



Women  
With  
Disabilities  
Australia  
(WWDA)



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

**WWDA  
RESPONSE TO  
GROUP HOMES  
ISSUES PAPER**

**JULY 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

#### Nominee

National Disability Awards 2017

## 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 the context of living arrangements for people with disability, including group homes, the Royal Commission should recognise article 19, *Living independently and being included in the community*, as wide-ranging and all-encompassing of CRPD rights, and as critical to the prevention of violence, abuse, neglect and exploitation, and ensure that its examination focuses on:
  - the role of living arrangements and supports in facilitating human dignity, independence, autonomy, freedom, and participation and inclusion in the community;
  - explicitly recognising segregated living arrangements as discrimination and as a form of systemic neglect;
  - the role of existing law, policy and practice in continuing to prevent the right to live independently and be included in the community, including through substitute-decision making mechanisms; policy that encourages new segregated housing models; policy and practice that obliges people with disability to live in particular living arrangements to obtain essential supports; and policy and strategy failures in relation to poverty alleviation, adequate standard of living, access to social and public housing, accessible housing design and construction, and full community inclusion and participation.
- 1.2 In line with the jurisprudence and recommendations of the CRPD Committee, Australia should withdraw its interpretative declaration on article 12, replace substitute decision-making mechanisms with supported decision-making, and implement a nationally consistent supported decision-making framework.
- 1.3 The National Disability Insurance Agency should:
  - review SDA and SIL policy and practice to ensure that people with disability are not forced into shared living and shared support arrangements;
  - provide NDIS participants with opportunities to review their accommodation and support arrangements, and to genuinely choose options that do not oblige shared living and support arrangements;
  - remove the group home category as a new build option for SDA; and
  - work with its Independent Advisory Council to identify repurposing options for existing group homes to transition into genuine non-segregated housing options that facilitate community participation and inclusion.
- 1.4 A national Deinstitutionalisation and Disability Housing Strategy should be developed by Australian governments in close consultation and participation with people with disability and their representative organisations, with the aim of including strategies and timeframes for:
  - the closure of residential institutional living arrangements for people with disability;
  - the development of genuine community-based housing and support options that facilitate autonomy, freedom and community inclusion;
  - an increase in the range, affordability and accessibility of public and social housing;
  - the amendment of the National Construction Code to mandate minimum universal access design features for all new and extensively modified housing.

1.5 The next ten-year National Disability Strategy (NDS) should recognise that the right to live independently and be included in the community is integral to achieving all NDS outcome areas, and should significantly increase its commitment and coordinated actions, including by:

- ensuring the NDS is underpinned by strong commitment to implementation of the full range of rights contained in the CRPD, including mechanisms for close consultation and active participation of people with disability through their representative organisations;
- establishing a centralised coordination mechanism, such as an independent Office of Disability Inclusion to drive the NDS across government and to ensure CRPD compliance;
- incorporating measurable outcomes within an accountability, evaluation and reporting framework;
- incorporating an intersectional framework, which includes gender-specific measures to progress, monitor, review and evaluate actions across all NDS outcome areas;
- implementing measures to ensure disaggregation of data across all policy areas;
- ensuring age-specific and gender-specific actions to prevent and respond to all forms of violence, abuse, neglect and exploitation of people with disability;
- developing strong linkages with other national plans and frameworks, such as the National Plan to Reduce Violence against Women and Their Children, the National Framework for Protecting Australia's Children;
- implementing measures to achieve commitments under the Sustainable Development Goals, particularly in relation to ending poverty and inequality, including gender inequality;
- ensuring research, development and implementation of universal design standards to achieve accessibility and community inclusion in all areas of life.

1.6 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.

1.7 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, 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.

1.8 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.

- 1.9 In the context of living arrangements, including group homes, the Royal Commission should not only examine the incidence, impact and response to domestic and family violence, but should also examine the incidence, impact and response to violations of sexual and reproductive autonomy as well as harmful gender norms, gender stereotyping and microaggressions.
- 1.10 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;
  - recognise that segregated living arrangements constitute discrimination, and facilitate violence, abuse, neglect and exploitation;
  - examine how ableism and intersecting forms of inequality and discrimination operate within Australian legal, policy and practice frameworks and through community attitudes generally, and how they underpin violence, abuse, neglect and exploitation;
  - make recommendations that address the root causes of violence, abuse, neglect and exploitation and that facilitate large scale responses and social transformation.
- 1.11 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, such as through:
- Review, amendment 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;
  - Establishing independent bodies, such as an independent Office of Disability Inclusion, to drive and coordinate intersectional research and policy and law reform;
  - Co-designed violence prevention and response programs and resources;
  - 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.
- 1.12 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 independently living and being included in the community.
- 1.13 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 gender-based violence, abuse, neglect and exploitation experienced by women and girls with disability.



- 1.14 The Australian Bureau of Statistics (ABS) should address the methodological restrictions and limitations of the Personal Safety Survey (PSS) in order to ensure a more accurate and comprehensive picture of gender-based violence in Australia.
- 1.15 Australian governments should develop nationally consistent legislation on the prevention of all forms of gender-based violence for all women and girls that reflects the definition of 'gender-based violence' outlined in the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation 35 'Gender-based Violence Against Women' (2017).
- 1.16 The Royal Commission should specifically examine the area of sexual and reproductive rights for people with disability, with a particular focus on women and girls with disability.
- 1.17 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:
- Examine the adequacy of the oversight function of the NDIS Quality and Safeguards Commission in relation to the elimination of restrictive practices, and the gaps in oversight for people with disability who are not NDIS participants;
  - Actively engage with the Commonwealth Ombudsman and its OPCAT Advisory Group, with the aim of discussing the evidence it has received regarding torture and ill-treatment, and 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 segregated living arrangements;
  - Make findings and recommendations for the urgent and immediate elimination of restrictive practices.
- 1.18 A comprehensive suite of violence prevention and response programs and resources should be funded by Australian governments, co-designed with women with disability for women with disability, and delivered across the life span and in institutional settings 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, to be free from violence, abuse, neglect and exploitation, and to be free from torture and ill-treatment;
  - Increasing opportunities and participation in decision-making and in speaking up about rights.
- 1.19 Australian governments should develop nationally consistent domestic and family violence legislation that covers institutional settings and includes a broad definition of domestic relationships; ensure this legislation is integrated into domestic and family violence response training for police, the judiciary and domestic and family violence services; and ensure that the *National Plan to Reduce Violence Against Women and Their Children* is amended to reflect this legislation by including institutional settings and a broad definition of domestic relationships.

- 1.20 The Australian Government should implement Recommendation 2 from the Senate Inquiry, which would establish a national, independent, statutory protection watchdog that has broad functions and powers, that covers all forms of violence against all people with disability, and that is not limited to the NDIS.
- 1.21 The National Disability Insurance Agency should develop, in close consultation with women with disability and their representative organisations, an NDIS Gender Strategy which should include measures to ensure that all forms of violence, including gender-based violence are identified and addressed through the NDIS planning process, that crisis response procedures are established for urgent plan reviews, and that pathways and protocols are established with domestic violence services and supports.



## 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 (Senate Inquiry).<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. 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.”<sup>5</sup>
- 2.5 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>6</sup>
- 2.6 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>7</sup>
- 2.7 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)<sup>8</sup> 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.

- 2.8 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>9</sup>
- 2.9 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 areas of independent living and being included in the community, 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 Group Homes Issues Paper (the Issues Paper).
- 3.2 As noted in the Issues Paper, the living arrangements of people with disability are a site of violence, abuse, neglect and exploitation. The examination of group homes is placed within the context of article 19 of the CRPD, *Living independently and being included in the community*. The questions in the Issues Paper seek views in relation to violence, abuse, neglect and exploitation experienced by people with disability in group homes as well as examples of good practice in group homes. However, this focus is limiting as article 19 is much broader and all-encompassing of CRPD rights than a discussion of appropriate and safe housing or accommodation models for people with disability.
- 3.3 Section 4 of this submission provides a discussion of article 19 and its integral importance to the implementation of all rights contained in the CRPD. Implementation of all of the elements of article 19 is interdependent on implementation of other CRPD articles. This means that an examination of living arrangements for people with disability cannot be limited to discussions of safe housing and support arrangements. Article 19 is *about autonomy and individual choice, liberty and security, freedom of movement and being a full participating member of the community on an equal basis with others*.
- 3.4 Violence, abuse, neglect and exploitation that is experienced by people with disability in various living arrangements, is often facilitated by Australian law, policy and practice that, in a number of areas continues to prevent the right to live independently and be included in the community. These areas are also outlined in Section 4.
- 3.5 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. Intersectional discrimination results in greater limitations on personal development, autonomy, liberty and security and freedom to choose where and with whom to live. Recognition of intersectionality is critical to the full implementation of article 19, and this is discussed in section 5 of this submission.
- 3.6 Article 19 requires the end of segregation and isolation of people with disability from the community in institutional environments including group homes. Segregation on the basis of impairment is discrimination and this must be explicitly articulated and explored by the Royal Commission. The ongoing reliance on institutional living arrangements, including group homes should also be considered as systemic neglect.
- 3.7 The pervasiveness of institutional living arrangements is underlined by a predominant ableist view that some people with disability are unable to live outside of institutional settings, such as group homes, or that institutions provide a safer environment for people with disability. Ableism remains prevalent in Australian laws, policy and practice, and it is ableism that enables violence, abuse, neglect and exploitation of people with disability. Just as gender inequality is well-recognised as the underpinning driver of violence against women, ableism and intersecting forms of inequality and discrimination are the drivers of violence against women with disability. Ableism, segregation and violence are discussed in section 6.

