



Women  
With  
Disabilities  
Australia  
(WWDA)



# ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION OF PEOPLE WITH DISABILITY

## WWDA RESPONSE TO EDUCATION AND LEARNING ISSUES PAPER

MARCH 2020

**WOMEN WITH DISABILITIES AUSTRALIA**

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#### Winner

National Human Rights Award 2001

#### Winner

National Violence Prevention Award 1999

#### Winner

Tasmanian Women's Safety Award 2008

#### Nominee

French Republic's Human Rights Prize 2003

#### Nominee

UN Millennium Peace Prize for Women 2000

#### Certificate of Merit

Australian Crime & Violence Prevention Awards 2008



## ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

[Women With Disabilities Australia \(WWDA\)](#) is the award winning, national Disabled People's Organisation (DPO) for women and girls with all types of disability in Australia. The key purpose of WWDA is to promote and advance the human rights and freedoms of women and girls with disability. Our goal is to be a national voice for the rights of women and girls with disability and a national force to improve the lives and life chances of women and girls with disability.

WWDA represents more than two million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories of Australia, and is internationally recognised for our global leadership in advancing the human rights of women and girls with disability. As a DPO, WWDA is managed and run by women with disability, for women and girls with disability.

WWDA is a founding member of [Disabled People's Organisations Australia](#) (DPO Australia) along with First People's Disability Network Australia, National Ethnic Disability Alliance, and People with Disability Australia. DPO Australia is an alliance of four national disabled people's organisations in Australia. 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 interest, purpose and strategic priority.



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# 1 RECOMMENDATIONS

## RECOMMENDATIONS

- 1.1 In line with its Terms of Reference, which are based in the context of the CRPD, the Royal Commission should explicitly recognise as fundamental to all its work (including reports, community forums, stakeholder engagement, Hearings, publications, findings and recommendations):
  - the right to inclusive education as enshrined in the CRPD and elaborated in General Comment No.4; and
  - the failure to provide inclusive education as discrimination and systemic neglect.
- 1.2 Without opening debate about the right to inclusive education, the Royal Commission should examine the nature, effects and impact of discrimination and systemic neglect in both special and mainstream schools, including seeking evidence directly from people with disability, and holding governments, policy makers, educational practitioners and other stakeholders to account for discriminatory views.
- 1.3 A national Action Plan for Inclusive Education should be developed by Australian governments, and should include:
  - A nationally consistent legislative and policy framework that fully complies with CRPD article 24 and General Comment No. 4;
  - Specific actions to recognise and respond to intersectionality, including for women and girls with disability;
  - Measurable actions and rigorous accountability mechanisms for the transition from segregated models of education to inclusive education;
  - Reallocation of resources and funding from segregated education models to inclusive education;
  - Explicit recognition of the right to be free from violence, abuse, neglect and exploitation, including behaviour management that constitutes torture and ill-treatment, such as restrictive practices.
- 1.4 In line with its Terms of Reference, which are based in the context of the CRPD, the Royal Commission should:
  - explicitly recognise intersectionality as a key aspect of the human rights approach to disability;
  - ensure that an intersectional analysis is integral to all its work (including reports, community forums, stakeholder engagement, Hearings, publications, findings and recommendations);
  - identify, examine and address the specific issues, barriers, discrimination and human rights violations across all areas for women and girls with disability, as well as those that are specific to women and girls and/or that disproportionately affect women and girls with disability.
- 1.5 The Royal Commission should establish an expert advisory group of women and girls with disability and our representative organisations to provide advice on the situation of women and girls with disability in all areas of examination, to provide advice on specific areas of examination that disproportionately impact on women and girls with disability, to provide advice on the process of examinations, findings and recommendations, and on other related matters.
- 1.6 The Royal Commission, in consultation with women with disability and our representative organisations should conduct a stand-alone Public Hearing, as well as forums, roundtables and other engagement activities to examine the specific experiences of women and girls with disability in relation to violence, abuse, neglect and exploitation.
- 1.7 The Royal Commission should:
  - recognise ableism and intersecting forms of inequality and discrimination as the underlying drivers of violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
  - examine how ableism and intersecting forms of inequality and discrimination operate within Australian legal, policy and practice frameworks and community attitudes generally, and how they underpin violence, abuse, neglect and exploitation;
  - make recommendations that address these root causes of violence, abuse, neglect and exploitation and that lead to large scale responses and social transformation.

- 1.8 A coordinated, nationally consistent violence prevention and response strategy should be developed by Australia governments, with active participation of people with disability that comprehensively combats ableism and intersecting forms of inequality and discrimination through a range of measures aimed at facilitating social transformation, including:
- Review, amend or repeal of laws, policies and practice that do not comply with the CRPD and that give rise to violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
  - National surveys and awareness raising campaigns;
  - Political commitments and leadership from governments;
  - Budget allocations and resourcing;
  - Educational programs delivered as part of early childhood, school and tertiary curricula.
- 1.9 The Royal Commission should explicitly recognise restrictive practices as violations of article 15 of the CRPD and violations of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and as part of its examination of these practices, it should:
- Compel evidence from the Australian Government regarding its response, including specific actions to address the issues raised by the UN mandates in their letter regarding instances of violence, abuse, neglect and exploitation, torture and ill-treatment in educational settings;
  - Hold to account educational authorities that have used restrictive practices as a means of behaviour management and control of students with disability;
  - Make findings and recommendations for the urgent and immediate elimination of restrictive practices in the area of education and learning.
- 1.10 The Royal Commission should actively seek to engage with the Subcommittee for the Prevention of Torture (SPT) and the UN Working Group on Arbitrary Detention (WGAD) during their visit to Australia, with the aim of discussing the evidence it has received regarding torture and ill-treatment, to demonstrate support for the design and scope of the Australian National Preventive Mechanism (NPM) to be disability inclusive, including for the inclusion of disability specific places of detention, such as educational settings.
- 1.11 Australia should commission a comprehensive assessment, using intersectional research methodologies, on the situation and rights of women and girls with disability in Australia, in order to establish a baseline of disaggregated data and intersectional evidence to measure progress toward implementation of CRPD in all areas, including in the area of education and learning.
- 1.12 Australian governments should implement a nationally consistent framework to enable the collection, analysis and public reporting of disaggregated data across all jurisdictions, on all forms of gendered disability violence, abuse, neglect and exploitation experienced by women and girls with disability.
- 1.13 Australian governments should foster inclusive education policies and practices that actively allow children with disability, including girls with disability to express their will and preference and to participate in the development of educational policies.
- 1.14 As part of educational curricula, a comprehensive suite of educational programs should be developed by Australian governments and delivered across the life span, with the aim of:
- Fostering and valuing diversity and inclusion;
  - Challenging ableism and intersecting forms of inequality and discrimination, including for women and girls with disability;
  - Building knowledge, skills and strengths in recognising rights to bodily integrity and to be free from violence, abuse, neglect and exploitation;
  - Increasing opportunities and participation in decision-making and in speaking up about rights.



