



Women
With
Disabilities
Australia
(WWDA)



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

**WWDA RESPONSE TO
EMPLOYMENT ISSUES
PAPER**

AUGUST 2020

WOMEN WITH DISABILITIES AUSTRALIA

PUBLISHING INFORMATION

Women with Disabilities Australia (WWDA) (2020). 'Response to the Employment Issues Paper of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability'. August 2020. WWDA: Hobart, Tasmania.

Acknowledgments

WWDA acknowledges the traditional owners of the land on which this publication was produced. We acknowledge Aboriginal and Torres Strait Islander people's deep spiritual connection to this land. We extend our respects to community members and Elders past, present and emerging.

This document was written by Carolyn Frohmader, WWDA Executive Director, for and on behalf of Women with Disabilities Australia (WWDA).

Women with Disabilities Australia (WWDA) receives part of its funding from the Australian Government, Department of Social Services.

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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.

DPO's are recognised internationally as organisations OF people with disability that are led, directed and governed BY people with disability. The United Nations Committee on the Rights of Persons with Disabilities has clarified that States should give priority to the views of these organisations when addressing issues related to people with disability. The Committee has further clarified that States should prioritise resources to organisations of people with disability that focus primarily on advocacy for disability rights and, adopt an enabling policy framework favourable to their establishment and sustained operation.¹

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

1 RECOMMENDATIONS

The Royal Commission must recognise that the issue of employment of women with disability - including in the context of violence, abuse, neglect and exploitation - cannot be examined without an understanding of, and the need for targeted measures to address, the underlying structural barriers to their workforce participation.² Women with disability need, and have a right to, the implementation of specific, targeted measures to dismantle the many structural barriers that impede their right to economic participation and to an adequate standard of living.

With this in mind, this Submission makes a number of recommendations that encompass a range of areas and issues – including segregation of people with disability; legislative and policy frameworks; intersectionality, disability and gender; the National Disability Insurance Scheme (NDIS); safeguards and redress; an adequate standard of living for people with disability; and, research, education and data collection.

Segregation of People with Disability in Australia

- 1.1 Analysis by the Royal Commission of the issue of employment in the context of violence, abuse, neglect and exploitation, must start from the premise and recognition that segregation of people with disability – including in Australian Disability Enterprises (ADEs), and other forms of segregated settings and environments – remain State sanctioned practices that enable violence, abuse, neglect, and exploitation to flourish.
- 1.2 The Royal Commission must conceptualise and recognise that segregation of people with disability – in all its forms - is a violation of fundamental human rights and is an ideology with resultant practices that contravene the Convention on the Rights of Persons with Disabilities (CRPD) and other human rights treaties to which Australia is a party.
- 1.3 In examining the area of employment, the Royal Commission must explicitly recognise and identify segregated models of employment as discrimination. In line with the definitions of ‘neglect’ and ‘exploitation’ in the Issues Paper,³ the Royal Commission must also explicitly recognise that the effect of this discrimination constitutes systemic exploitation and neglect.⁴
- 1.4 Recognising Australian Disability Enterprises (ADEs) and other segregated models of employment as being in contravention of the CRPD, and reflecting recommendations made to Australia by the Committee on the Rights of Persons with Disabilities, the Australian Government should urgently develop and implement a national, time bound strategy and framework for the closure of all ADEs and segregated models of employment, and provide services to transition people with disability from ADEs into open inclusive and accessible forms of employment, ensuring equal remuneration for work for equal value.
- 1.5 The Royal Commission should examine the nature, effects and impact of discrimination and systemic neglect in both open and segregated employment, including seeking evidence directly from women with disability, and holding governments, policy makers, and other stakeholders to account for discriminatory views.
- 1.6 Acknowledging that segregated settings enable violence, abuse, neglect, and exploitation against people with disability to flourish, the Australian Government should develop and implement a national, time bound strategy and framework for the closure of all residential institutions for people with disability, including those operated by non-government and private sectors, and allocate and provide the necessary resources for people with disability to move to genuine community based housing and individualised support options that will support inclusion and participation in the general community.

- 1.7 In line with its Terms of Reference, which are based in the context of the CRPD, the Royal Commission should explicitly recognise as fundamental to all its work (including reports, community forums, stakeholder engagement, Hearings, publications, findings and recommendations):
- the right of people with disability to work on an equal basis with others, ensuring equal remuneration for work for equal value as enshrined in the CRPD and ICESCR; and,
 - the failure to provide these rights as discrimination and systemic neglect.

Legislative and Policy Frameworks

- 1.8 Recognising the gendered nature of violence, the disproportionate, multiple and intersecting forms of violence experienced by women and girls with disability, and the lack of legislative, policy and service responses to prevent and address violence against women and girls with disability, the Australian Government should develop and enact national legislation, on the prevention of all forms of gender-based violence. Such legislation should utilise the definition of ‘gender-based violence’ as articulated in the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2017 General Recommendation 35 ‘Gender-based Violence Against Women’.⁵
- 1.9 Consistent with recommendations to Australia from the Committee on the Rights of Persons with Disabilities,⁶ the Australian Government should, in consultation with people with disability and their representative organisations, develop a National Disability Employment Strategy that incorporates the recommendations from the Willing to Work Inquiry,⁷ and contains targeted gendered measures for increasing workforce participation of people with disability, including addressing structural employment barriers.
- 1.10 The new National Disability Strategy (NDS) currently being developed, must reflect Australia’s obligations under the CRPD to address discrimination against women and girls with disability, and must include targeted, gender-specific measures to advance gender equality. The new NDS must include gender-specific measures to progress, monitor, review and evaluate actions across the NDS outcome areas, and provide for the collection of gender-disaggregated data across all NDS outcome areas.
- 1.11 The Australian Government, through the Department of Prime Minister and Cabinet, Office for Women, should, in consultation with civil society, develop a National Gender Equality Policy Framework. The Framework should be aligned with human rights commitments; identify an established method of gender analysis to be rolled out across government, including legislated commitments to gender mainstreaming and budgeting, an intersectional analysis reflecting women in their diversity, and, adequate resourcing and accountability through measurable targets and reporting.
- 1.12 A coordinated, nationally consistent, gendered Violence Prevention and Response Strategy for People with Disability should be developed by Australia governments, with active participation of people with disability that comprehensively combats ableism and intersecting forms of inequality and discrimination through a range of measures aimed at facilitating social transformation, including:
- Review, amend or repeal of laws, policies and practice that do not comply with the CRPD and that give rise to violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
 - National surveys and awareness raising campaigns;
 - Political commitments and leadership from governments;
 - Budget allocations and resourcing;

- Educational programs delivered as part of early childhood, school and tertiary curricula.

- 1.13 Consistent with recommendations made to successive Australian Government's by the United Nations treaty monitoring bodies and by civil society organisations, including Disabled People's Organisations, the Australian Government should as a matter of urgency, withdraw its Interpretative Declarations on CRPD Article 12 [Equal recognition before the law], Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality]. These Interpretative Declarations, which include allowing for substituted decision-making and compulsory treatment, have been found to be hindering Australia's ability to comply with the CRPD and are being used as a justification to deny people with disability their human rights.
- 1.14 Recognising that legal capacity underpins personhood and is indispensable for the exercise of civil, political, economic, social and cultural rights, the Australian Government should abolish substitute decision-making regimes and, in line with recommendations to Australia from the Committee on the Rights of Persons with Disabilities,⁸ develop a nationally consistent supported decision-making framework. Substitute decision-making and 'best interest' approaches have been thoroughly criticised as fundamentally contravening the CRPD and as intrinsically value laden.⁹
- 1.15 The Australian Government and State and Territory Governments should strengthen anti-discrimination laws to explicitly recognise and address intersectional discrimination, including its aggravating and compounding effects, and to guarantee the protection from discrimination on the grounds of disability that explicitly covers all persons with disability.

Intersectionality, Disability & Gender

- 1.16 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.
- 1.17 The Royal Commission, in consultation with women with disability and our representative organisations should conduct stand-alone Public Hearings, 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 – across and inclusive of all life 'domains', and areas, including sexual and reproductive rights.
- 1.18 Reflecting CRPD Article 6, CRPD General Comment 3, CEDAW article 4 (1), CEDAW General Recommendation No. 25 (2004)¹⁰ on temporary special measures, and Australia's obligations to take positive actions and additional gender-specific measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms, the Australian Government should put into place temporary special measures to accelerate the participation of women with disability in employment and in political and public life.
- 1.19 The Royal Commission should establish an expert advisory group of women and girls with disability and our representative organisations to provide advice on the situation of women and girls with disability in all areas of examination, to provide advice on specific

areas of examination that disproportionately impact on women and girls with disability, to provide advice on the process of examinations, findings and recommendations, and on other related matters.

- 1.20 To give full effect to Term of Reference G, the Royal Commission should:
- recognise ableism and intersecting forms of inequality and discrimination as the underlying drivers of violence, abuse, neglect and exploitation of people with disability, including women and girls with disability;
 - examine how ableism and intersecting forms of inequality and discrimination operate within Australian legal, policy and practice frameworks and community attitudes generally, and how they underpin violence, abuse, neglect and exploitation;
 - make recommendations that address these root causes of violence, abuse, neglect and exploitation and that lead to large scale responses and social transformation.
- 1.21 Consistent with CRPD General Comment 3¹¹ and CRPD General Comment 7,¹² the Royal Commission must provide safe and supportive spaces to enable women and girls with disability to engage with the Royal Commission without fear of retribution.
- 1.22 Recognising that Australia is a signatory to seven core international human rights treaties, each of which contain obligations relating to people with disability (including women and girls with disability), and which are expected to be viewed and implemented as complementary mechanisms through which to create a holistic framework of rights protection and response for all people with disability, the Royal Commission should consider in its work, all of the relevant recommendations made to Australia from the international human rights treaty monitoring bodies, not just those stemming from the Committee on the Rights of Persons with Disabilities (CRPD).

The National Disability Insurance Scheme (NDIS)

- 1.23 Recognising the gender inequity in the National Disability Insurance Scheme (NDIS), whereby the percentage of female participants has remained at 37% or lower since the Scheme's inception, the National Disability Insurance Agency (NDIA) should, in consultation with women with disability and their representative organisations, urgently develop an NDIS Gender Strategy.
- 1.24 The National Disability Insurance Scheme (NDIS) should be required to provide gender-disaggregated data across all its data collection processes and frameworks, and this data should be published in all NDIS Quarterly Reports.
- 1.25 Reflecting Australia's obligations under CRPD Article 6 and acknowledging that there has been no improvement in the labour force participation of women with disability for more than two decades, the NDIS Participant Employment Strategy 2019-2022 should be gendered. Annual employment results published to measure the Strategy's progress, must include gender-disaggregated data.
- 1.26 The National Disability Insurance Scheme (NDIS) should, in consultation with people with disability and their representative organisations, develop a risk assessment process for identifying and responding to violence against people with disability, including identifying and responding to gender-based violence. Inherent in this, is the need for the National Disability Insurance Agency (NDIA) to develop pathways to safety for NDIS participants escaping violence.

Safeguards and Redress

- 1.27 Consistent with and reflecting Australia's international human obligations regarding the requirement for available, effective, independent and impartial remedies to be available

to those whose rights have been violated under the various treaties,¹³ and reflecting recent recommendations to Australia by the Committee on the Rights of Persons with Disabilities,¹⁴ the Australian Government should ensure that a Redress Scheme is established for the Royal Commission.

- 1.28 Consistent with the protections offered by the Royal Commission into Institutional Responses to Child Sexual Abuse; ie: permanently sealing confidential Submissions and evidence after the Royal Commission ended, it is critical that the Royal Commission Legislation be amended as a matter of urgency in order to ensure confidentiality of Submissions and evidence after the Royal Commission is completed.
- 1.29 Acknowledging that the remit of the National Disability Insurance Scheme (NDIS) Quality & Safeguards Commission covers only NDIS participants, who make up less than 10% of the Australian population of people with disability, the Australian Government should establish an independent, statutory, national protection mechanism under specific purpose legislation, and with broad functions and powers to protect, investigate and enforce findings in relation to all forms of violence, abuse, exploitation and neglect against all people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it. This national protection mechanism should explicitly operate within a human rights framework, and include as a minimum, the following core functions:
- a ‘no wrong door’ complaint handling function – the ability to receive, investigate, determine, and make recommendations in relation to complaints raised;
 - the ability to initiate ‘own motion’ complaints and to undertake own motion enquiries into systemic issues;
 - the power to make recommendations to relevant respondents, including Commonwealth and State and territory governments, for remedial action;
 - the ability to conduct policy and programme reviews and ‘audits’;
 - the ability to publicly report on the outcomes of systemic enquiries and group, policy and programme reviews, or audits, including through the tabling of an Annual Report to Parliament;
 - the ability to develop and publish policy recommendations, guidelines, and standards to promote service quality improvement;
 - the ability to collect, develop and publish information, and conduct professional and public educational programs;
 - the power to enable enforcement of its recommendations, including for redress and reparation for harms perpetrated.
- 1.30 The National Disability and Neglect Hotline¹⁵ should be abolished, and resources re-allocated to the establishment of an independent, statutory national mechanism to protect, investigate and enforce findings in relation to all forms of violence, abuse, exploitation and neglect against people with disability.

An adequate standard of living for people with disability in Australia

- 1.31 Recognising that there are many women with disability who have no or minimal opportunities to engage in paid work throughout their adult life, and reflecting Australia’s obligations to safeguard and promote an adequate standard of living and social protection for people with disability, a government provided, broadly based, adequate financial safety net is essential if economic security for women with disability is to be enhanced.
- 1.32 Acknowledging that Government pensions are the main source of personal income for 42% of people with disability of working age; the median gross weekly personal income of people with disability is half that of people without disability; and more than 45% of people with a disability live in poverty, the Australian Government should act urgently to increase the rate of the Newstart Allowance and the Disability Support Pension (DSP).

Research, Education and Data Collection

- 1.33 Consistent with long-standing recommendations to Australia from the CRPD and CEDAW Committees,¹⁶ the Australian Government should commission and adequately resource 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 areas of employment, economic security, and violence, abuse, neglect, and exploitation. This national intersectional research process must include the specific experiences of those who are Indigenous, those from culturally and linguistically diverse backgrounds, those who are migrants, refugees or asylum seekers, and those from LGBTIQ+ communities.
- 1.34 Australian governments should implement a nationally consistent framework to enable the collection, analysis and public reporting of disaggregated data across all jurisdictions, on all forms of gendered disability violence, abuse, neglect and exploitation experienced by women and girls with disability.
- 1.35 Consistent with recommendations made to Australia by the CRPD and CEDAW Committees,¹⁷ the Australian Government must ensure that data on violence against women with disability is systematically collected under the National Data Collection and Reporting Framework [for family, domestic and sexual violence], expected to be operational in 2022.
- 1.36 Consistent with CRPD Article 6, CRPD General Comment 3, and CRPD General Comment 7, the Australian Government should provide long-term support, including core support and resources for research, capacity building, and violence prevention, to human rights based Disabled People's Organisations (DPOs) constituted by, of and for women and girls with disability.
- 1.37 As part of educational curricula, a comprehensive suite of educational programs should be developed by Australian governments and delivered across the life span, with the aim of:
- Fostering and valuing diversity and inclusion;
 - Challenging ableism and intersecting forms of inequality and discrimination, including for women and girls with disability;
 - Building knowledge, skills and strengths in recognising rights to bodily integrity and to be free from violence, abuse, neglect and exploitation;
 - Increasing opportunities and participation in decision-making and in speaking up about rights.