- 3.8 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>10</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>11</sup> The significant lack of disaggregated data, research and studies that apply an intersectional analysis makes it extremely difficult to understand the situation of women and girls with disability, including in the area of living arrangements. However, as outlined in section 7, this understanding is critical for identifying the necessary specific measures for violence prevention, response and redress for women and girls with disability.
- 3.9 Section 7 of this submission also outlines the gendered nature of violence, abuse, neglect and exploitation that often arise within living arrangements, including harmful gender norms and stereotypes, intersectional discrimination, domestic and family violence and violations of sexual and reproductive rights. Women with disability are also subjected to restrictive practices within living arrangements, and these practices constitute torture or other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment) under article 15 of the CRPD and international human rights law. The Royal Commission must recognise restrictive practices within this framework.
- 3.10 Existing law, policy and practice are unable to fully respond to and protect women and girls with disability from gender-based violence and intersectional discrimination and inequality. Gaps in domestic violence laws, the *National Disability Strategy 2010-2020*, the *National Plan to Reduce Violence Against Women and their Children 2010-2020*, the National Disability Insurance Scheme (NDIS) and the NDIS Quality and Safeguards Commission are discussed in section 7.
- 3.11 We note that the Royal Commission is largely 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. We acknowledge and welcome the most recent issues papers that focus on broader issues – Rights and Attitudes and Restrictive Practices – or that focus on the experiences of specific groups – First Nations People with Disability. 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 - ableism.
- 3.12 Our submission provides an overview of key human rights issues and the intersection between gender and disability in relation to living arrangements for people with disability. We highlight overarching concerns with aspects of the Royal Commission’s limited adherence to a human rights framework and lack of intersectional analysis in its work to date. Several of our comments are the same as comments made in our response to the Education Issues Paper, as they are equally applicable to this Issues Paper. We argue that



human rights, strong adherence to the CRPD, and intersectionality needs to underpin the work of the Royal Commission.

- 3.13 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>12</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 gender-based 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.
- 3.14 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>13</sup> This paper elaborates substantially on key points made in this submission.



## **4 LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY**



# LIVING INDEPENDENTLY AND BEING IN THE COMMUNITY

## 4.1 More than living arrangements and housing

- 4.1.1 The Issues Paper notes that “the living arrangements of people with disability are a key area of inquiry for the Royal Commission”<sup>14</sup> and rightly notes that these living arrangements are a site of violence, abuse, neglect and exploitation. This Issues Paper focuses specifically on group homes, with other living arrangements to be examined in future issues papers.<sup>15</sup>
- 4.1.2 The Issues Paper highlights article 19 of the CRPD Living independently and being included in the community as the context for the “human rights-based approach”<sup>16</sup> to the examination of group homes. The focus of discussion is on group homes as an accommodation model for people with disability, the regulations governing the building type and construction of group homes and the numbers of people that can be accommodated in group homes. The questions in the Issues Paper seek views in relation to violence, abuse, neglect and exploitation experienced by people with disability in group homes as well as examples of good practice in group homes. In the context of article 19 of the CRPD, this focus is limiting, as article 19 is much broader and all-encompassing of CRPD rights than a discussion of appropriate and safe housing or accommodation models for people with disability.
- 4.1.3 The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) provides comprehensive guidance on interpretation and implementation of the CRPD in its General Comments. General Comment No. 5 on living independently and being included in the community outlines the CRPD Committee’s guidance on article 19.<sup>17</sup> General Comment No. 5 makes clear that article 19 is about autonomy and individual choice, liberty and security, freedom of movement and being a full participating member of the community on an equal basis with others. An examination of living arrangements, including group homes for people with disability must be considered within this broad human rights context.

## 4.2 Dignity, autonomy, freedom and interdependence within society

- 4.2.1 Article 3 General principles of the CRPD outlines general principles that underpin the interpretation and implementation of substantive articles, including article 19. The general principles that “are the foundation of the right to live independently and be included in the community”<sup>18</sup> are article 3(a) - “Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons”<sup>19</sup> - and article 3 (c) - “Full and effective participation and inclusion in society”.<sup>20</sup>
- 4.2.2 These general principles are evident in article 19, which recognises the equal right of people with disability to live in the community, to be fully included and to participate in community life, with choices equal to others. It means that people with disability have the same right as everyone else to exercise “freedom of choice and control over decisions affecting one’s life with the maximum level of self-determination and interdependence within society”.<sup>21</sup>

- 4.2.3 The right articulated in article 19 is a translation of foundational international human rights law into the context of disability. The 1948 Universal Declaration of Human Rights (UDHR) emphasises that an individual’s personal development is dependent on being a part of the community;<sup>22</sup> the 1966 International Covenant on Civil and Political Rights (ICCPR) contains the right to liberty of movement and freedom to choose one’s residence;<sup>23</sup> and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the right to an adequate standard of living, including adequate food, clothing and housing.<sup>24</sup> These rights form the “indispensable conditions for human dignity and the free development of a person”.<sup>25</sup>
- 4.2.4 These rights are also articulated within the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in the context of race<sup>26</sup> and in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in the context of women.<sup>27</sup> In the context of children, the Convention on the Rights of the Child (CRC) specifies the rights of children not to be separated from their parents, except to protect from harm;<sup>28</sup> that parents and legal guardians should be provided with support in their child-rearing responsibilities;<sup>29</sup> and that children with disability should enjoy a dignified life that allows active participation in the community.<sup>30</sup>
- 4.2.5 Within article 19 of the CRPD, these foundational rights articulate the individual autonomy and self-determination of people with disability to freely make choices about where and with whom to live on an equal basis with others and to receive the disability and mainstream community supports required to ensure full participation and inclusion in all aspects of society. For children with disability, this means respecting their evolving capacities to express their own views and make their own choices, ensuring that age-appropriate and adequate support is provided to ensure their active participation in the community, including providing support to families and guardians to prevent institutionalisation of children. The right to grow up in a family is the core of the right to live independently and be included in the community for children with disability.<sup>31</sup>
- 4.2.6 The implementation of article 19 is critical to the realisation of other human rights for people with disability as it is “one of the widest ranging and most intersectional articles of the Convention and has to be considered as integral to the full implementation of the Convention.”<sup>32</sup> Implementation of article 19 requires taking effective and appropriate measures to ensure that people with disability:
- can choose their residence, and where and with whom they live on an equal basis with others;<sup>33</sup>
  - are not obliged to live in a particular living arrangement or setting;<sup>34</sup>
  - have access to a range of community support services, including personal assistance to support living and inclusion in the community, and to prevent isolation or segregation from the community;<sup>35</sup>
  - have access to mainstream community services and facilities on an equal basis with others.<sup>36</sup>
- 4.2.7 Implementation of all of the elements of article 19 is interdependent on implementation of other CRPD articles. An examination of the violence, abuse, neglect and exploitation that is experienced by people with disability in various

living arrangements, requires analysis of Australian law, policy and practice that, in a number of areas continues to prevent the right to live independently and be included in the community.

### 4.3 Equal recognition before the law

- 4.3.1 Personal autonomy to choose where and with whom to live is dependent on people with disability being able to exercise their full legal capacity on an equal basis with others.<sup>37</sup> Legal capacity – the ability to hold and exercise rights - is central to equality before the law, and is guaranteed in article 12 of the CRPD, Equal recognition before the law.
- 4.3.2 Equal recognition before the law is viewed as critical to the exercise of all other human rights,<sup>38</sup> including article 19. The right to exercise full legal capacity is essential to exercising choice and control over one’s life by choosing where to live, with whom to live and how to live, in accordance with one’s own will and preference. Legal capacity underpins personhood,<sup>39</sup> and is essential for human dignity and the personal agency and free personal development that is inherent to article 19. It is essential for making everyday decisions, such as when to get up, what to wear and what to eat, as well as larger life decisions, such as where to live and with whom to live, who to have relationships and friendships with, whether to consent to medical treatment, and how to spend money and manage finances.
- 4.3.3 Women with disability are more likely to be denied their right to legal capacity which has significant impacts on other rights, including the right to maintain sexual and reproductive autonomy, to found a family, to choose where and with whom to live, to be free from violence and to maintain bodily and mental integrity.<sup>40</sup>
- 4.3.4 Article 12 and article 19 are mutually reinforcing. In order for people with disability to have the opportunity to develop and express their will and preferences, they must “have the opportunity to live independently in the community and to make choices and to control their everyday lives, on an equal basis with others”.<sup>41</sup> Being included in the community facilitates the “social networks and naturally occurring community support (including friends, family and schools)” that is critical for supported decision-making.<sup>42</sup>
- 4.3.5 Globally and in Australia, legal capacity is consistently denied or limited for people with disability in legal systems, particularly through the substitute decision-making systems of guardianship, financial management and mental health laws. In the context of living arrangements, the choice of where to live and who to live with is often not the individual choice of people with disability but more often that of family members, guardians, NDIS nominees, NDIS planners, service providers and policy makers.<sup>43</sup>
- 4.3.6 Article 12 requires a shift from substitute decision-making systems and practices based on the ‘best interests’ principle to supported decision-making principles, standards and frameworks based on the rights, will and preferences of the individual with disability. Despite this, Australia continues to maintain that the CRPD “[a]llows for fully supported or substituted decision-making where necessary, as a last resort and subject to safeguards”.<sup>44</sup> This is the basis of the interpretative declaration<sup>45</sup>

that Australia made at the time of ratification of the CRPD in 2008. This position has been maintained over the past 12 years, despite the fact that there has been consistent jurisprudence from the CRPD Committee that formal and informal substitute-decision-making mechanisms are not compliant with the CRPD, and that these mechanisms must be replaced with fully supported-decision making mechanisms.<sup>46</sup>

- 4.3.7 Following its two reviews of Australia in 2013 and 2019, the CRPD Committee recommended the withdrawal of the interpretative declaration on article 12 and the replacement of substitute decision-making with supported decision-making.<sup>47</sup> During its 2019 review of Australia, the CRPD Committee noted that it “regretted the continued denial of decision-making capacity to persons with disabilities, which... affected all other areas of life and led to the ongoing practices of forced institutionalisation..., involuntary medical treatments including forced sterilisation and surgery...”<sup>48</sup>
- 4.3.8 In 2014, the Australian Law Reform Commission (ALRC) provided its final report from its inquiry into barriers to equal recognition before the law and legal capacity for people with disability.<sup>49</sup> It made 55 recommendations for reform, with its key recommendation focused on the establishment of National Decision-Making Principles and Guidelines to guide reform of Commonwealth, State and Territory laws and legal frameworks.<sup>50</sup> Following its 2019 review, the CRPD Committee recommended that Australia implement a “nationally consistent supported decision-making framework” as highlighted by the ALRC.<sup>51</sup> The Australian Government has still not provided its response to the ALRC Report or taken steps to implement the CRPD Committee recommendation.
- 4.3.9 For people with disability to be able to make meaningful choices in their lives, including where to live and with whom to live, and for the free development of the person, Australia needs to meet its obligations under article 12 and replace substitute decision-making with supported decision-making that respects the rights, will and preferences of people with disability.