## 2 BACKGROUND





## BACKGROUND

- 2.1 The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) was established after many years of campaigning by people with disability and our representative organisations at both the domestic and international levels.<sup>1</sup>
- 2.2 Women With Disabilities Australia (WWDA), as part of Disabled People's Organisations Australia (DPO Australia) played a leading role in these advocacy efforts, and in particular, in exposing the gendered nature of violence against people with disability.
- 2.3 In 2015, our campaign efforts led to the establishment of the Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential settings, including the gender and age-related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability.<sup>2</sup> Recommendation 1 from that Senate Inquiry was that a Royal Commission be established.<sup>3</sup>
- 2.4 However, it wasn't until 2019, and after further concerted advocacy efforts that the Royal Commission was finally established by the Australian Government.
- 2.5 The Terms of Reference for the Royal Commission are contained in the Commonwealth Letters Patent that were signed by the Governor General on 4 April 2019.<sup>4</sup> These Terms of Reference explicitly state that:

“Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of exploitation, violence and abuse under the Convention on the Rights of Persons with Disabilities.”
- 2.6 The Terms of Reference reflect our campaign calls that the Royal Commission should have regard to “all forms of violence against, and abuse, neglect and exploitation of, people with disability, whatever the setting or context”.<sup>5</sup>
- 2.7 The Terms of Reference also reflect our calls for recognition of the intersectional dimensions of people with disability that make the experiences of violence, abuse, neglect and exploitation specific, unique and diverse:

“the specific experiences of violence against, and abuse, neglect and exploitation of, people with disability are multi-layered and influenced by experiences associated with their age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, including the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability.”<sup>6</sup>
- 2.8 The multi-layered or intersectional analysis required by the Terms of Reference, and enshrined in the Convention on the Rights of Persons with Disabilities (CRPD) are critical to ensuring that all forms of violence in all settings experienced by people with disability, including women and girls with disability is identified, understood and addressed.
- 2.9 As noted in the Royal Commission's Accessibility and Inclusion Strategy, it is now well established and recognised internationally and domestically that women and girls with disability are “far more likely to experience violence and abuse than women and girls without disability, and they are less likely to report this abuse for both personal and systemic reasons”.<sup>7</sup>
- 2.10 Australia has received numerous recommendations from the United Nations (UN) to investigate, address and remedy this situation for women and girls with disability. Very few of these recommendations have been implemented by successive Australian governments. The most recent key recommendations from UN Treaty Bodies relevant to the area of education and learning and violence, abuse, neglect and exploitation are outlined in the Appendix to this submission.



## **3 INTRODUCTION**

## INTRODUCTION

- 3.1 WWDA welcomes the opportunity to make this submission in response to the Royal Commission's Education and Learning Issues Paper (the Issues Paper).
- 3.2 As noted in the Issues Paper, the area of education and learning is both a site of violence, abuse, neglect and exploitation for students with disability and a critical facilitator of an inclusive society.<sup>8</sup>
- 3.3 However, given the growing trend towards special education, special units in mainstream schools, and the poor outcomes reported by students with disability,<sup>9</sup> the area of education and learning is not just a site of violence, abuse, neglect and exploitation, but also a form of neglect in itself.<sup>10</sup>
- 3.4 The right to inclusive education is clearly articulated in CRPD article 24, with implementation guidance provided in General comment 4 from the Committee on the Rights of Persons with Disabilities (CRPD Committee).<sup>11</sup> The right to inclusive education, and the neglect experienced by people with disability through the denial of this right, must be explicitly articulated and explored by the Royal Commission. This is discussed further in section 4 of this submission.
- 3.5 While it is recognised that "the nature of the experience of violence is intensified in frequency, extent and nature when gender and disability intersect",<sup>12</sup> the available data, research and evidence about this experience is lacking, and where it exists, it is largely focused within the area of domestic and family violence.<sup>13</sup>
- 3.6 The significant lack of disaggregated data, research and studies that apply an intersectional analysis in the area of education and learning makes it extremely difficult to understand the situation of women and girls with disability. However, as noted in section 8 of this submission, this understanding is critical for identifying the necessary specific measures for violence prevention, response and redress for women and girls with disability.
- 3.7 We note that the Royal Commission is examining violence, abuse, neglect and exploitation within separate service and life domains, such as in the area of education and learning, group homes, health and criminal justice. While we acknowledge that the task of examining all forms of violence in all settings is immense, we caution against focusing only on particular service settings and domains that merely leads to reform of those domains. A focus only on particular service settings and domains risks:
- ignoring the reality of the pervasive nature of violence, abuse, neglect and exploitation that can be experienced by people with disability across all domains and aspects of their lives, and the specific and unique forms of this violence for women and girls with disability; and
  - failing to expose the underpinning driver or enabler of violence, abuse, neglect and exploitation in the Australian law, policy and practice landscape and within society in general. As outlined in section 6 of this submission, ableism, and the resulting inequality and discrimination, including intersectional discrimination is a key driver of all forms of violence against people with disability in all settings.
- 3.8 For women and girls with disability, it is imperative that the intersection between ableism and gender inequality and discrimination is explicitly identified, examined and addressed. Intersectionality is outlined in section 5 of this submission.
- 3.9 Restrictive practices are often accepted and unregulated practices within educational settings, often under the guise of 'behaviour management'. In section 7, we outline how these practices constitute torture and ill-treatment under the CRPD and international human rights law and argue that they need to be understood and addressed by the Royal Commission within this framework.
- 3.10 Inclusive education has the potential to be a critical facilitator of human rights for people with disability, particular in its role in building knowledge, skills and capacity in decision-making and autonomy, and in

recognising all forms of violence and rights to bodily integrity. This is discussed in section 9.

