disability; and address the methodological restrictions in data collection instruments used to capture data on violence against women and girls with disability.

In its 2018 review¹⁷⁹ of Australia's eighth periodic report¹⁸⁰ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee expressed its concern at the lack of national legislation prohibiting all forms of gender-based violence against women. The CEDAW Committee recommended that the Australian Government adopt commonwealth legislation that is in line with

the Convention and prohibits all forms of gender-based violence against women and girls, and shift the power to legislate on this matter to the Commonwealth Parliament. The Committee also recommended that Australia should expedite the establishment of the national data collection framework and guarantee that data on femicide and violence against women with disability is systematically collected under the framework.

In its 2019 Concluding Observations¹⁸¹ of Australia, the **Committee on the Rights of the Child** expressed its serious concerns about the high rates of violence against children in the home, that girls between the ages of 10-19 years suffer the highest rate of sexual abuse, that Indigenous children continue to be disproportionately affected by family and domestic violence, including sexual violence, that children with disability are more vulnerable to violence, neglect and abuse, including sexual abuse, and that girls with disability are forced to undergo sterilisation procedures. The Committee recommended that Australia: prioritise implementation of violence prevention and response measures for children, particularly girls, of all ages within the National Framework for Protecting Australia's Children 2009-2020 (National Framework) and the National Plan to Reduce Violence against Women and their Children 2010–2022 (National Plan); ensure that the National Centre for the Prevention of Child Sexual Abuse establishes a comprehensive standard with regard to intervention in cases of child sexual abuse to avoid the retraumatisation of child victims; provide child-specific therapeutic interventions and counselling to child victims of violence, in addition to the support provided to families; substantially increase family violence prevention and responses related to Indigenous children; review the National Framework and the National Plan to ensure they adequately prevent violence against children with disability and prohibit by law forced or coerced sterilisation of girls with disability; and enact legislation to prohibit unnecessary medical or surgical treatment

on intersex children and provide support and counselling to families of intersex children.

In its 2017 Concluding observations¹⁸² on the fifth periodic report of Australia,¹⁸³ the **Committee on Economic, Social and Cultural Rights** expressed its concern about the high levels of violence and abuse against persons with disability, especially those with intellectual disability and women with disability, placed in institutions or residences. The Committee also articulated its concern at the lack of effectiveness of oversight and complaint mechanisms in alternative care settings. The Committee recommended amongst other things, that Australia redouble its efforts to combat domestic violence against women and children, including among indigenous peoples; increase accommodation and support services, especially in rural and remote areas; fully implement the recommendations in the inquiry report by the Senate Community Affairs References Committee into violence, abuse and neglect against people with disability in institutional and residential settings (2015); and pay particular attention to ensure that women with disability who are victims of domestic violence can claim their rights.

In 2017, the Human Rights Committee released its Concluding Observations¹⁸⁴ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.¹⁸⁵ While welcoming the various measures taken to address violence against women, the Committee specifically noted its concern that violence against women in Australia continues to have a disproportionate effect on women with disability and Indigenous women. In relation to violence against women with disability, the Committee recommended that Australia improve support services to women with disability who are victims of domestic violence, including through the implementation of the relevant recommendations from the Stop the Violence Project.¹⁸⁶ The Committee also recommended that all allegations of

sexual abuse, regardless of the time of their commission, are promptly, impartially, thoroughly and effectively investigated and perpetrators are brought to justice and, if found responsible, are punished in accordance with the gravity of their acts.

The **Committee against Torture** reviewed the combined fourth and fifth periodic reports of Australia¹⁸⁷ in 2014. The Concluding Observations¹⁸⁸ from the review noted the Committee's concern that violence against women in Australia disproportionately affects women with disability and Indigenous women. The Committee recommended amongst other things that Australia redouble its efforts to prevent and combat all forms of violence against women and increase its efforts to address violence against women with disability and Indigenous women.

Women refugees, migrants and asylum seekers



5. Women refugees, migrants and asylum seekers

The Platform for Action

The Platform for Action called for an increase in women's participation in decision-making in conflict resolution processes and the promotion of non-violent forms of conflict resolution, and recognized women's contribution to fostering a culture of peace. It also prioritized the protection of women in situations of armed conflict, as well as assistance to refugees, internally displaced people and women in colonies and non-self-governing territories.¹⁸⁹

Women and girls with disability in Australia

The Migration Act 1958¹⁹⁰ contains Australia's immigration regulatory framework. It covers control of arrivals and the presence of non-citizens, detention, decision-making processes for granting, refusing or cancelling visas, criminal offences for people-smuggling and other migration-related offences, and a review system for challenging visa decisions.

The Disability Discrimination Act (DDA) 1992 provides an exemption for certain provisions within the Migration Act 1958, which means that Australia's migration arrangements and treatment of disability are unable to satisfy the equal protection obligations under the Convention on the Rights of Persons with Disabilities (CRPD). Evidence demonstrates that Australia's migration policies have increasingly eroded the human rights of migrants, in contravention of its international human rights and humanitarian obligations, and that several of its migration policies and laws are regressive and fall behind international standards.¹⁹¹

People with disability, and families who have members with disability, consistently have their visa applications denied because they are unable to meet the strict health requirement under the Migration Act 1958 (Cth).¹⁹² An individual or family

could have been living in Australia for many years, contributing to the economic and social life of the community, but they will be deported because of a failure to meet the health requirement.¹⁹³

The health requirement means that the visa applicant must be free of a 'disease or condition', which would be too costly to the Australian taxpayer, put the general public at risk, or prevent access to health care for Australian citizens. It is extremely difficult for children and adults with disability to meet the health requirement given the focus is exclusively on the perceived economic cost of the applicant's 'condition' and the perceived 'burden' this will place on public health and community resources. There is no recognition of the economic, social and cultural contributions of people with disability and their families. The only recourse for people with disability, and families who have members with disability is to seek Ministerial intervention. This relies on significant lobbying, public pressure and petitioning to achieve, and often does not result in a fair outcome.¹⁹⁴ While the health requirement does not, on face, discriminate against persons with a disability, the provisions have been found to indirectly discriminate against people with disability, in that they set 'standards of health requirement which the disabled do not or cannot meet'.¹⁹⁵ Migrants with disability find it difficult to access permanent residence or citizenship because of their disability.¹⁹⁶

The Australia Government has recently made some amendments to its visa policy processes and requirements for people with disability. For example, prior to 1 July 2019, the policy underpinning the health requirement set the threshold for significant cost at \$40,000. In August 2019, the Australian Government increased this threshold to \$49,000. The formula used to calculate the cost of people with permanent disabilities or conditions seeking permanent residency has also been updated. Previously, people with permanent conditions could be rejected if the hypothetical cost of their care exceeded the

Women refugees, migrants, and asylum seekers

cost threshold over their lifetime. Now, the hypothetical cost will be calculated over ten years.¹⁹⁷ Although these measures are welcomed by people with disability, there remains concern that key legislative and policy reform has not been undertaken. This includes reforms recommended by the Committee on Economic, Social and Cultural Rights to amend the Migration Act 1958 (Cth) and the Disability Discrimination Act 1992 (Cth) “to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.”¹⁹⁸

Asylum seekers and/or people with disability living in Australia on non-permanent visas are ineligible to access the National Disability Insurance Scheme (NDIS) as they do not meet residency requirements. The Age and Disability Support Pensions have a 10-year qualifying residence period,¹⁹⁹ leaving migrants with disability at an increased risk of a range of human rights violations.

Prolonged and indefinite detention has a profound effect on migrants’ mental well-being, with many cases reported of self-harm, post-traumatic stress disorder, anxiety and depression. Those who leave detention after a prolonged period often continue to suffer from post-traumatic stress and low self-esteem, which takes from them the opportunity to rebuild their lives.²⁰⁰ Australia’s migration laws, policies and practices have resulted in institutionalised, severe and routine violations of the prohibition on torture and ill-treatment; have been found to create serious physical and mental pain, illness and suffering and continue to cause life-long disability and impairments.²⁰¹

Evidence shows that female asylum seekers and refugees in immigration detention on Nauru have been raped and sexually abused by security guards, by service providers, by male refugees and asylum seekers, and there was not a proper and independent investigation mechanism in place, nor has there been attention to the longer term support and recovery of victims/survivors.²⁰²

There are also concerns about risks of sexual violence against women and girls arising from the secrecy and lack of safeguards in onshore detention centres. Women and girls fear reporting such incidents to the police, and even when they are reported, investigation or appropriate sanctions rarely ensue.²⁰³

Key recommendations from the international human rights treaty bodies

In 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia’s compliance with the Convention on the Rights of Persons with Disabilities.²⁰⁴ The Committee expressed concern about: migration and asylum legislation, including the health requirement in the Migration Regulations 1994, which allows for discrimination against people with disability; the exemption contained in the Disability Discrimination Act (DDA) 1992 for certain provisions in the Migration Act 1958 that results in the exclusion of people with disability; the ten year qualifying period for migrants with non-permanent visas to access the Age Pension and the Disability Support Pension (DSP); the transfer of refugees and asylum seekers with disability to ‘regional processing countries’; and the situation of refugee and asylum-seeking children with disability kept in detention facilities in Australia and offshore. The Committee recommended that Australia: review and amend its migration laws and policies to end discrimination against people with disability who wish to migrate or seek asylum, particularly remove the DDA exemption to certain provisions in the Migration Act 1958; remove the ten year qualifying period for migrants to access the Age Pension and the DSP; cease the transfer of refugees and asylum seekers, particularly those with disability to ‘regional processing countries’; establish a minimum standard of health care and support for people with disability held in immigration detention; and urgently remove all refugee

and asylum children, including children with disability and their families, from detention facilities.