#### 4.4 Liberty and security

- 4.4.1 The critical interrelationship between article 19 and article 14 Liberty and security of person reinforces the guarantee in article 19 that people with disability are not obliged to live in particular living arrangements. Article 14 is derived from the foundational right to liberty and security of the person contained in the ICCPR.<sup>52</sup> Applied to persons with disability, article 14 stipulates that people with disability enjoy the right to liberty and security of the person on an equal basis with others, and that the existence of impairment shall in no case justify a deprivation of liberty.
- 4.4.2 In the context of disability, the right to liberty and security of the person not only encompasses, for example, situations of indefinite detention without conviction in prisons and involuntary detention in psychiatric facilities, but all situations where people with disability are detained or compelled to remain based on impairment. In relation to living arrangements, people with disability are often compelled or obliged to live in circumstances amounting to detention by the way in which essential support services are tied to living arrangements. While no law may compel people

with disability to live in these environments, there is rarely any other options. In order to receive essential support, people with disability are compelled to remain in the family home or to live in disability supported accommodation arrangements, including large-scale institutions, group homes, and other facilities, such as aged care, boarding or rooming houses and psychiatric facilities.

- 4.4.3 People with disability have limited to no alternatives but to live in these arrangements if they are to have access to essential support services.<sup>53</sup> This amounts to involuntary and indefinite detention, which manifests through, for example:

“the inability of the person to choose an alternative place to live (which would provide the services essential for survival and well-being), the inability to choose with whom they will live, and the inevitable suppression of personal autonomy to externally imposed rules (such as meal times, meal composition, sleeping times, and personal care arrangements). Typically, such facilities also restrict, or entirely prevent, the person from leaving the facility, sometimes by overt means, such as by locking ward or unit doors, and sometimes by less obvious means, such as by not teaching independent living skills, or by failing to provide support to a person to leave the environment when they wish to. Being required to ‘visit’ the community in the company of others at times and places facility managers and staff choose is also an example of the involuntariness of such detention.”<sup>54</sup>

- 4.4.4 Witnesses during the Public Hearing on Homes and Living (Public Hearing) provided evidence about the lack of alternative housing options other than group homes, and for people who want or need to move, “it’s a revolving door of moving people around” from one group home to another.<sup>55</sup> People with disability are required to fit into accommodation models, rather than having options to make genuine choices about where to live on an equal basis with others:

“It’s not about fitting into a model that only exists. It’s about asking that person themselves: how do they want to live, where, and who do you want to provide the support, and that way we will be a lot closer to being included in the community. We just want what everyone else wants. We want an education. We want jobs. We want friends. We want relationships. It’s not that special. But we can’t do that if we’re forced to live where we don’t want to live.”<sup>56</sup>

- 4.4.5 The NDIS aims for NDIS participants to have choice and control over their lives, including in relation to their living arrangements. Under the NDIS, Specialist Disability Accommodation (SDA) provides the funding for eligible participants to choose their housing option, and Supported Independent Living (SIL) provides funding for eligible participants to choose essential daily support providers. The intention is to break the nexus between housing and support that leads to people with disability being compelled to live in particular living arrangements in order to receive essential support. However, the reality does not live up to this promise:

- Most SDA housing consists of group homes transferred to the NDIS from the States, and existing residents of those group homes were automatically deemed eligible for SDA funding so as to remain in their group home.<sup>57</sup> Many residents “acknowledged that they had typically not been shown or offered any other options” and were unaware that they could decide on alternative living

arrangements.<sup>58</sup>

- The Specialist Disability Accommodation Provider and Investor Brief<sup>59</sup> “expresses a vision for SDA housing with a clear bias toward shared models of housing” and indicates that the National Disability Insurance Agency (NDIA) will require most people with disability “to live in group-home style accommodation settings, even if it is not their preference”.<sup>60</sup>
- The Joint Standing Committee on the National Disability Insurance Scheme (Joint Standing Committee) has expressed concern that SIL arrangements “may force participants with SIL to live in shared settings, and may be perpetuating older models of disability support rather than delivering the innovations promised by the NDIS”.<sup>61</sup> While there is no policy that directs this approach, assessments of SIL by the NDIA appear to “lead the agency to prefer shared over individual arrangements in many cases”.<sup>62</sup>

4.4.6 Policy and practice in Australia continue to compel people with disability to live in particular living arrangements in order to receive essential supports. This needs to be urgently addressed if the right to live independently and be included in the community is to be realised.

## 4.5 Equality and non-discrimination

- 4.5.1 The principles of equality and non-discrimination are fundamental to international human rights law and enshrined in all the core human rights conventions. In the context of disability, article 5 of the CRPD Equality and non-discrimination incorporates the prohibition of segregation on the basis of impairment, reflecting the established principle in international law that segregation is inherently unequal and discriminatory.<sup>63</sup>
- 4.5.2 The inter-relationship between article 5 and article 19 reinforces that segregated approaches to living arrangements for people with disability, regardless of the ‘quality’ of these arrangements are inherently discriminatory and therefore a violation of human rights. Institutionalisation of all kinds is discriminatory “as it demonstrates a failure to create housing support and services in the community for persons with disabilities, who are forced to relinquish their participation in community life” in order to receive essential support and/or treatment.<sup>64</sup>
- 4.5.3 Segregation from community life is a predominant element of many of the living arrangements that people with disability are compelled to live in, including people forced to remain in the family home; for younger people with disability in nursing homes; people with disability involuntarily detained in psychiatric facilities; people with disability living in large institutions and smaller institutional settings, such as group homes; people with disability in boarding and rooming houses; and people with disability in various other unsafe and unsuitable accommodation models.
- 4.5.4 The lack of accessible housing alternatives in the community was a major reason for the introduction of SDA within the NDIS, with a focus on developing “accommodation for people who require specialist housing solutions”.<sup>65</sup> SDA aims to provide eligible people with disability choice of housing options given the lack of mainstream housing alternatives. Potentially, the SDA could address critical housing shortages, particularly for those who are living with ageing parents, younger people



in nursing homes, those who remain in hospitals, psychiatric facilities and other settings because of the lack of alternatives. While the SDA housing market is new, “it is expected to create thousands of new dwellings for people with disability over the next few years”<sup>66</sup> increasing choice in where to live and who to live with.

- 4.5.5 However, SDA is targeted to people with “very extreme functional impairment or very high support needs”<sup>67</sup> so only 6% of NDIS participants are eligible. In addition, and as noted above, most NDIS participants with SDA funding transitioned to the NDIS within an existing supported accommodation arrangement, particularly in group homes. The majority of these participants were not offered or not aware of other choices, and it is unclear what measures are being taken to ensure these participants will be able to canvass and make choices about other housing options that are not segregated and congregated living arrangements. Although SDA has enabled development of contemporary, non-segregated housing options, of great concern is the fact that the SDA rules and guidelines allow for the building of new group homes, with the group home being one of the most common building types, particularly in NSW.<sup>68</sup> This means that SDA is facilitating the continuation of segregated and congregate forms of housing for people with disability rather than ending these forms of housing.
- 4.5.6 Rather than enable further group home developments through SDA, the NDIA should remove group homes as an SDA new build option, and focus on repurposing existing group homes into genuine non-segregated housing options that facilitate community participation and inclusion. The Independent Advisory Council to the NDIS has prepared a range of advice on contemporary options for housing and support, including in relation to repurposing group homes.<sup>69</sup> For example, repurposing options for group homes should replicate genuine community living options, and could include group homes becoming ordinary residential housing for people with disability who have partners and families, for families who have family members with disability, or for shared housing for people with disability sharing with people with and without disability.
- 4.5.7 The ongoing predominance and support for the group home model of accommodation reinforces and maintains the segregation of people with disability from the community. It violates the human rights principles and standards of equality and non-discrimination and prevents realisation of the right to live independently and be included in the community.

## 4.6 Adequate standard of living and social protection

- 4.6.1 There is a critical interrelationship between Article 28 and article 19. The ICESCR right to an adequate standard of living is explicitly applied to people with disability by article 28 of the CRPD Adequate standard of living and social protection. Article 28 and article 19 cover some of the same subject matter, but they have a different focus in the context of living independently and being included in the community. Article 28 guarantees the right to an adequate standard of living, including the right to adequate housing and support services, while article 19 guarantees the right to liberty of movement and freedom to choose one’s residence by requiring “housing and support services to be structured and provided in ways that enable

independence, autonomy, participation and inclusion in the community.”<sup>70</sup>