- 3.11 Our submission provides an overview of key human rights issues and the intersection between gender and disability in relation to the area of education and learning. We highlight overarching concerns with aspects of the Royal Commission's focus in the area of education and learning and its lack of intersectional analysis in its work to date. We argue that human rights, strong adherence to the CRPD, and intersectionality needs to underpin the work of the Royal Commission not just in the area of education and learning but in all its work.
- 3.12 For a comprehensive discussion of the human rights approach to violence, abuse, neglect and exploitation against people with disability, including women and girls with disability, we draw the attention of the Royal Commission to our submission, as part of DPO Australia (formerly the Australian Cross Disability Alliance) to the Senate Inquiry into violence, abuse and neglect against people with disability.<sup>14</sup> This submission comprehensively examines the human rights conceptualisation of 'disability', 'intersectionality' and 'violence against people with disability'; provides information on the scope and prevalence of violence, including gendered disability violence; outlines human rights violations that constitute violence, abuse, neglect and exploitation against people with disability; and highlights failures in the Australian legislative, policy and service landscape in relation to violence.
- 3.13 For a comprehensive discussion of the human rights approach to violence, abuse, neglect and exploitation specific to women and girls with disability, we draw the attention of the Royal Commission to the paper, Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective.<sup>15</sup> This paper elaborates substantially on key points made in this submission.



## **4 INCLUSIVE EDUCATION – RIGHT DENIED**



## INCLUSIVE EDUCATION – RIGHT DENIED

- 4.1 As noted in the Issues Paper, the right to inclusive education is guaranteed in article 24 of the CRPD. Guidance on interpretation and implementation of article 24 is provided in General Comment No. 4 on the right to inclusive education. General Comment No. 4 makes clear that segregated models of education, including special schools or separate units within mainstream schools contravene the CRPD.<sup>16</sup>
- 4.2 This is reinforced in General Comment No.6 on equality and non-discrimination, which states that segregated models of education contravene the CRPD, and the failure to provide inclusive education is discrimination and a direct contravention of articles 5 and 24.<sup>17</sup>
- 4.3 People with disability rarely receive a genuine inclusive educational experience in Australia.<sup>18</sup> Over the past decade, segregation of students with disability has increased significantly, with a 35% increase in students with disability attending special schools.<sup>19</sup> Funding incentives support this increase, with higher funding going to children with disability if they attend a special school rather than a mainstream school.<sup>20</sup>
- 4.4 The National Disability Strategy 2010-2020 (NDS), which is the national plan for CRPD implementation, does commit to “an inclusive high-quality education system”<sup>21</sup> but the outcome has not been achieved.
- 4.5 The NDS does not contain measures to address the gender and disability inequality and intersectional discrimination experienced by women and girls with disability in relation to all areas of their life, including in the area of education and learning.<sup>22</sup>
- 4.6 The Disability Discrimination Act 1992 (Cth) (DDA) and the Disability Standards for Education (2005) do not provide a legislative or policy framework for inclusive education that fully complies with article 24 and General Comment No. 4.<sup>23</sup> The DDA also does not protect against systemic and intersectional discrimination.<sup>24</sup>
- 4.7 The increase in students with disability attending special schools demonstrates that Australia is not only not complying with its obligations under article 24, it is also taking regressive measures that are not compliant with international human rights standards of implementation. The right to inclusive education needs to be progressively implemented over time and within the maximum extent of available resources. It is not permissible to take regressive or ‘backward’ steps.<sup>25</sup>
- 4.8 The Australian Government clearly does not hold that segregated education is discrimination. In its most recent report to the CRPD Committee, Australia stated that it is meeting its obligations under article 24 by providing:

“an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education options including enrolment in mainstream classes in mainstream schools with additional support, specialist classes or units in mainstream schools and specialist schools”.<sup>26</sup>
- 4.9 The report goes on to suggest that the CRPD Committee should clarify that education can be offered through specialist classes or schools consistent with article 24.<sup>27</sup> This is of grave concern because Australia appears to be rejecting and/or misunderstanding internationally agreed human rights obligations, which recognise segregation as a form of discrimination.
- 4.10 A critical starting point for the Royal Commission in examining the area of education and learning must be to explicitly recognise segregated models of education in both ‘special’ and mainstream schools as discrimination.
- 4.11 In line with the definition of ‘neglect’ in the Issues Paper, the Royal Commission must also explicitly recognise that the effect of this discrimination constitutes systemic neglect.<sup>28</sup>
- 4.12 The Royal Commission examinations, findings and recommendations must aim to prevent this neglect and realise the right to inclusive education. This means that the Royal Commission could focus on, for example,

examining why Australian governments maintain and condone segregated models of education? how this segregation underpins violence, abuse, neglect and exploitation? what measures need to be taken at all levels of government, including accountability measures to prevent segregation and realise inclusion? what measures, including accountability measures need to be taken by all levels of education to facilitate the right to inclusive education for people with disability?

- 4.13 The Royal Commission should also allow for evidence to be provided by people with disability, including children with disability themselves. This would allow examination of how this systemic neglect is experienced by people with disability, including women and girls with disability, in terms of poor educational outcomes, the culture of low expectations and ongoing segregation, marginalisation and disadvantage, and the exposure to harmful educational practices, such as seclusion and forms of restraint.
- 4.14 While the Townsville Hearing on education and learning in the Queensland school system did to some extent examine some preliminary issues outlined in paragraphs 3.5 and 3.6 above, this examination was not based in the explicit recognition that segregated models of education constituted discrimination and that Australian governments needed to be accountable and address this discrimination. No evidence was provided directly by people with disability. Australian governments, educational authorities, unions and educational authorities were not held to account; there was no rebuttal made to witnesses regarding discriminatory views they expressed in favour of segregated education.
- 4.15 Of particular concern were remarks made at the end of the Townsville Hearing to the effect that the Royal Commission needed to hear from special schools so as to hear “the other side of the debate”, and the response indicated that the Royal Commission was open to hearing “all sides of the argument”.<sup>29</sup>
- 4.16 We would be extremely concerned if the Royal Commission was to canvass views in future hearings, forums and papers about the value of segregated models of education, thus opening up debate about the right to inclusive education and the right to non-discrimination in education for people with disability. These rights have already been negotiated and agreed and outlined in legally binding international human rights law through the CRPD.