The **Committee on the Elimination of Discrimination against Women** reviewed Australia's implementation of CEDAW²⁰⁵ in 2018.²⁰⁶ In relation to refugee and asylum-seeking women, the Committee expressed its particular concern that women and girls seeking asylum in Australia are exposed to rape, sexual abuse and physical harm, perpetrated with impunity, by security guards, service providers, refugees and asylum seekers and members of the local community in Nauru, with the women who are victims of such violence left without access to justice. The Committee made a series of recommendations relating to refugee and asylum-seeking women, including that Australia stop intercepting and returning asylum-seeking women and girls arriving by sea; stop offshore processing in Nauru and the processing of asylum claims at sea, and ensure that all women and girls seeking asylum have access to gender-sensitive and fair refugee status determination processes within the territory of Australia and to legal representation and legal remedies. It also recommended that Australia repeal provisions on the mandatory detention of asylum seekers; and guarantee that all refugee and asylum-seeking women and girls who are under the responsibility of Australia have access to comprehensive, adequate and accessible sexual and reproductive health services and information, including to emergency contraception and abortion services. The Committee further recommended that Australia ensure that all immigration facilities under its responsibility investigate all complaints of sexual and physical violence against women and girls, including rape, bring perpetrators to justice and guarantee that they are punished, and provide redress and adequate compensation to victims. The Committee also recommended that Australia guarantee that refugee and asylum-seeking women and girls have unconditional access to gender, age, culture and language-appropriate social, education, mental

and physical health services on the territory of Australia.

In its 2019 Concluding Observations²⁰⁷ of Australia, the **Committee on the Rights of the Child** recommended that Australia: review migration laws and policies with a view to withdrawing 'disability' as a criterion for rejecting immigration requests; create an independent position of guardian for unaccompanied children; amend the Migration Act to prohibit the detention of asylum-seeking, refugee and migrant children; amend the Migration Act and the Maritime Powers Act to ensure respect for non-refoulement obligations; enact legislation prohibiting the detention of children and their families in regional processing countries; ensure access to adequate child protection, education and health services, including mental health services to children detained in regional processing countries; implement durable solutions for all refugee and migrant children to ensure early rehabilitation, reintegration and sustainable resettlement; and introduce adequate mechanisms for monitoring the well-being of children involved in asylum, refuge and migration processes.

In its 2009 Concluding Observations²⁰⁸ on the fourth periodic report of Australia, the **Committee on Economic, Social and Cultural Rights** expressed its concern that section 52 of the *Disability Discrimination Act 1992* exempts migration laws, regulations, policies and practices, from the effects of the Act, leading to negative immigration decisions based on disability or health conditions. The Committee further expressed its concern that this situation has had a particularly negative impact on the families of asylum-seekers. The Committee recommended that Australia amend the *Migration Act 1958* and the *Disability Discrimination Act 1992* to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.

In its 2017 Concluding observations²⁰⁹ on the fifth periodic report

Women refugees, migrants, and asylum seekers

of Australia,²¹⁰ the **Committee on Economic, Social and Cultural Rights** expressed its deep concern about Australia's treatment of asylum seekers, including the policy of transferring asylum seekers to the regional processing centres for the processing of their claims. The Committee recommended that Australia stop its policy of offshore processing of asylum claims; complete the closure of the regional processing centres, repatriate all concerned persons to Australia and process their asylum claims with all procedural safeguards, while respecting their right to family reunification. The Committee further recommended that Australia amend relevant policies and legislation, particularly the *Migration Act 1958*, to end restrictive access to services and entitlements on the basis of a person's mode of arrival in Australia, and ensure equity and transparency in processing claims for permanent protection and requirements for family reunification.

In its 2017 Concluding Observations²¹¹ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**,²¹² the Human Rights Committee expressed a significant number of concerns regarding Australia's treatment of refugees and asylum seekers. The Committee made an extensive number of recommendations, including that Australia repeal section 197(c) of the *Migration Act 1958* and introduce a legal obligation to ensure that the removal of an individual must always be consistent with Australia's non-refoulement obligations; ensure that all persons under Australia's jurisdiction who are in need of international protection have access to fair and efficient asylum procedures, including access to legal representation and legal remedies. The Committee also recommended that Australia bring its legislation and practices relating to immigration detention into compliance with article 9 of the Covenant; and, address the conditions of detention in immigration facilities, provide adequate mental health care, refrain from applying force or physical restraints against migrants

and ensure that all allegations of use of force against them are promptly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are offered reparation. The Committee also recommended that Australia end its offshore transfer arrangements and cease any further transfers of refugees or asylum seekers to any other "regional processing country".

In its 2014 Concluding Observations²¹³ following the review of the combined fourth and fifth periodic reports of Australia,²¹⁴ the **Committee against Torture** made an extensive number of recommendations relating to Australia's treatment of refugees and asylum seekers. The Committee recommended that Australia adopt all the necessary legislative and other measures to ensure that it effectively meets its non-refoulement obligations under the Convention, in particular with regard to all asylum seekers and other persons in need of international protection who attempt to arrive or arrive in Australia, regardless of the mode and date of arrival. The Committee recommended that Australia redouble its efforts with a view to expanding the use of alternatives to closed immigration detention. The Committee further recommended that Australia ensure that effective measures are in place to identify as early as possible all victims of torture among asylum seekers and among other persons in need of international protection, and provide regular training on the procedures established in the Istanbul Protocol to asylum officers and health experts participating in the asylum determination procedure, including training on detecting psychological traces of torture and on gender-sensitive approaches.

In December 2017, the **Committee on the Elimination of Racial Discrimination** released its Concluding Observations²¹⁵ of Australia's compliance under the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee made a series of recommendations relating to

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asylum seekers, migrants and refugees. Amongst other things the Committee recommended that Australia stop its policy of offshore processing of asylum claims, transfer all migrants, asylum seekers and refugees to Australia and process any remaining asylum claims while guaranteeing all procedural safeguards. The Committee also recommended that Australia investigate human rights violations in the regional processing centres, prosecute the alleged perpetrators, punish them appropriately if convicted and provide full reparation to the victims. The Committee further recommended that Australia repeal the mandatory detention provisions in the *Migration Act 1958*, find alternatives to the detention of all migrants and asylum seekers arriving in Australia without a visa, ensure detention is used only as a last resort and ensure regular judicial review of detention decisions.

Women and the economy



6. Women and the economy

The Platform for Action

The Platform for Action called for the promotion of women's economic rights and independence, including access to employment under appropriate working conditions, control over resources, elimination of occupational discrimination and segregation, and the harmonisation of work and family responsibilities for women and men.²¹⁶

Women and girls with disability in Australia

There is a lack of gender-disaggregated data in Australia on the economic position of women with disability.

However, available data shows that Australians with disability are more likely to be unemployed (10.0% compared with 5.3% for those without disability) and face longer periods of unemployment than people without disability.²¹⁷ Compared with other OECD²¹⁸ countries, Australia has one of the lowest employment participation rates for people with disability.²¹⁹ Only 9% of people with disability report they have the same employment opportunities as other people.²²⁰ Complaints about discrimination in employment make up a significant proportion of all disability discrimination complaints made to Australian anti-discrimination agencies.²²¹

The number of people with disability in the labour force has fallen by 3.0% in the past decade.²²² At the same time, the number of working age people without disability participating in the labour force has increased by 23%.²²³

Between 2003 and 2015, the number of people with disability working full time dropped by 16%. At the same time, the numbers of those working part time increased by 14%. By comparison, the number of people without disability in full-time and part-time employment increased over this period (by 12% and 33%,

respectively).²²⁴

Employed people with disability are more likely to work part-time (44% - 63%), compared with employed people without disability (32%).²²⁵ Almost one-third of people with disability (32.4%) who work part-time want to work more hours, compared with just over one-quarter of people without disability (27.1%).²²⁶ The amount of time unemployed people with disability look for work is substantially longer than for people without disability. People with disability are significantly more likely to still be looking for a job 13 weeks or longer after they first started (65.5%) compared with those without disability (56.1%).²²⁷

There has been no improvement in labour force participation of women with disability in the past two decades.²²⁸ Men with disability (51.3%) are much more likely to be employed than women with disability (44.4%). Women with disability 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 disability who are in the labour force have lower incomes from employment; are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment, and are much more likely to be in lower paid jobs than men with disability.²²⁹ Women with disability have a much higher rate of part-time employment (56% of women with disability who are employed) than men with disability (22% of men with disability who are employed). Research has found that when women with disability are employed, they face higher rates of sexual harassment, violence, abuse and discrimination in the workplace than women without disability.²³⁰

Women with disability are often given marginal jobs far below their capacity. They are denied opportunities for further training and job advancement. They are often unable to enforce industrial

rights. Women with disability have reported being typically treated like children and not given credit when they have performed well on the job because attitudes in their workplace were such that no one believed that they could have actually done the job on their own.²³¹

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.²³² The Report of the Inquiry 'Making It Fair' recommended, amongst other things that 'the Government as a matter of priority collect relevant information on workforce participation of women with disability to provide a basis for pay equity analysis and inform future policy direction.' This recommendation has never been enacted.

There are no specific policies or programs that address the lack of employment participation of women with disability, including addressing the structural barriers to their workforce participation.

Many young people with disability do not enter the labour force at all over the first seven post-school years (18% compared to 5% of those without a disability) and are much more likely to experience long-term unemployment (13%) than those without a disability (7%).²³³

Indigenous peoples with disability aged 15-64 years are much less likely to be in the labour force than those without disability (41.7% compared with 75.7%).²³⁴ Culturally and linguistically diverse (CALD) people with disability, especially refugees and asylum seekers are less likely to secure employment and more likely to face discrimination in the workforce. They often feel obligated to enter numerous certificate courses by job network agencies. There is no data available on the labour force participation of CALD people with disability.

Segregated employment for people with disability through Australian Disability Enterprises (ADEs) continues in Australia, enabling employers to pay people with disability lower wages than other people,²³⁵ and with less than 1% having opportunities to move into mainstream employment. The Supported Wage System (SWS)²³⁶ still provides for people with disability to be paid a pro-rata percentage of the minimum wage for their industry according to their assessed capacity.