- 4.6.2 Article 28 includes recognition of the right to adequate housing, the continuous improvement of living conditions, and the right to social protection. Article 28 is directed to living independently and being included in the community by stipulating that people with disability have a right to an adequate standard of living in order to facilitate their full participation and inclusion in community life on an equal basis with others. This includes access to affordable disability-related supports, social assistance with disability-related expenses, equal access to public housing programs, the provision of social protection and poverty alleviation programs, particularly for women and girls with disability and older people with disability.<sup>71</sup>
- 4.6.3 An adequate standard of living is not the reality for many people with disability, particularly women and girls with disability. In Australia, 45% of people with disability live in poverty which is more than double the average of other countries in the Organisation for Economic Cooperation and Development (OECD).<sup>72</sup> Women with disability “bear a disproportionate burden of poverty” and experience greater social exclusion due to socioeconomic disadvantage, intersectional discrimination, poor service access, inadequate and unsafe housing, violence, inadequate health care, and a lack of opportunities to actively participate in society.<sup>73</sup> Women with disability experience a greater risk of institutionalisation;<sup>74</sup> are over-represented in public housing; less likely to own their own homes; pay the highest level of their gross income on housing although they are in the lowest income brackets; are at increased risk of homelessness;<sup>75</sup> with older women being the fastest growing cohort of homeless Australians.<sup>76</sup>
- 4.6.4 Australia is a signatory to the UN Sustainable Development Goals (SDGs), which are 17 global goals to end poverty and inequality by focusing on a range of targets, including those to improve health, education, employment, economic growth and gender inequality.<sup>77</sup> The key response to the SDGs for people with disability in Australia is the National Disability Strategy 2010-2020 (NDS),<sup>78</sup> which is the 10 year national policy framework agreed by all levels of government to implement the CRPD and improve the lives of people with disability, including in the areas health, education, justice, employment, income support systems and infrastructure.<sup>79</sup> However, the NDS has not delivered on its goals, lacks accountability and evaluation mechanisms, has no centralised coordination mechanism and has been deprioritised by the introduction of the NDIS.<sup>80</sup> A new NDS is currently in development.
- 4.6.5 Most concerningly for women and girls with disability, the NDS remains gender neutral.<sup>81</sup> There are no gender-specific measures to progress, monitor, review or evaluate actions across the NDS outcome areas; there are no mechanisms for the collection of disaggregated data; and no reporting on the gender dimensions of any aspect of the NDS.<sup>82</sup>

## 4.7 Accessibility and universal design

- 4.7.1 A precondition for living independently and being included in the community for people with disability is the accessibility of mainstream places and facilities.<sup>83</sup> Article 9 Accessibility outlines measures for the removal of accessibility barriers that

prevent or limit people with disability from living independently and participating fully in all aspects of life. This includes barriers in relation to the built environment, facilities and services open to the public, transport, housing, cultural and recreational facilities, schools, information, technology and communications.

- 4.7.2 Article 4 General obligations includes a requirement for research and development of universally designed goods, services, equipment and facilities and the promotion of universally designed standards and guidelines.<sup>84</sup> In relation to article 9, universal design is a principal means to facilitate accessibility, and in the context of article 19, it provides for a barrier-free approach to independent living and inclusion in the community. It also “makes society accessible for all human beings, not only persons with disabilities”.<sup>85</sup> This includes through the development of universal design standards for accessibility across a range of areas and the incorporation of universal housing design in building and construction codes to ensure social and residential housing is accessible to all members of the community.<sup>86</sup>
- 4.7.3 The majority of people with disability are not eligible for housing through SDA or for any support under the NDIS, and are reliant on other forms of housing support, such as public housing or private rental. The lack of choice in where to live and with whom is underlined by the lack of accessible mainstream and public housing, and the continued reliance on disability specific models of accommodation or precarious forms of accommodation, such as boarding or rooming houses. The 2010 Livable Housing Design Guidelines provide aspirational targets for all new homes to incorporate universal housing design standards by 2020.<sup>87</sup> However, some ten years later, only 5% of new housing construction is expected to meet these standards,<sup>88</sup> leaving people with disability with little to no housing options in the community, reinforcing and maintaining segregation, social isolation and an inadequate standard of living.

## 4.8 Elements of institutionalisation

- 4.8.1 Segregation and isolation and the loss of liberty and security, personal choice, autonomy and freedom of movement are “defining elements” of institutionalisation.<sup>89</sup> These elements can occur in family homes, in large-scale institutions, disability supported accommodation arrangements, group homes and other facilities, such as aged care, boarding or rooming houses and psychiatric facilities.
- 4.8.2 There is significant evidence that clearly demonstrates that these defining elements of institutionalisation are inherent to group homes, and that they underline the conditions necessary for violence, abuse, neglect and exploitation to occur.<sup>90</sup>
- 4.8.3 Article 19 makes clear that institutional accommodation and support services are an explicit violation of human rights. The CRPD requires the elimination of segregated and socially isolated living arrangements where people with disability are obliged to live in order to receive daily support, and which deny or limit full inclusion in the community. It is not only about living “outside of residential institutions of all kinds”, but is also “about not losing personal choice and autonomy as a result of the imposition of certain life and living arrangements”.<sup>91</sup>

## 4.9 Transformational change, not accommodation models

- 4.9.1 It is critical that the Royal Commission’s examination of living arrangements of people with disability, including group homes, goes beyond a discussion of appropriate and safe housing and accommodation models for people with disability. Examining living arrangements as the only facilitator of independent living and being included in the community, reduces the focus of article 19 to particular disability accommodation and service settings and models. This is not only reductionist, but risks ignoring the significance of article 19 for ensuring human dignity, free personal development, interdependence within community, autonomy and freedom. Article 19 is the basis for the full implementation of the CRPD.
- 4.9.2 Examination of the living arrangements of people with disability within the context of article 19 will require broad examination and analysis by the Royal Commission, guided by questions such as:
- Are people with disability genuinely able to choose their living arrangements, the people they live with, and the supports that are provided?
  - How are people with disability supported to make their own choices about where they live and who they live with?
  - Are there laws, policy and practice that oblige people with disability to live in particular living arrangements and to share support workers with others?
  - Does housing and support arrangements for people with disability facilitate autonomy, freedom of movement, personal development and community inclusion?
  - Do people with disability choose and personally direct their support workers and services?
  - What specialised and mainstream measures or programs facilitate personal development, supported decision-making, leadership skills and community engagement?
  - What disability and mainstream supports exist to ensure accessibility and

inclusion in the community, including in relation to independent living skills, information, communications, accessible public transport, inclusive education, employment?

- Are there research programs focused on universal design, and are universal design standards, including universal housing design standards integrated into construction regulations?
- Why and how do governments continue to support and fund living arrangements that oblige people to live together in particular models, including group homes in order to receive essential support?
- Why is housing that is available to other members of the community not accessible and available to people with disability?

4.9.3 The Issues Paper and some of the discussion during the Public Hearing implies that good practice within group homes could potentially reform the group home model by, for example, changing protocols and practices, providing additional staff training and enhancing support to increase choices for residents. While there are examples of better group homes that provide greater independence, autonomy and social inclusion, the supported accommodation model has inherent limitations that prevent it from fulfilling the right to live independently and be included in the community. Better group homes still contain the defining elements of institutionalisation that are inconsistent with personal development, freedom of movement, autonomy, and liberty and security of the person.

4.9.4 The Issues Paper and discussion during the Public Hearing also sought information on alternative living arrangements to the group home model of accommodation. The ongoing reliance on institutional living arrangements for people with disability reflects the prevailing view that people with disability require different living and social arrangements than the those without disability. Discussion of 'models' and alternative living arrangements risks retaining the focus on disability specific accommodation models, 'special' living arrangements and different living alternatives to others in the community. It diminishes people with disability to objects within the institutionalised disability accommodation and service systems, with discussions focused on enhancements and improvements to these systems rather than transformational change that will enable autonomy, choice, freedom and community inclusion.

4.9.5 As institutional living arrangements, group homes diminish human dignity and inherently violate the CRPD and this should be explicitly acknowledged by the Royal Commission. In line with the definitions of violence, abuse, neglect and exploitation, the Royal Commission should also explicitly acknowledge that being compelled to live in group homes or any other living arrangement does not comply with articles 14 and 19 of the CRPD and constitutes a form of violence, abuse and systemic neglect.<sup>92</sup>

4.9.6 Article 19 requires transformational change that will include elimination of institutional living and support environments, the requirement for universal housing design, the establishment of genuine individualised supports that are freely chosen and directed by people with disability and that facilitate living within the community, and the removal of barriers to ensure accessibility to all aspects of community life.

## RECOMMENDATIONS

- In the context of living arrangements for people with disability, including group homes, the Royal Commission should recognise article 19, Living independently and being included in the community, as wide-ranging and all-encompassing of CRPD rights, and as critical to the prevention of violence, abuse, neglect and exploitation, and ensure that its examination focuses on:
  - the role of living arrangements and supports in facilitating human dignity, independence, autonomy, freedom, and participation and inclusion in the community;
  - explicitly recognising segregated living arrangements as discrimination and as a form of systemic neglect;
  - the role of existing law, policy and practice in continuing to prevent the right to live independently and be included in the community, including through substitute-decision making mechanisms; policy that encourages new segregated housing models; policy and practice that obliges people with disability to live in particular living arrangements to obtain essential supports; and policy and strategy failures in relation to poverty alleviation, adequate standard of living, access to social and public housing, accessible housing design and construction, and full community inclusion and participation.
- In line with the jurisprudence and recommendations of the CRPD Committee, Australia should withdraw its interpretative declaration on article 12, replace substitute decision-making mechanisms with supported decision-making, and implement a nationally consistent supported decision-making framework.
- The National Disability Insurance Agency should:
  - review SDA and SIL policy and practice to ensure that people with disability are not forced into shared living and shared support arrangements;
  - provide NDIS participants with opportunities to review their accommodation and support arrangements, and to genuinely choose options that do not oblige shared living and support arrangements;
  - remove the group home category as a new build option for SDA; and
  - work with its Independent Advisory Council to identify repurposing options for existing group homes to transition into genuine non-segregated housing options that facilitate community participation and inclusion.
- A national Deinstitutionalisation and Disability Housing Strategy should be developed by Australian governments in close consultation and participation with people with disability and their representative organisations, with the aim of including strategies and timeframes for:
  - the closure of residential institutional living arrangements for people with disability;
  - the development of genuine community-based housing and support options that facilitate autonomy, freedom and community inclusion;
  - an increase in the range, affordability and accessibility of public and social housing;
  - the amendment of the National Construction Code to mandate minimum universal access

design features for all new and extensively modified housing.