2 BACKGROUND



2 BACKGROUND

- 2.1 The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission)¹⁸ was established after many years of campaigning by people with disability and our representative organisations at both the domestic and international level.¹⁹
- 2.2 Women With Disabilities Australia (WWDA) - including in our capacity as a founding member 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 collective 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.²⁰ Recommendation 1 from that Senate Inquiry was that a Royal Commission into violence against people with disability be established.²¹
- 2.4 However, it was not until 2019, following further concerted advocacy efforts that the Royal Commission was finally established by the Australian Government. The urgent need for a Royal Commission into all forms of violence against people with disability, was a key recommendation from the 2017 review of Australia's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR); and was also addressed at the September 2019 review of Australia's compliance with the Convention on the Rights of Persons with Disabilities (CRPD).
- 2.5 The Terms of Reference for the Royal Commission are contained in the Commonwealth Letters Patent that were signed by the Governor General on 4 April 2019.²² The Terms of Reference explicitly state that:
- “Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of exploitation, violence and abuse under the Convention on the Rights of Persons with Disabilities.”*
- 2.6 The Terms of Reference reflect our campaign calls that the Royal Commission should have regard to “all forms of violence against, and abuse, neglect and exploitation of, people with disability, whatever the setting or context”.²³
- 2.7 The Terms of Reference also reflect our calls for recognition of the intersectional dimensions of people with disability that make the experiences of violence, abuse, neglect and exploitation specific, unique and diverse:
- “the specific experiences of violence against, and abuse, neglect and exploitation of, people with disability are multi-layered and influenced by experiences associated with their age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, including the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability.”²⁴*
- 2.8 The intersectional analysis required by the Terms of Reference and enshrined in the CRPD, is critical to ensuring that all forms of violence in all settings experienced by people

with disability, including women and girls with disability is identified, understood and addressed.

- 2.9 Despite our collective calls for the Terms of Reference for the Royal Commission to include provision for a redress scheme, this was not included. In September 2019, the Committee on the Rights of Persons with Disabilities adopted its Concluding Observations following its review of Australia's compliance with the CRPD. The Committee expressly recommended that the Australian Government: "ensure [adequate resources and] a redress mechanism for the Royal Commission".²⁵ It remains unclear as to whether the Australian Government will adopt this critical recommendation.
- 2.10 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".²⁶ CRPD General Comment No. 3 on women and girls with disabilities, published by the Committee on the Rights of Persons with Disabilities in 2016, elaborates on this fact, and draws particular attention to the structural and institutional forms of gender-based violence related to law, the state and culture that women and girls with disability not only experience, but are more at risk of.²⁷
- 2.11 Australia has received numerous recommendations from the United Nations (UN) to investigate, address and remedy this situation for women and girls with disability. Very few of these recommendations have been implemented by successive Australian governments. The most recent key recommendations from UN Treaty Bodies relevant to the area of employment and to violence, abuse, neglect and exploitation are outlined in Appendix 2 to this submission.



3 INTRODUCTION AND CONTEXT

3 INTRODUCTION AND CONTEXT

- 3.1 WWDA welcomes the opportunity to make this Submission in response to the Royal Commission's Employment Issues Paper (the Issues Paper).²⁸ WWDA does so in the recognition that there has been no improvement in labour force participation of women with disability in Australia for over two decades.²⁹ This is despite the fact that the last two decades have seen significant improvement in the labour force participation in Australia of men with disability, and women without disability.
- 3.2 WWDA also recognises and stresses that improving the labour force participation of women with disability cannot be achieved without an understanding of, and the need for targeted measures to address, the underlying structural barriers to their workforce participation.³⁰ Women with disability need, and have a right to, the implementation of specific, targeted measures to dismantle the many structural barriers that impede their right to economic participation and to an adequate standard of living.
- 3.3 Analysis by the Royal Commission of the issue of employment in the context of violence, abuse, neglect and exploitation, must start from the premise and recognition that segregation of people with disability – including in Australian Disability Enterprises (ADEs), (colloquially known as 'sheltered workshops') and other forms of segregated settings and environments – remain State sanctioned practices that enable violence, abuse, neglect, and exploitation to flourish. Segregation of people with disability – in all its forms - must be conceptualised and understood as a violation of fundamental human rights, and as an ideology with resultant practices that contravene the CRPD and other human rights treaties to which Australia is a party.
- 3.4 Therefore, in examining the area of employment and economic participation, the Royal Commission must explicitly recognise and identify segregated models of employment as discrimination. In line with the definitions of 'neglect' and 'exploitation' in the Issues Paper, the Royal Commission must also explicitly recognise that the effect of this discrimination constitutes systemic exploitation and neglect.³¹
- 3.5 As noted in the Issues Paper:
- 'having a meaningful job with fair and equitable pay can promote the inclusion and independence of people with disability and support their right to live free from violence, abuse, neglect and exploitation. While not the only factor, financial independence may reduce the risk of violence, abuse, neglect and exploitation of people with disability.'*³²
- 3.6 However, it must be recognised that women with disability throughout Australia bear a disproportionate burden of poverty and are amongst the poorest of all groups in society. They experience multiple and intersecting forms of discrimination and disadvantage, which creates and perpetuates systemic inequality between disabled men and women. In practice this means that women with disability have far fewer opportunities, lower status and less power and influence than men with disability (and non-disabled women), and far less chance of realising substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.³³
- 3.7 It is telling, yet unsurprising that the Issues Paper provides no data or information on the employment situation of women with disability in Australia. Despite Term of Reference G, which clearly calls for the Royal Commission to examine the specific experiences of violence against, and abuse, neglect and exploitation of, people with disability in relation to sex and gender,³⁴ the omission in the Issues Paper of any reference to the specific situation of women with disability in relation to employment, is deeply concerning.

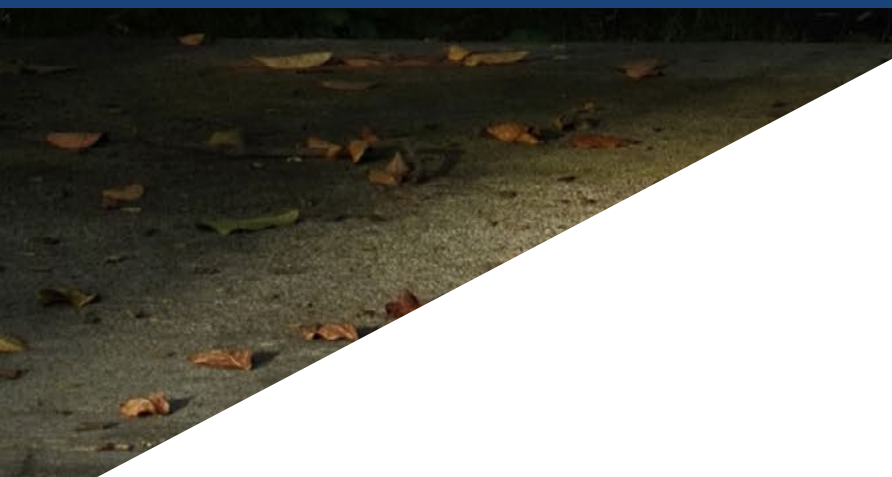
- 3.8 We note that the Royal Commission is examining violence, abuse, neglect and exploitation within separate service and life domains, such as in the area of education and learning, group homes, employment, restrictive practices, health and criminal justice. Whilst we recognise that the task of examining all forms of violence in all settings is immense, we caution against focusing only on particular service settings and domains that merely leads to reform of those domains. A focus only on particular service settings and domains risks:
- ignoring the reality of the pervasive nature of violence, abuse, neglect and exploitation that can be experienced by people with disability across all domains and aspects of their lives, and the specific and unique forms of this violence for women and girls with disability; and,
 - failing to expose the underpinning drivers or enablers of violence, abuse, neglect and exploitation in the Australian law, policy and practice landscape and within society in general. As outlined in section 8 of this submission, ableism, and the resulting inequality and discrimination, including intersectional discrimination is a key driver of all forms of violence against people with disability in all settings.
- 3.9 For women and girls with disability, it is imperative that the intersection between ableism and gender inequality and discrimination is explicitly identified, interrogated and addressed. Intersectionality is outlined in section 7 of this submission.
- 3.10 In addition, without a sound understanding of how society constructs disability and the ways in which different systems and structures of oppression intersect to shape the experiences of discrimination, it is more likely that those tasked with shaping or implementing policies will develop solutions better suited for short-term fixes instead of long-term structural change.
- 3.11 The dearth of disaggregated data, research and studies, including those that apply an intersectional analysis in the area of violence against women with disability (including in employment) makes it extremely difficult to understand the situation of women and girls with disability. However, as noted in section 9 of this submission, this understanding is critical for identifying the necessary specific measures for violence prevention, response and redress for women and girls with disability. It is also a clear obligation in terms of domestic implementation of the CRPD, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and other human rights treaties to which Australia is a party.
- 3.12 Whilst it is recognised that “the nature of the experience of violence is intensified in frequency, extent and nature when gender and disability intersect”,³⁵ the available data, research and evidence about this experience is lacking. Where it does exist, it is largely focused within the area of domestic and family violence and conceptualised within a narrow framework and discourse of spousal and/or intimate partner violence.³⁶ This narrow focus does not reflect contemporary understandings of what constitutes gender-based violence nor the complexity of the myriad of forms it takes, and the settings in which it occurs. As a result, other forms of violence against women - particularly those perpetrated against women and girls with disability - become obscured, resulting in their marginalisation in, and exclusion from, legislation, policies and service responses designed to address and prevent violence against women.³⁷
- 3.13 The work of the Royal Commission is framed within and underpinned by the CRPD. The CRPD is clear on gender equality. The CRPD recognises gender as one of the most important categories of social organisation. It expressly states the requirement to incorporate a gender perspective in all efforts to promote the human rights of people with disability, meaning that the rights of women with disability must be addressed when interpreting and implementing every article of the Convention.

- 3.14 The CRPD prioritises women and girls with disability as a group warranting specific attention and additional measures. It obliges Governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms. It clarifies the need to ensure that national policies, frameworks and strategies make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and that such policies and frameworks include focused, gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights.
- 3.15 Despite the obligations of the CRPD in relation to women and girls with disability, it remains the case that in the Australian legislative, policy and service context, people with disability are still often treated as asexual, genderless human beings. This gender-neutrality can (and does) create and perpetuate the consequences of gender-based discrimination and can (and does) lead to misleading analyses of issues and/or inaccurate assessments of likely policy outcomes.
- 3.16 Article 27 of the CRPD sets out the rights to work and employment of persons with disability. These are the right to work on an equal basis with others, and opportunity to gain a living by work freely chosen. The freely chosen work should be in a labour market and work environment that is open, inclusive and accessible to all persons with disability. Article 27 elaborates on measures that Governments must take to safeguard and promote these rights.
- 3.17 Article 6 of the CRPD (Women with Disabilities) as a cross-cutting article, means that the rights of women with disability must be specifically identified and addressed in all measures in the implementation and monitoring of Article 27. It is clear that in the Australian context, this is yet to occur.
- 3.18 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.³⁸ This submission comprehensively examines the human rights conceptualisation of ‘disability’, ‘intersectionality’ and ‘violence against people with disability’; provides information on the scope and prevalence of violence, including gendered disability violence; outlines human rights violations that constitute violence, abuse, neglect and exploitation against people with disability; and highlights failures in the Australian legislative, policy and service landscape in relation to violence.
- 3.19 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.³⁹ This paper elaborates on key points made in this submission. We also draw the attention of the Royal Commission to the Women with Disabilities Australia (WWDA) Position Statement: The Right to Freedom from All Forms of Violence.⁴⁰ This Statement outlines key evidence concerning ongoing violations of Australian women and girls with disabilities’ right to freedom from all forms of violence and highlights specific human rights obligations to ensure that all women and girls with disability can realise their right to freedom from all forms of violence, abuse, exploitation and neglect.
- 3.20 Consistent with CRPD General Comment No. 3 on women and girls with disabilities; and CRPD General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention; it is critical that the Royal Commission provide safe and supportive spaces to enable women and girls with disability to engage with the Royal Commission without fear of retribution.

- 3.21 Consistent with the protections offered by the Royal Commission into Institutional Responses to Child Sexual Abuse; ie: permanently sealing confidential Submissions and evidence after the Royal Commission ends, it is critical that the Royal Commission Legislation be amended as a matter of urgency in order to ensure confidentiality of Submissions and evidence after the Royal Commission ends.
- 3.22 Some of the comments in this Submission are extracted from our responses to the Royal Commission’s Education Issues Paper and the Group Homes Issues Paper, as these comments are equally relevant to this Issues Paper on Employment.



4 SEGREGATED EMPLOYMENT - A VIOLATION OF HUMAN RIGHTS



4. SEGREGATED EMPLOYMENT – A VIOLATION OF HUMAN RIGHTS

- 4.1 Segregated employment for people with disability through Australian Disability Enterprises (ADEs) (often referred to as ‘sheltered workshops’) continues in Australia, enabling employers to pay people with disability lower wages than other people,⁴¹ and with less than 1% having opportunities to move into mainstream employment. The Supported Wage System (SWS)⁴² still provides for people with disability to be paid a pro-rata percentage of the minimum wage for their industry according to their assessed capacity.
- 4.2 Analysis by the Royal Commission of the issue of employment in the context of violence, abuse, neglect and exploitation, must start from the recognition that segregation of people with disability – including in Australian Disability Enterprises (ADEs), and other forms of segregated settings and environments – remain State sanctioned practices that enable violence, abuse, neglect, and exploitation to flourish. Segregation of people with disability – in all its forms - must be conceptualised and understood as a violation of fundamental human rights, and as an ideology with resultant practices that contravene the CRPD and other human rights treaties to which Australia is a party.
- 4.3 Segregation ultimately has its roots in harmful social beliefs about the inferiority of people with disability, and their ‘otherness’.⁴³ Deeply ingrained beliefs that people with disability are not competent enough to earn a living wage, exist autonomously within the community, or demonstrate the same level of productivity as a non-disabled worker can see people with disability - particularly people with intellectual disability and/or cognitive impairment - funnelled into segregated employment settings (like ADEs) that deprive them of self-determination and fair treatment.
- 4.4 The ongoing support for ADEs 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 multiple rights, including, for eg: the right to live independently and be included in the community; the right to inherent dignity and autonomy; the right to an adequate standard of living; the right to liberty and security, personal choice, autonomy and freedom of movement – just to name a few.
- 4.5 Sheltered workshops are often celebrated for providing an altruistic service to their communities while neglecting the fact that in reality they are inherently discriminatory, provide workers with disability with dead-end jobs, meagre wages, and the glimpse of a future containing little else. The result of sheltered work placements and the effect of segregation simply lowers expectations and reinforces negative public attitudes making it extremely difficult for individuals to transition into meaningful employment.⁴⁴
- 4.6 Segregation and isolation and the loss of liberty and security, personal choice, autonomy and freedom of movement are “defining elements” of institutionalisation.⁴⁵ These elements can occur in family homes, in large-scale institutions, disability supported accommodation arrangements, group homes and other residential facilities, and segregated employment settings such as ADEs. There is significant evidence that clearly demonstrates that these defining elements of institutionalisation are inherent to segregated employment settings, and that they underlie, and often give rise to, the conditions which enable violence, abuse, neglect and exploitation to occur.⁴⁶
- 4.7 As outlined later in this Submission, the sheltered and/or ‘hidden’ nature of segregated work environments and a lack of independent oversight means it is difficult for women with disability to speak up about violence, harassment, abuse and/or exploitation in their workplace, make a complaint, or seek information or assistance. Women with disability remain largely invisible in the discourse about violence, abuse, exploitation and neglect in the workplace, including in segregated workplace settings.⁴⁷