Key recommendations from the international human rights treaty bodies

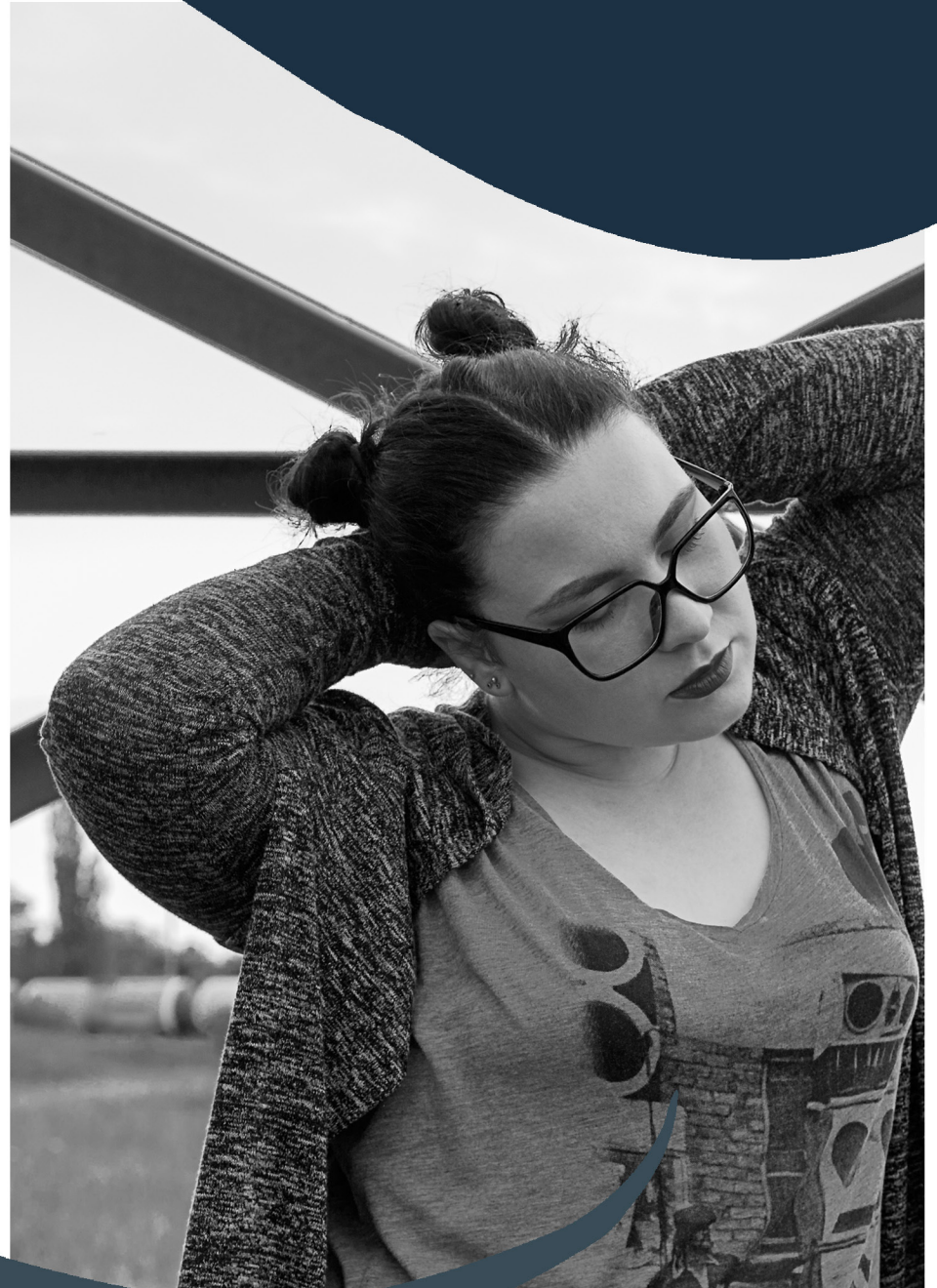
In 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia's compliance with the Convention on the Rights of Persons with Disabilities.²³⁷ The Committee expressed concern about: the narrow and incomplete scope of the review of the National Employment Framework for People with Disability and the lack of clear measures to reform Disability Employment Services; the ongoing segregation of people with disability employed through Australian Disability Enterprises and the fact that such people receive a sub-minimum wage; the low labour force participation of people with disability, particularly women with disability, Indigenous people with disability, people with disability from culturally and linguistically diverse backgrounds and refugee and asylum-seeking people with disability. The Committee recommended that Australia: take measures to reform Disability Employment Services; develop a national disability employment strategy that contains targeted gender-sensitive measures and incorporates the recommendations from the Australian Human Rights Commission's "Willing to work" inquiry; undertake a comprehensive review of Australian Disability Enterprises to ensure they comply with the Convention and provide services to enable people with disability to

transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value; and implement measures to address systemic and structural barriers experienced by persons with disabilities, particularly by women with disability, Indigenous people with disability, people with disability from culturally and linguistically diverse backgrounds and refugee and asylum-seeking people with disability.

In its 2018 review²³⁸ of Australia's eighth periodic report²³⁹ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee recommended that Australia put into place temporary special measures to accelerate the equal participation of women in political and public life, education, employment and the health sector, including with regard to women facing intersecting forms of discrimination. It also recommended that the Australian Government implement recommendations from the 2017 Inquiry into gender segregation in the workplace, which included a key recommendation that Australia develop and implement a national policy framework to achieve gender pay equity in Australia.

The **Committee on Economic, Social and Cultural Rights** specifically addressed segregated employment of people with disability in its 2017 Concluding observations²⁴⁰ on the fifth periodic report of Australia,²⁴¹ and clarified that segregated employment and wage discrimination is in contravention of the Covenant on Economic, Social and Cultural Rights (ICESCR).²⁴² In addition, the Committee recommended that Australia employ targeted measures to address the unemployment people with disability.

Women in power and decision- making



7. Women in power and decision-making

The Platform for Action

The Platform for Action affirmed the importance of women's equal participation in decision-making as a means of achieving "transparent and accountable government and administration and sustainable development in all areas of life". The Platform for Action called on governments to take measures to ensure women's equal access to, and full participation in, power structures and decision-making and increase women's capacity to participate in decision-making and leadership.²⁴³

Women and girls with disability in Australia

Access to decision-making, political participation and representation are essential markers of equality. Yet women and girls with disability in Australia continue to be denied the right to participate in, and remain largely excluded from, decision-making, participation and advocacy processes, about issues that affect their lives and those of their families, communities and nations.

Historically, a focus on individual incapacity or the 'tragedy' of disability frequently saw women with disability as dependent, as burdens and in need of care and protection,²⁴⁴ resulting in their isolation, segregation and exclusion from participation in the wider community. This exclusion has silenced their voices and rendered invisible their contribution and experiences.²⁴⁵ The invisibility of women with disability in public decision-making has contributed to a lack of awareness of their rights as equal members of society and has reinforced negative stereotypes and discriminatory practices.²⁴⁶

Direct, indirect and intersectional discrimination and prejudice on the basis of sex, disability, race, colour, ethnicity, sexuality, gender identity, social origin and access to economic resources, are recognised globally as impediments to meaningful participation

for women and girls with disability. Widespread discrimination, systemic prejudice, paternalistic and ableist attitudes that denigrate, devalue, oppress and limit, continue to impact negatively on women and girls with disability in Australia.²⁴⁷

Women and girls with disability are frequently excluded from making or participating in decisions that affect their lives on a daily basis, including as active agents in their own health care, including sexual and reproductive health care.²⁴⁸ Too often, women and girls with disability have their views ignored or disregarded in favour of 'experts', 'professionals', parents, guardians, and carers, as well as representatives of organisations not controlled and constituted by women with disability themselves.²⁴⁹

Young girls with disability – particularly adolescent girls - are rarely given opportunities to participate in decision-making and advocacy processes, about issues that affect their lives. The denial of their rights to participation and decision-making around their sexual and reproductive rights, including their right to freedom from all forms of violence, is recognised globally as a critical human rights issue warranting urgent attention at all levels.²⁵⁰

Frequent and ongoing experiences of violence, abuse, harassment exploitation and systemic discrimination can contribute to women and girls with disability having lower self-esteem, confidence, limited awareness of their human rights, and, significant and real fears about acting on those rights or accessing the support to do so.²⁵¹ Women and girls with disability who live in institutional environments and other closed settings have limited opportunities for meaningful decision-making and participation. They are regularly deprived of the information, education and skills to realise their human rights, and are rarely, if ever, consulted on their views.²⁵²

Women in power and decision-making

Wide-ranging systemic failures in legislation, policies and service systems in Australia continue to facilitate conditions that deny the participatory rights of women and girls with disability. These failures are evident in laws and practices which foster and enable substitute decision-making and denial of legal capacity, as well as laws which facilitate egregious human rights violations such as forced sterilisation, forced abortion and forced living arrangements.²⁵³

The denial of the right to meaningful decision-making and participation has led to many women and girls with disability being denied a number of other rights, including the right to vote, marry, have or adopt children, develop social and intimate relationships, realise their sexual and reproductive rights, access education, live their lives free from violence, and, fulfil their basic rights to liberty of the person and freedom of movement.²⁵⁴

Many women and girls with disability are not afforded the right to make their own decisions because others determine that they 'lack capacity' to do so. Such judgements often lead to substitute decision-making processes whereby others decide on a woman or girl's behalf what is in her 'best-interests'. This is particularly the case for women and girls with intellectual disability – where the diagnosis of intellectual disability is assumed to equate with a lack of capacity to make decisions.²⁵⁵

The ability and the right to full and effective decision-making and participation is dependent on access to accurate, accessible and appropriate information.²⁵⁶ Yet many women and girls with disability are denied the right to seek, receive and impart information about decisions affecting their lives. Information concerning issues relevant to women and girls with disability is rarely available in timely, comprehensive, and accessible ways. Governments and service providers rarely provide information in the full range of accessible formats, such as in sign language,

Braille, large print, audio, Easy English, plain and/or non-technical language, captioned video, in languages other than English, or through the provision of accessible and usable web sites.