- The next ten-year National Disability Strategy (NDS) should recognise that the right to live independently and be included in the community is integral to achieving all NDS outcome areas, and should significantly increase its commitment and coordinated actions, including by:
  - ensuring the NDS is underpinned by strong commitment to implementation of the full range of rights contained in the CRPD, including mechanisms for close consultation and active participation of people with disability through their representative organisations;
  - establishing a centralised coordination mechanism, such as an independent Office of Disability Inclusion to drive the NDS across government and to ensure CRPD compliance;
  - incorporating measurable outcomes within an accountability, evaluation and reporting framework;
  - incorporating an intersectional framework, which includes gender-specific measures to progress, monitor, review and evaluate actions across all NDS outcome areas;
  - implementing measures to ensure disaggregation of data across all policy areas;
  - ensuring age-specific and gender-specific actions to prevent and respond to all forms of violence, abuse, neglect and exploitation of people with disability;
  - developing strong linkages with other national plans and frameworks, such as the National Plan to Reduce Violence against Women and Their Children, the National Framework for Protecting Australia's Children;
  - implementing measures to achieve commitments under the Sustainable Development Goals, particularly in relation to ending poverty and inequality, including gender inequality;
  - ensuring research, development and implementation of universal design standards to achieve accessibility and community inclusion in all areas of life.



## **5 INTERSECTIONALITY**





## INTERSECTIONALITY

- 5.1 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. WWDA notes there has been little focus on the intersection between disability and gender in the Issues Papers and in the Public Hearings to date. An intersectional analysis should be integral to all the work of the Royal Commission, 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 relation to the right to live independently and be included in the community.
- 5.2 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>93</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>94</sup> The CRPD is a response to this lack of recognition of the rights of people with disability.
- 5.3 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)*.
- 5.4 However, the CRPD explicitly acknowledges different layers or intersections of identity, through its preamble paragraph (p) that highlights concern 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”.<sup>95</sup>
- 5.5 Intersectional discrimination acknowledges that people with disability do not experience discrimination as a homogenous group. It recognises the “multidimensional layers of identities, statuses and life realities”<sup>96</sup> that “interact with each other at the same time in such a way as to be inseparable”.<sup>97</sup>
- 5.6 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*. 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>98</sup>
- 5.7 Article 6 recognises “that women and girls with disabilities are subject to multiple

discrimination”,<sup>99</sup> which establishes “the first binding intersectionality clause in a human rights treaty”.<sup>100</sup> Importantly, article 6 is a cross-cutting article that relates to all other articles of the CRPD.<sup>101</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>102</sup>

5.8 Article 6 ensures that the CRPD is not gender neutral, and this is reinforced by other elements within the CRPD:

- Preamble paragraph (s) emphasises “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 references to ‘sex’, ‘gender’ and ‘age’ are included throughout the CRPD.<sup>103</sup>

5.9 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*. This General Comment highlights that women and girls with disability “are more likely to be discriminated against than men and boys with disabilities and women and girls without disabilities”.<sup>104</sup> Intersectional discrimination means that women and girls with disability experience the “same harmful practices”<sup>105</sup> committed against women and girls without disability but they also experience specific and unique forms of violence. This includes the denial of free and informed consent, 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>106</sup>

5.10 Intersectional discrimination “can prevent the full and equal enjoyment of the right to live independently and to be included in the community”.<sup>107</sup> For women and girls with disability, intersectional discrimination results in greater limitations on personal development, autonomy, liberty and security and freedom to choose where and with whom to live.<sup>108</sup> They are more likely to live in poverty without an adequate standard of living.<sup>109</sup> There are greater risks of all forms of institutionalisation and violence, abuse, neglect and exploitation,<sup>110</sup> and this is particularly the case for older women with disability who experience greater difficulties in accessing adequate housing.<sup>111</sup> Personal choice and decision-making regarding sexual and reproductive health is often denied or ignored resulting in gender-based violence, such as imposed menstrual management and suppression practices, forced contraception, forced abortion and forced sterilisation.<sup>112</sup>

5.11 Recognition of intersectionality is critical to achieving the rights outlined in article 19. Article 19 ensures human dignity, personal development, interdependence within community, autonomy, freedom and individual choice. This necessarily requires explicit recognition of the diversity of individuals, cultures and communities. Implementation of article 19 cannot be biased towards specific age, gender, cultural, social, religious or other norms and values.<sup>113</sup> For women and girls with disability, housing and support arrangements need to facilitate their “full development, advancement and empowerment”,<sup>114</sup> which will require

challenging “patriarchal social patterns”, gender-based discrimination and inequality.<sup>115</sup>

- 5.12 During the Public Hearing, the issue of intersectionality was highlighted with brief discussion of how intersectional discrimination impacts on different groups of people, including women with disability, First Nations people with disability, people with disability from culturally and linguistically diverse backgrounds and people with disability from LGBTIQ+ communities.<sup>116</sup> WWDA welcomes this discussion, but notes that the Public Hearing provided limited opportunity to explore intersectional discrimination in detail.
- 5.13 For women with disability, the Public Hearing was largely confined to brief discussion of the application of family violence law to group homes,<sup>117</sup> and some practical examples regarding the area of domestic and family violence and sexual assault. While domestic and family violence and sexual assault in institutional settings and in the community are critical issues for examination by the Royal Commission, the experience of violence, abuse, neglect and exploitation of women and girls with disability cannot be confined to this. There also needs to be recognition of the subtler and more ambiguous, yet harmful daily prejudice and bias, commonly called microaggressions, that affect the well-being, sense of belonging and the full development of people with disability, and which reinforce societal norms.<sup>118</sup> Microaggressions are covert forms of discrimination that can be unintentionally conveyed by individuals, processes and systems, including by disability and mental health support workers, carers, medical and disability professionals, policy makers and service provider policies and practices.
- 5.14 Microaggressions experienced by women and girls with disability reinforce disability and gender stereotypes, inequalities and intersectional discrimination, which makes them extremely vulnerable to violence, abuse, neglect and exploitation. For example, during the Public Hearing, a witness outlined the situation of her daughter, who was not provided with support to shave her legs because the group home policy deemed it as a risk, although support workers assisted men to shave their faces.<sup>119</sup> The imposition of the group home policy denied the daughter the ability to freely exercise her autonomy about her personal care and grooming preferences. While this situation may be viewed as a ‘minor restriction’, it exemplifies how the priorities of the service provider overrode the woman’s choices and autonomy to freely express her personality and preferences. This ‘minor restriction’ is indicative of the gendered rules that often govern the lives of women with disability in many living arrangements, including group homes and that prevent free personal development, individual choice and personal expression. This violates article 19 and constitutes a form of systemic neglect.
- 5.15 Within the context of living arrangements, including in group homes, these microaggressions can be pervasive and normalised. Instead of facilitating personal development, microaggressions reinforce and perpetuate societal norms and power relations and facilitate a culture of violence, abuse, neglect and exploitation.
- 5.16 In the context of article 19, a comprehensive gender analysis of living arrangements, including group homes is required to expose individual, structural and systemic forms of gender-based violence, abuse, neglect and exploitation. For example, relevant questions include:
- Are there gender norms or biases that limit women and girls with disability from being able to choose where and with whom they live?
  - Are women and girls with disability able to choose the sex of their support staff and

their co-residents (if they share with others), and are these choices respected?

- Are group home residents supported to undertake household tasks and community activities based on personal preferences rather than gender norms and stereotypes?
- Are group home residents able to make their own personal care and grooming choices and receive support to exercise these choices?
- Are age and gender-based safety and violence prevention measures implemented within living arrangements? Are these measures decided with participation from the residents within the living arrangement, particularly women and girls with disability?
- Can women and girls with disability exercise sexual and reproductive autonomy, such as freely choosing menstrual management practices, contraception or abortion?
- Are all women with disability within the same living arrangement subjected to the same menstrual management or menstrual suppression and contraceptive practices?
- Have forced contraceptive practices increased the risk of sexual violence by removing the risk of pregnancy, and thus the visible evidence of such violence?
- Does chemical restraint reduce the ability of women and girls with disability to remember and report violence, abuse, neglect and exploitation?
- What specialised and mainstream measures or programs facilitate personal development, supported decision-making, leadership skills and community engagement for women and girls with disability?
- What measures or programs provide women and girls with disability ongoing support and information about gender and disability equality, respectful and healthy relationships, rights to bodily integrity and sexual and reproductive rights?
- Are there gender stereotypes and norms that prevent or limit personal relationship and friendship choices and sexual expression for women with disability?
- Are women with disability supported to access mainstream gender and age-appropriate violence prevention and response measures, such as 1800Respect and sexual assault counselling?
- Does housing and support arrangements for women and girls with disability facilitate autonomy, freedom of movement, personal development and community inclusion?
- What disability and mainstream supports exist to ensure accessibility and inclusion in the community, including in relation to independent living skills, information, communications, accessible public transport, inclusive education, employment?
- What measures are being taken by governments to address intersectional discrimination and gender and disability inequality?

5.17 Intersectionality is a key element of the human rights approach to disability required by the CRPD, and there needs to be practical application of intersectionality to the work of the Royal Commission, including in research, analysis, public hearings and examinations of issues.

5.18 The issues, barriers, intersectional discrimination and human rights violations that are specific to women and girls with disability 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, 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.
- In the context of living arrangements, including group homes, the Royal Commission should not only examine the incidence, impact and response to domestic and family violence, but should also examine the incidence, impact and response to violations of sexual and reproductive autonomy as well as harmful gender norms, gender stereotyping and microaggressions.