- 4.8 Many women with disability in institutional and segregated settings have limited access to police, support services, lawyers or advocates, and are trapped within the entrenched sub-culture of violence and abuse prevalent in institutional and segregated settings. They experience social isolation and lack of access to learning environments; are often economically, physically and psychologically dependent on others; and are socialised or compelled to tolerate a high degree of personal indignity, mishandling, and violence, abuse, exploitation and neglect as an incident of service delivery to them.⁴⁸
- 4.9 Disability scholar and former CRPD Committee member, Theresia Degener, notes that there are some underlying notions intrinsic to the sheltered workshops system that reveal a particularly harmful misconception about ‘disability’ that consequentially interfere with the respect for an individual’s inherent dignity. These create a significant prejudice and serve to continuously justify the segregation of people with disability. Degener traces the use of segregated facilities such as sheltered workshops and their legitimacy back to a reliance on particularly two assumptions associated with the notoriously problematic medical model view of disability. This model describes an approach to disability that still determines the disability policy landscape today and continues to have a detrimental impact on the human rights claims of persons with disability (particularly those with intellectual disability) under the cloak of protectionism. The first is that people with disability, above all else, require medical interventions, shelter, and welfare services; a need that can override any consideration for the inherent dignity and autonomy of individuals; and the second is that impairment can preclude legal capacity and interfere with the eligibility for rights claims. In combination, these assumptions distract from the idea that people with disability can make rights claims and that their segregation is inherently discriminatory.⁴⁹
- 4.10 The type of work [and often mundane] tasks performed by people with disability in ADEs often includes manual, repetitive labour, such as packaging, assembly, production, recycling, screen printing, plant nursery, garden, maintenance, landscaping, firewood stacking, kindling cutting, cleaning services, and laundry services. Because of the type of work involved and the level of gender segregation, these environments are often male-dominated and are more likely to have a stronger adherence to strictly stereotypical ‘masculine’ or ‘feminine’ gender roles based on stereotypes.⁵⁰ Because of their sheltered/ segregated nature, very little is known about the individual experiences of women with disability in ADEs. Rarely [if ever] are ADEs seen from the perspective of their employees.
- 4.11 Because of their sheltered/segregated nature, there is minimal [if any] oversight of the daily workplace practices and instances of violence, abuse, exploitation and neglect in ADEs are unlikely to be ‘picked up’ and/or reported. ADEs are not subject to the same levels of external oversight and regulation as mainstream workplaces/environments. One of the key differences is that sheltered workshops operate under federal and state industrial relations regulations but are exempt from national minimum wage regulations.⁵¹ Instead sheltered workshops are required under the Disability Services Act 1986 to pay supported employees’ wages that are ‘adjusted’ using wage assessment tools. As reported in 2017, the average hourly rate in sheltered workshops was \$5.61 an hour.⁵² This wage discrimination is in clear contravention of a number of the international human rights treaties to which Australia is a party.
- 4.12 The collection of Concluding Observations from the Committee on the Rights of Persons with Disabilities reveal that the Committee has provided substantial and definitive commentary on sheltered or segregated employment structures. The Committee has overwhelmingly found that sheltered work and conditions thereof to be inconsistent with the Convention and contrary to human rights provisions therein. As a result, the Committee has consistently urged State Parties, many of which still heavily rely on sheltered work structures, to review such practices and related legislation and bring them in line with the Convention.

4.13 In 2019, the Committee on the Rights of Persons with Disabilities adopted its Concluding Observations following its review of Australia's compliance with the CRPD.⁵³ In relation to ADEs, the Committee expressed its concern at the "ongoing practice of segregated employment through Australian Disability Enterprises (ADEs) with sub-minimum wage payment" and recommended that Australia:

Undertake a comprehensive review of Australian Disability Enterprises (ADEs) to adhere to Article 27 of the Convention and provide services to transition of persons with disabilities from sheltered employment into open inclusive and accessible forms of employment, ensuring equal remuneration for work for equal value.....

4.14 The issue of segregated employment settings and wage discrimination of people with disability, has also been clearly articulated by the Committee on Economic, Social and Cultural Rights (CESCR). In In 2017, the CESCR Committee adopted its Concluding Observations⁵⁴ following its review of Australia's compliance⁵⁵ with the International Covenant on Economic, Social and Cultural Rights (ICESCR). The CESCR Committee has clarified that segregated employment and wage discrimination is in clear contravention of the ICESCR⁵⁶ and has recommended that Australia employ targeted measures to address the unemployment people with disability.



**5 THE RIGHT TO WORK FOR
WOMEN WITH DISABILITY -
RHETORIC VERSUS REALITY**

5. THE RIGHT TO WORK FOR WOMEN WITH DISABILITY – RHETORIC VERSUS REALITY

- 5.1 Australia is a signatory to seven core international human rights treaties.⁵⁷
- 5.2 As a party to these treaties, Australia has chosen to be bound by the treaty requirements and has an international obligation to implement the treaty provisions through its laws and policies. Together, the seven international human rights treaties to which Australia is a party – along with their Optional Protocols,⁵⁸ General Comments⁵⁹ and recommendations adopted by the bodies monitoring their implementation - provide the framework to delineate the obligations and responsibilities of governments and other duty-bearers to comprehensively promote the human rights of women and girls with disability, including their right to work and to economic security.
- 5.3 Through its Terms of Reference, the work of the Royal Commission is framed within and underpinned by the CRPD. However, it should be understood that implementation of the seven core international human rights treaties to which Australia is a party, is not mutually exclusive. They are expected to be viewed and implemented as complementary mechanisms through which to create a holistic framework of rights protection and response for all people with disability.⁶⁰
- 5.4 For more than a decade, several of the international human rights treaty monitoring bodies have made recommendations to Australia in relation to people with disability, including specific recommendations relating to women and girls with disability. These include recommendations in relation to employment of women with disability, and in relation to violence against women and girls with disability. We urge the Royal Commission to consider all of these recommendations in its work, not just those stemming from the CRPD.
- 5.5 Paid employment is recognised as one of the benchmarks for financial security, but in the circumstances where many women with disability have either no, sporadic or minimal opportunities to engage in paid work throughout their adult life, a government provided, broadly based, financial safety net is essential if economic security for women with disability is to be enhanced.
- 5.6 CRPD article 28 [Adequate standard of living and social protection] elaborates on measures that Governments must take to safeguard and promote an adequate standard of living and social protection for people with disability, and specifically articulates the need to:
- (2)(b) ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.*
- 5.7 Australia is a high-income country, with most measures of lifestyle and well-being amongst the highest in the world. Alongside economic growth and rising wealth, the reality is that inequality has become a hallmark of Australia's economy over recent decades. The benefits have not been evenly shared, with women continuing to lag behind men in terms of jobs, incomes and superannuation balances, and with intersecting forms of discrimination such as ableism, racism, and homophobia/transphobia compounding the risks of poverty.⁶¹ Women in Australia on average have 42% less superannuation at retirement than men, which equates to a gap of around \$114,000.⁶² There is no data or information available on the superannuation situation of women with disability.
- 5.8 Research undertaken by WWDA, and indeed supported by similar research the world over, has demonstrated that women with disability do not need 'incentives' or 'motivation' to take up paid employment. What they do need is the elimination of discrimination and negative stereotypes from both a gender and disability perspective which compound their exclusion from support services, social and economic opportunities and participation

in community life.⁶³ They also need the implementation of specific, targeted measures to dismantle the many other structural barriers that impede their right to economic participation and to an adequate standard of living.

Employment of People with Disability in Australia

- 5.9 Although there is an acute lack of gender-disaggregated data in Australia on the economic position of women with disability, available data shows that Australians with disability are more likely to be unemployed (10.0% compared with 5.0% for those without disability) and face significantly longer periods of unemployment than people without disability.⁶⁴ Compared with other OECD⁶⁵ countries, Australia has one of the lowest employment participation rates for people with disability.⁶⁶ Only 9% of people with disability report they have the same employment opportunities as other people.⁶⁷
- 5.10 Complaints about discrimination in employment make up a significant proportion of all disability discrimination complaints made to Australian anti-discrimination agencies.⁶⁸ Recent data released by the Australian Bureau of Statistics (ABS),⁶⁹ shows that:
- An estimated 45.2% of employed people with disability report experiencing unfair treatment or discrimination due to their disability from their employer in the past 12 months;
 - An estimated two in five employed people with disability (42.0%) report that they experienced unfair treatment or discrimination due to their disability from their work colleagues.
- 5.11 The number of people with disability in the labour force has fallen by 3.0% in the past decade.⁷⁰ At the same time, the number of working age people without disability participating in the labour force has increased by 23%.⁷¹ Between 2003 and 2015, the number of people with disability working full time dropped by 16%. At the same time, the numbers of those working part time increased by 14%. By comparison, the number of people without disability in full-time and part-time employment increased over this period (by 12% and 33%, respectively).⁷²
- 5.12 Employed people with disability are more likely to work part-time (44% - 63%), compared with employed people without disability (32%).⁷³ Almost one-third of people with disability (32.4%) who work part-time want to work more hours, compared with just over one-quarter of people without disability (27.1%).⁷⁴ The amount of time unemployed people with disability look for work is substantially longer than for people without disability. People with disability are significantly more likely to still be looking for a job 13 weeks or longer after they first started (65.5%) compared with those without disability (56.1%).⁷⁵
- 5.13 Many young people with disability do not enter the labour force at all over the first seven post-school years (18% compared to 5% of those without a disability) and are much more likely to experience long-term unemployment (13%) than those without a disability (7%).⁷⁶
- 5.14 Aboriginal and Torres Strait Islander people aged 15-64 years with disability are much less likely to be in the labour force than those without disability (41.7% compared with 75.7%).⁷⁷ Culturally and linguistically diverse (CALD) people with disability, especially refugees and asylum seekers are less likely to secure employment and more likely to face discrimination in the workforce. They often feel obligated to enter numerous certificate courses by job network agencies. There is no data available on the labour force participation of CALD people with disability.⁷⁸

Labour force participation of women with disability in Australia

- 5.15 Men with disability (51.3%) are much more likely to be employed than women with disability (44.4%).⁷⁹ Women with disability in Australia are significantly disadvantaged in employment

in relation to access to jobs, in regard to remuneration for the work they perform, and in the types of jobs they gain. Working-age women with disability who are in the labour force have lower incomes from employment; are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment, and are much more likely to be in lower paid jobs than men with disability.⁸⁰ Women with disability have a much higher rate of part-time employment (56% of women with disability who are employed) than men with disability (22% of men with disability who are employed). Women with disability (5.9% of women with disability who are employed) are much more likely to be underemployed than men with disability (3.9% of men with disability who are employed).⁸¹

- 5.16 Many women with disability are often given marginal jobs far below their capacity. They are denied opportunities for further training and job advancement. They are often unable to enforce industrial rights. Women with disability have reported being typically treated like children and not given credit when they have performed well on the job because attitudes in their workplace were such that no one believed that they could have actually done the job on their own.⁸² There is evidence that women, including women with disability, have a lower level of information about, and understanding of, personal finances, including superannuation, than men.⁸³
- 5.17 The issue of employment of women with disability cannot be addressed without an understanding of, and the need to address, the underlying structural barriers to their workforce participation. These structural barriers include but are not restricted to: poverty; gender bias and gender inequality; the intersection of gender and disability discrimination; lack of safe, accessible and affordable housing; lack of accessible and affordable transport; the high incidence and prevalence of gender-based violence; non-optional costs of disability; inflexible work arrangements, to name just a few.

“If women with disabilities do not have access to transport, safe accommodation, meaningful work, freedom from violence and abuse, access to education and information - we will continue to be dependent on community services and government payments. We will continue to experience ourselves as living on the edge of our society, as being of less worth than other human beings - and our society will continue to have that perception of us.”⁸⁴

- 5.18 Both the CRPD Committee and the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) have consistently expressed their concerns for more than a decade, about the lack of specific, targeted measures taken by successive Australian governments to address the labour force participation of women with disability and have repeatedly called on Australia to address the underlying structural barriers to their workforce participation.⁸⁵ These recommendations have not been enacted, and there remain no policies or targeted programs that address the lack of employment participation of women with disability, including addressing the structural barriers to their workforce participation.

Violence, abuse, exploitation and neglect of women with disability in employment settings

- 5.19 Many women with disability experience violence, abuse, exploitation and neglect in the workplace – whether this be in open or segregated work settings. Women with disability are often so ‘grateful’ to have a job, that they are reluctant to report any form of violence or abuse, and anecdotal evidence to WWDA for more than two decades, indicates that even when women with disability do report violence and abuse in the workplace (including sexual violence), they are rarely believed, and/or the ‘incident’ is downplayed, and/or not responded to, investigated or treated as a crime.⁸⁶
- 5.20 Women with disability are much more likely to experience violence (particularly sexual violence) in residential and institutional settings (including segregated employment

settings),⁸⁷ where they frequently experience sustained and multiple episodes.⁸⁸ The overwhelming majority of perpetrators of sexual violence and abuse of women with disability in institutions are male caregivers/support workers/staff. Lack of reporting and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,⁸⁹ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators.

- 5.21 Australian research about sexual assault has highlighted the risks for women and girls with disability in institutional, residential, and other segregated settings, including the way that perpetrators can often deliberately target women with disability, particularly those who are least able to resist or make a formal complaint. The common scenario of perpetrators moving between services, either by choice, or as a result of intervention by management, is another serious dimension in the abuse of women with disability in segregated environments.⁹⁰
- 5.22 Research has also found that when women with disability are employed, they face higher rates of sexual harassment, violence, abuse and discrimination in the workplace than women without disability.⁹¹ Studies show that women with disability experience higher rates of sexual harassment than men with disability.⁹² In terms of the workplace, the Fourth National Survey on Sexual Harassment in Australian Workplaces found that nine out of ten (89%) women with disability, compared to almost seven out of ten (68%) men with disability had been sexually harassed in their lifetimes.⁹³
- 5.23 Often, women with disability are reluctant to report being abused and/or sexually harassed, either because they are unaware that it is illegal or are afraid of the consequences if they do report it, such as allegedly making a difficult situation worse, or being branded a ‘troublemaker’. Women with disability who are abused and/or sexually harassed in the workplace may not have adequate information about their right to a safe and secure workplace and may be seen by other workers or the employer as ‘an easy target’ and therefore perceived as less likely to report being harassed. Some women with disability may feel that their job security would be threatened if they were to take action. Women with disability who do take action and report being sexually abused and harassed are often not believed.⁹⁴
- 5.24 Sheltered workshops (ADEs) are often male-dominated and by their very nature, are isolated and segregated work environments. Because of this, women with disability are much more likely to be exposed to greater risk of violence, abuse, exploitation and neglect, as it is recognised that that gender-based violence is more likely to occur in male-dominated workplaces.⁹⁵ The sheltered and/or ‘hidden’ nature of segregated work environments and a lack of independent oversight means it is difficult for women with disability to speak up about violence, harassment or abuse in their workplace, make a complaint, or seek information or assistance. Women with disability remain largely invisible in the discourse about violence, abuse, exploitation and neglect in the workplace.⁹⁶
- 5.25 Research has demonstrated that women with disability, particularly women with an intellectual disability, cognitive, communication and/or sensory impairment, and/or high support needs, are much more likely to experience abuse, including physical and sexual assault, than the general population.⁹⁷ It is clear that more research on the experiences of women with disability experiencing (or at risk of experiencing) violence, abuse, exploitation and neglect, particularly in segregated settings and environments, is urgently needed.
- 5.26 Government programs such as JobAccess, provide minimal information about violence and abuse in the workplace.⁹⁸ The JobAccess website, for example, provides a list of agencies/phone numbers that people with disability can contact if “you wish to complain about disability services that you are receiving”. This information is not provided in accessible formats (such as Easy Read) and provides no contextual information about for example, what violence, abuse, neglect and exploitation might look like in employment settings, how to identify it, how to seek advocacy support to report it, and so on.