There are no Information and Communication Standards in Australia that require information to be fully accessible.²⁵⁷ There are no mandated minimum standards for government and public sector organisations to ensure web accessibility and usability;²⁵⁸ and for accessible information and services to be provided to the public. Many women and girls with disability are unable to enjoy freedom of expression and opinion due to a lack of communication supports, and inequitable access to information. 67% of people with disability find government information inaccessible and/or difficult to understand.²⁵⁹

Through General Comment 7, the Committee on the Rights of Persons with Disabilities has clearly articulated the duty of States parties to actively involve people with disability, through their representative organisations, including those representing women and children with disability, in the development and implementation of legislation and policies to implement the *Convention on the Rights of Persons with Disabilities* (CRPD) and in other decision-making processes.²⁶⁰

However, in Australia there are no permanent or effective mechanisms to ensure the active, full and meaningful participation of people with disability - including women and girls with disability - in the implementation and monitoring of the CRPD²⁶¹ and other decision-making processes that affect the lives of people with disability.

There remain limited opportunities for women with disability in Australia to participate in the development of policies regarding the rights of women and gender equality.²⁶² Women with disability are marginalised from initiatives to monitor the implementation of

the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) and there is no government support to enable women with disability to attend and/or participate in relevant international human rights events, including the Commission on the Status of Women (CSW).²⁶³

Key recommendations from the international human rights treaty bodies

In 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia's compliance with the Convention on the Rights of Persons with Disabilities.²⁶⁴ The Committee expressed concern about: the lack of information on the representation of women with disability, particularly Indigenous women with disability, in political and public life; the lack of progress made to abolish substituted decision-making regimes and replace them with supported decision-making systems; electoral laws that contain "unsound mind" provisions that result in people with disability not being entitled to vote in elections; the electoral process not being fully accessible and not guaranteeing secret voting rights to people with disability; and the lack of information and communications technologies and systems and no legally binding information and communications accessibility standards. The Committee was also concerned that there are no permanent or effective mechanisms to ensure the active participation of persons with disability, through their representative organisations, in the implementation and monitoring of the Convention; the lack of disability and age appropriate assistance for children with disability to participate and express their views; and the limited opportunities for women and girls with disability to participate in the development of policies regarding the rights of women and gender equality. The Committee recommended that Australia: ensure representation and accelerate the participation of women

with disability, particularly Indigenous women with disability, in political and public life at all levels; repeal laws and policies that deny or diminish the right of people with disability to exercise legal capacity and implement a nationally consistent supported decision-making framework; develop measures to ensure the full accessibility of electoral processes and guarantee secret voting rights; and develop legally binding information and communications accessibility standards. The Committee further recommended that Australia establish formal and permanent mechanisms to ensure the full and effective participation of people with disability, including children with disability, through their representative organisations, in the implementation and monitoring of the Convention; amend all legislation to guarantee that children with disability are provided with age-appropriate support and accommodations to express their views in all matters that affect their rights or interests; and to adequately support organisations and networks of women and girls with disability, particularly those representing Indigenous women and girls with disability, to engage in all initiatives to promote gender equality and ensure their effective participation in the development of policies for gender equality and the advancement of women and girls.

In its 2018 review²⁶⁵ of Australia's eighth periodic report²⁶⁶ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee expressed its concern that temporary special measures may not be used sufficiently to accelerate progress towards substantive gender equality, and recommended that Australia put in place temporary special measures to accelerate the equal participation of women in political and public life, education, employment and the health sector, including with regard to women facing intersecting forms of discrimination.

In 2019, the **Committee on the Rights of the Child** provided

its Concluding Observations²⁶⁷ to Australia following its review. The Committee recommended that Australia enhance children's meaningful and empowered participation in the family, in the community and in schools, paying particular attention to girls, children with disability and Indigenous children. The Committee also recommended providing audio description and captioning on online information to ensure greater information access for children with disability, and promoting the right to freedom of expression, particularly for children with disability, Indigenous children, children with a refugee or migrant background and children living in rural and remote areas.

In 2017, the Human Rights Committee released its Concluding Observations²⁶⁸ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.²⁶⁹ The Committee expressed its concern that section 93 (8) of the Commonwealth Electoral Act 1918 denies the right to vote to any person of "unsound mind" and that similar provisions are contained in state and territory electoral legislation. The Committee recommended that Australia ensure that federal, state and territory electoral legislation does not discriminate against persons with intellectual and psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable or objective relation to their ability to vote.

Institutional mechanisms for the advancement of women



8. Institutional mechanisms for the advancement of women

The Platform for Action

The Platform for Action articulated three components to advance the critical area of concern related to institutional mechanisms: create or strengthen national machineries and other governmental bodies; integrate gender perspectives in legislation, public policies, programmes and projects; and generate and disseminate sex-disaggregated data and information for planning and evaluation.²⁷⁰

Women and girls with disability in Australia

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 disability.

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.²⁷¹ 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.

Australian society remains permeated by gender differences and gender inequalities. There is no country in which the outcomes of public policy are equal for men and women, and this is even more stark in the case of men with disability and women with disability. In the Australian legislative, policy and service context, people with disability are often treated as asexual, genderless

human beings. Australian disability related policies, programs and services consistently fail to apply an appropriate gender lens, and gender related policies, programs and services consistently fail to apply an appropriate disability lens. Most policy, program and service 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.²⁷²

However, it is well established that women and girls with disability experience multiple and intersecting forms of discrimination and disadvantage, which creates and perpetuates systemic inequality between disabled men and women including clear patterns of disabled women's inferior access to resources and opportunities. In practice this means that disabled women have far fewer opportunities, lower status and less power and influence than men and boys with disability, and far less chance of realising 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. Research has shown that there is limited awareness in the community about the needs, rights and experiences of women and girls with disability and negative stereotypes remain, which often translates into systemic and widespread exclusion of disabled women and girls from both specialist disability and mainstream services, social and economic opportunities and participation in community life.²⁷³

Although the prohibition of discrimination and the promotion of equality are principles enshrined in Australian legislative and policy and frameworks to advance the rights of people with disability, and to end all forms of discrimination against women - women and girls with disability in Australia have failed to be afforded, or benefit from, these provisions.

Institutional mechanisms for the advancement of women

The *Disability Discrimination Act 1992* (DDA)²⁷⁴ and the *National Disability Strategy 2010-2020* (NDS)²⁷⁵ remain the primary legislative and policy framework designed to promote and protect the rights of people with disability in Australia.

Whilst the *Disability Discrimination Act 1992* (DDA) and State/Territory based anti-discrimination legislation incorporate some of the rights under the CRPD,²⁷⁶ the scope of protected rights and grounds of discrimination are much narrower in Australia than under international human rights law.²⁷⁷ Existing Commonwealth and most State/Territory anti-discrimination legislation does not protect against systemic and intersectional discrimination and disability hate crimes. There are no effective legislative remedies to address intersectional discrimination.

The *National Disability Strategy 2010-2020* (NDS)²⁷⁸ is agreed to by all Australian governments and sets out the national policy framework to guide governments to meet their obligations under the CRPD.²⁷⁹ It sets out goals and objectives under six areas of mainstream and disability-specific public policy. These 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. In formally endorsing the NDS in 2011, all Australian governments 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.

However, despite these commitments, disaggregated data and the collection of information on the situation of women and girls with disability are not built into the NDS.²⁸⁰ The NDS, its Implementation Plans, and Progress Reports, its mechanisms and trend indicators for monitoring, review and evaluation, all remain un-gendered. They do not provide for, nor report on any focused,

gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights. They do not enable capacity at any level to address, monitor or evaluate the gender dimensions of any element of the NDS. The NDS also lacks actions and measurable outcomes to address systemic human rights violations, including in health, employment, education, freedom from violence, and forced medical treatment. The NDS lacks resourcing in implementation, monitoring and evaluation across its policy outcome areas and lacks accountability and implementation mechanisms.²⁸¹

There remains no comprehensive legal framework for the protection of human rights in Australia.

Key recommendations from the international human rights treaty bodies

In its 2019 Concluding Observations of Australia,²⁸² the **Committee on the Rights of Persons with Disabilities** expressed and reiterated a number of concerns from its 2013 initial review of Australia: the lack of an effective legislative framework to protect people with disability from systemic, intersectional and multiple forms of discrimination; a lack of an effective monitoring mechanism and insufficient resources to effectively implement the National Disability Strategy; limited opportunities for women and girls with disability to participate in the development of policies regarding the rights of women and gender equality; and the lack of nationally consistent measures for the collection and public reporting of disaggregated data on the full range of obligations contained in the Convention. The Committee recommended that Australia: enact a comprehensive national human rights law; strengthen anti-discrimination laws to address and prohibit systemic, intersectional and multiple forms of discrimination; provide sufficient resources and establish a formal

Institutional mechanisms for the advancement of women

monitoring mechanism for the National Disability Strategy; and develop a national disability data framework to ensure nationally consistent measures for the collection and public reporting of disaggregated data on the full range of obligations contained in the Convention, especially with regard to women, children and Indigenous persons with disabilities. The Committee further recommended that Australia strengthen measures to address multiple and intersectional forms of discrimination against women and girls with disability and, in particular, adequately support organisations and networks of women and girls with disability, particularly those representing Indigenous women and girls with disability, to engage in all initiatives to promote gender equality and ensure their effective participation in the development of policies for gender equality and the advancement of women and girls.

The **Committee on the Elimination of Discrimination against Women** reviewed Australia's implementation of CEDAW²⁸³ in 2018.²⁸⁴ The Committee expressed its concern at the lack of harmonisation of anti-discrimination legislation, and the absence of a Charter of Human Rights that guarantees equality between women and men or a general prohibition of discrimination against women. Amongst other things, the Committee recommended that Australia harmonise federal, state and territory legislation against discrimination in line with the Convention; and, fully incorporate the Convention into national law by adopting a Charter of Human Rights that includes a guarantee of equality between women and men, and prohibits discrimination against women. The Committee further recommended that Australia adopt a comprehensive national gender equality policy with performance indicators, and ensure sufficient human and financial resources to coordinate and monitor the implementation of that policy.