## **6 ABLEISM, SEGREGATION AND VIOLENCE**



## ABLEISM, SEGREGATION AND VIOLENCE

- 6.1 Article 19 responds to “one of the most pervasive human rights abuses experienced by persons with disability; their segregation and isolation from the community in institutional environments”.<sup>120</sup>
- 6.2 The Issues Paper highlights the long history of institutionalisation of people with disability from the late 1800s, the campaign by the disability rights movement for deinstitutionalisation from the 1970s, the gradual closure of large residential institutions and the development of other forms of accommodation, primarily the smaller group home supported accommodation model.<sup>121</sup>
- 6.3 The shift to the group home model of accommodation was viewed as facilitating greater quality of life and community participation. However, as noted above, the defining elements of institutionalisation are still inherent to this model. Article 19 requires much more than reducing the number of people living within a particular living arrangement; “this only results in the replacement of one type of institution with another”.<sup>122</sup>
- 6.4 Institutionalisation is characterised by segregation and isolation and the loss of liberty and security, personal choice, autonomy and freedom of movement. The Report from the Senate Inquiry found “that institutional and congregate care models of service delivery are themselves major factors in the prevalence of violence, abuse and neglect of people with disability.”<sup>123</sup>
- 6.5 The Report from the Senate Inquiry also highlighted that the de-valuing of people with disability is an underlying cause of violence, abuse and neglect, with this de-valuing permeating the “attitudes of individual disability workers, service delivery organisations and most disturbingly, government systems designed to protect the rights of individuals”.<sup>124</sup> The Report highlighted 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>125</sup>
- 6.6 The de-valuing of people with disability is commonly referred to as ‘ableism’, which is based in entrenched and seemingly neutral social beliefs or norms that de-value people with disability as human beings. Not only are these beliefs offensive to human dignity and human rights, they underpin and enable violence, abuse, neglect and exploitation.
- 6.7 Ableism is the foundation of the medical model of disability, where disability is viewed 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. 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 institutions, accommodation and living arrangements, segregated employment, segregated transport systems, special access arrangements, special sporting events, guardianship, financial management and mental health laws.
- 6.8 In contrast, the social model of disability differentiates between the concepts of disability and impairment. It recognises disability as a social construct underpinned by power relations that oppress and discriminate against people with impairments.<sup>126</sup> Impairment

is viewed as a personal characteristic that is one aspect of human diversity. 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.

- 6.9 The CRPD is based on the social model of disability, but goes further by codifying a human rights model of disability.<sup>127</sup> It recognises disability as a social construct, but also “values impairment as part of human diversity and human dignity”.<sup>128</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>129</sup> Human rights cannot be diminished for people with disability based on their impairment, as this would violate the foundational human rights principle that “[a]ll human beings are born free and equal in dignity and rights”.<sup>130</sup> The human rights model of disability negates the norms that underpin ableism.
- 6.10 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 incremental 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 living arrangements. The reliance on the group home as the predominant accommodation model for people with disability, including current policies that continue their development, exemplify this reluctance.
- 6.11 The pervasiveness of institutional living arrangements, including group homes is underlined by a predominant ableist view that some people with disability are unable to live outside of institutional settings, such as group homes, or that institutions provide a safer environment for people with disability. This is particularly the case for people with disability who are assessed as having ‘severe and profound’ impairments or ‘complex, high support needs’. Despite the fact that many people with disability who are categorised in this way already live in the community, the most recent findings from the Australian Bureau of Statistics (ABS) demonstrate that the likelihood of a person with disability living in institutional settings, including group homes increases with age and ‘disability severity’.<sup>131</sup>
- 6.12 Ableism is the foundation of inequality and discrimination, including segregation on the basis of impairment, and this underpins the violence, abuse and exploitation experienced by people with disability.<sup>132</sup> However, this is rarely acknowledged or addressed. 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 - inequality and discrimination - identified or acknowledged, and consequently, there is no recognition of the need for a social transformation to address this situation.
- 6.13 In comparison, it is now well understood that gender inequality underpins violence against women.<sup>133</sup> Gender inequality operates at many levels, “from social and cultural norms (the dominant ideas about men and women in society), to economic structures (such as the



pay gap between men and women), to organisational, community, family and relationship practices”.<sup>134</sup>

- 6.14 There is growing recognition that an intersectional approach is essential to prevent and respond to violence against women:

“The gendered drivers, and reinforcing factors, of violence against women should always be considered together with other forms of social, political and economic discrimination and inequality (such as racism or ableism), as these influence and intersect with gender inequality.”<sup>135</sup>

- 6.15 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>136</sup> It is acknowledged that beliefs, behaviours and systems that excuse, justify or condone violence and inequality must be challenged and reformed. 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>137</sup>

- 1.16 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. This includes their segregation in institutional environments. The rights guaranteed in article 19 require the removal of inequality and discrimination, including multiple and intersectional discrimination and positive gender and age-appropriate measures to ensure full development, advancement and empowerment of women and girls with disability.

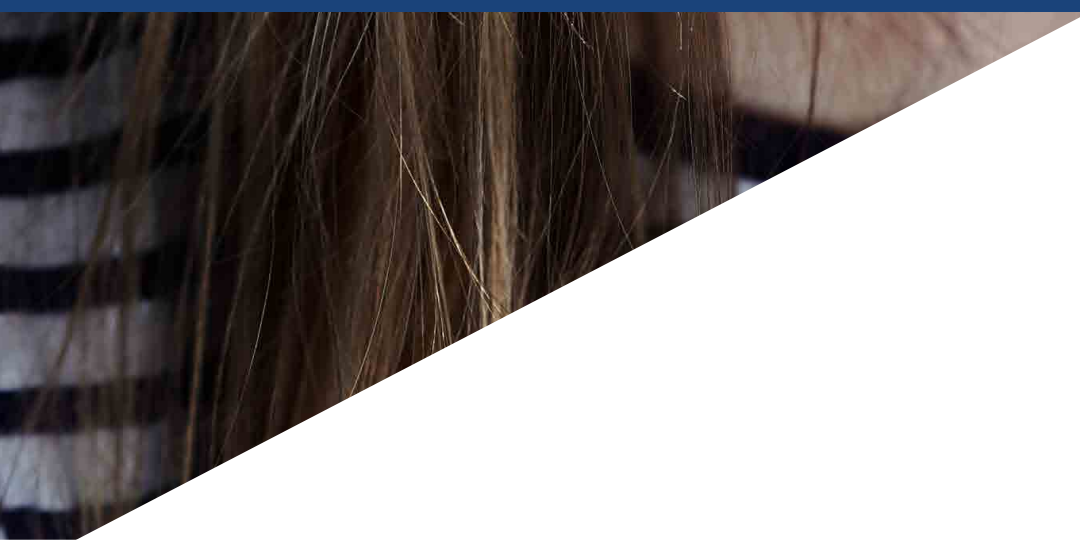
- 6.17 Implementation of article 19 is critical to combatting ableism and upholding the human rights model of disability. Article 19 demands the full inclusion of people with disability in all aspects of community life, and this necessarily means the end of inequality and discrimination, including segregation in living arrangements; and it demands respect for the full autonomy and individual freedom of people with disability. Article 19 underlines the conditions for human dignity and free personal development, respecting the diversity and intersectional identities of people with disability. In this way, implementation of article 19 is critical to the prevention of violence, abuse, neglect and exploitation.

## 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;
  - recognise that segregated living arrangements constitute discrimination, and facilitate violence, abuse, neglect and exploitation;
  - examine how ableism and intersecting forms of inequality and discrimination operate within Australian legal, policy and practice frameworks and through community attitudes generally, and how they underpin violence, abuse, neglect and exploitation;
  - make recommendations that address the root causes of violence, abuse, neglect and exploitation and that facilitate 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, such as through:
  - Review, amendment 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;
  - Establishing independent bodies, such as an independent Office of Disability Inclusion, to drive and coordinate intersectional research and policy and law reform;
  - Co-designed violence prevention and response programs and resources;
  - 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.



# **10 EXPOSING AND RESPONDING TO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION**



# EXPOSING AND RESPONDING TO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION

## 7.1 Intersectional research and disaggregated data

- 7.1.1 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>138</sup>
- 7.1.2 Nevertheless, there is a significant lack of disaggregated data, research and information across all life domains that prevents development of a comprehensive evidence base on the situation of women and girls with disability in Australia.<sup>139</sup> This results in women and girls with disability being invisible and marginalised in society and being largely excluded from policies, programs, services and measures to progress disability and gender equality.<sup>140</sup>
- 7.1.3 This issue has consistently been raised by WWDA over many decades, with few measures taken to rectify it. WWDA has had to source and analyse a range of data sources, reports and information to compile comprehensive data and information on the situation of women and girls with disability in Australia, including in relation to violence, abuse, neglect and exploitation.<sup>141</sup>
- 7.1.4 There is little to no intersectional analysis, research or disaggregated data that examines the experience of violence, abuse, neglect 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>142</sup>
- 7.1.5 The ABS 2016 Personal Safety Survey (PSS) is a key source of data that collects information on the nature and extent of violence experienced by men and women aged 18 years and over.<sup>143</sup> The most recent PSS has found that women with disability were more likely to have experienced violence in the preceding 12 months than women without disability.<sup>144</sup> However, the PSS only surveys people living in private dwellings and excludes residential care and institutional facilities, such as group homes. There is little to no disaggregated data or intersectional research available in Australia on the experiences of violence, abuse and exploitation for women and girls with disability living in a broad range of accommodation settings, including group homes.
- 7.1.6 The final report from the Senate Inquiry found a lack of nationally consistent data sets to “describe the extent of violence, abuse and neglect of people with disability”.<sup>145</sup> Available data is often not disaggregated to capture the experiences of people with disability or the experiences of particular groups of people with disability, including women and girls with disability, children with disability, Aboriginal and Torres Strait Islander people with disability or people with disability from culturally and linguistically diverse backgrounds.<sup>146</sup>

## 7.2 Gender-based violence

7.2.1 The final report from the Senate Inquiry highlighted the evidence it received about the gender-based nature and risks of violence in institutional settings. This evidence illustrates the governance of service system processes over human dignity and individual autonomy, the inherent risks of violence embedded in workplace practices, the lack of gender-specific protocols and procedures and the lack of trauma-informed support available to women with disability that is well-established practice in the community. This includes the following:<sup>147</sup>

- Lack of gender-specific service policies and practices, particularly in relation to personal care and transportation, aimed at reducing the risks of perpetrators targeting women with disability;
- Lack of privacy in bedrooms, including no personal room keys for residents and no respect for residents' requests for privacy;
- Lack of privacy in bathrooms, with women being showered by men and/or in men's bathrooms for staff member convenience;
- The forced use of male staff to undertake overnight shifts with female residents, and to assist with toileting, menstrual care and showering, often against the expressed wishes of female residents;
- 'Encouraging' female residents to be 'girlfriends' to male residents, to participate in sex as a means to 'manage' behaviour of male residents;
- Being forced to remain in the same room where sexual assaults have occurred, resulting in re-traumatisation and despite repeated requests to be moved to a different room or location.