5.27 Similarly, with Disability Employment Services (DES) there is minimal information provided for DES participants regarding how to recognise, identify, report, violence, abuse, exploitation and neglect in the Disability Employment Services.⁹⁹ The DES Code of Conduct¹⁰⁰ provides no information in relation to the prevention of, or response to, violence and abuse in DES services.

Poverty and women with disability

5.28 Poverty is a major structural barrier to employment for women with disability. It is virtually impossible to be 'work ready' for anyone when living in poverty. Forty-five per cent of people with a disability in Australia live in poverty.¹⁰¹ 11.2% of people with disability experience deep and persistent disadvantage, more than twice that of the national prevalence.¹⁰² This rate is significantly higher for Indigenous people with disability. 61% of people with disability cannot afford to cover their basic needs on their current income.¹⁰³

5.29 Women with disability's economic inequalities and discrimination against them in areas such as employment, income, access to other economic resources and lack of economic independence reduce their capacity to act and take decisions, and increases their exposure to, and risk of violence, abuse, neglect and exploitation.¹⁰⁴

5.30 Government pensions are the main source of personal income for 42% of people with disability of working age.¹⁰⁵ By comparison, wages or salary is the main source of personal income for 68% of people of working age without disability.¹⁰⁶ The median gross weekly personal income of people with disability is half that of people without disability.¹⁰⁷ Income, welfare and taxation systems in Australia do not recognise the significant costs of disability that people with disability incur throughout their lifetime.¹⁰⁸ For eg: research indicates that women with disability spend more of their income on medical care and health related expenses than men with disability.¹⁰⁹ Women with disability between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of non-disabled women. Women with disability between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts.¹¹⁰

5.31 Lack of access to appropriate, available, accessible and affordable housing is a major factor contributing to the poverty of many women with disability in Australia. Women with disability are substantially over-represented in public housing, are less likely to own their own homes than their male counterparts, are in the lowest income earning bracket, yet pay the highest level of their gross income on housing, and are over-represented in the main factors that increase the risk of homelessness.¹¹¹ Women aged 55 and over, including those with disability, were the fastest growing cohort of homeless Australians between 2011 and 2016, increasing by 31%.¹¹²

5.32 The Disability Support Pension (DSP)¹¹³ is inadequate to support women with disability.¹¹⁴ DSP eligibility has been tightened to such a degree that 25-30% of people with disability are now receiving the much lower Newstart unemployment payment,¹¹⁵ which has further entrenched poverty. The rate of successful DSP claims has declined markedly – from 69% in 2011 to 29.8% in 2018.¹¹⁶ While governments have significantly reduced the number of people receiving the DSP, this has not translated into increased employment and economic security for women with disability.¹¹⁷

5.33 It is unrealistic to think that employment of women with disability will improve, without for example, Government recognising the need to increase the rate of the Disability Support Pension (DSP) and the Newstart Allowance. Research has found that people with disability ineligible for the Disability Support Pension (DSP) live in poverty on the Newstart Allowance and are unable to afford basic necessities such as for example, food, baby formula and sanitary pads. The low rate of Newstart Allowance additionally means that people with disability cannot afford medication, attend medical appointments, and/or purchase necessary medical aids and equipment.¹¹⁸

- 5.34 Throughout the COVID19 pandemic, women with disability in receipt of the Disability Support Pension (DSP), are experiencing and facing additional, unforeseen costs in this time of crisis, which is causing significant levels of distress and anxiety, and only serving to further entrench DSP recipients into poverty. Despite significant advocacy from DPOs and DROs, the Australian Government has refused to act on recommendations to include recipients of the DSP in the Coronavirus Supplement of \$550 per fortnight, consistent with the Jobseeker Payment and other payments announced by the Prime Minister on Sunday 22nd March 2020.¹¹⁹
- 5.35 In addition, research has found that women are not only losing their jobs at a faster rate than men during the COVID-19 recession, they are being helped less by emergency government stimulus. Australian women have lost 11.5% of their hours during the coronavirus pandemic, compared 7.5% for men; between March and April 2020, the number of women employed fell 5.3% compared to 3.9% for men; and that the Australian government stimulus had disproportionately supported male-intensive industries like construction.¹²⁰

Discrimination against women with disability in all areas of employment

- 5.36 It is clear that women with disability face and experience significant discrimination in all areas of employment, regardless of the setting or circumstance. In 2018, the Australian NGO CRPD Shadow Report Coordinating Committee, undertook a national survey of people with disability to help inform the development of the CRPD NGO Shadow Report for Australia's 2019 CRPD review.¹²¹ Of the almost 900 respondents, 72% were women with disability. In relation to employment, an adequate standard of living, and violence and abuse, key findings included:
- Only 9% of respondents believe they have the same employment opportunities as other people.
 - Only 30% of survey respondents believe they receive the same pay for their work as a person without a disability would.
 - A majority of respondents (61%) do not have access to all the support services they need. Of particular concern is a majority of respondents (60%) who cannot afford the support they need.
 - 76.5% of respondents feel discriminated against or treated unfairly because of their disability. This includes widespread discrimination across all spheres of life: from service providers, from employers and from the broader community.
 - 33% of respondents experience violence or abuse. In addition to this, just 41% of respondents feel safe in their community, and only 53% of respondents feel safe where they live.
 - Overwhelmingly, respondents believe that their income (whether from wages or social security payments) is not enough to support their basic needs (61%).
 - Difficulty accessing Government services and agencies is high (67%). Many respondents had experienced discrimination or disrespect from agencies such as Centrelink, the NDIS, and Employment services (such as DES).
 - 57% of respondents find Government information inaccessible or difficult to understand.
 - Despite 65% of respondents knowing about discrimination laws, just 12% of respondents believe that discrimination laws help.
 - There was a concerning number of comments referring to suicide, or being better off dead, reflecting the mental health challenges and psychological pressures faced by many people with disability.

The National Disability Insurance Scheme, Gender, and Employment

- 5.37 The National Disability Insurance Scheme (NDIS) is a universal scheme that funds ‘reasonable and necessary’ supports for Australians with permanent and significant disability, and which is currently being rolled out across Australia.¹²² At full implementation of the Scheme in 2020, approximately 460,000 people (10% of the population of people with disability in Australia) are expected to be supported by the NDIS. As at March 2020, the NDIS had a total of 364,879 participants – almost 100,000 less than predicted by this time.¹²³
- 5.38 Although the NDIS Act (2013) clearly articulates that one of the objects of the NDIS is to ‘give effect to Australia’s obligations under the Convention on the Rights of Persons with Disabilities’,¹²⁴ (which includes gender equality), there is clear gender inequity in the NDIS. It is deeply concerning that across all jurisdictions, the percentage of female participants in the NDIS remains at less than 37%, with some jurisdictions having even lower figures.¹²⁵ This situation has remained unchanged since the Scheme began.
- 5.39 Men with disability have been found to be more likely to successfully secure NDIS services than women, which allows them to negotiate better deals and services from their allocated funds. Research has found that the structure of the NDIS may be exacerbating existing social inequities, and that women, rural and regional Australians, and those from poor households are more likely to miss out on disability care and supports than their peers.¹²⁶
- 5.40 The NDIA argues that the gender disparity in NDIS participants is due to the ‘relatively high proportion of children entering the Scheme. The most common disability types at younger ages are autism and developmental delay, which are far more prevalent in males than females.’¹²⁷ However, there is growing evidence that the number of girls and women with Autism are vastly underestimated.¹²⁸
- 5.41 The perception Autism mostly affects men and boys has led to a bias in the diagnosis;¹²⁹ research on autism skews toward males to an acute degree;¹³⁰ autism assessment tools are usually based on male characteristics;¹³¹ females express their autism in ways which do not meet current diagnostic criteria;¹³² and girls and women with undiagnosed autism are typically mis-diagnosed as having other ‘conditions’, including ‘anxiety; depression; low self-esteem; eating disorders; mental illness’ and so on.¹³³ The majority of studies in autism still do not include enough autistic girls and women. People with autism also show greater diversity in gender and sexual identity than is seen in the general population, but researchers rarely knowingly include sex- and gender-diverse individuals in their studies.¹³⁴
- 5.42 The NDIA does not provide gender-disability disaggregated data or information, including in relation to employment, or employment outcomes. Similar to other national disability frameworks, systems, services and programs, the NDIS essentially treats and views people with disability as asexual, genderless human beings.
- 5.43 The ‘NDIS Participant Employment Strategy 2019 – 2022’¹³⁵ which sets out how the NDIA “will take action to make sure more NDIS participants achieve meaningful participation in our economy”,¹³⁶ is completely ungendered, despite the fact that there has been no improvement in labour force participation of women with disability in Australia for over two decades.¹³⁷
- 5.44 The ‘NDIS Participant Employment Strategy 2019 – 2022’ includes information as to how the NDIA will measure the Strategy’s progress. It identifies for example, that the NDIA will “Publish annual employment results that include data split by industry, disability type and age.”¹³⁸ It remains completely unacceptable that ‘gender’ is not included.
- 5.45 NDIA ‘Performance Reports’¹³⁹ provide only minimal gender-disaggregated data, making it difficult to understand how female NDIS participants are faring through the NDIS.

- 5.46 For example, in relation to employment and NDIS participants:¹⁴⁰
- 49% of older adults (aged over 25 yrs) are working in an ADE, compared to 35% of younger adults (15-24 yrs);
 - Participants with Down syndrome (72%) or intellectual disability (74%) are the most likely to be working in an ADE;
 - After three years in the Scheme, only 15% of participants aged 15 to 24 agreed that being in the NDIS had helped them find a suitable job;
 - For participants aged 25 and over, after three years in the Scheme, only 18% agreed that being in the NDIS had helped them find a suitable job,
 - 77% of NDIS participants receive the Disability Support Pension (DSP).
- 5.47 There is no data or information provided as to how many of these participants (including those working in ADEs), are women.

The National Disability Strategy (NDS) 2010-2020

- 5.48 The National Disability Strategy (NDS) 2010-2020¹⁴¹ sets out the national policy framework for guiding Australian governments to meet their obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It is also a framework to implement disability related international obligations from other UN treaties to which Australia is a party.
- 5.49 Although Australian Governments formally agreed that the NDS 2010-2020 would ‘ensure that the principles underpinning the CRPD are incorporated into policies and programs affecting people with disability, their families and carers,’ the fundamental principle of equality between men and women, has not been reflected in the NDS 2010-2020. It has not provided for, nor reported on any focused, gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights.
- 5.50 The NDS includes ‘Economic Security’ as one of its six key areas of mainstream and disability-specific public policy. It contains three policy priorities under ‘Economic Security’ [Area 3]:
- Increase access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability, their families and carers.
 - Income support and tax systems to provide an adequate standard of living for people with disability, their families and carers; while fostering personal financial independence and employment.
 - Improve access to housing options that are affordable and provide security of tenure.
- 5.51 It is clear that in the almost ten years since the inception of the NDS, there has been minimal purchase on any of these three policy priorities, particularly for women with disability. There are no policies or programs stemming from the NDS that address the lack of employment participation of women with disability, including addressing the structural barriers to their workforce participation.
- 5.52 The NDS lacks actions and measurable outcomes to address systemic human rights violations, including in health, employment, education, freedom from violence, and forced medical treatment. The NDS lacks resourcing in implementation, monitoring and evaluation across its policy outcome areas and lacks accountability and implementation mechanisms.¹⁴² 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.¹⁴³

- 5.53 The NDS is siloed within the Australian Government Department of Social Services (DSS) as a disability policy responsibility only. This means there is little authority to leverage change across other Australian Government departments, or across State and Territory jurisdictions. DPOs have consistently urged Australian Governments to establish an executive mechanism within the Department of Prime Minister and Cabinet to secure high level and cross government coordination of the NDS.¹⁴⁴ This recommendation has been echoed by a Senate Inquiry,¹⁴⁵ and the CRPD Committee,¹⁴⁶ however has been rejected by Government.¹⁴⁷
- 5.54 Governments across Australia are now working together to design a new National Disability Strategy to guide disability policy, programs and legislation over the next 10 years. Societies are permeated by gender differences and gender inequalities, and the outcomes of public policy are not equal for men and women. It is therefore critical that the new Strategy reflects Australia's obligations under the CRPD to address discrimination against women and girls with disability, and includes targeted, gender-specific measures to advance gender equality, including in the area of employment and economic security. It is also critical that the new National Disability Strategy includes a clear plan and timeframe for the closure of ADEs; as well as a clear plan and timeframe for the closure of all other segregated settings and environments (including segregated living settings). The CRPD and its Concluding Observations from its 2013 and 2019 review of Australia's compliance under the CRPD, must frame and inform the new National Disability Strategy, including priority areas for action.

Past Inquiries into Employment of People with disability

- 5.55 In the Australian context, there have been many reviews over the past 15 years into employment of people with disability. Despite these multiple reviews and inquiries, and the significant amount of public monies expended on them – the reality is that many of the recommendations stemming from these inquiries, have never been enacted. These inquiries and their outcomes have not translated into any tangible improvement in the employment of people with disability – instead, the number of people with disability in the labour force has fallen by 3.0% in the past decade,¹⁴⁸ labour force participation of women with disability has remained stagnant for two decades; the number of people with disability employed in the public service has decreased, and the number of people with disability living in poverty has escalated.
- 5.56 For example, in 2005 the [then] Human Rights and Equal Opportunity Commission conducted a National Inquiry into Employment and Disability. The final Report of the Inquiry 'Workability'¹⁴⁹ contained 30 recommendations, including the need for the Australian Government to develop a National Disability Employment Strategy that included a 'benchmarking, monitoring and reporting system'.¹⁵⁰ Ten years later, the Australian Human Rights Commission, conducted the Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with disability.¹⁵¹ The 496 page Final Report contained a significant number of recommendations in relation to promoting the right to work for Australians with disability.
- 5.57 Like the Human Rights and Equal Opportunity Commission inquiry recommendations from ten years earlier, the Willing to Work Inquiry also recommended that the Australian Government "develop a national workforce strategy for Australians with disability to significantly lift labour force participation rates. The national strategy should include targets, actions, performance indicators and timeframes." The recommendations from the 2015 National Willing to Work Inquiry have not been enacted.