## Recommendations

- In line with its Terms of Reference, which are based in the context of the CRPD, the Royal Commission should explicitly recognise as fundamental to all its work (including reports, community forums, stakeholder engagement, Hearings, publications, findings and recommendations):
  - the right to inclusive education as enshrined in the CRPD and elaborated in General Comment No.4; and
  - the failure to provide inclusive education as discrimination and systemic neglect.
- Without opening debate about the right to inclusive education, the Royal Commission should examine the nature, effects and impact of discrimination and systemic neglect in both special and mainstream schools, including seeking evidence directly from people with disability, and holding governments, policy makers, educational practitioners and other stakeholders to account for discriminatory views.
- A national Action Plan for Inclusive Education should be developed by Australian governments, and should include:
  - A nationally consistent legislative and policy framework that fully complies with CRPD article 24 and General Comment No. 4;
  - Specific actions to recognise and respond to intersectionality, including for women and girls with disability;
  - Measurable actions and rigorous accountability mechanisms for the transition from segregated models of education to inclusive education;
  - Reallocation of resources and funding from segregated education models to inclusive education;
  - Explicit recognition of the right to be free from violence, abuse, neglect and exploitation, including behaviour management that constitutes torture and ill-treatment, such as restrictive practices.



## **5 INTERSECTIONALITY**



## INTERSECTIONALITY

- 5.1 While the Terms of Reference establishing the Royal Commission require examination of the intersectional dimensions of violence, abuse, neglect and exploitation, we note that to date there has been little to no focus on the intersection between disability and gender. The Hearings, community forums and the Issues Papers have been gender neutral with little to no identification of the specific experiences of women and girls with disability.
- 5.2 The most recent Issues Paper on the criminal justice system does state that the Royal Commission will particularly look at “the experiences of First Nations people with disability, the experiences of culturally and linguistically diverse people with disability, and the experiences of women and children with disability”.<sup>30</sup> While this is welcome, we argue that the experiences of women and girls with disability need to be a cross-cutting theme throughout all the work of the Royal Commission.
- 5.3 The Issues Paper on education and learning does note that CRPD article 24 is guided by cross-cutting obligations, including article 7 on children with disability.<sup>31</sup> However, it does not explicitly reference Article 6 on women with disability as a cross-cutting obligation. The term ‘children’ is inclusive of girls with disability, but there is no gender specific content within the Issues Paper.
- 5.4 Intersectionality is a key element of the human rights approach to disability required by the CRPD.
- 5.5 People with disability, including women and girls with disability have their rights articulated and upheld through all the international human rights treaties to which Australia is a party.<sup>32</sup> However, until the development and adoption of the CRPD, the application of human rights to the issues and concerns of people with disability were largely invisible and not addressed.<sup>33</sup> The CRPD is a response to this lack of recognition of the rights of persons with disability.
- 5.6 Until the CRPD, the specific issues and concerns for women and girls with disability were mainly articulated, in varying degrees, within the jurisprudence developed under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).
- 5.7 However, the CRPD explicitly acknowledges different layers or intersections of identity, through its preamble paragraph (p):

“Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple and aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.
- 5.8 Intersectional discrimination acknowledges that people with disability do not experience discrimination in the same way as a homogenous group. It recognises the “multidimensional layers of identities, statuses and life realities”<sup>34</sup> that “interact with each other at the same time in such a way as to be inseparable”.<sup>35</sup>
- 5.9 Intersectional discrimination is specifically articulated for women and girls with disability and children with disability in the CRPD through the inclusion of article 6, Women with disabilities and article 7, Children with disabilities.
- 5.10 Intersectional discrimination recognises the diversity of women and girls with disability:

“They include indigenous women; refugee, migrant, asylum-seeking and internally displaced women; women in detention (hospitals, residential institutions, juvenile or correctional facilities and prisons); women living in poverty; women from different ethnic, religious and racial backgrounds; women with multiple disabilities and high levels of support; women with albinism;

and lesbian, bisexual and transgender women, as well as intersex persons.”<sup>36</sup>

- 5.11 Article 6 recognises “that women and girls with disabilities are subject to multiple discrimination”,<sup>37</sup> which establishes “the first binding intersectionality clause in a human rights treaty”.<sup>38</sup>
- 5.12 Importantly, article 6 is a cross-cutting article that relates to all other articles of the CRPD.<sup>39</sup> This means that the issues and concerns of women and girls with disability must be included in all actions to implement the CRPD, including the implementation of “positive measures... to ensure that women with disabilities are protected against multiple discrimination and can enjoy human rights and fundamental freedoms on an equal basis with others”.<sup>40</sup>
- 5.13 Article 6 ensures that the CRPD is not gender neutral, and this is reinforced by other elements within the CRPD:
- Preamble paragraph (s) states, “[e]mphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities”;
  - Article 3 (g) contains the principle “Equality between men and women”; and
  - Specific ‘sex’, ‘gender’ and ‘age’ references throughout the CRPD.<sup>41</sup>
- 5.14 Guidance on interpretation and implementation of article 6 has been developed by the CRPD Committee in its General Comment No. 3 (2016) on women and girls with disabilities.
- 5.15 This General Comment highlights that women and girls with disability experience the “same harmful practices”<sup>42</sup> committed against women without disability but also experience specific and unique forms of violence. This includes the absence of free and informed consent and legal compulsory detention and treatment, economic exploitation, violations of sexual and reproductive rights, and forms of violence that constitute torture and ill-treatment, such as forced or coerced sterilisation, the administration of electroshock treatment and the use of chemical, physical or mechanical restraints, and isolation and seclusion.<sup>43</sup>
- 5.16 The recognition that women and girls with disability are more likely to experience violence, abuse, neglect and exploitation than both men with disability and women and girls without disability warrants a concerted and specific focus on women and girls with disability within the Royal Commission. An intersectional analysis should be integral to all its work, not only to deliver on the Terms of Reference, but to also adequately investigate and make recommendations that respond to the specific situation of women and girls with disability, including in the area of education and learning.
- 5.17 Importantly, the Royal Commission needs to recognise that violence, abuse, neglect and exploitation of women and girls with disability cannot be confined to an examination of domestic and family violence, which is often the only area where there is focus on women and girls with disability. There needs to be recognition that the experiences of women and girls with disability are integral to all areas examined by the Royal Commission, and that there will also be areas that disproportionately impact on women and girls, such as violations of sexual and reproductive rights, which should also be examined by the Royal Commission.
- 5.18 The issues, barriers, discrimination and human rights violations that are specific to women and girls and/or that disproportionately affect women and girls with disability must be identified, analysed and addressed by the Royal Commission.