In 2019, the **Committee on the Rights of the Child** provided its

Concluding Observations²⁸⁵ to Australia following its review. The Committee recommended that Australia: enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout Australia; ensure adequate resources for the Parliamentary Joint Committee on Human Rights to effectively examine all proposed legislation and its impact on children's rights; ensure that the National Children's Commissioner has adequate and sufficient human, technical and financial resources to implement and monitor the application of the Convention; and establish by law mandatory consultations between the National Children's Commissioner and children on issues that affect them and ensure that the results of those consultations and any other recommendations made by the Commissioner are taken into consideration in law and policymaking. The Committee also recommended that Australia adopt a national comprehensive policy and strategy on children that encompasses all areas of the Convention, with sufficient human, technical and financial resources for its implementation; establish appropriate mechanisms and inclusive processes so that civil society, the community and children specifically may participate in all stages of the budget process, including formulation, implementation and evaluation; and ensure that data collected on children's rights cover all areas of the Convention, in particular those relating to violence, alternative care, natural disasters and children in conflict with the law, that they are disaggregated by age, sex, disability, geographic location, ethnic origin, national origin and socioeconomic background, and that they identify children in situations of vulnerability, such as Indigenous children, children with disability and asylum-seeking, refugee and migrant children.

In its 2017 Concluding observations²⁸⁶ on the fifth periodic report of Australia,²⁸⁷ the **Committee on Economic, Social and Cultural Rights** expressed its concern that women continue to experience disadvantages across key areas (including work, health, education,

and housing) and recommended that Australia intensify its efforts to address the obstacles to achieving substantive equality between men and women, including through the strengthening of temporary special measures. The Committee also recommended that Australia consider introducing a federal Charter of Rights that guarantees the full range of economic, social and cultural rights. In relation to the *National Disability Strategy 2010-2020*, the Committee expressed its concern at the slow progress in its implementation and its weak accountability and implementation mechanisms. The Committee recommended that Australia ensure full implementation of the National Disability Strategy by focusing on all the six areas covered and allocating the necessary resources. The Committee further recommended that Australia strengthen accountability mechanisms to ensure that people with disability fully enjoy their economic, social and cultural rights.

In its 2017 Concluding Observations²⁸⁸ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**,²⁸⁹ the Human Rights Committee recommended that Australia should take measures, including considering consolidating existing non-discrimination provisions in a comprehensive federal law, in order to ensure adequate and effective substantive and procedural protection against all forms of discrimination on all the prohibited grounds, including religion, and intersectional discrimination, as well as access to effective and appropriate remedies for all victims of discrimination.

Human rights of women



9. Human rights of women

The Platform for Action

The Platform for Action makes clear that the full and equal enjoyment of all human rights and fundamental freedoms by women and girls is essential for achieving gender equality. The Platform for Action called on Governments to: promote and protect the human rights of women, through the full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women; ensure equality and non-discrimination under the law and in practice; and achieve legal literacy.²⁹⁰

Women and girls with disability in Australia

Women and girls with disability in Australia continue to experience, and are at risk of, many extremely egregious human rights violations such as forced medical treatments and interventions; deprivation of liberty; restrictive practices; denial of the right to legal capacity; forced sterilisation, forced abortion, forced contraception; female genital mutilation; menstrual suppression; chemical and physical restraint; forced institutionalisation; forced isolation and segregation; withholding of medications; indefinite detention; forced marriage; 'sex normalising' practices' of persons with intersex variations, and sexual slavery.²⁹¹

Forced sterilisation²⁹² of women and girls with disability, is an ongoing practice that remains legal and sanctioned by Australian Governments.²⁹³ In many parts of the world, forced sterilisation is recognised as a particularly egregious form of gender-based violence that has no place in a civilised world.²⁹⁴ However, in Australia, it remains legal to forcibly sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest' as determined by a third party.

Australian State and Territory guardianship legislation and some other child protection acts²⁹⁵ regulate and provide a degree of

protection from forced sterilisation for all children and young people and adults with disability or intersex variations. However there is no law in Australia that explicitly prohibits forced sterilisation of children; or that prohibits forced sterilisation of adults without their full, prior and informed consent.²⁹⁶ Treatment decisions about intersex people encapsulate other issues, such as a desire to conduct 'normalising' surgery, and the neutrality of decision-making may be undermined.²⁹⁷

The Australian Government currently passes responsibility for action on forced sterilisation and 'sex normalising' practices to State and Territory jurisdictions; and retains the focus on regulation and non-binding guidelines rather than prohibition of such practices. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and 'sex normalising' medical interventions within Australia.²⁹⁸

Forced contraception of women and girls with disability through the use of menstrual suppressant drugs is a widespread, current practice in Australia and is rarely, if ever, subject to independent monitoring or review.²⁹⁹ Forced contraception is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse. It is a practice widely used in group homes and other forms of institutional settings and is often justified as a way of reducing the 'burden' on staff/carers who have to 'deal with' managing menstruation of disabled women and girls. In the case of persons with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.

Across Australia, mental health laws, policy and practice

authorise the forced treatment of women with disability, limiting individual rights to liberty and security and equal recognition before the law. Laws have failed to prevent, and in some cases actively condone unacceptable practices, including invasive and irreversible treatments (such as the authorisation of psychosurgery, electroconvulsive therapy,³⁰⁰ forced sterilisation, chemical, mechanical and physical restraint and seclusion).³⁰¹

Forty-four to 80% of people with disability who show 'behaviours of concern' are administered a form of chemical restraint,³⁰² between 50% and 60% are subjected to regular physical restraint,³⁰³ and those with multiple impairment and complex support needs are subjected to much higher levels of restraint and seclusion.³⁰⁴ More than a quarter of all people with intellectual disability will be subject at some time in their life to some form of restraint and/or seclusion.³⁰⁵

The use of forced treatments and restrictive practices on people with psychosocial disability has increased sharply in recent years. Available data about electroconvulsive 'Therapy' (ECT) performed on involuntary patients (that is, forcibly detained and treated without the person's consent) indicates that women are three times more likely than men to be subject to the practice, across all age cohorts.³⁰⁶

A high number of people with disability, including children, are administered psychotropic medication, physical restraint and seclusion under the guise of 'behaviour management' policies and practices, including in schools, disability and mental health facilities, hospitals, and aged care settings.³⁰⁷ There is no regulatory protective framework to protect children with disability from being subjected to behaviour modification and restrictive practices in schools.

A number of Australian laws, policies and practices deny or

diminish recognition of women with disability as persons before the law, and/or deny or diminish the right of a woman with disability to exercise legal capacity. This takes place in laws such as guardianship, estate management and mental health laws and affects areas such as financial services, voting, public office, board participation, access to justice, will making and deposition, providing evidence in court proceedings, and the opportunity for women with disability to choose what disability supports they need, who will provide them and when.³⁰⁸ Many women and girls with disability are not afforded the right to make their own decisions because others determine that they 'lack capacity' to do so. Such judgements often lead to substitute decision-making processes whereby others decide on a woman or girl's behalf what is in her 'best-interests'. This is particularly the case for women and girls with intellectual disability – where the diagnosis of intellectual disability is assumed to equate with a lack of capacity to make decisions.³⁰⁹

There remain significant issues with legislative, policy and practice frameworks, which result in the indefinite detention of people with disability (including women with disability), disproportionately experienced by Indigenous peoples with disability, people with intellectual disability and people with psychosocial disability.

All Australian jurisdictions have in place legislation that addresses a defendant within the criminal justice system and their 'fitness' to stand trial. These justice diversion provisions are applied when people with disability, particularly those with cognitive or psychosocial disability are deemed 'unfit' to stand trial. An unfitness test may arise as an issue before or during the trial process.³¹⁰

Justice diversion provisions have resulted in people with disability being detained indefinitely in prisons or psychiatric facilities without being convicted of a crime. In numerous cases,

people are being detained for a longer period than if they had been convicted.³¹¹ This situation is exacerbated by a lack of community based housing, therapeutic and disability support options available for people with disability who are deemed 'unfit' to stand trial.

The practice of indefinite detention is disproportionately experienced by Indigenous peoples with disability.³¹² A lack of transparency in data makes it difficult to quantify the number of people indefinitely detained, however evidence indicates, that there are at least 100 people detained across Australia without conviction in prisons, psychiatric units and forensic detention services under mental impairment legislation. These people are predominately Indigenous, have cognitive and/or psychosocial impairment, cultural communication barriers and/or hearing loss.³¹³ This issue intersects with the high rates of incarceration of Indigenous Australians, who whilst making up 2.5% of the Australian population, comprise at least 50% or one-half of the people detained without conviction.³¹⁴ In detention, people with disability are vulnerable to punitive treatment and practices, such as chemical and physical restraints, and solitary confinement.

There is no nationally consistent disaggregated data on the number of persons with disability in the criminal justice system, although available data shows significant over-representation, particularly for people with cognitive and psychosocial disability.³¹⁵

Indigenous young people, particularly those with disability are overrepresented in the youth justice system, including in detention-based supervision (24 times higher than the rate for non-Indigenous young people), and in community-based supervision (17 times higher than the rate for non-Indigenous young people).³¹⁶

Indigenous peoples with disability are 14 times more likely to be

imprisoned than the rest of the population.³¹⁷ 50% of the total prison population report a history of psychosocial disability,³¹⁸ almost one-third report a disability,³¹⁹ and 25%–30% of prisoners have an intellectual disability.³²⁰ Indigenous women are the fastest growing prison population in Australia. A significant proportion have cognitive impairment as well as an undiagnosed psychosocial disability.³²¹ People with disability are being sent to prison because there are limited options or alternative pathways for courts to consider.³²²

Women with disability engaging in the justice system face significant barriers, with many finding access to justice difficult, hostile and ineffectual. As a result, they are often left without legal redress. Women with disability report that the legal and justice system are not trained properly to support them, and feel they are denied the same opportunities to engage in the justice system as people without disability.³²³ Discriminatory attitudes, a lack of support services and programs and minimal provision of legal or procedural adjustments, often means that women with disability are viewed as not credible, not capable of giving evidence, unable to make legal decisions or participate in legal proceedings.

In 2016, the Australian Government made a voluntary commitment³²⁴ to improve the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment.³²⁵ In 2016 Australian Governments³²⁶ tabled the Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment. However, three years later, these Principles are yet to be consulted on, endorsed or implemented. People with disability in Australia, including women with disability, continue to experience indefinite detention in prisons, psychiatric units and forensic detention services.