Gender Discrimination and Bias in Disability Employment Services

- 5.58 As noted in the Issues Paper, the Australian Government 'has a number of employment programs aimed at increasing the participation of people with disability in employment.'¹⁵²

One of these is the Disability Employment Services (DES) Program, which is ‘designed to support people with disability to find work in the open labour market’.¹⁵³ Research undertaken by WWDA has found that DES has made no difference to employment outcomes for women with disability. Many women with disability also describe experiencing direct and indirect discrimination by DES providers.¹⁵⁴

- 5.59 Despite the Australian Government spending hundreds of millions of dollars a year on the DES program, less than 1 out of 10 people entering the DES program get a job, and stay in that job, for at least twelve months.¹⁵⁵ In 2019, In its most recent report to the CRPD Committee for the CRPD Review of Australia’s compliance under the CRPD, the Australian Government asserted that:

“The reforms for disability employment services had been introduced in July 2018; they included funding changes which provided better incentives for providers of disability employment services and which had resulted in an increase in the employment rate of women with disabilities one year later.”¹⁵⁶

- 5.60 However, no data or information was provided by the Australian Government to support these statements, and there is no evidence or data easily available to demonstrate that as at July 2019, DES has “resulted in an increase in the employment rate of women with disabilities” from the previous year.

- 5.61 In 2019, the Committee on the Rights of Persons with Disabilities adopted its Concluding Observations following its review of Australia’s compliance with the CRPD.¹⁵⁷ The CRPD Committee expressed its concern at “the narrow and incomplete review of the National Employment Framework for People with Disability as well as the lack of clear measures to reform the Disability Employment Services” and recommended that Australia “Undertake measures to reform Disability Employment Services and develop a national disability employment strategy that incorporates the recommendations from the Willing to Work Inquiry, and contains targeted gender-sensitive measures.”¹⁵⁸

Appendix 1 of this Submission provides a range of comments and quotes from women with disability throughout Australia in relation to employment.



6 THE RIGHT TO WORK - AUSTRALIA'S HUMAN RIGHTS OBLIGATIONS

6. THE RIGHT TO WORK – AUSTRALIA’S HUMAN RIGHTS OBLIGATIONS

- 6.1 The Terms of Reference for the Royal Commission explicitly reference and embed the Convention on the Rights of Persons with Disabilities:

RECOGNISING that people with disability are: equal citizens and have the right to the full and equal enjoyment of all human rights and fundamental freedoms, including respect for their inherent dignity and individual autonomy.

AND 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.

- 6.2 In this context, it is unacceptable to ‘cherry pick’ which human rights people with disability are entitled to. It is concerning, for example, that the Issues Paper does not highlight the fact that segregated employment is in clear breach of the CRPD, but rather identifies ADEs as a ‘government employment program’ and provides a brief description of the program. The Issues Paper then proceeds to ask, for example,

“whether the current range of employment programs and supports for people with disability are easy to access, how well they assist people to find and keep a job and whether or not the jobs provide an adequate income.....We want to know how those programs may or may not protect people with disability from violence, abuse, neglect and exploitation in their employment.”¹⁵⁹

- 6.3 WWDA would be extremely concerned if the Royal Commission was to canvass, in future hearings, forums and papers, views about the value of segregated models of employment, thus opening up debate about the ‘benefits’ or otherwise, of ADEs. CRPD Article 5 prohibits segregation on the basis of impairment, reflecting the established principle in international law that segregation is inherently unequal and discriminatory.¹⁶⁰ The right to work on an equal basis with others, ensuring equal remuneration for work of equal value, has already been negotiated and agreed and outlined in legally binding international human rights law through the CRPD. In this context, the value/benefits of ‘segregated employment’ of people with disability through ADEs, should not be up for debate in the Royal Commission.
- 6.4 Article 27 of the CRPD sets out the rights to work and employment of persons with disability. These are the right to work on an equal basis with others, and opportunity to gain a living by work freely chosen. The freely chosen work should be in a labour market and work environment that is open, inclusive and accessible to all persons with disability. Article 27 elaborates on measures that Governments must take to safeguard and promote these rights.
- 6.5 Although the Committee on the Rights of Persons with Disabilities is yet to develop a specific General Comment in relation to Article 27, the right to work and to an adequate standard of living is addressed in General Comment 6 [Equality and Non-Discrimination]; General Comment 3 [Women and girls with disabilities]; General Comment 5 [Living independently and being included in the community]; and General Comment 2 [Accessibility]. General Comment 1 [Equal recognition before the law] is also critical in the context of the right to work, as it clearly articulates that equality before the law is a fundamental general principle of human rights protection and is indispensable for the exercise of other human rights.

Equal Recognition Before The Law

- 6.6 CRPD article 12 is premised on the general principles of the Convention, namely, respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices), and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disability as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.
- 6.7 The right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disability on an equal basis with others. Legal capacity underpins personhood,¹⁶¹ and is indispensable for the exercise of civil, political, economic, social and cultural rights. This includes the right to meaningful work and to an adequate standard of living.
- 6.8 Many women with disability are not afforded the right to make their own decisions because others determine that they 'lack capacity' to do so. Such judgements often lead to substitute decision-making processes whereby others decide on a woman or girl's behalf what is in her 'best interest'. This is particularly the case for women and girls with intellectual disability – where the diagnosis of intellectual disability is assumed to equate with a lack of capacity to make decisions.¹⁶² Substitute decision-making and 'best interest' approaches have been thoroughly criticised as fundamentally contravening the CRPD and as intrinsically value-laden.¹⁶³ In practice, the 'best interest' approach most often serves the interests of guardians, families, carers and service providers.¹⁶⁴
- 6.9 The CRPD recognises that women with disability are subject to multiple and intersectional forms of discrimination, and 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, to maintain bodily and mental integrity, and to realise their right to work in the open labour market, in work that is freely chosen, and that provides just, favourable conditions of work on an equal basis with others.¹⁶⁵
- 6.10 Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disability and should never amount to substitute decision-making. The CRPD Committee have made it clear that States Parties' obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives.¹⁶⁶
- 6.11 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".¹⁶⁷ This is the basis of the interpretative declaration¹⁶⁸ 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.¹⁶⁹
- 6.12 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.¹⁷⁰ 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...”¹⁷¹

- 6.13 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.¹⁷² 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. Following its 2019 review, the CRPD Committee recommended that Australia implement a “nationally consistent supported decision-making framework” as highlighted by the ALRC. Six years on from the ALC Report, the Australian Government has still not provided its response to the Report or taken steps to implement the CRPD Committee recommendation.
- 6.14 For women with disability to be able to make meaningful choices in their lives, including the right to meaningful work, the right to freedom from all forms of violence, and for the free development of the person, Australia needs to meet its obligations under CRPD article 12 and replace substitute decision-making with supported decision-making that respects the rights, will and preferences of all women with disability.

Equality and non-discrimination

- 6.15 Equality and non-discrimination are among the most fundamental principles and rights of international human rights law. Because they are interconnected with human dignity, they are the cornerstones of all human rights. States parties have an obligation to respect, protect and fulfil the right of all persons with disabilities to non-discrimination and equality. This means that States parties must refrain from any action that discriminates against persons with disability.
- 6.16 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.¹⁷³ The CRPD has made it clear that segregated settings, including segregated employment settings, are by their very nature, discriminatory and prevent the application of the equality principle to people with disability.
- 6.17 Women and girls with disability are among those groups of persons with disability who most often experience multiple and intersectional discrimination. Article 6 of the CRPD is a binding equality and non-discrimination article that prohibits discrimination against women and girls with disabilities and obliges States parties to promote equality of both opportunity and outcomes.
- 6.18 Through CRPD General Comment 6 [Equality and non-discrimination] the CRPD Committee has provided authoritative guidance on the implementation of, and intersection between CRPD Article 27 [Right to Work] and CRPD Article 5 [Equality and non-discrimination]. The Committee has clarified for example, that: “States parties must ensure that there is no discrimination on the grounds of disability in connection to work and employment, and that to achieve or accelerate de facto equality in the work environment as laid out in article 5, States Parties should, amongst other things:
- Transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market, and in the meantime also ensure the immediate applicability of labour rights to those settings;
 - Protect the rights of workers with disabilities; and ensure the right to freely chosen employment;

- Ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start work;
- Expressly recognise the denial of reasonable accommodation as discrimination and prohibit multiple and intersectional discrimination, and harassment;
- Ensure proper transition into and out of employment for persons with disabilities in a non-discriminatory manner. States parties are obliged to ensure equal and effective access to benefits and entitlements, such as retirement or unemployment benefits. Such entitlements must not be infringed upon by exclusion from employment, thereby further exacerbating the situation of exclusion;
- Promote work in inclusive and accessible, safe and healthy working environments in the public and private sectors;
- Ensure that persons with disabilities enjoy equal opportunities regarding career advancement opportunities;
- Ensure access to training, retraining and education, including vocational training and capacity-building for employees with disabilities,
- Provide training on the employment of persons with disabilities and reasonable accommodation for employers, representative organisations of employees and employers, unions and competent authorities;
- Develop and enact universally applicable occupational health and safety measures for persons with disabilities, including occupational safety and health regulations that are non-discriminatory and inclusive of persons with disabilities;
- Recognise the right of persons with disabilities to have access to trade and labor unions.

Living independently and being included in the community

6.19 CRPD General Comment No. 5 [Living independently and being included in the community] outlines the CRPD Committee’s guidance on CRPD article 19.¹⁷⁴ 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 employment, including segregated employment, must be considered within this broad human rights context.

6.20 CRPD article 19, 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”.¹⁷⁵

6.21 Subparagraph (b) of CRPD Article 19, states:

‘Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;’

6.22 CRPD General Comment No. 5 clarifies the various individualised services which fall within the category of ‘support services.’ It makes clear that ‘support services’ are not restricted to services inside the home but must also be able to be extended to the spheres of employment, and that any institutional form of support services which segregates and limits personal autonomy is not permitted by article 19 (b). CRPD General Comment No. 5 clearly articulates that:

“to respect the rights of persons with disabilities under article 19 means that States parties need to phase out institutionalisation,” and that implementing article 19 will assist in phasing out ‘sheltered employment.’

- 6.23 Furthermore, CRPD General Comment No. 5 recognises the inherent risk to women and girls with disability in segregated settings:

‘Since institutions tend to isolate those who reside within them from the rest of the community, institutionalised women and girls with disabilities are further susceptible to gender-based violence, including forced sterilization, sexual and physical abuse, emotional abuse and further isolation. They also face increased barriers to reporting such violence. It is imperative that States include these issues in their monitoring of institutions and ensure access to redress for women with disabilities who are exposed to gender-based violence in institutions.’

- 6.24 CRPD General Comment No. 5 clearly articulates the imperative for States parties to: ‘Adopt clear and targeted strategies for deinstitutionalisation, with specific time frames and adequate budgets, in order to eliminate all forms of isolation, segregation and institutionalization of persons with disabilities.’

Accessibility

- 6.25 CRPD Article 9 [Accessibility] is a cross-cutting article of the CRPD, meaning that accessibility must be specifically identified and addressed in all measures in the implementation of the CRPD, including Article 27. CRPD Article 9 states in part that:

‘To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.’

- 6.26 CRPD Article 9 elaborates on measures that Governments must take to safeguard and promote these rights, including in the area of employment. CRPD General Comment 2 [Accessibility] provides authoritative guidance to States parties on how Article 9 should be implemented. It clarifies that:

‘Persons with disabilities cannot effectively enjoy their work and employment rights, as described in article 27 of the Convention, if the workplace itself is not accessible. Workplaces therefore have to be accessible, as is explicitly indicated in article 9, paragraph 1 (a). A refusal to adapt the workplace constitutes a prohibited act of disability-based discrimination. Besides the physical accessibility of the workplace, persons with disabilities need accessible transport and support services to get to their workplaces. All information pertaining to work, advertisements of job offers, selection processes and communication at the workplace that is part of the work process must be accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication. All trade union and labour rights must also be accessible, as must training opportunities and job qualifications. For example, foreign language or computer courses for employees and trainees must be conducted in an accessible environment in accessible forms, modes, means and formats.’¹⁷⁶

The right to work – the International Covenant on Economic, Social and Cultural Rights (ICESCR)

6.27 The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Australia in 1975, protects the equal rights of men and women to housing, work, social security, education, the highest attainable standard of health, and the continuous improvement of living conditions. Article 3 of this Covenant provides for the equal right of men and women to the enjoyment of rights it articulates, and this is a mandatory and immediate obligation of States parties.¹⁷⁷

6.28 Articles 6, 7 & 8 of the Covenant set out the rights to work, including for example, the right of everyone to the opportunity to gain a living by work freely chosen or accepted; and the right of everyone to the enjoyment of just and favourable conditions of work, including equal remuneration for work of equal value without distinction of any kind.

6.29 ICESCR General Comment No. 18 (2005) on the Right to Work provides authoritative guidance to States parties on the implementation of ICESCR article 6.¹⁷⁸ It clarifies that the right to work includes the right of every human being to decide freely to accept or choose work, and that ‘work’ as specified in article 6 of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant.

6.30 ICESCR General Comment No. 18 clarifies that:

‘The ‘right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’ is not realized where the only real opportunity open to disabled workers is to work in so-called ‘sheltered’ facilities under substandard conditions. States parties must take measures enabling persons with disabilities to secure and retain appropriate employment and to progress in their occupational field.....’¹⁷⁹

6.31 In 2016, the Committee on Economic, Social and Cultural Rights, provided further guidance and clarification regarding the right to work for people with disability. Through its General Comment 23 [The right to just and favourable conditions of work], the Committee clarified that:

“At times, workers with disabilities require specific measures to enjoy the right to just and favourable conditions of work on an equal basis with others. Workers with disabilities should not be segregated in sheltered workshops. They should benefit from an accessible work environment and must not be denied reasonable accommodation, like workplace adjustments or flexible working arrangements. They should also enjoy equal remuneration for work of equal value and must not suffer wage discrimination due to a perceived reduced capacity for work.”¹⁸⁰

6.32 ICESCR General Comment 23 also clarifies that:

“the failure of employers to respect the minimum wage should be subject to penal or other sanctions’ and that “any person who has experienced a violation of the right to just and favourable conditions of work should have access to effective judicial or other appropriate remedies, including adequate reparation, restitution, compensation, satisfaction or guarantees of non-repetition.”