7.2.2 Often, violence, abuse, neglect and exploitation, including gender-based violence are downplayed or sanitised as 'service incidents', 'administrative infringements', 'workplace training matters' or 'behaviour management'.<sup>148</sup> This issue was illustrated during the Public Hearing when counsel for the Royal Commission questioned the CEO of Yoralla about the choice of language used to describe criminal sexual acts committed by a former employee. It was noted that in describing criminal sexual acts as "disclosures of acts of a sexual nature", that the CEO could be viewed as "downplaying" the seriousness of the criminal sexual offences that were perpetrated against a number of Yoralla residents.<sup>149</sup> Commissioner Atkinson further questioned the CEO: "a rape of a woman in a closed environment by a man who is a personal carer offering the most intimate of circumstances, is an act of violence, is it not?"<sup>150</sup>

7.2.3 The evidence provided by Yoralla during the Public Hearing clearly demonstrates how the downplaying of violence, abuse, neglect and exploitation results in inadequate and re-traumatising responses to the survivors of violence. The priorities of the service clearly override those of the survivors, with the evidence demonstrating a lack of active support to listen to and support the survivors, assist in obtaining independent legal advice, assist with seeking compensation, to move survivors to different rooms and locations despite repeated requests over 8 years, to receive personal apologies and to receive the trauma-informed approach that would be expected for the care of a victim of sexual violence.<sup>151</sup> These practices within

group homes and other supported accommodation are commonly and frequently reported to WWDA.

- 7.2.4 For many people with disability, their domestic setting is the institutional arrangement they live in, including group homes. However, violence perpetrated in these living arrangements is rarely understood as domestic and family violence and the responses to this violence rarely include domestic violence interventions.<sup>152</sup> There is no nationally consistent domestic violence legislation, and different jurisdictions have different definitions of what constitutes a domestic relationship and a domestic setting.<sup>153</sup> Even in the jurisdictions where domestic and family violence law does cover institutional settings and domestic relationships with support workers, co-residents and carers,<sup>154</sup> this has not been well understood or acted upon by first responders or domestic violence support services. The extremely few studies that have looked at the application of this legislation has found that it was rarely used to address domestic violence in institutional settings, with police reporting that a common barrier was the risk of homelessness for victims and perpetrators with disability who rely on specific living arrangements for their accommodation and support.<sup>155</sup>
- 7.2.5 Violations of sexual and reproductive rights of people with disability, particularly women and girls with disability are rarely examined or researched in Australia. WWDA has consistently raised the fact that practices such as forced contraception are widespread for women and girls with disability, particularly in group homes and other institutional settings and that this practice is rarely subject to oversight, monitoring or review.<sup>156</sup> Forced contraception is a practice used to suppress menstruation or sexual expression, often to reduce the care ‘burden’ on staff in supporting women with menstrual care, and to prevent pregnancy, including pregnancy that results from rape and sexual assault.<sup>157</sup> This issue was raised by the Australian Civil Society CRPD Shadow Report Working Group for the September 2019 review of Australia by the CRPD Committee.<sup>158</sup> The CRPD Committee recommended that Australia end the forced “administration of contraception and the imposition of abortion procedures on women and girls with disabilities”.<sup>159</sup> The significant lack of transparency, oversight and monitoring of these practices requires urgent interrogation by the Royal Commission within a broader examination of violations of sexual and reproductive rights of people with disability, in particular women and girls with disability.
- 7.2.6 There are no comprehensive programs focused on preventing and responding to violence, abuse, neglect and exploitation that are targeted at women and girls with disability, particularly those living in institutional settings, such as group homes. Gender-specific respectful relationships programs designed and delivered by women with disability are invaluable and aim to develop a sense of bodily integrity and an understanding of what constitutes violence, abuse, neglect and exploitation, however they are extremely limited and rarely provided to residents within institutional settings.<sup>160</sup> Resources aimed at disability service providers and support workers are not gender-specific, do not understand gender-based violence and rarely link to gender-specific, trauma-informed supports.<sup>161</sup> There are other valuable resources and projects that aim to build knowledge and enhance support for women with disability,<sup>162</sup> enhance accessibility of domestic violence services<sup>163</sup> and support women with disability experiencing domestic and family violence, such as WWDA’s and 1800RESPECT’s Sunny app.<sup>164</sup> However, these are not part of a

coordinated, comprehensive plan to prevent and respond to violence experienced by women and girls with disability in Australia and do not necessarily reach women with disability in institutional settings.

### 7.3 Torture and ill-treatment

- 7.3.1 People with disability are subjected to restrictive practices in a range of settings, including in family homes, mental health facilities, large residential institutions, group homes, boarding and rooming houses, aged care facilities, schools, prisons and juvenile justice facilities. 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>165</sup>
- 7.3.2 Despite women and girls with disability disproportionately impacted by all forms of violence, abuse, neglect and exploitation, including torture and ill-treatment,<sup>166</sup> there is little to no intersectional analysis, research or disaggregated data on the gendered nature of restrictive practices or the experiences of women and girls with disability in relation to restrictive practices.
- 7.3.3 Evidence has shown that there is an insidious relationship between the use of restrictive practices and other forms of violence within institutional settings – the use of restrictive practices desensitises both disability support workers and residents so that they are unable to recognise violence, abuse, neglect and exploitation, they view it as acceptable and it becomes normalised within daily life.<sup>167</sup> During the Public Hearing, evidence highlighted that restrictive practices reinforce the control and management of people with disability in group homes, and that the elimination of restrictive practices also requires the end of institutional living arrangements, such as group homes.<sup>168</sup>
- 7.3.4 Article 15 of the CRPD reaffirms the right of persons with disability to freedom from torture or cruel, inhuman or degrading treatment or punishment. 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. OPCAT applies more broadly than just to traditional places of detention, such as prisons and immigration detention, which is critical for people with disability who are over-represented in traditional places of detention, such as prisons and juvenile detention centres, but who are also detained in disability specific and related institutions, such as locked dementia wards, mental health facilities, residential *accommodation, including group homes as well as educational settings, particularly* ‘time out’ and seclusion rooms and segregated areas.<sup>169</sup> 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>170</sup>
- 7.3.5 The Office of the Commonwealth Ombudsman is the NPM Coordinator for the implementation of Australia’s NPM, and it has established a civil society OPCAT

Advisory Group to provide advice and guidance.<sup>171</sup> 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), and submissions for a disability inclusive NPM have been submitted to the SPT by civil society, including DPOs as part of the Australian OPCAT Network.<sup>172</sup> While the scheduled 2020 visit to Australia by the SPT has been postponed due to the COVID-19 pandemic, the Royal Commission should constructively engage with the Commonwealth Ombudsman and the OPCAT Advisory Group in relation to the role of the NPM in preventing and monitoring places of detention for people with disability.

## 7.4 Law, policy and practice responses

- 7.4.1 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>173</sup> These are critical research studies largely commissioned under the National Plan to Reduce Violence Against Women and their Children 2010-2020 (the National Plan). However, the National Plan only focuses on domestic and family violence and sexual assault in the context of intimate partner violence and these studies reflect this context. The National Plan does not cover all forms of gender-based violence, nor the many settings and spaces in which gender-based violence occurs. This conceals and renders invisible many of the structural, systemic and institutional forms of gender-based violence that are experienced by women and girls with disability, such as forced sterilisation, forced contraception, denial of legal capacity, forced treatment and restrictive practices; and excludes women with disability experiencing violence in institutional settings, including group homes.<sup>174</sup>
- 7.4.2 The NDS acknowledges the range of evidence that demonstrates that people with disability are at greater risk of violence, abuse, neglect and exploitation, that violence is more common in institutional contexts and that women with disability face greater risks.<sup>175</sup> However, over the ten-year life of the NDS, the only actions outlined to address this situation have focused on the implementation of the National Plan and consideration of the recommendations from the Senate Inquiry. As noted, the National Plan only addresses intimate partner violence to the exclusion of other forms of gender-based violence experienced by women with disability within the variety of settings where they live. The Australian Government's response to the recommendations from the Senate Inquiry was the establishment of the NDIS Quality and Safeguards Commission, and the referral of the majority of recommendations to the States and Territories. The coverage of the NDIS Quality and Safeguards Commission is limited to NDIS service providers and participants, and does not have a clear focus on the gender dimensions of violence, abuse, neglect and exploitation.
- 7.4.3 The report from the Senate Inquiry recommended that the NDS should be amended to ensure linkages with domestic violence frameworks and implementation of specific actions to address violence, abuse and neglect of people with disability; and that the National Plan should be amended to cover institutional accommodation settings.<sup>176</sup>



- 7.4.4 The NDIS does not have a risk assessment process for identifying and responding to violence against people with disability, including identifying and responding to gender-based violence. Although the NDIS provides information on safeguards for NDIS participants to prevent the “risk of harm, abuse, neglect or exploitation”;<sup>177</sup> and to identify individualised strategies within the planning process, these strategies are focused on the provision of advocates, guardians, nominees, service system protocols and external monitoring and complaints mechanisms.