## Recommendations

- In line with its Terms of Reference, which are based in the context of the CRPD, the Royal

Commission should:

- explicitly recognise intersectionality as a key aspect of the human rights approach to disability;
  - ensure that an intersectional analysis is integral to all its work (including reports, community forums, stakeholder engagement, Hearings, publications, findings and recommendations);
  - identify, examine and address the specific issues, barriers, discrimination and human rights violations across all areas for women and girls with disability, as well as those that are specific to women and girls and/or that disproportionately affect women and girls with disability.
- The Royal Commission should establish an expert advisory group of women and girls with disability and our representative organisations to provide advice on the situation of women and girls with disability in all areas of examination, to provide advice on specific areas of examination that disproportionately impact on women and girls with disability, to provide advice on the process of examinations, findings and recommendations, and on other related matters.
  - The Royal Commission, in consultation with women with disability and our representative organisations should conduct a stand-alone Public Hearing, as well as forums, roundtables and other engagement activities to examine the specific experiences of women and girls with disability in relation to violence, abuse, neglect and exploitation.



## **6 INEQUALITY AND DISCRIMINATION UNDERPIN VIOLENCE**



## INEQUALITY AND DISCRIMINATION UNDERPIN VIOLENCE

- 6.1 It is now well understood that gender inequality underpins violence against women,<sup>44</sup> and that this inequality operates on many levels:

“from social and cultural norms (the dominant ideas about men and women in a society), to economic structures (such as the pay gap between men and women), to organisational, community, family and relationship practices.”<sup>45</sup>
- 6.2 It is recognised that to prevent violence against women, viewed as a “significant social problem”, there needs to be “a large scale response” to achieve a “social transformation”.<sup>46</sup> It is acknowledged that beliefs, behaviours and systems that excuse, justify or condone violence and inequality must be challenged and reformed.
- 6.3 While there are criticisms about the adequacy of the response to prevent violence against women, the current response in Australia includes state and national laws, national action plans, political commitments and budget allocations, national surveys, national awareness raising campaigns, inquiries, and educational programs delivered as part of the school curriculum.<sup>47</sup>
- 6.4 On the other hand, violence against people with disability is more often examined only in the context of the disability service system, the imputed ‘vulnerability’ of people with disability, the failure of policies and procedures, the lack of qualified and accredited staff and the lack of rigorous oversight and protective mechanisms. While these factors are important, rarely is the underlying driver of violence, abuse, neglect and exploitation - disability inequality and discrimination - identified or acknowledged, and consequently, there is no recognition of the need for a social transformation to address this situation.
- 6.5 The Report from Senate Inquiry into violence, abuse and neglect against people with disability highlighted the de-valuing of people with disability as an underlying cause of violence and recognised that “cultural attitudes are hard to shift and will take a long-term concerted effort from all stakeholders, with a lead role taken by government”.<sup>48</sup>
- 6.6 This de-valuing of people with disability is based in a medical model understanding of disability and is commonly called ‘ableism’. The medical model views disability as a ‘deficit’ within the individual, a deviation from bodily, cognitive and mental norms, which requires medical, rehabilitation, psychology and educational interventions to diagnose, treat or cure the individual.<sup>49</sup> The response to this has been to establish ‘special’ laws, policies, programs and arrangements that segregate, congregate and marginalise people with disability - special schools, special accommodation arrangements, segregated employment, segregated transport systems, special access arrangements, special sporting events, guardianship, financial management and mental health laws.
- 6.7 The social model of disability recognises disability as a social construct underpinned by power relations that oppress and discriminate against people with impairments.<sup>50</sup> Disability is not inherent within the individual but is the result of the way that society responds to impairment, with this response resulting in inequality and discrimination, including segregation on the basis of impairment.
- 6.8 The CRPD is based on the social model of disability, but goes further by codifying a human rights model of disability.<sup>51</sup> It recognises disability as a social construct, but also “values impairment as part of human diversity and human dignity”.<sup>52</sup> The inherent dignity of the human being is the focus of the human rights model of disability, rather than impairment. It “clarifies that impairment does not derogate human dignity nor does it encroach upon the disabled person’s status as a rights-bearer”.<sup>53</sup>
- 6.9 The influence of ableism is poorly recognised in Australia, with the medical model of disability still evident in Australian law, policy and practice. While, there has been greater recognition of the rights of people with disability, which has led to associated reforms, the impact of the medical model is evident in the continued reluctance within this reform agenda to comprehensively dismantle the ‘special’ laws, policies, programs and arrangements that

segregate, congregate and marginalise people with disability, including in the area of education and learning.

- 6.10 It is this medical or ableist view of people with disability that is the foundation of inequality and discrimination, which underpins the violence, abuse and exploitation experienced by people with disability.<sup>54</sup>
- 6.11 For women and girls with disability, gender inequality, disability inequality and intersectional discrimination are interlinked and inseparable. This means that the prevention of violence, abuse, neglect and exploitation requires explicit recognition and comprehensive dismantling of all forms of intersecting inequality and discrimination experienced by people with disability, including women and girls with disability.
- 6.12 The establishment of the Royal Commission is an opportunity to go beyond investigation of life domains, the operation of service systems, the quality of support workers, and protective mechanism responses, and to explicitly expose and address the underlying drivers or enablers of violence, abuse, neglect and exploitation. It is critical that there is a comprehensive investigation of ableism, inequality and intersectional discrimination in Australian law, policy and practice and in community attitudes generally so that findings and recommendations address root causes of violence, abuse, neglect and exploitation.
- 6.13 The risk for the Royal Commission in only focusing on separate service systems and life domains, is that the investigation and outcomes are narrowed to merely enhancing existing service systems, removing existing barriers and establishing or improving protective mechanisms, without identifying the overall social transformation required to prevent violence, abuse, neglect and exploitation against people with disability, including women and girls with disability.

## Recommendations

- The Royal Commission should:
  - recognise ableism and intersecting forms of inequality and discrimination as the underlying drivers of violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
  - examine how ableism and intersecting forms of inequality and discrimination operate within Australian legal, policy and practice frameworks and community attitudes generally, and how they underpin violence, abuse, neglect and exploitation;
  - make recommendations that address these root causes of violence, abuse, neglect and exploitation and that lead to large scale responses and social transformation.
  
- A coordinated, nationally consistent violence prevention and response strategy should be developed by Australian governments, with active participation of people with disability that comprehensively combats ableism and intersecting forms of inequality and discrimination through a range of measures aimed at social transformation, including:
  - Review, amend or repeal of laws, policies and practice that do not comply with the CRPD and that give rise to violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
  - National surveys and awareness raising campaigns;
  - Political commitments and leadership from governments;
  - Budget allocations and resourcing;
  - Educational programs delivered as part of early childhood, school and tertiary curricula.