7 UNDERSTANDING INTERSECTIONALITY

7. UNDERSTANDING INTERSECTIONALITY

- 7.1 Over two-million women and girls with disability live in Australia (approximately 20% of the population of women), including approximately 100,000 girls with disability aged 0-14 and two- million women with disability aged 15 and older.¹⁸¹
- 7.2 Women with disability in Australia come from a range of backgrounds, lifestyles, beliefs and communities. They may be Indigenous or come from culturally and linguistically diverse communities. They may have a faith, or not; be married, divorced, partnered, or single; gay, lesbian, bisexual, transgender or intersex; parents, guardians, carers, and friends. They may or may not be in paid work, or they may be engaged in education and training. Each of these contexts can affect how, when, why, and in what form a woman with disability accesses, receives and/or is denied, services and supports, and how or if, and to what extent, they are included in social, political, cultural and economic opportunities and participation in community life.
- 7.3 While the Terms of Reference establishing the Royal Commission require examination of the intersectional dimensions of violence, abuse, neglect and exploitation, we note that to date there has been little to no focus on the intersection between disability and gender. The Hearings, community forums and the Issues Papers have been gender-neutral with little to no identification or examination of the specific experiences of women and girls with disability. This gender-neutrality can (and does) create and perpetuate the consequences of gender-based discrimination and can (and does) lead to misleading analyses of issues and/or inaccurate assessments of likely policy outcomes.
- 7.4 It is telling, yet unsurprising that the Issues Paper on Employment provides no data or information on the employment situation of women with disability in Australia. Despite Term of Reference G, which clearly calls for the Royal Commission to examine the specific experiences of violence against, and abuse, neglect and exploitation of, people with disability in relation to sex and gender,¹⁸² the omission in the Issues Paper of any reference to the specific situation of women with disability in relation to employment, is deeply concerning.
- 7.5 The Issues Paper does reference CRPD article 27, however, it does not explicitly reference Article 6 on women with disability as a cross-cutting obligation. The cross-cutting nature of Article 6 means that the rights of women with disability must be examined and addressed when interpreting and implementing every article of the Convention.
- 7.6 Intersectionality is a key element of the human rights approach to disability required by the CRPD.
- 7.7 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.¹⁸³ 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.¹⁸⁴ The CRPD is a response to this lack of recognition of the rights of persons with disability.
- 7.8 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)¹⁸⁵ and the Convention on the Rights of the Child (CRC).¹⁸⁶

7.9 However, the CRPD explicitly acknowledges different layers or intersections of identity, through its preamble paragraph (p):

“Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple and aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.

7.10 Intersectional discrimination acknowledges that people with disability do not experience discrimination in the same way as a homogenous group. It recognises the “multidimensional layers of identities, statuses and life realities”¹⁸⁷ that “interact with each other at the same time in such a way as to be inseparable”.¹⁸⁸

7.11 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.

7.12 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.”¹⁸⁹

7.13 Article 6 recognises “that women and girls with disabilities are subject to multiple discrimination”,¹⁹⁰ which establishes “the first binding intersectionality clause in a human rights treaty”.¹⁹¹

7.14 Importantly, article 6 is a cross-cutting article that relates to all other articles of the CRPD.¹⁹² 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”.¹⁹³

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

- Preamble paragraph (s) states, “[e]mphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities”;
- Article 3 (g) contains the principle “Equality between men and women”; and
- Specific ‘sex’, ‘gender’ and ‘age’ references throughout the CRPD.¹⁹⁴

7.16 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.¹⁹⁵

7.17 General Comment 3 clarifies that CRPD Article 6 is a binding non-discrimination and equality provision that unequivocally outlaws discrimination against women with disability and promotes equality of opportunity and equality of outcomes. It specifically recognises that women and girls with disability are more likely to be discriminated against than men and boys with disability and women and girls without disability.¹⁹⁶

- 7.18 This General Comment highlights that women and girls with disability experience the “same harmful practices”¹⁹⁷ committed against women without disability but also experience specific and unique forms of violence. This includes the absence of free and informed consent and legal compulsory detention and treatment, economic exploitation, violations of sexual and reproductive rights, and forms of violence that constitute torture and ill-treatment, such as forced or coerced sterilisation, the administration of electroshock treatment and the use of chemical, physical or mechanical restraints, and isolation and seclusion.¹⁹⁸
- 7.19 The recognition that women and girls with disability are more likely to experience violence, abuse, neglect and exploitation than both men with disability and women and girls without disability warrants a concerted and specific focus on women and girls with disability within the Royal Commission. An intersectional analysis should be integral to all its work, not only to deliver on the Terms of Reference, but to also adequately investigate and make recommendations that respond to the specific situations of women and girls with disability, including in the area of employment and economic security.
- 7.20 Importantly, the Royal Commission needs to recognise that violence, abuse, neglect and exploitation of women and girls with disability cannot be confined to an examination of domestic and family violence, which is often the only area where there is focus on women and girls with disability. There needs to be recognition that the experiences of women and girls with disability are integral to all areas examined by the Royal Commission, and that there will also be areas that disproportionately impact on women and girls, such as violations of sexual and reproductive rights, which must also be examined by the Royal Commission.
- 7.21 The issues, barriers, discrimination and human rights violations that are specific to women and girls and/or that disproportionately affect women and girls with disability must be identified, analysed and addressed by the Royal Commission.



**8 GENDER INEQUALITY AND DISABILITY
DISCRIMINATION AS DRIVERS OF
VIOLENCE AGAINST WOMEN
WITH DISABILITY**

8. GENDER INEQUALITY AND DISABILITY DISCRIMINATION AS DRIVERS OF VIOLENCE AGAINST WOMEN WITH DISABILITY

8.1 It is now well understood that gender inequality underpins violence against women,¹⁹⁹ and that this inequality operates on many levels:

“from social and cultural norms (the dominant ideas about men and women in a society), to economic structures (such as the pay gap between men and women), to organisational, community, family and relationship practices.”²⁰⁰

8.2 It is recognised that to prevent violence against women, viewed as a “significant social problem”, there needs to be “a large scale response” to achieve a “social transformation”.²⁰¹ It is acknowledged that beliefs, behaviours and systems that excuse, justify or condone violence and inequality must be challenged and reformed.

8.3 While there are criticisms about the adequacy of the response to prevent violence against women, the current response in Australia includes state and national laws, national action plans, political commitments and budget allocations, national surveys, national awareness raising campaigns, inquiries, and educational programs delivered as part of the school curriculum.²⁰²

8.4 On the other hand, violence against people with disability is more often examined only in the context of the disability service system, the imputed ‘vulnerability’ of people with disability, the failure of policies and procedures, the lack of qualified and accredited staff and the lack of rigorous oversight and protective mechanisms. While these factors are important, rarely is the underlying driver of violence, abuse, neglect and exploitation - disability inequality and discrimination - identified or acknowledged, and consequently, there is no recognition of the need for a social transformation to address this situation.

8.5 The Report from Senate Inquiry into violence, abuse and neglect against people with disability highlighted the de-valuing of people with disability as an underlying cause of violence and recognised that “cultural attitudes are hard to shift and will take a long-term concerted effort from all stakeholders, with a lead role taken by government”.²⁰³

8.6 This de-valuing of people with disability is based in a medical model understanding of disability and is commonly called ‘ableism’. The medical model views disability as a ‘deficit’ within the individual, a deviation from bodily, cognitive and mental norms, which requires medical, rehabilitation, psychology and educational interventions to diagnose, treat or cure the individual.²⁰⁴ The response to this has been to establish ‘special’ laws, policies, programs and arrangements that segregate, congregate and marginalise people with disability - special schools, special accommodation arrangements, segregated employment, segregated transport systems, special access arrangements, special sporting events, guardianship, financial management and mental health laws.

8.7 The social model of disability recognises disability as a social construct underpinned by power relations that oppress and discriminate against people with impairments.²⁰⁵ 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.

8.8 The CRPD is based on the social model of disability, but goes further by codifying a human rights model of disability.²⁰⁶ It recognises disability as a social construct, but also “values impairment as part of human diversity and human dignity”.²⁰⁷ 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”.²⁰⁸

- 8.9 The influence of ableism is poorly recognised in Australia, with the medical model of disability still evident in Australian law, policy and practice. While, there has been greater recognition of the rights of people with disability, which has led to associated reforms, the impact of the medical model is still 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 employment.
- 8.10 It is this medical or ableist view of people with disability that is the foundation of inequality and discrimination, which underpins the violence, abuse and exploitation experienced by people with disability.²⁰⁹
- 8.11 For women and girls with disability, gender inequality, disability inequality and intersectional discrimination are interlinked and inseparable. This means that the prevention of violence, abuse, neglect and exploitation requires explicit recognition and comprehensive dismantling of all forms of intersecting inequality and discrimination experienced by people with disability, including women and girls with disability.
- 8.12 A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. However as noted by the 2013 Council of Australian Governments (COAG) ‘Stop the Violence Project’ (STVP),²¹⁰ women and girls with disability are at high risk of gender-based and other forms of violence based on social stereotypes and biases that attempt to dehumanise or infantilise them, exclude or isolate them, target them for sexual and other forms of violence, and put them at greater risk of institutionalised violence. A combination of factors at the societal and individual level – such as exclusion from participation in community life due to prejudices, stigma and discrimination, lack of access to quality education, employment and livelihood, as well as access to healthcare and other support services and resources - result in marginalisation, disempowerment, dehumanisation and the systemic denial of the rights of women and girls with disability.²¹¹
- 8.13 The empowerment of women is vital in any framework to tackle violence against women and girls, and this is even more potent for women with disability, who have made it clear that empowerment for them comes from speaking and/or acting in their own interests; the presence of a collectivity and a basis in self-determination; and a discourse of human rights.²¹²
- 8.14 Organisations, groups and networks of women with disability, as well as other human rights based DPOs play an essential role in efforts to promote the rights of women and girls with disability to gender equality and to freedom from violence, abuse, neglect and exploitation. However, in Australia, national DPOs and DROs are poorly funded, only funded for a two-year period, indexation is not applied to funding and there are restrictions on how this funding can be used.²¹³ Open competitive tendering, short term funding contracts, inflexible funding guidelines and no guarantees of funding post June 2022, continue to position DPOs in a precarious and thoroughly unsustainable position. The important role of DPOs, in line with CRPD General Comment 7²¹⁴ is not well understood by Australian governments.
- 8.15 The establishment of the Royal Commission is an opportunity to go beyond investigation of life domains, the operation of service systems, the quality of support workers, and protective mechanism responses, and to explicitly expose and address the underlying drivers or enablers of violence, abuse, neglect and exploitation. It is critical that there is

a comprehensive investigation of ableism, inequality and intersectional discrimination in Australian law, policy and practice and in community attitudes generally so that findings and recommendations address root causes of violence, abuse, neglect and exploitation.

- 8.16 The risk for the Royal Commission in only focusing on separate service systems and life domains, is that the investigation and outcomes are narrowed to merely enhancing existing service systems, removing existing barriers and establishing or improving protective mechanisms, without identifying the overall social transformation required to prevent violence, abuse, neglect and exploitation against people with disability, including women and girls with disability.



9 EXPOSING VIOLENCE - THE LACK OF DISAGGREGATED DATA AND RESEARCH

9. EXPOSING VIOLENCE – THE LACK OF DISAGGREGATED DATA AND RESEARCH

- 9.1 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.²¹⁵
- 9.2 It is widely recognised that any available data relating to incidence and prevalence of violence against women with disability, does not give the true picture of the level of risk and prevalence of violence and abuse, due to many factors and barriers experienced by women with a disability to reporting violence. Just some of these factors include for example: the reinforced demand for compliant behaviours; the perceived lack of credibility; social isolation; lack of access to learning environments; lack of awareness of rights and what constitutes violence, abuse, neglect and exploitation; dependence upon others; fear of losing services; lack of access to police, support services, lawyers or advocates; lack of public scrutiny of institutions; and the entrenched sub-culture of violence and abuse prevalent in institutional and/or segregated settings.²¹⁶
- 9.3 For example, a national survey undertaken as part of the COAG Reform Project ‘Stop the Violence’ (STVP) in 2013, found that violence is present in the lives of approximately twenty-two per cent of women and girls with disability who had accessed service support (including employment services)²¹⁷ in the preceding 12 months. The main types of violence experienced by the women included domestic violence (80%); emotional abuse (68%); sexual violence and abuse (63%); financial abuse (58%); the withholding of care (23%), and the withholding of medication (14%). Importantly, findings from the survey provided data only on women and girls with disability who had accessed services. However, current literature, Australian Government reporting on the service use of people with disability, reports from family violence services²¹⁸ and women with disability themselves, suggest that many women and girls with disability do not and/or cannot and/or are prevented from using and/or accessing services. As highlighted by the STVP, it is highly likely that significant numbers of women and girls with disability who are experiencing or at risk of violence do not access any type of service. This suggests that the prevalence of violence against women and girls with disability is likely to be substantially higher than the already alarming 22 per cent suggested by the STVP national survey findings.
- 9.4 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.²¹⁹
- 9.5 Nevertheless, there remains a significant lack of disaggregated data, research and information across all life domains that prevents development of a comprehensive evidence base on violence experienced by women and girls with disability in Australia. This results in women and girls with disability being largely excluded from policies, programs, services and measures to progress gender equality.²²⁰
- 9.6 Furthermore, there is little to no intersectional analysis, research or disaggregated data that examines the experience of violence, abuse, neglect and exploitation of 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.²²¹
- 9.7 While Australia has an existing, and continually evolving national data landscape on violence against women, national datasets (surveys, longitudinal datasets and

administrative data) have limitations in reference to violence against women and girls with disability. These limitations include: challenges in extrapolating comprehensive evidence on prevalence and perpetration rates for this particular cohort; challenges with how data is collected, what is collected, how surveys are methodologically designed and administered and; how existing data is leveraged for the creation of new data assets.²²²

9.8 For example, the ABS's Personal Safety Survey (PSS) is the key Australian data asset that collects information on the nature and extent of violence experienced by men and women aged 18 years and over.²²³ The 2016 PSS found that women with disability were more likely to have experienced violence in the preceding 12 months than women without disability.²²⁴ However, the PSS's sampling frame includes only people living in private dwellings and excludes residential care and institutional facilities, such as group homes. WWDA is not aware of any statistical collections, where the Commonwealth is a data custodian, which specifically collects data on experiences of violence for women and girls living in non-private dwellings, or segregated environments/settings such as Australian Disability Enterprises, or other forms of congregate care settings.

9.9 There is little to no disaggregated data, research or intersectional analysis available in Australia on the employment and economic security experiences of women and girls with disability,²²⁵ including in relation to their experiences of violence, abuse and exploitation in employment settings and services.

9.10 For more than a decade, the United Nations has been critical of Australia for its neglect of women and girls with disability in all aspects of data collection, information and research,²²⁶ and has repeatedly called on Australian Governments to address this neglect as a matter of urgency. These strong recommendations from the UN are consistent with recommendations made to successive Australian Governments by civil society organisations, parliamentary inquires and other fora.²²⁷ Yet to date, there has been little progress in this area, and women and girls with disability continue to be excluded from policies, programs, services and measures to progress gender equality – including in the areas of employment and the right to freedom from all forms of violence.

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

“commission and fund a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the Convention can be measured.”²²⁸

9.12 This long-standing recommendation has not been enacted.



10 APPENDIX 1: THE VOICES OF WOMEN WITH DISABILITY IN RELATION TO THE RIGHT OF WORK

10. APPENDIX 1: THE VOICES OF WOMEN WITH DISABILITY IN RELATION TO THE RIGHT TO WORK

The following information comes from women with disability who have provided feedback and commentary to Women with Disabilities Australia (WWDA) regarding their experiences of employment, including their experiences of violence, abuse, exploitation and neglect in workplace environments.

“A DES worker told me that I needed to “make more eye contact” because “you’re never going to get a job otherwise.” He would also repeatedly touch me, despite being asked not to. He said: “You have to get comfortable with this so you can get a job”. When I told the agency that I had Post Traumatic Stress Disorder (PTSD) from severe violence in my childhood, they told me “that’s just what parenting was like back then” and that I would just need to “get over it” if I wanted a job.”

“One DES agency didn’t want to have anything to do with me because I “didn’t look disabled enough”. They advised me not to even bother seeking work because I’d have a hard time getting back onto the pension if I was no longer able to work.”