## 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 independently living and being included in the community.
- 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 gender-based violence, abuse, neglect and exploitation experienced by women and girls with disability.
- The Australian Bureau of Statistics (ABS) should address the methodological restrictions and limitations of the Personal Safety Survey (PSS) in order to ensure a more accurate and comprehensive picture of gender-based violence in Australia.
- Australian governments should develop nationally consistent legislation on the prevention of all forms of gender-based violence for all women and girls that reflects the definition of ‘gender-based violence’ outlined in the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) General Recommendation 35 ‘Gender-based Violence Against Women’ (2017).
- The Royal Commission should specifically examine the area of sexual and reproductive rights for people with disability, with a particular focus on women and girls with disability.
- 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:
  - Examine the adequacy of the oversight function of the NDIS Quality and Safeguards Commission in relation to the elimination of restrictive practices, and the gaps in oversight for people with disability who are not NDIS participants;
  - Actively engage with the Commonwealth Ombudsman and its OPCAT Advisory Group, with the aim of discussing the evidence it has received regarding torture and ill-treatment, and 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 segregated living arrangements;

- Make findings and recommendations for the urgent and immediate elimination of restrictive practices.
- A comprehensive suite of violence prevention and response programs and resources should be funded by Australian governments, co-designed with women with disability for women with disability, and delivered across the life span and in institutional settings 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, to be free from violence, abuse, neglect and exploitation, and to be free from torture and ill-treatment;
  - Increasing opportunities and participation in decision-making and in speaking up about rights.
- Australian governments should develop nationally consistent domestic and family violence legislation that covers institutional settings and includes a broad definition of domestic relationships; ensure this legislation is integrated into domestic and family violence response training for police, the judiciary and domestic and family violence services; and ensure that the National Plan to Reduce Violence Against Women and Their Children is amended to reflect this legislation by including institutional settings and a broad definition of domestic relationships.
- The Australian Government should implement Recommendation 2 from the Senate Inquiry, which would establish a national, independent, statutory protection watchdog that has broad functions and powers, that covers all forms of violence against all people with disability, and that is not limited to the NDIS.
- The National Disability Insurance Agency should develop, in close consultation with women with disability and their representative organisations, an NDIS Gender Strategy which should include measures to ensure that all forms of violence, including gender-based violence are identified and addressed through the NDIS planning process, that crisis procedures are established for crisis plan revisions, and that pathways and protocols are established with domestic violence services and supports.



## 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-Asustralia.pdf>

- 8.1 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 living independently and being included in the community and violence, abuse, neglect and exploitation.

### 8.2 Right to live independently and be included in the community:

#### 8.2.1 Adequate standard of living, housing, accessibility:

8.2.1.1 In 2019, the **Committee on the Rights of Persons with Disabilities (CRPD Committee)** provided its Concluding Observations<sup>178</sup> on the combined second and third periodic report of Australia.<sup>179</sup> The CRPD 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 CRPD 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 CRPD 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 CRPD Committee further recommended that Australia amend federal law to include mandatory rules on access for all new and extensively modified housing.

8.2.1.2 The **Committee on the Elimination of Discrimination against Women (CEDAW Committee)** reviewed Australia's implementation of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>180</sup> in 2018.<sup>181</sup> The CEDAW

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 CEDAW 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.

- 8.2.1.3 In September 2019, the **Committee on the Rights of the Child** (CRC Committee) reviewed Australia's implementation of the Convention on the Rights of the Child (CRC). The CRC Committee reiterated its 2012 recommendation on public budgeting and the allocation of resources to address social disadvantage, and recommended in its Concluding Observations<sup>182</sup> 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 CRC Committee also recommended that Australia address the high rate of homelessness among children, particularly focusing on children leaving alternative care.
- 8.2.1.4 In 2017, the **Committee on Economic, Social and Cultural Rights** (ESCR Committee) provided its Concluding Observations<sup>183</sup> on the fifth periodic report of Australia.<sup>184</sup> The ESCR 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 ESCR 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 ESCR 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 ESCR 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.
- 8.2.1.5 In December 2017, the **Committee on the Elimination of Racial Discrimination** (CERD Committee) released its Concluding Observations<sup>185</sup> of Australia's compliance under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The CERD 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 CERD 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 CERD 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.

## **8.2.2 Autonomy, decision-making, representation, participation, accessibility:**

8.2.2.1 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.<sup>186</sup> The CRPD 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 CRPD 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 CRPD; 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 CRPD 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 CRPD 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 CRPD; 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.

8.2.2.2 In its 2018 review<sup>187</sup> of Australia's eighth periodic report<sup>188</sup> under CEDAW, 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.

8.2.2.3 In 2019, the **CRC Committee** provided its Concluding Observations<sup>189</sup> to Australia following its review. The CRC 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 CRC 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.

8.2.2.4 In 2017, the **Human Rights Committee** (HRC Committee) released its Concluding Observations<sup>190</sup> on the sixth periodic report of Australia under the International Covenant on Civil and Political Rights (ICCPR).<sup>191</sup> 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 HRC 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.

### **8.2.3 Equality and non-discrimination:**

8.2.3.1 In its 2019 Concluding Observations,<sup>192</sup> 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 CRPD 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.

8.2.3.2 The **CEDAW Committee**<sup>193</sup> 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 CEDAW; and, fully incorporate CEDAW 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 CEDAW 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.

8.2.3.3 In 2019, the **CRC Committee**<sup>194</sup> recommended that Australia: enact comprehensive national child rights legislation fully incorporating CRC 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 CRC, 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 CRC, 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.

8.2.3.4 In 2017, the **ESCR Committee**<sup>195</sup> 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 ESCR 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 ESCR Committee expressed its concern at the slow progress in its implementation and its weak accountability and implementation mechanisms. The ESCR 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 ESCR Committee further recommended that Australia strengthen accountability mechanisms to ensure that people with disability fully enjoy their economic, social and cultural rights.



8.2.3.5 In 2017, the **Human Rights Committee** recommended<sup>196</sup> 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.

#### **8.2.4 Awareness-raising and positive social attitudes:**

8.2.4.1 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.<sup>197</sup> The CRPD 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 CRPD 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.

8.2.4.2 In its 2018 Concluding Observations<sup>198</sup> 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 CEDAW 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.

8.2.4.3 In its 2019 Concluding Observations<sup>199</sup> 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.

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

8.3.1 In the September 2019 Concluding Observations,<sup>200</sup> 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 CRPD Committee also expressed concern about the ongoing practice of forced sterilisation, forced abortion and forced contraception, and the unregulated use of involuntary, intrusive and irreversible surgery and medical interventions on intersex infants and children; 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. In relation to torture and ill-treatment, the CRPD Committee expressed concern about legislation, policies and practices that permit the use of psychotropic medications, physical restraints and seclusion and restrictive practices against people with disability, including children, in any setting; 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: 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. The CRPD Committee further 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; eliminate substitute decision-making; 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; 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; and ensure that organisations of people with disability can effectively engage in the establishment and work of the OPCAT national preventive mechanism.

8.3.2 In its 2018 review the **CEDAW Committee** expressed its concern<sup>201</sup> at the lack of national legislation prohibiting all forms of gender-based violence against women and at harmful practices against women and children occurring in Australia. 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. The CEDAW Committee further 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 CEDAW 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 CEDAW 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.

8.3.3 In its 2019 Concluding Observations the **CRC Committee** expressed its serious

concerns<sup>202</sup> 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.

- 8.3.4 In its 2017 Concluding observations,<sup>203</sup> 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, and the fact that laws in Australia permit compulsory treatment, including forced sterilisation and electroconvulsive therapy. The ESCR 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. The ESCR also recommended that Australia: revise its approach to mental health and ensure full respect for the human rights of persons with cognitive or psychosocial disability; 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.
- 8.3.5 In 2017, the **HRC Committee** released its Concluding Observations<sup>204</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 HRC Committee also expressed concern at the ongoing practice of forced sterilisation of women and girls with disability, and forced irreversible and invasive medical interventions on infants and children

born with intersex variations. The HRC 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 HRC 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 HRC Committee also recommended that Australia abolish the practice of forced sterilisation of women and girls with disability; and 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.

- 8.3.6 The **Committee against Torture** (CAT Committee) reviewed the combined fourth and fifth periodic reports of Australia in 2014. The Concluding Observations<sup>205</sup> from the review noted the Committee's concern that violence against women in Australia disproportionately affects women with disability and Indigenous women. The CAT 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; and to 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..

#### 8.4 Rights of the Child:

- 8.4.1 In its 2019 Concluding Observations<sup>206</sup> 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.
- 8.4.2 In 2018, the **CEDAW Committee** recommended<sup>207</sup> 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.
- 8.4.3 In 2019, the **CRC Committee** recommended<sup>208</sup> 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.



# 11 ENDNOTES



## ENDNOTES

- 1 See e.g., 'Ending Violence' page on Disabled People's Organisations Australia (DPO Australia) website at <https://dpoa.org.au/our-work/ending-violence/>; Disabled People's Organisations Australia (2017) Civil Society Statement to the Australian Government Calling for a Royal Commission into Violence, Abuse and Neglect of People with Disability. Sydney: DPO Australia. Available at: <http://dpoa.org.au/civil-society-statement-rc/>
- 2 Senate Community Affairs References Committee. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect)
- 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)
- 4 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Terms of Reference. Available at: <https://disability.royalcommission.gov.au/about/Pages/Terms-of-reference.aspx>
- 5 Ibid.
- 6 Ibid, paragraph (e).
- 7 Ibid, paragraph (g).
- 8 Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 3(a). Available at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>
- 9 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Accessibility and Inclusion Strategy, page 5. Available at: <https://disability.royalcommission.gov.au/about/Pages/accessibility-inclusion-strategy.aspx>
- 10 Women with Disabilities Australia, Stop the Violence Project, Background Paper, National Symposium on Violence Against Women and Girls with Disabilities, October 2013, WWDA, Hobart, page 17. Available at: [http://wwda.org.au/wp-content/uploads/2013/12/STV\\_Background\\_Paper\\_FINAL.pdf](http://wwda.org.au/wp-content/uploads/2013/12/STV_Background_Paper_FINAL.pdf)
- 11 See e.g., Frawley, P; Dyson, S; Robinson, S, Whatever it takes? Access for women with disabilities to domestic and family violence services: Key findings and future directions, Compass Issue 5, 2017, ANROWS. Available at: <https://www.anrows.org.au/publication/whatever-it-takes-access-for-women-with-disabilities-to-domestic-and-family-violence-services-key-findings-and-future-directions/>; Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Lea, M., Cadwallader, J., Sands, T. (2018) Women, disability and violence: Barriers to accessing justice: Final report (ANROWS Horizons, 02/2018). Sydney: ANROWS. Available at: <https://www.anrows.org.au/publications/horizons/women-disability-and-violence-barriers-accessing-justice-final-report>



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