## **7 RESTRICTIVE PRACTICES – TORTURE AND ILL-TREATMENT**

## RESTRICTIVE PRACTICES – TORTURE AND ILL-TREATMENT

- 7.1 Often, violence, abuse, neglect and exploitation are downplayed or sanitised as ‘service incidents’, ‘administrative infringements’, ‘a workplace training matter’ or ‘behaviour management’.<sup>55</sup>
- 7.2 The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur on Torture) has noted that restrictive practices “remain invisible or are being justified” as legitimate treatment, behaviour modification or management when “perpetrated against persons with disabilities” instead of being recognised as torture or other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment).<sup>56</sup>
- 7.3 Article 15 of the CRPD reaffirms the right of persons with disability to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 7.4 There is a high prevalence in the use of restrictive practices as a form of ‘behaviour management’ in educational settings.<sup>57</sup> Children and adults with disability are routinely subjected to behaviour management or restrictive practices that include chemical, mechanical, social and physical restraint, detention, seclusion, solitary confinement and exclusionary time out.<sup>58</sup> Children with disability have been restricted to fenced-off sections of a playground, confined to makeshift cages, locked in cupboards and tied to chairs.<sup>59</sup>
- 7.5 The use of restrictive practices desensitises both educational personnel and students with disability, undermining their ability to recognise these practices as unacceptable and as forms of violence, abuse, neglect and exploitation, and leads to acceptance of other forms violence and ill-treatment.<sup>60</sup>
- 7.6 In addition, children with disability in segregated models of education, both special schools and segregated units in mainstream schools, lack the community oversight and protective transparency that inclusive education affords.<sup>61</sup>
- 7.7 Women and girls with disability are disproportionately affected by violence, abuse, neglect and exploitation in educational settings, including restrictive practices,<sup>62</sup> and other forms of torture and ill-treatment more generally.<sup>63</sup>
- 7.8 A number of serious human rights violations against children with disability in educational settings, have been reported as a complaint, called a ‘communication’ in the UN system, to the UN Special Rapporteur on the Rights of Persons with Disabilities.<sup>64</sup> The violations included sexual harassment, abuse, rape, solitary confinement, restraints, corporal punishment, segregation, denial of reasonable accommodation and a lack of redress mechanisms.
- 7.9 In March 2017, a letter outlining these violations was sent to the Australian Government seeking further information and a response to specific questions regarding Australia’s legislative and policy measures to protect children with disability and promote their rights. The letter also provided a detailed outline of the international human rights law that applied to Australia with respect to the complaint. The seriousness of the violations in the complaint was reflected in the fact that the letter was sent jointly by the UN mandates of the Working Group on Arbitrary Detention, the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the right to education.<sup>65</sup>
- 7.10 WWDA is not aware of a public response to this letter, and there is no evidence of actions or measures at the national, state or territory levels to eliminate restrictive practices or to develop oversight and protective mechanisms in educational settings to protect children with disability.
- 7.11 Australia ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017. OPCAT obliges Australia to implement a National Preventive Mechanism (NPM) with powers to inspect, monitor and report on people in detention and



people deprived of their liberty.

- 7.12 The Special Rapporteur on Torture has called for an “absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement.”<sup>66</sup> An Australian NPM must seek to enforce this ban.
- 7.13 Australia is yet to finalise the design and scope of the NPM, but people with disability through their representative organisations, including WWDA, are strongly arguing for a disability inclusive NPM.<sup>67</sup> This is critical, as people with disability are over-represented in traditional places of detention, such as prisons and juvenile detention centres, but are also detained in disability specific and related institutions, such as locked dementia wards, mental health facilities, residential accommodation as well as educational settings, particularly ‘time out’ and seclusion rooms and segregated areas.<sup>68</sup>
- 7.14 OPCAT also obliges Australia to accept visits from the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The SPT visits places of detention and provides advice regarding NPM establishment.<sup>69</sup> Both the SPT and the UN Working Group on Arbitrary Detention (WGAD) intend to visit Australia in 2020, and submissions for a disability inclusive NPM have been submitted to both these groups by civil society, including DPOs as part of the Australian OPCAT Network.<sup>70</sup>
- 7.15 The Royal Commission has already heard reports of restrictive practices in educational settings,<sup>71</sup> and has noted that behaviour management and the use of restrictive practices “are very important topics, worthy and in need of detailed consideration... and work which the Commission will be undertaking into the future”.<sup>72</sup>
- 7.16 It is critical that any future examination of behaviour management and restrictive practices by the Royal Commission is conducted within the context of the human rights interpretation and understanding of violence, abuse, neglect, exploitation, torture and ill-treatment.
- 7.17 We would be very concerned if these topics were confined to merely discussions about enhancing educational policies and oversight mechanisms, reportable incident systems, teacher training and developing responsible and best practice behaviour management practices. The consequence of this limited examination is to maintain the ongoing minimising and downplaying of torture and ill-treatment perpetrated against people with disability by the education system, and the continual confinement of people with disability to objects of service system management and practice.

## Recommendations

- The Royal Commission should explicitly recognise restrictive practices as violations of article 15 of the CRPD and violations of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and as part of its examination of these practices, it should:
  - Compel evidence from the Australian Government regarding its response, including specific actions to address the issues raised by the UN mandates in their letter regarding instances of violence, abuse, neglect and exploitation, torture and ill-treatment in educational settings;
  - Hold to account educational settings that have used restrictive practices as a means of behaviour management and control of students with disability;
  - Make findings and recommendations for the urgent and immediate elimination of restrictive practices in the area of education and learning.
- The Royal Commission should actively seek to engage with the Subcommittee for the Prevention Against Torture (SPT) and the UN Working Group on Arbitrary Detention (WGAD) during their visit to Australia, with the aim of discussing the evidence it has received regarding torture and ill-treatment, to demonstrate support for the design and scope of the Australian National Preventive Mechanism (NPM) to be disability inclusive, including for the inclusion of disability specific places of detention, such as educational settings.