“A DES agency kept sending me to job interviews where the person doing the interviews asked me why I was bothering as they couldn’t accommodate my disabilities. I think that disability employment agencies were given funding (from the Federal Government) for how many people they sent along to job interviews.”

“I got a part time job through a Disability Employment Service. The job I got was as a hostess at a restaurant. The job description was hostessing, some waitressing, and working the till etc. After a week, the boss started adding unpaid hours and other jobs to these duties. I managed to avoid the heavy cleaning and the cleaning of toilets. He thought he could save paying for a cleaner by getting me to do these jobs as unpaid labour by adding them to my duty list. I overheard him speaking to the Chef – he said: “the retard can do more for no money because she won’t know any better”. When I walked into the office, the Chef went red in the face and the boss told me to “do as I’m told or I’d get the sack and I should be grateful that someone was willing to employ someone like me.”

“I know of people with disabilities who have been found a job (by a disability employment service) in small business. The small business got money off the government for employing someone with a disability. But the experience of the people with disabilities was that they experienced discrimination by the employers and were treated really horribly.”

“I think that some disability employment services don’t really care where they get you a job – it’s just about them being able to tick the boxes and say that they got a job for someone with a disability.”

“I did get a job through a Disability Employment Service. However, when I began my employment, I wasn’t given an orientation or induction and I never felt part of the ‘team’. In the whole time that I was employed, I was never once offered any training to further my career, and I feel I was kept at a very low rate of pay because of my disability.”

“DES service workers should have to do specific training on gender, disability and human rights. Particularly around the intersection between disability, gender and employment. It’s no point just assuming that women with disabilities can get a job without the recognition and proper understanding of the structural issues that

prevent women with disabilities from finding and securing employment.”

“There is almost an assumption and an expectation from disability employment services that women with disabilities should be grateful for ANY job. But we don’t want just ANY job – we have a right to meaningful employment, with proper conditions, and opportunities to pursue a career path.”

“It’s rare for an employer to give work opportunities unless they can get money from the government and when that runs out, you are sacked.”

“I am severely autistic. Employment options a few... to non-existent.”

“Only ever offered work experience or volunteer work. Or last resort to work at an Australian Disability Enterprise.”

“I would like to start my own business, something I could do from home.”

“I spent most of my life without a job because nobody would employ me. My spine was considered a risk factor. The first job I got I never declared it and spent a lot of the time hurting my back due to heavy lifting that nobody else would do so I had too.”

“Age and disability preclude both government and private employers from fair treatment but is subtle.”

“I find it very difficult to leave the house for extended periods of time. The day after I’ve been out, I am in pain and need to be at home in a quiet place. So, I can’t leave the house to complete full time work, I’m unable to work part-time as my symptoms fluctuate and I have no ability to predict when I will be able to work. University offers a flexibility that the work force doesn’t. In addition, I can’t handle much stress or pressure which makes my symptoms flare.”

“I have not been employed since 2011 due to my disability. Employers are not willing nor able to change employment policies when there may be months of a year that I cannot work.”

“The disability means there are less types of jobs I can apply for (eg: nothing requiring physical handling) -so this isn’t discrimination, but it is a barrier in gaining meaningful employment because there are fewer opportunities realistically; and then some employers project unconscious bias so it can be difficult to get through interview stage; not impossible but can be a challenge.”

“I’ve never had an employer understand my disability, which has meant that my disability has permanently deteriorated because of my rostered hours and working conditions every time I’ve been employed. It takes me years to recover, the gaps on my resume mean I’m always starting over a minimum wage role, if I’m lucky. Usually I can only find exploitative work with a resume like mine, I worked as a cook for \$30 per day.”

“Employers do not want to provide ongoing training to people to help them advance their career, not meaningful employment, no flexible working arrangements for people to change their days and hours around when needed. No value not given any responsibilities where you can learn new skills and be able to progress your career to a higher position.”

“Regardless of having two university degrees, I have spent eight years long-term unemployed. I believe for the most part this is because of discrimination from

employers. Job services for people with disability, are inadequate, and many of their workers are low skilled, and do not know how to work with clients who are educated.”

Case Studies

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

Mia is 40 and lives in a regional and remote area of Australia. Mia is desperate to work in paid employment. She loves working and feels she has a lot to contribute. She stayed in her last job for 10 years and was a highly valued employee. She only left her job because her [then] partner had secured a good job in regional Australia. Mia has a disability which affects her vision at times, however, with appropriate aids and equipment, she is a productive employee. Mia has difficulty finding a job in her new area. She seeks the help of a Disability Employment Service (DES), which helps her to apply for a job in a call centre. At interview, Mia advises the manager that she has a disability which affects her vision but that it will not affect her work performance. Mia gets the job. Mia requests an orientation to her new job, but the Manager says she doesn't have time and Mia will just have to figure it out. Within days of commencing her new job, Mia starts to experience bullying from the Manager. Mia is placed in a dark corner of the office space where she has difficulty seeing. She is given a chair that doesn't allow her to get close enough to the desk to see the computer screen. Mia's request for minor adjustments to her workstation (including a light) are denied by the Manager. The discrimination intensifies. Mia is frightened of going to work but she wants to keep her job and doesn't understand why she is being treated so cruelly. Mia doesn't take any time off, despite her doctor's concerns at the effect the discrimination is having on her. Mia keeps her DES support worker updated about all the incidents she is experiencing. Her DES support worker agrees Mia is experiencing disability discrimination but says there is nothing that she or the DES can do about it. One day Mia goes to work and is introduced to a young man who has been employed by the Manager. He is in the process of receiving an orientation from the Manager. Later that day, Mia is told by the manager that she is being sacked. Mia is not given any reasons why her employment is being terminated. She is given one day's notice. When Mia advises her DES support worker what has happened, the DES worker re-iterates that there is nothing the DES can do about it. The DES worker gives Mia

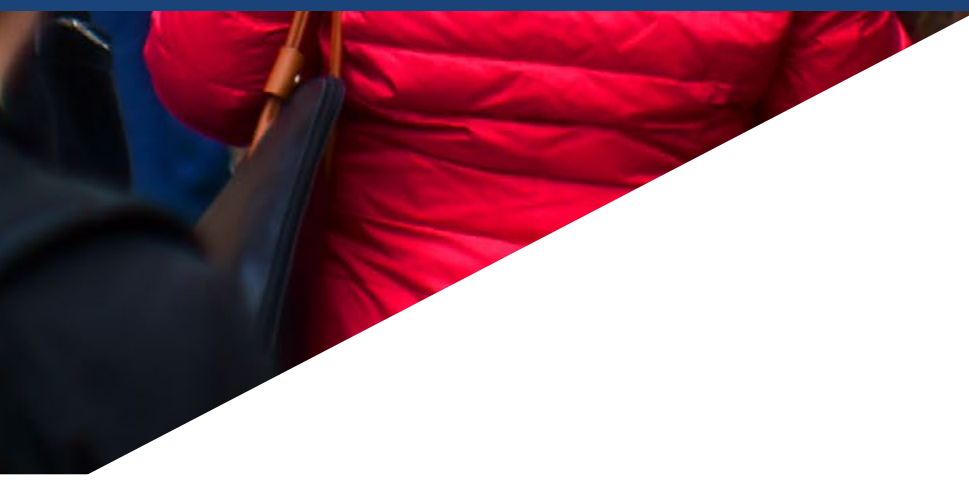
WWDA's phone number and tells her to contact WWDA to see if WWDA can help her. WWDA is able to find Mia a solicitor who is currently working with Mia to lodge a formal disability discrimination complaint against the call centre.

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

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



10 APPENDIX 2: RELEVANT CONCLUDING COMMENTS FROM UN TREATY BODIES



11. APPENDIX 2: RELEVANT 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-Asutralia.pdf>

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 employment and to violence, abuse, neglect and exploitation.

The right to work

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.²²⁹ The Committee expressed concern about: the narrow and incomplete scope of the review of the National Employment Framework for People with Disability and the lack of clear measures to reform Disability Employment Services; the ongoing segregation of people with disability employed through Australian Disability Enterprises and the fact that such people receive a sub-minimum wage; the low labour force participation of people with disability, particularly women with disability, Indigenous people with disability, people with disability from culturally and linguistically diverse backgrounds and refugee and asylum-seeking people with disability. The Committee recommended that Australia: take measures to reform Disability Employment Services; develop a national disability employment strategy that contains targeted gender-sensitive measures and incorporates the recommendations from the Australian Human Rights Commission’s “Willing to work” inquiry; undertake a comprehensive review of Australian Disability Enterprises to ensure they comply with the Convention and provide services to enable people with disability to transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value; and implement measures to address systemic and structural barriers experienced by persons with disabilities, particularly by women with disability, Indigenous people with disability, people with disability from culturally and linguistically diverse backgrounds and refugee and asylum-seeking people with disability.

In its 2018 review²³⁰ of Australia’s eighth periodic report²³¹ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee recommended that Australia put into place temporary special measures to accelerate the equal participation of women in political and public life, education, employment and the health sector, including with regard to women facing intersecting forms of discrimination. It also recommended that the Australian Government implement recommendations from the 2017 Inquiry into gender segregation in the workplace, which included a key recommendation that Australia develop and implement a national policy framework to achieve gender pay equity in Australia.

The **Committee on Economic, Social and Cultural Rights** specifically addressed segregated employment of people with disability in its 2017 Concluding observations²³² on the fifth periodic report of Australia,²³³ and clarified that segregated employment and wage discrimination is in contravention of the Covenant on Economic, Social and Cultural Rights (ICESCR).²³⁴ In addition, the Committee recommended that Australia employ targeted measures to address the unemployment people with disability.

Right to freedom from violence, abuse, neglect and exploitation

In September 2019, the **Committee on the Rights of Persons with Disabilities** adopted its Concluding Observations following its review of Australia's compliance with the Convention on the Rights of Persons with Disabilities.²³⁵ The Committee expressed concern about: the lack of oversight, complaint and redress mechanisms for people who are not eligible for the NDIS and who experience violence, particularly women with disability; the lack of resources and redress mechanisms available for people with disability to participate in the Royal Commission into Violence, Abuse, Neglect and Exploitation of Persons with Disabilities; the non-implementation of recommendations in the report from the Australian Human Rights Commission (AHRC), "A Future without Violence"; the lack of explicit reference to women and girls with disability in the National Plan to Reduce Violence against Women and their Children 2010-2020; the insufficient expertise and structural barriers within services dealing with domestic violence, sexual assault and related crises to adequately support women and girls with disability; and the limited number and scope of instruments to collect data on violence against women and girls with disability. The Committee recommended that Australia: establish a national accessible oversight, complaint and redress mechanism for all people with disability in all settings, particularly older women with disability; ensure adequate resources and a redress mechanism for the Royal Commission; implement the recommendations contained in the AHRC report; ensure inclusion of women and girls with disability in the National Plan; ensure accessible gender and age sensitive services that are inclusive of women and girls with disability; and address the methodological restrictions in data collection instruments used to capture data on violence against women and girls with disability.

In its 2018 review²³⁶ of Australia's eighth periodic report²³⁷ under the **Convention on the Elimination of All Forms of Discrimination Against Women**, the CEDAW Committee expressed its concern at the lack of national legislation prohibiting all forms of gender-based violence against women. The CEDAW Committee recommended that the Australian Government adopt commonwealth legislation that is in line with the Convention and prohibits all forms of gender-based violence against women and girls and shift the power to legislate on this matter to the Commonwealth Parliament. The Committee also recommended that Australia should expedite the establishment of the national data collection framework and guarantee that data on femicide and violence against women with disability is systematically collected under the framework.

In its 2019 Concluding Observations²³⁸ of Australia, the **Committee on the Rights of the Child** expressed its serious concerns about the high rates of violence against children in the home, that girls between the ages of 10-19 years suffer the highest rate of sexual abuse, that Indigenous children continue to be disproportionately affected by family and domestic violence, including sexual violence, that children with disability are more vulnerable to violence, neglect and abuse, including sexual abuse, and that girls with disability are forced to undergo sterilisation procedures. The Committee recommended that Australia: prioritise implementation of violence prevention and response measures for children, particularly girls, of all ages within the National Framework for Protecting Australia's Children 2009-2020 (National Framework) and the National Plan to Reduce Violence against Women and their Children 2010–2022 (National Plan); ensure that the National Centre for the Prevention of Child Sexual Abuse establishes a comprehensive standard with regard to intervention in cases of child sexual abuse to avoid the 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.

In its 2017 Concluding observations²³⁹ on the fifth periodic report of Australia,²⁴⁰ the **Committee on Economic, Social and Cultural Rights** expressed its concern about the high levels of violence and abuse against persons with disability, especially those with intellectual disability and women with disability, placed in institutions or residences. The Committee also articulated its concern at the lack

of effectiveness of oversight and complaint mechanisms in alternative care settings. The Committee recommended amongst other things, that Australia redouble its efforts to combat domestic violence against women and children, including among indigenous peoples; increase accommodation and support services, especially in rural and remote areas; fully implement the recommendations in the inquiry report by the Senate Community Affairs References Committee into violence, abuse and neglect against people with disability in institutional and residential settings (2015); and pay particular attention to ensure that women with disability who are victims of domestic violence can claim their rights.

In 2017, the Human Rights Committee released its Concluding Observations²⁴¹ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**.²⁴² While welcoming the various measures taken to address violence against women, the Committee specifically noted its concern that violence against women in Australia continues to have a disproportionate effect on women with disability and Indigenous women. In relation to violence against women with disability, the Committee recommended that Australia improve support services to women with disability who are victims of domestic violence, including through the implementation of the relevant recommendations from the Stop the Violence Project.²⁴³ The Committee also recommended that all allegations of sexual abuse, regardless of the time of their commission, are promptly, impartially, thoroughly and effectively investigated and perpetrators are brought to justice and, if found responsible, are punished in accordance with the gravity of their acts.

The **Committee against Torture** reviewed the combined fourth and fifth periodic reports of Australia²⁴⁴ in 2014. The Concluding Observations²⁴⁵ from the review noted the Committee's concern that violence against women in Australia disproportionately affects women with disability and Indigenous women. The Committee recommended amongst other things that Australia redouble its efforts to prevent and combat all forms of violence against women and increase its efforts to address violence against women with disability and Indigenous women.

Rights to equality, non-discrimination and participation

In its 2019 Concluding Observations, the **Committee on the Rights of Persons with Disabilities** expressed and reiterated a number of concerns from its 2013 initial review of Australia: the lack of an effective legislative framework to protect people with disability from systemic, intersectional and multiple forms of discrimination; a lack of an effective monitoring mechanism and insufficient resources to effectively implement the National Disability Strategy; limited opportunities for women and girls with disability to participate in the development of policies regarding the rights of women and gender equality; and the lack of nationally consistent measures for the collection and public reporting of disaggregated data on the full range of obligations contained in the Convention. The Committee recommended that Australia: enact a comprehensive national human rights law; strengthen anti-discrimination laws to address and prohibit systemic, intersectional and multiple forms of discrimination; provide sufficient resources and establish a formal monitoring mechanism for the National Disability Strategy; and develop a national disability data framework to ensure nationally consistent measures for the collection and public reporting of disaggregated data on the full range of obligations contained in the Convention, especially with regard to women, children and Indigenous persons with disabilities. The Committee further recommended that Australia strengthen measures to address multiple and intersectional forms of discrimination against women and girls with disability and, in particular, adequately support organisations and networks of women and girls with disability, particularly those representing Indigenous women and girls with disability, to engage in all initiatives to promote gender equality and ensure their effective participation in the development of policies for gender equality and the advancement of women and girls.