Key recommendations from the international human rights treaty bodies

In its 2019 Concluding Observations of Australia,³²⁷ the **Committee on the Rights of Persons with Disabilities** expressed its serious concerns, including reiterating a number of concerns from its 2013 review regarding egregious human rights violations. In relation to forced sterilisation and forced medical interventions, the Committee expressed concern about the ongoing practice of forced sterilisation, forced abortion and forced contraception, particularly among women and girls with disability, and the unregulated use of involuntary, intrusive and irreversible surgery and medical interventions on intersex infants and children. In relation to equal recognition before the law, access to justice and liberty and security of the person, the Committee expressed concern about the lack of progress made to abolish substitute decision-making regimes and establish supported decision-making systems; the lack of nationally consistent disability justice plans to ensure that people with disability can access the same legal protections and redress as the rest of the community; the overrepresentation of convicted young people with disability in the youth justice system, especially those from Indigenous communities; legislation that still views people with disability as being 'unfit to plead'; absence of national disaggregated data at all stages of the criminal justice system, including data on the number of people 'unfit to plead' who are committed to custody in prison and other facilities; legislative frameworks, policies and practices that result in the arbitrary and indefinite detention and forced treatment of people with disability, particularly Indigenous peoples with disability; the ongoing practice of obliging persons with 'cognitive and mental impairment' to undergo treatment, including through indefinite detention in psychiatric centres; the commitment of people with intellectual or psychosocial disability to custody, often indefinitely or for

terms longer than those imposed in criminal convictions; the absence of data on the number of persons found not guilty due to 'cognitive or mental health impairment' indefinitely detained; and the practice of retaining and restraining children with disability in adult settings. In relation to freedom from torture and cruel, inhuman or degrading treatment or punishment, the Committee expressed concern about legislation, policies and practices that permit the use of psychotropic medications, physical restraints and seclusion under the guise of 'behaviour modification' and restrictive practices against people with disability, including children, in any setting, including in justice, education, health, psychosocial and aged care facilities; the reported abuse of young Indigenous people with disability by fellow prisoners and prison staff, the use of prolonged solitary confinement, and the lack of safe and accessible channels for making complaints; and the lack of engagement with people with disability, through their representative organisations, regarding the designation and establishment of a disability-inclusive national preventive mechanism under the Optional Protocol to the Convention Against Torture (OPCAT). The Committee recommended that Australia: adopt uniform legislation prohibiting forced sterilisation, the administration of contraception and the imposition of abortion procedures on women and girls with disability; adopt clear legislative provisions that explicitly prohibit unnecessary, invasive and irreversible medical interventions, including surgical, hormonal or other medical procedures on intersex children before they reach the legal age of consent; and provide adequate counselling and support for the families of intersex children and redress to intersex persons having undergone such medical procedures; prohibit the use of non-consensual electroconvulsive therapy on the basis of any form of impairment; and ensure that the free and informed consent of the person concerned is provided prior to any medical treatment. The Committee also recommended to: develop nationally consistent disability justice plans across

governments to ensure that people with disability are supported in accessing the same legal protections and redress as the rest of the community; review the legal situation of people whose equal recognition before the law is restricted and who have been declared unfit to stand trial; address the overrepresentation of young Indigenous people in the juvenile justice system and implement the recommendations contained in *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*; eliminate substitute decision-making, provide gender and culture-specific individualised support, including psychosocial support, for people with disability in the justice system, make information accessible and provide community-based sentencing options; ensure that training modules on working with people with disability and the Convention are incorporated into mandated training programs for police officers, prison officers, lawyers, judicial officers, judges and court staff; and collect data disaggregated by disability, age, gender, location and ethnicity at all stages of the criminal justice system, including on the number of persons unfit to plead who are committed to custody in prison and other facilities. The Committee further recommended that Australia: repeal laws and policies and cease practices that enable the deprivation of liberty on the basis of impairment and that enable forced medical interventions on people with disability, particularly Indigenous peoples with disability; implement the recommendations contained in the Senate Community Affairs References Committee 2016 report *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*; stop committing people with disability to custody and for indefinite terms or for terms longer than those imposed in criminal convictions; collect data on the number of people indefinitely detained and on the number of such persons detained on an annual basis, disaggregated by the nature of the offence, the length of the detention, disability, Indigenous and other origin, sex, age and jurisdiction, with the aim of reviewing their detention; and end the practice of

detaining and restraining children with disability in any setting. The Committee also recommended that Australia: establish a nationally consistent legislative and administrative framework for the protection of all people with disability, including children, from the use of psychotropic medications, physical restraints and seclusion and the elimination of restrictive practices, including corporal punishment, in all settings, including the home; introduce policies and measures to protect people with disability, including young Indigenous people with disability from abuse by fellow prisoners and prison staff and ensure that people with disability cannot be held in solitary confinement; and ensure that organisations of people with disability can effectively engage in the establishment and work of the OPCAT national preventive mechanism.

In its 2018 review³²⁸ of Australia's eighth periodic report³²⁹ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee expressed its concern at harmful practices against women and children occurring in Australia. The Committee recommended that Australia abolish the practices of the non-consensual administration of contraceptives to, the performance of abortion on and the sterilisation of women and girls with disabilities, and develop and enforce strict guidelines on the sexual and reproductive health rights of women and girls with disabilities who are unable to consent. The Committee also recommended that Australia adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures. In addition, the Committee recommended that Australia build the capacity of immigration and child protection workers, law enforcement officers and community organisations working on domestic

violence, health and education to detect and respond to cases of early and forced marriage and investigate and prosecute such cases.

In its 2019 Concluding Observations³³⁰ of Australia, the **Committee on the Rights of the Child** expressed its regret that previous recommendations to Australia had not been implemented. In relation to the administration of child justice, the Committee expressed its serious concern about the very low age of criminal responsibility; the enduring overrepresentation of Indigenous children and their parents and carers in the justice system; the continuing overrepresentation of children with disability in the justice system; children in detention subjected to verbal abuse and racist remarks, deliberately denied access to water, restrained in ways that are potentially dangerous and excessively subjected to isolation; the high number of children in detention, both on remand and after sentencing; children in detention not being separated from adults; the continuing existence of mandatory minimum sentences applicable to children in the Northern Territory and Western Australia; and children's lack of awareness about their rights and how to report abuses. In relation to family environment and alternative care, the Committee was seriously concerned about the fact that, despite 25 enquiries conducted since 2012, the child protection systems still do not have sufficient human, technical and financial resources and are still unable to provide adequate professional support to children. The Committee noted that this results in: an excessive reliance on the police and the criminal justice system when dealing with children's behavioural problems and an insufficient reliance on appropriate therapeutic services; badly trained and poorly supported staff; and children of different ages, experiences and backgrounds, in particular child offenders and child victims of abuse, being placed together. The Committee further expressed concern about the persistently high number of children in alternative care; the continuing

overrepresentation of Indigenous children in alternative care, often outside their communities; children with disability being more at risk of maltreatment in institutions; children in alternative care having limited access to mental health and therapeutic services. The Committee recommended that Australia bring its child justice system fully into line with the Convention by: raising the minimum age of criminal responsibility to an upper age of 14 years; immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of incarceration among Indigenous peoples; explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or to discipline children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators; actively promote non-judicial measures, such as diversion, mediation and counselling, and wherever possible, the use of non-custodial sentences such as probation or community service; if detention is unavoidable, ensure that children are detained in separate facilities; repeal mandatory minimum sentences for children in the Northern Territory and Western Australia; ensure that children with disability are not detained indefinitely without conviction and that their detention undergoes regular judicial review; and provide children in conflict with the law with information about their rights and how to report abuses. The Committee also recalled its previous recommendations, urging Australia to: strongly invest in measures to prevent removal of children from their families; to limit removal, when it is deemed necessary, to the shortest time possible; and to ensure that children, their families and communities participate in decision-making in order to guarantee an individualised and community-sensitive approach; ensure adequate human, technical and financial resources to child protection services and proper training to those working with and for children in alternative care; enhance preventive measures in order to avoid children drifting from care into crime; strongly invest in measures developed and

implemented by Indigenous children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities; provide adequate training to child protection carers on the rights and needs of children with disability to prevent their maltreatment and abuse; and ensure that children in alternative care have access to the mental health and therapeutic services necessary for healing and rehabilitation. Further, the Committee recommended that Australia strengthen its measures to raise awareness of the harmful effects of child marriage on the physical well-being and mental health of girls; and to enact legislation explicitly prohibiting coerced sterilisation of all children or unnecessary medical or surgical treatment, guaranteeing the bodily integrity and autonomy of intersex children and providing adequate support and counselling to families of intersex children.

In 2017, the **Committee on Economic, Social and Cultural Rights** released its Concluding Observations³³¹ on the fifth periodic report of Australia.³³² The Committee expressed its deep concern regarding the indefinite detention of people with disability; the large number of people with disability in contact with the criminal justice system (particularly indigenous peoples), and the fact that laws in Australia permit compulsory treatment, including forced sterilisation and electroconvulsive therapy. The Committee recommended that Australia: revise its approach to mental health and ensure full respect for the human rights of persons with cognitive or psychosocial disability; address the root causes of people with disability in contact with the criminal justice system; end indefinite detention of people with disability without conviction; and repeal all legislation that authorises medical intervention without the free, prior and informed consent of the person concerned, abolishing the use of restraint and the enforced administration of intrusive and irreversible treatments.

In 2017, the Human Rights Committee released its Concluding Observations³³³ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.³³⁴ The Committee expressed its concern at the ongoing practice of forced sterilisation of women and girls with disability. It also expressed its concern that infants and children born with intersex variations are sometimes subject to irreversible and invasive medical interventions. The Committee recommended that Australia abolish the practice of forced sterilisation of women and girls with disability. The Committee further recommended that Australia move to end irreversible medical treatment, especially surgery, of intersex infants and children, who are not yet able to provide fully informed and free consent, unless such procedures constitute an absolute medical necessity.

In its 2014 Concluding Observations³³⁵ following the review of the combined fourth and fifth periodic reports of Australia,³³⁶ the **Committee against Torture** recommended that Australia enact uniform national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied. The Committee also expressed its concern that overrepresentation of Indigenous peoples in prisons has a serious impact on Indigenous young people and Indigenous women. The Committee recommended that Australia increase its efforts to address the overrepresentation of Indigenous peoples in prisons, in particular its underlying causes, and guarantee that adequately funded, specific, qualified and free-of-charge legal and interpretation services are provided from the outset of deprivation of liberty.