## **8 EXPOSING VIOLENCE – DISAGGREGATED DATA AND INTERSECTIONALITY**

## EXPOSING VIOLENCE – DISAGGREGATED DATA AND INTERSECTIONALITY

- 8.1 It is now well established that violence against women and girls with disability globally and in Australia is far more extensive, frequent and significantly more diverse in nature than violence amongst either their male counterparts or women without disability.<sup>73</sup>
- 8.2 While research studies have begun to focus on the experience of violence for women and girls with disability over the past decade, the focus of these studies has largely been on the incidence and experiences of women with disability in the area of domestic and family violence.<sup>74</sup>
- 8.3 There is little to no intersectional analysis, research or disaggregated data that examines the experience of violence, abuse and exploitation by specific groups of women and girls with disability, such as those who are Indigenous, those from culturally and linguistically diverse backgrounds, those who are migrants, refugees or asylum seekers, those who are lesbian, gay, bisexual, transgender or intersex, or those living in rural and remote communities.<sup>75</sup>
- 8.4 There is little to no disaggregated data or intersectional analysis available in Australia on the educational experiences of women and girls with disability,<sup>76</sup> including in relation to experiences of violence, abuse and exploitation in the area of education and learning.
- 8.5 There is data from the Australian Institute of Health and Welfare (AIHW) on the educational experiences of children and young people with disability, but this data is not disaggregated, or disaggregated data is not publicly available.<sup>77</sup>
- 8.6 In section 2 of the Issues Paper, a range of barriers and issues are outlined to highlight why inclusive education is not being achieved, but these barriers and issues are gender neutral. There is no intersectional analysis of these barriers.
- 8.7 Despite evidence that demonstrates high rates of suspension, restraint and seclusion of students with disability, there is no national data on this situation, nor are there regulatory or monitoring frameworks within education systems in relation to the use of restrictive practices.<sup>78</sup> There is no intersectional information that would highlight the situation of women and girls with disability in relation to suspension, restraint and seclusion.
- 8.8 There is evidence that students with disability regularly experience discrimination, an entrenched culture of low expectations, significantly high levels of bullying and harassment, and educational practices that allow for students to be subjected to a range of restrictive practices.<sup>79</sup> However, this evidence is gender neutral.
- 8.9 There are reports of serious human rights violations,<sup>80</sup> including sexual harassment, abuse and rape perpetrated against children with disability in schools, including incidents relayed during the Townsville Hearing of the Royal Commission,<sup>81</sup> but little to no disaggregated information that would elaborate on the gender-based nature of these incidents and the situation of girls with disability.
- 8.10 General Comment No. 4 notes that women and girls with disability in particular are:  
“disproportionately affected by violence and abuse, including physical and humiliating punishments by educational personnel, for example through the use of restraints and seclusion and bullying by others in and on route to school”.<sup>82</sup>
- 8.11 The Australian Human Rights Commission (AHRC) conducted a national, independent survey of university students into the nature, prevalence and reporting of sexual assault and sexual harassment at Australian universities.<sup>83</sup> Although the sample size was small, this survey found that 30% of students with disability compared to 21% of students without disability were sexually harassed in a university setting. The sexual harassment incident rate for men with disability was 24% compared to 16% of men without disability; and the

rate for women with disability was 39% compared to 32% of women without disability.<sup>84</sup>

8.12 The AHRC survey noted that people with disability are significantly underrepresented in higher education in Australia, and there was limited data available through the survey on incidents of sexual assault. However, the data did show that 3.9% of students with disability compared to 1.5% without disability were sexually assaulted in a university setting, although there was no gender disaggregation of this situation.<sup>85</sup>

8.13 The lack of disaggregated data and intersectional research in the area of education and learning significantly undermines the ability to understand the specific experiences of women and girls with disability. An intersectional analysis of the available evidence would be invaluable in identifying and implementing specific measures and programs for women and girls with disability in the area of education and learning. For example:

- Accessibility: are there accessible and safe sanitation facilities that allow for menstrual management support in educational facilities? Are women and girls with disability at risk of violence because of the lack of accessible and safe sanitation facilities? Are women and girls with disability discouraged, either personally or by an educational facility from attending school because of the lack of these facilities?
- Discrimination, suspension and expulsions: do women and girls with disability experience higher rates of discrimination, suspension and expulsion than other students? Are there gender-related factors that contribute to these higher or lower rates?
- Segregation: what gender differences, if any, are there in the segregation rates of students with disability in special schools and in segregated environments in mainstream schools?
- Restrictive practices: Are girls with disability subjected to higher incidences of restrictive practices compared to other students with disability? Are they more likely to be subjected to specific types of restrictive practices? Are there gender-based restrictive practices?
- Bullying and harassment: Does bullying and harassment have a gendered component, such as sexual harassment, threats of rape, derogatory gendered comments regarding beauty and appearance? Are these identified as gendered disability violence and linked to gender-based violence responses? How is gendered disability bullying and harassment addressed in school policies or educational curricula aimed at countering gender inequality, gender bias and / or gender-based violence?
- Diversity and inclusion: Are there gendered disability specific or disability inclusive diversity and inclusion programs for teachers and students with disability?

8.14 The lack of disaggregated data and intersectional research in the area of education and learning severely limits the ability to analyse, address, prevent, and respond to the intersectional discrimination and inequality that underpins violence, abuse, neglect and exploitation experienced by women and girls with disability.

## Recommendations

- Australia should commission a comprehensive assessment, using intersectional research methodologies, on the situation and rights of women and girls with disability in Australia, in order to establish a baseline of disaggregated data and intersectional evidence to measure progress toward implementation of CRPD in all areas, including in the area of education and learning.
- Australian governments should implement a nationally consistent framework to enable the collection, analysis and public reporting of disaggregated data across all jurisdictions, on all forms of gendered disability violence, abuse, neglect and exploitation experienced by women and girls with disability.