Women and the media



9. Women and the media

The Platform for Action

The Platform for Action recognized the potential that exists for the media to make a contribution to gender equality. The Platform for Action called on States to increase the participation and access of women to expression and decision-making in and through the media and new technologies of communication and to promote a balanced and non-stereotyped portrayal of women in the media.³³⁷

Women and girls with disability in Australia

The vast majority of information about disability in the mass media remains largely negative. Disabling stereotypes which medicalise, patronise, criminalise and dehumanise disabled people abound in books, films, on television, and in the press. They form the bed-rock on which the attitudes towards, assumptions about and expectations of disabled people are based. They are fundamental to the discrimination and exploitation which disabled people encounter daily, and contribute significantly to their systematic exclusion from mainstream community life. They can, and do, have a profound effect on the self-image of people with disability themselves.

Although the representation of people with disability in the Australian media has improved over recent years, the representation of women and girls with disability remains limited. Images of disabled women and girls in the mass media are still largely negative or absent. If portrayed in a fictional or dramatic work, they are often utilised to represent a negative situation or character flaw (weakness, passivity, evil, sickness). If reported in a news or feature story, the disabled girl or woman is usually singled out as an object of pity or charity, or conversely, as a heroine for achieving the ordinary. Terminology used by media outlets, such as “inspirational,” “brave” and “courageous” gives the public the impression that people with disability should be

praised and viewed as heroic for simply doing everyday things.

Women and girls with disability are not exempt from the influence of messages that attempt to dictate what is desirable and what is not in a ‘real woman’. Mass media abounds with a preference toward youth, beauty, and ability, reinforcing the pernicious notion that women and girls with disability are somehow not young, beautiful or capable. These messages are often internalised, and have an impact on how all women, including women and girls with disability, see themselves.

Campaigns or content that are purposely striving to include marginalised women routinely miss out those with disability. Missing in the media are the everyday stories about girls and women with disability who are attending schools, participating in active family life, holding down jobs - part of the foreground and background of the rhythm and dynamics of communities all over the world. Women with disability constantly face stigma and varying degrees of struggle to achieve legitimacy, and the absence or misrepresentations of women with disability in the media only further disempowers them.

Key recommendations from the international human rights treaty bodies

In 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia’s compliance with the Convention on the Rights of Persons with Disabilities.³³⁸ The Committee expressed its concern about the lack of concerted efforts at all levels to promote awareness-raising efforts about disability, including campaigns promoting a positive image and awareness of the contribution of persons with disabilities, and the low level of participation of people with disability in awareness-raising efforts,

particularly women, Indigenous peoples, people with disability from culturally and linguistically diverse backgrounds and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons with disability, through their representative organisations. The Committee recommended that Australia develop a national government strategy to promote a positive image and awareness of the rights of all people with disability and that it ensure the consultation and participation of representative organisations of people with disability, particularly women, Indigenous people, people with disability from culturally and linguistically diverse backgrounds and LGBTIQ people with disability, in the development and delivery of all awareness-raising activities.

In its 2018 Concluding Observations³³⁹ of Australia, the **Convention on the Elimination of All Forms of Discrimination Against Women** expressed its concern at the absence of a holistic strategy to address negative social and cultural patterns in public discourse, the media, the workplace, schools, universities, health institutions and the judiciary that exacerbates discrimination against various groups of women on the basis of their gender, belonging to an indigenous group, migration, asylum or social status, religion, ethnicity, nationality, colour, age, disability, sexual orientation or gender identity. The Committee recommended that Australia develop a comprehensive strategy to overcome discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society and raise awareness of the benefits for Australian society of respecting and protecting the diversity of its population, aiming at the full inclusion of Indigenous women, migrant women and their daughters, women belonging to ethnic minority groups, refugee and asylum-seeking women, women with disability, foreign women, older women, women in poverty, women belonging to religious minority groups, lesbian, bisexual and transgender women and intersex persons.

In its 2019 Concluding Observations³⁴⁰ of Australia, the **Committee on the Rights of the Child** recommended that Australia strengthen its programs to raise awareness of the Convention, by engaging more with the media, including social media, in a child-friendly manner, and by promoting the active involvement of children in public outreach activities, including in measures targeting parents, social workers, teachers and law enforcement officials. The Committee also recommended that Australia include mandatory modules on human rights and the Convention in the school curriculum and in training programs for all professionals working with or for children, including all law enforcement officials, teachers, health personnel, social workers and personnel of childcare institutions, as well as State and local government officials. Further, the Committee recommended that awareness-raising campaigns aimed at government officials, the public and families be conducted to combat the stigmatisation of and prejudice against children with disability and promote a positive image of such children.

Women and the environment



11. Women and the environment

The Platform for Action

The Platform for Action called for building on the progress made at the United Nations Conference for Environment and Development (UNCED) in Rio de Janeiro in 1992 and for the full and equal participation of women and men as agents and beneficiaries of sustainable development. It called on States to actively involve women in environmental decision-making at all levels; integrate gender concerns and perspectives in sustainable development policies and programmes; and improve the assessment of development and environmental policies on women, including compliance with international obligations.³⁴¹

Women and girls with disability in Australia

There is no data or research in Australia on women with disability and the environment, including the impact on women and girls with disability from climate change and natural disasters.

Australia is witnessing a significant increase in both the severity and frequency of natural disasters, and the link between climate change and extreme events is increasingly being recognised. Research has shown that people with disability are disproportionately affected in disaster and emergency situations due to the lack of accessibility in evacuation, response, and recovery efforts, and exclusion of disability issues in planning and preparedness.³⁴² Research on the effects of disaster on people with disability confirms that people with disability are at higher risk than those without disability of death, injury, loss of property, difficulties during sheltering, vulnerability post-disaster, and require more intensive disaster management.³⁴³

It is increasingly clear that climate risk – as with disasters – exposes existing inequalities. The people who face the greatest levels of risk – and therefore require the highest resilience – are likely to be those that face the highest inequality and barriers

accessing their rights in everyday life. This includes people with disability, women, children, older persons, Indigenous peoples, people with chronic health conditions and other contextually marginalised people.³⁴⁴

Some people with disability may be especially vulnerable to extreme heat events due to increased sensitivity to keeping their body temperatures cool enough. For example, people with multiple sclerosis have been shown to experience greater pain and fatigue on hot days, and some people with spinal cord injuries do not have the ability to sweat as a means of cooling down. As such, extreme heat poses a very real threat to many disabled people. Severe storms and other extreme weather events can leave people with disability without electricity, which can be particularly problematic for those people with disability who require electricity-powered medical and other equipment to survive. The effects of drought can cause food and water shortages and insecurity. Combined with other social factors such as the number of people with disability living in poverty, the impacts of drought can be particularly dire for people with disability. Bushfires and floods can pose a very real threat to the lives of people with disability. Not only do people with disability face much more difficulty escaping these types of events, but those affected may also lose their critical mobility, accessibility devices, medical and related equipment in fires and/or floods that destroy or damage their homes.

Natural disasters - such as bushfires, floods, drought - can require people to relocate to other areas, either temporarily or permanently. Evacuation shelters designed to protect the community in the event of natural disasters are often difficult to access for people with disability - lacking ramps, railings, accessible toilets and other accessible facilities, including accessible information. Warning and evacuation systems can often be inaccessible for people with disability.

In Australia, there are no nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive supports during emergencies.³⁴⁵

Australia is a signatory to the Sendai Framework for Disaster Risk Reduction 2015-2030,³⁴⁶ which is a 15-year agreement with seven targets and four priorities for action which aim to achieve substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries. People with disability are acknowledged in the Sendai Framework - establishing them and their representative organisations as legitimate stakeholders in the design and implementation of disaster risk reduction policies. In the Australian context, the Department of Home Affairs is leading Australia's reporting against the Sendai Framework³⁴⁷ and driving implementation³⁴⁸ at a national level, however there is no mechanism for engagement with people with disability.

Key recommendations from the international human rights treaty bodies

In its 2019 Concluding Observations of Australia,³⁴⁹ the **Committee on the Rights of Persons with Disabilities** expressed its ongoing concern about the lack of nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive support during emergencies, and a mechanism for engagement with organisations of people with disability in the implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 at the national level and in its reporting process. The Committee reiterated its recommendation from its 2013 review that Australia, in close consultation with representative organisations of people with disability, establish a fully accessible and inclusive mechanism

to engage with people with disability in the implementation and monitoring of the Sendai Framework.

In its 2018 Concluding Observations³⁵⁰ of Australia, the **Convention on the Elimination of All Forms of Discrimination Against Women** recommended that Australia Adopt a human rights-based approach in the development of climate change responses, make women the central force for the development and implementation of activities relating to climate change at the local, national, regional and international levels, further reduce greenhouse gas emissions, notably those resulting from coal consumption and exports, and reinforce support for gender-sensitive disaster risk reduction and climate change adaptation within Australia and in surrounding small island States.

In 2019, the **Committee on the Rights of the Child** provided its Concluding Observations³⁵¹ to Australia following its review. The Committee expressed its strong concern about Australia's position that the Convention does not extend to protection from climate change, emphasising that the effects of climate change have an undeniable impact on children's rights, including in relation to the rights to life, survival and development, non-discrimination, health and an adequate standard of living. It also expressed concern that Australia has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in particular coal. Further, the Committee expressed its concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrated disrespect for the right of children to express their views on this important issue. The Committee recommended that Australia: ensure that children's views are taken into account in developing policies and programs addressing climate change, the environment and disaster risk management and to increase

children's awareness and preparedness for climate change and natural disasters; promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy; and develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment.

The Girl-Child



12. The Girl-Child

The Platform for Action

While issues of concern to girls cut across all 12 critical areas of concern, the Platform for Action gave specific attention to the persistent discrimination against and violation of the rights of the girl child. The Platform for Action identified nine strategic objectives on: eliminating all forms of discrimination; eliminating negative cultural attitudes and practices; promoting and protecting girls' rights; increasing awareness of girls' needs and potential; health and nutrition; eliminating economic exploitation; education, skills development and training; eradicating violence; promoting awareness and participation in social, economic and political life; and, strengthening the role of the family.³⁵²

Young women and girls with disability in Australia

A safe passage from childhood into adult life is the right of every young girl, including those with disability. But more than just having a right to safety, young women and girls with disability have the right to participate in their communities, to speak out and be listened to, to share in technological advancements and design them, to be creative, and to take the lead on matters that concern them. A fundamental prerequisite for young women and girls with disability to fully participate in all aspects of social, economic, and political life is the freedom to exercise agency - the freedom to make decisions for themselves about all aspects of their lives. Yet many young women and girls with disability are too often denied agency by stigma and prejudice that assumes they are less capable than they are, by laws and norms that discriminate against them and by barriers and inattention to their right to access services and information. Research shows that when young women and girls with disability are denied agency, they are less able to access services they need, such as medical, health and disability services, including sexual and reproductive health services, education, information technologies, and employment, which has important consequences for their

development.³⁵³

The unique intersection of age, gender and disability requires appropriate measures to ensure human rights are protected for young women and girls with disability. Targeted measures are needed not only to prevent young women and girls with disability from 'falling through the cracks', but also to address the way multiple forms of discrimination interact to render young women and girls with disability both invisible and as targets for the denial of their human rights.³⁵⁴

In the Australian context, there is a dearth of appropriate, accessible and inclusive youth-friendly information resources and engagement mechanisms for young women and girls with disability. The challenges young women and girls with disability face are often exacerbated by the absence of information about their lived experiences, especially information that takes into account their diversity and intersecting forms of discrimination. Mainstream national initiatives directed at children and young people often fail to include the voices of young women and girls with disability and fail to provide targeted, accessible child and youth friendly information for children and young persons with disability.³⁵⁵

In recognition of the need for targeted, focused measures to promote the rights of young women and girls with disability, the United Nations General Assembly has recently urged States parties to accelerate efforts to scale up accurate, age-appropriate comprehensive education that provides adolescent girls and young women with disability, with information in accessible and alternative communication formats on sexual and reproductive health, gender equality and women's empowerment, human rights, physical, psychological and pubertal development and power in relationships between women and men, to enable them to build self-esteem and informed decision-making,

communication and risk reduction skills and develop respectful relationships.³⁵⁶

Regardless of country or context, no group has ever been as severely restricted, or negatively treated, in respect of their sexual and reproductive rights, as girls and women with disability. Sexual and reproductive rights are fundamental human rights. They include the right to dignity, equality, autonomy and self-determination – the right of everyone to make free and informed decisions about, 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 enjoy and express their sexuality, be free from interference in making personal decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. It also includes the right to be free from all forms of violence, abuse, exploitation and neglect.³⁵⁷

Research indicates that girls with disability are 3 to 4 times more likely to experience violence, including sexual violence, than girls without disability.³⁵⁸ Girls and young women with disability are exposed to a broad range of violence perpetrated by carers, parents, guardians, peers, educators, service providers, and others, including dating partners. Violence can take many forms, including structural and institutional forms of gender-based violence related to law, the state and culture that girls and young women with disability not only experience, but are more at risk of³⁵⁹ – such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage.³⁶⁰

Forced sterilisation is prohibited by the international human rights treaties to which Australia is a party. Yet it remains a legal

practice in Australia. Girls and women with disability in Australia are at particular risk of forced and coerced sterilisation performed under the auspices of legitimate medical care or the consent of others in their name. Sterilisation is often claimed by medical, health and/or legal professionals as being a 'necessary treatment' in the so-called 'best interest' of the woman/girl concerned.³⁶¹

For many girls and young women with disability, knowledge of sexual and reproductive rights and health has been shown to be poor and access to information and education opportunities are limited. Sex education for girls and young women with disability is wholly inadequate, often focused exclusively on reproductive health and taught from a heterosexual perspective. Young persons with disability who identify as LGBTQI experience and are at risk of, particular forms of discrimination that lead to the denial of their rights. They commonly experience discrimination on the basis of their sexual orientation or gender identity and disability at school, at work, in institutional settings and supported living environments, and are at high risk for bullying and poor school outcomes. Girls and young women with disability are largely excluded and ignored in sexual and reproductive rights and health policy, service and program development, including the development of information, education and training resources.

Young women with disability are at increased risk of being denied the legal right to make decisions for themselves. The denial of legal capacity to young women with disability can exacerbate their risk of further violations of their human rights. Laws, policies and systems that deny young women with disability legal capacity and instead assign legal guardians or substitute-decision making regimes, render young women with disability invisible in their own age-appropriate decision-making processes. Girls with disability are often denied or limited in expressing their views in line with their evolving capacities and are often perceived as 'fixed' in their capacities to understand or participate in decision-making

affecting their lives. Their age-appropriate views or decisions are ignored, dismissed, or routinely substituted by third parties, including families, guardians, legal representatives, and service providers.

Research demonstrates that services and programs for young people routinely fail to be inclusive of young women and girls with disability.³⁶² Concerted efforts to raise awareness and disseminate accurate information about young women and girls with disability that challenge misconceptions and stereotypes is critical to promote their full participation and inclusion. Young women and girls with disability have identified that one of the most critical steps required for their empowerment is to ensure they have access to youth-friendly, targeted, accessible and inclusive information resources and engagement mechanisms that provide channels to have their voices heard and to exercise agency, raise their self-confidence and increase their power and authority to take decisions in all areas affecting their lives. The need for targeted initiatives that build the capacity of young women and girls with disability to learn about and understand their human rights has been identified by women and girls with disability in Australia as a priority issue.

Key recommendations from the international human rights treaty bodies

In its 2019 Concluding Observations of Australia,³⁶³ the **Committee on the Rights of Persons with Disabilities** recommended that Australia: adopt uniform national legislation prohibiting, in the absence of free and informed consent, the sterilisation of adults and children, the administration of contraception and the imposition of abortion procedures on women and girls with disability; adopt clear legislative provisions that explicitly prohibit unnecessary, invasive and irreversible

medical interventions, including surgical, hormonal or other medical procedures on intersex children before they reach the legal age of consent, and provide adequate counselling and support for the families of intersex children; amend legislation to guarantee that children with disability are provided with age-appropriate support and accommodations to express their views in all matters that affect their rights or interests; include a focus on the rights of children with disability in national plans of action for the realisation of the rights of the child; facilitate access to services under the National Disability Insurance Scheme for women and girls with disability, particularly Indigenous women and girls with disability; strengthen measures to address multiple and intersectional forms of discrimination against women and girls with disability; end the practice of detaining and restraining children with disability in any setting; ensure inclusion of women and girls with disability in the National Plan to Reduce Violence Against Women and their Children; ensure accessible gender and age sensitive domestic violence, sexual assault and related violence services that are inclusive of women and girls with disability; and address the methodological restrictions in data collection instruments used to capture data on violence against women and girls with disability.

In its 2018 review³⁶⁴ of Australia's eighth periodic report³⁶⁵ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee recommended that Australia abolish the practices of the non-consensual administration of contraceptives to, the performance of abortion on and the sterilisation of women and girls with disabilities, and develop and enforce strict guidelines on the sexual and reproductive health rights of women and girls with disability who are unable to consent.

In its 2012 Concluding Observations³⁶⁶ of Australia, the **Committee on the Rights of the Child** expressed its serious concern that the

absence of legislation prohibiting forced sterilisation of women and girls with disability is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities. The Committee recommended that Australia enact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability. The Committee also recommended that Australia intensify efforts to provide adolescents with education on sex and reproductive health, and improve the accessibility of contraception, counselling, and confidential health services, particularly among Indigenous and socioeconomically disadvantaged communities. The Committee also recommended that Australia promote the meaningful and empowered participation of all children, with particular attention to children in vulnerable situations.

In 2019, the **Committee on the Rights of the Child** provided its Concluding Observations³⁶⁷ to Australia following its review. The Committee recommended that Australia: enact legislation explicitly prohibiting forced or coerced sterilisation of girls with disability, or unnecessary medical or surgical treatment, guaranteeing the bodily integrity and autonomy of intersex children and providing adequate support and counselling to families of intersex children. The Committee also recommended strengthening measures to prevent teenage pregnancies among Indigenous girls, including by providing culturally sensitive and confidential medical advice and services; and continuing to provide children with education on sexual and reproductive health as part of the mandatory school curriculum, paying special attention to preventing early pregnancy and sexually transmitted infections. The Committee further recommended that the action plans under the National Framework for Protecting Australia's Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022 be reviewed to prioritise the implementation of key violence prevention and response measures for children of all ages, in particular against girls. The

Committee also recommended to strengthen its measures to raise awareness of the harmful effects of child marriage on the physical well-being and mental health of girls; and to enhance children's meaningful and empowered participation in the family, in the community and in schools, paying particular attention to girls, children with disability and Indigenous children.

In its 2017 Concluding Observations³⁶⁸ on Australia, the **Committee on Economic, Social and Cultural Rights** expressed its deep concern that laws in Australia permit compulsory treatment, including forced sterilisation and electroconvulsive therapy. The Committee recommended that Australia repeal all legislation that authorises medical intervention without the free, prior and informed consent of the concerned, abolishing the use of restraint and the enforced administration of intrusive and irreversible treatments.

In 2017, the Human Rights Committee released its Concluding Observations³⁶⁹ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.³⁷⁰ The Committee expressed its concern at the ongoing practice of forced sterilisation of women and girls with disability. It also expressed its concern that infants and children born with intersex variations are sometimes subject to irreversible and invasive medical interventions. The Committee recommended that Australia abolish the practice of forced sterilisation of women and girls with disability. The Committee further recommended that Australia move to end irreversible medical treatment, especially surgery, of intersex infants and children, who are not yet able to provide fully informed and free consent, unless such procedures constitute an absolute medical necessity.

In its 2014 Concluding Observations³⁷¹ following the review of the combined fourth and fifth periodic reports of Australia,³⁷² the **Committee against Torture** recommended that Australia enact

uniform national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied.

Endnotes



Endnotes

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