## **9 BUILDING STRENGTHS THROUGH INCLUSIVE EDUCATION**



## BUILDING STRENGTHS THROUGH INCLUSIVE EDUCATION

- 9.1 Inclusive education has a key role in facilitating the social transformation required to address the underpinning drivers of violence, abuse, neglect and exploitation against people with disability. It would end educational neglect, and also challenge ableism and the stereotypes, prejudices, inequality, discrimination and harmful practices that arise from ableism.
- 9.2 A key aspect of this social transformation is building the confidence, knowledge and skills of people with disability, including women and girls:
- to increase active and meaningful participation in decision-making in all aspects of their lives; and
  - in understanding the right to bodily integrity and to be free from violence, abuse, neglect and exploitation.
- 9.3 Many forms of violence, abuse, neglect and exploitation perpetrated against people with disability are the result of denial or limitations of legal capacity in contravention of article 12 of the CRPD.<sup>86</sup> This is particularly the situation for women and girls with disability who can more often experience denial of legal capacity and experience harmful practices as a result.<sup>87</sup>
- 9.4 Article 12 requires a shift from making decisions on behalf of people with disability in their 'best interests' to providing support for people with disability to express their own 'will and preference'. This shift from substitute decision-making to supported decision-making provides people with disability with "the ability to assert, exercise and enforce" their human rights as articulated in the CRPD.<sup>88</sup>
- 9.5 For children with disability, this requires recognising their "evolving capacities",<sup>89</sup> providing opportunities for children with disability to express their views freely and for these views to be "given due weight in accordance with their age and maturity."<sup>90</sup>
- 9.6 Inclusive education is a powerful facilitator in providing opportunities for students with disability to express their will and preference, to build "confidence to exercise legal capacity, providing the necessary support at all educational levels, including to diminish future requirements for support".<sup>91</sup>
- 9.7 Inclusive education could also actively involve students with disability in the development of policies, including gendered, accessible reporting and protection mechanisms, to address harmful disciplinary measures, bullying and harassment, including cyberbullying and gendered disability violence.<sup>92</sup>
- 9.8 There is research, reports and resources aimed at reducing gender biases in curricula and educational culture, as well as the roll-out of respectful relationship programs aimed at challenging the gender stereotypes and gender inequality that underpins violence against women and girls.<sup>93</sup>
- 9.9 However, women and girls with disability are not explicitly included nor is intersectional discrimination and inequality necessarily acknowledged in these reports and resources. Women and girls with disability do not have positive portrayals "in curricula, books, media, popular culture and so on".<sup>94</sup> They are likely to be excluded from sex education and respectful relationship programs and not develop a sense of their own bodily integrity, what constitutes respectful and equal relationships and what constitutes violence, abuse, neglect and exploitation in educational and other environments. They remain stereotyped as burdens and recipients of care, as passive, genderless, asexual or over-sexed and child-like regardless of age.<sup>95</sup> As a result, "[h]armful gender and disability stereotypes combine to fuel discriminatory attitudes, policies and practices..." against women and girls with disability,<sup>96</sup> which makes them extremely vulnerable to violence, abuse, neglect and exploitation.
- 9.10 The few respectful relationships programs aimed at women with disability and delivered by women with disability are invaluable.<sup>97</sup> However, these programs are usually focused on women rather than girls, they are specific to women with intellectual disability, and they focus on recognising and responding to domestic and family violence. They are often project based so not sustainable once funding runs out, and they are only available in limited locations. There are no comprehensive educational programs aimed at addressing both

harmful gender and disability stereotypes for all women and girls with disability that cover the life span beginning from early childhood education, through primary and secondary schooling, in tertiary education and other learning environments.

- 9.11 A core feature of inclusive education is respect for and valuing of diversity.<sup>98</sup> Programs to challenge the drivers of violence, abuse, neglect and exploitation – ableism, sexism, racism, homophobia etc; disability and gender inequality and intersectional discrimination - should be central aspects of an inclusive education throughout the life span.

## Recommendations

- Australian governments should foster inclusive education policies and practices that actively allow children with disability, including girls with disability to express their will and preference and to participate in the development of educational policies.
  
- As part of educational curricula, a comprehensive suite of educational programs should be developed by Australian governments and delivered across the life span, with the aim of:
  - Fostering and valuing diversity and inclusion;
  - Challenging ableism and intersecting forms of inequality and discrimination, including for women and girls with disability;
  - Building knowledge, skills and strengths in recognising rights to bodily integrity and to be free from violence, abuse, neglect and exploitation;
  - Increasing opportunities and participation in decision-making and in speaking up about rights.



## **10 APPENDIX**



## APPENDIX – CONCLUDING COMMENTS FROM UN TREATY BODIES

*This section of the Submission is taken from the 2019 publication: 'Disabled People's Organisations Australia and the National Women's Alliances, The Status of Women and Girls with Disability in Australia, Position Statement 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.' Women With Disabilities Australia, 2019. Written by Carolyn Frohmader for and on behalf of WWDA and DPO Australia. Available at: <http://wwda.org.au/wp-content/uploads/2019/12/The-Status-of-Women-and-Girls-with-Disability-Australia.pdf>*

- 10.1 The UN has made numerous recommendations, called concluding comments or concluding observations following periodic reviews of Australia under different treaty bodies. The following provides a summary of the most recent key recommendations from these treaty bodies in relation to education and learning and violence, abuse, neglect and exploitation.
- 10.1.1 Right to Inclusive Education:**
- 10.1.2 In September 2019, the CRPD Committee adopted its Concluding Observations following its review of Australia's compliance with the CRPD.<sup>99</sup> 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 CRPD 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.
- 10.1.3 The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) made a series of recommendations regarding education in its 2018 Concluding Observations of Australia.<sup>100</sup> 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.
- 10.1.4 In its 2019 Concluding Observations<sup>101</sup> of Australia, the Committee on the Rights of the Child (CRC Committee) 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.
- 10.1.5 In its 2017 Concluding observations<sup>102</sup> on the fifth periodic report of Australia, the Committee on Economic, Social and Cultural Rights (ESCR Committee) 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.

## **10.2 Right to freedom from violence, abuse, neglect and exploitation:**

- 10.2.1 In the September 2019 Concluding Observations, the CRPD 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; 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.
- 10.2.2 In its 2018 review 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. 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.
- 10.2.3 In its 2019 Concluding Observations the CRC Committee 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 re-traumatisation 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.
- 10.2.4 In its 2017 Concluding observations, the ESCR Committee 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.
- 10.2.5 In 2017, the Human Rights Committee released its Concluding Observations<sup>103</sup> on the sixth periodic report of Australia under the International Covenant on Civil and Political Rights. 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. 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. 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.

- 10.2.6 The Committee against Torture (CAT Committee) reviewed the combined fourth and fifth periodic reports of Australia in 2014. The Concluding Observations<sup>104</sup> 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.

### **10.3 Rights of the Child:**

- 10.3.1 In its 2019 Concluding Observations the CRPD Committee recommended that Australia: 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.
- 10.3.2 In 2018, 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.
- 10.3.3 In 2019, the CRC 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 provide children with education on sexual and reproductive health as part of the mandatory school curriculum. 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 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.

### **10.4 Rights to equality, non-discrimination and participation:**

- 10.4.1 In its 2019 Concluding Observations, the CRPD Committee 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 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.
- 10.4.2 The CEDAW 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.

- 10.4.3 In 2019, the CRC 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.
- 10.4.4 In 2017, the ESCR Committee 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.
- 10.4.5 In 2017, the Human Rights Committee recommended that Australia 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 intersectional discrimination, as well as access to effective and appropriate remedies for all victims of discrimination.



## **11 ENDNOTES**



## ENDNOTES

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- 3 Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, November 2015, Commonwealth of Australia, page xv. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)
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