The **Committee on the Elimination of Discrimination against Women** reviewed Australia's implementation of CEDAW²⁴⁶ in 2018.²⁴⁷ The Committee expressed its concern at the lack of harmonisation of anti-discrimination legislation, and the absence of a Charter of Human Rights that guarantees equality between women and men or a general prohibition of discrimination against

women. Amongst other things, the Committee recommended that Australia harmonise federal, state and territory legislation against discrimination in line with the Convention; and, fully incorporate the Convention into national law by adopting a Charter of Human Rights that includes a guarantee of equality between women and men and prohibits discrimination against women. The Committee further recommended that Australia adopt a comprehensive national gender equality policy with performance indicators and ensure sufficient human and financial resources to coordinate and monitor the implementation of that policy.

In 2019, the **Committee on the Rights of the Child** provided its Concluding Observations²⁴⁸ to Australia following its review. The Committee recommended that Australia: enact comprehensive national child rights legislation fully incorporating the Convention and providing clear guidelines for its consistent and direct application throughout Australia; ensure adequate resources for the Parliamentary Joint Committee on Human Rights to effectively examine all proposed legislation and its impact on children's rights; ensure that the National Children's Commissioner has adequate and sufficient human, technical and financial resources to implement and monitor the application of the Convention; and establish by law mandatory consultations between the National Children's Commissioner and children on issues that affect them and ensure that the results of those consultations and any other recommendations made by the Commissioner are taken into consideration in law and policymaking. The Committee also recommended that Australia adopt a national comprehensive policy and strategy on children that encompasses all areas of the Convention, with sufficient human, technical and financial resources for its implementation; establish appropriate mechanisms and inclusive processes so that civil society, the community and children specifically may participate in all stages of the budget process, including formulation, implementation and evaluation; and ensure that data collected on children's rights cover all areas of the Convention, in particular those relating to violence, alternative care, natural disasters and children in conflict with the law, that they are disaggregated by age, sex, disability, geographic location, ethnic origin, national origin and socioeconomic background, and that they identify children in situations of vulnerability, such as Indigenous children, children with disability and asylum-seeking, refugee and migrant children.

In its 2017 Concluding observations²⁴⁹ on the fifth periodic report of Australia,²⁵⁰ the **Committee on Economic, Social and Cultural Rights** expressed its concern that women continue to experience disadvantages across key areas (including work, health, education, and housing) and recommended that Australia intensify its efforts to address the obstacles to achieving substantive equality between men and women, including through the strengthening of temporary special measures. The Committee also recommended that Australia consider introducing a federal Charter of Rights that guarantees the full range of economic, social and cultural rights. In relation to the National Disability Strategy 2010-2020, the Committee expressed its concern at the slow progress in its implementation and its weak accountability and implementation mechanisms. The Committee recommended that Australia ensure full implementation of the National Disability Strategy by focusing on all the six areas covered and allocating the necessary resources. The Committee further recommended that Australia strengthen accountability mechanisms to ensure that people with disability fully enjoy their economic, social and cultural rights.

In its 2017 Concluding Observations²⁵¹ on the sixth periodic report of Australia under the **International Covenant on Civil and Political Rights**,²⁵² the Human Rights Committee recommended that Australia should take measures, including considering consolidating existing non-discrimination provisions in a comprehensive federal law, in order to ensure adequate and effective substantive and procedural protection against all forms of discrimination on all the prohibited grounds, including religion, and intersectional discrimination, as well as access to effective and appropriate remedies for all victims of discrimination.



12 ENDNOTES



12. ENDNOTES

- 1 Committee on the Rights of Persons with Disabilities, , [General comment No. 7 \(2018\) on the participation of persons with disabilities](#), including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, UN Doc No. CRPD/C/GC/7.
- 2 These structural barriers include but are not restricted to: poverty; gender bias and gender inequality; the intersection of gender and disability discrimination; lack of safe, accessible and affordable housing; lack of accessible and affordable transport; the high incidence and prevalence of gender-based violence; non-optional costs of disability; inflexible work arrangements, to name just a few.
- 3 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) [Issues Paper: Employment](#).
- 4 On page 8 of the [Issues Paper](#), it is noted that the Royal Commission defines ‘Neglect’ as including “*physical and emotional neglect, passive neglect and wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment*”.
- 5 Committee on the Elimination of Discrimination against Women (14 July 2017); [General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#). UN Doc No: CEDAW/C/GC/35. In its General Comment 35, the CEDAW Committee has explicitly noted that: ‘*Violations of women’s sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.*’
- 6 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 51st meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3.
- 7 Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney.
- 8 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 51st meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3.
- 9 Women With Disabilities Australia (WWDA) ‘[WWDA Position Statement 2: The Right to Decision-Making](#)’. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-7-6.
- 10 Committee on the Elimination of Discrimination against Women (14 July 2017); [General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#). UN Doc No: CEDAW/C/GC/35.
- 11 Committee on the Rights of Persons with Disabilities (CRPD), [General comment No. 3 \(2016\), Article 6: Women and girls with disabilities](#), 2 September 2016, UN Doc. CRPD/C/GC/3.
- 12 Committee on the Rights of Persons with Disabilities, , [General comment No. 7 \(2018\) on the participation of persons with disabilities](#), including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, UN Doc No. CRPD/C/GC/7.
- 13 United Nations General Assembly (2006) [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#). UN Doc. A/RES/60/147. See also: Office of the United Nations High Commissioner for Human Rights and the International Bar Association (2003) [Human Rights in The Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers](#). Professional Training Series No. 9; OHCHR, Geneva.
- 14 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 51st meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3.

- 15 Australian Government, [The National Disability Abuse and Neglect Hotline](#). See also: Australian Government, Department of Social Services, [National Disability Abuse and Neglect Hotline Data](#).
- 16 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 511th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3. See also: Committee on the Elimination of Discrimination against Women [Concluding observations on the eighth periodic report of Australia](#), 25 July 2018, UN Doc. CE-DAW/C/AUS/CO/8.
- 17 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 511th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3. See also: Committee on the Elimination of Discrimination against Women [Concluding observations on the eighth periodic report of Australia](#), 25 July 2018, UN Doc. CE-DAW/C/AUS/CO/8.
- 18 [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#).
- 19 See for e.g. Disabled People’s Organisations Australia (DPO Australia) [‘Ending Violence’](#). See also: 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.
- 20 Senate Community Affairs References Committee (Feb 2015) [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.
- 21 Senate Community Affairs References Committee (Nov 2015) [Final Report: 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.
- 22 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Terms of Reference](#).
- 23 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Terms of Reference](#), paragraph (e).
- 24 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Terms of Reference](#), paragraph (g).
- 25 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 511th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3.
- 26 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Accessibility and Inclusion Strategy](#), page 5.
- 27 Such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage.
- 28 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) [Issues Paper: Employment](#).
- 29 Productivity Commission (July 2018) National Disability Agreement Review, [Issues Paper](#).
- 30 These structural barriers include but are not restricted to: poverty; gender bias and gender inequality; the intersection of gender and disability discrimination; lack of safe, accessible and affordable housing; lack of accessible and affordable transport; the high incidence and prevalence of gender-based violence; non-optional costs of disability; inflexible work arrangements, to name just a few.
- 31 On page 8 of the [Issues Paper: Employment](#), it is noted that the Royal Commission defines ‘Neglect’ as including “physical and emotional neglect, passive neglect and wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment”.

- 32 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) [Issues Paper: Employment](#).
- 33 Frohmader, C. (2014) [‘Gender Blind, Gender Neutral’: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities](#). Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1.
- 34 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Terms of Reference](#), paragraph (g)
- 35 Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) [Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper](#). Hobart: Women with Disabilities Australia. See also: Women with Disabilities Australia, People with Disability Australia, University of New South Wales (2013) [Report of the Outcomes and Proceedings of the National Symposium on Violence Against Women and Girls with Disabilities](#). WWDA, Hobart, Tasmania.
- 36 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. See also: 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.
- 37 Frohmader, C., Dowse, L., and Didi, A. (2015) [‘Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective’](#). September 2015 (revised and updated version). Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-4-5.
- 38 Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings’](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia.
- 39 Frohmader, C., Dowse, L., and Didi, A. (2015) [‘Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective’](#). September 2015 (revised and updated version). Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-4-5.
- 40 Women With Disabilities Australia (WWDA) [‘WWDA Position Statement 1: The Right to Freedom From All Forms of Violence’](#). WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9.
- 41 The [Committee on Economic, Social and Cultural Rights](#) has specifically addressed segregated employment of people with disability and clarified that segregated employment and wage discrimination is in contravention of the Covenant on Economic, Social and Cultural Rights (ICESCR).
- 42 The [Supported Wage System](#) is a process that allows employers to pay a productivity-based wage for people with disability that matches an independently assessed productivity rate.
- 43 French, P. (2010) Accommodating human rights: a human rights perspective on housing, and housing and support, for persons with disability. People with Disability Australia (PWDA), Sydney.
- 44 May-Simera, C. (2018) Reconsidering Sheltered Workshops in Light of the United Nations Convention on the Rights of Persons with Disabilities (2006). *Laws*, 2018, 7, 6. www.mdpi.com/journal/laws
- 45 Committee on the Rights of Persons with Disabilities, [General comment No. 5 \(2017\) on living independently and being included in the community](#), para 16(c), UN Doc No: CRPD/C/GC/5.
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- 47 Women with Disabilities Victoria (2019), [Submission to Australian Human Rights Commission National Inquiry](#)

[into Sexual Harassment in Australian Workplaces](#), (Melbourne: Victoria).

- 48 Women With Disabilities Australia (2007) [Forgotten Sisters - A Global Review of Violence against Women with Disabilities](#). WWDA Resource Manual on Violence Against Women With Disabilities. Hobart, Tasmania: Women With Disabilities Australia.
- 49 Cited in May-Simera, C. (2018) Reconsidering Sheltered Workshops in Light of the United Nations Convention on the Rights of Persons with Disabilities (2006). *Laws*, 2018, 7, 6. www.mdpi.com/journal/laws
- 50 Women with Disabilities Victoria (2019), [Submission to Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces](#), (Melbourne: Victoria).
- 51 Women with Disabilities Victoria (2019), [Submission to Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces](#), (Melbourne: Victoria).
- 52 Women with Disabilities Victoria (2019), [Submission to Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces](#), (Melbourne: Victoria).
- 53 Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 51th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3.
- 54 Committee on Economic, Social and Cultural Rights (2017) [Concluding observations on the fifth periodic report of Australia](#); 11 July 2017; UN Doc. E/C.12/AUS/CO/5.
- 55 [Australia's Fifth Report Under the International Covenant On Economic, Social and Cultural Rights](#) (ICESCR) 2010-2014. Date of submission 1 February 2016. UN Doc. E/C.12/AUS/5
- 56 Through ICESCR General Comment 23, the CESCR Committee has clarified that: "At times, workers with disabilities require specific measures to enjoy the right to just and favourable conditions of work on an equal basis with others. Workers with disabilities should not be segregated in sheltered workshops. They should benefit from an accessible work environment and must not be denied reasonable accommodation, like workplace adjustments or flexible working arrangements. They should also enjoy equal remuneration for work of equal value and must not suffer wage discrimination due to a perceived reduced capacity for work." UN Committee on Economic, Social and Cultural Rights (CESCR), [General comment No. 23 \(2016\) on the right to just and favourable conditions of work](#) (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23.
- 57 [Convention on the Rights of Persons with Disabilities](#) [2008] ATS 12; [Convention on the Rights of the Child](#) [1991] ATS 4; [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) [1989] ATS 21; [Convention on the Elimination of All Forms of Discrimination Against Women](#) [1983] ATS 9; [International Covenant on Civil and Political Rights](#) [1980] ATS 23; [International Covenant on Economic, Social and Cultural Rights](#) [1976] ATS 5; [International Convention on the Elimination of All Forms of Racial Discrimination](#) [1975] ATS 40.
- 58 Human rights treaties are often followed by "Optional Protocols" which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty. Optional protocols include an inquiry procedure, as well as a complaints procedure. An inquiry procedure enables the treaty body to conduct inquiries into serious and systematic abuses of human rights in countries that become States parties to the Optional Protocol. This allows widespread violations to be investigated where individuals or groups may be unable to make communications (for practical reasons or because of fear of reprisals) and is important where individual communications fail to reflect the systemic nature of widespread violations of human rights.
- 59 The Committees publish their interpretation of the content of human rights provisions, known as [General Comments](#) on thematic issues or methods of work. These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions, such as the right to life or the right to adequate food, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties.
- 60 The UN Special Rapporteur on Torture has emphasised this: "*it is necessary to highlight additional measures needed to prevent torture and ill-treatment against people with disabilities, by synthesizing standards and coordinating actions in line with the CRPD*". See: UN Human Rights Council, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), 1 February 2013, A/HRC/22/53

- 61 Australian NGO Beijing +25 Caucus (2019) [Working Together for Equality: NGO Beijing+25 Review 2019](#) Australia.
- 62 See for eg: Branley, A. (21 Feb 2019) [Women retire with almost half the super as men. This idea might help change that](#). ABC News. See also: Riach, K. (2 Oct 2018) [Snakes and ladders: Why women's superannuation is complex](#). ABC News. See also: Elsworthy, E. (11 Apr 2020) [Women to be 'severely impacted' by withdrawing superannuation amid the coronavirus pandemic](#). ABC News.
- 63 Women With Disabilities Australia (August 2008) [Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce](#); WWDA, Hobart, Tasmania. See also: Frohmader, C. (2014) ['Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities](#). Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1.
- 64 See: Australian Bureau of Statistics, [Disability, Ageing and Carers, Australia: First Results, 2015](#) (Cat. No. 4430.0.10.001); People with disability were significantly more likely to still be looking for a job 13 weeks or longer after they first started (65.5%) compared with those without disability (56.1%), Australian Bureau of Statistics, [Disability and Labour Force Participation, 2012](#) (2015); See also: Price Waterhouse Coopers (2011) [Disability Expectations: Investing in a better life, a stronger Australia](#). See also: Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW. See: Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney.
- 65 The [Organisation for Economic Co-operation and Development](#) (OECD).
- 66 See for eg: Price Waterhouse Coopers (2011) [Disability Expectations: Investing in a better life, a stronger Australia](#).
- 67 Australian NGO CRPD Shadow Report Coordinating Committee (2019) Findings from the National CRPD Survey.
- 68 Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney.
- 69 Australian Bureau of Statistics (ABS) (2020) [Disability and the Labour Force](#). ABS, Canberra.
- 70 Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- 71 Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- 72 Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- 73 Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.
- 74 Cited in: Women with Disabilities Australia (WWDA) (2017) Position Statement 5: The Right to Work and to Social Protection. (forthcoming).
- 75 Cited in: Women with Disabilities Australia (WWDA) (2017) Position Statement 5: The Right to Work and to Social Protection. (forthcoming).
- 76 See for eg: Price Waterhouse Coopers (2011) [Disability Expectations: Investing in a better life, a stronger Australia](#). See also: Australian Bureau of Statistics (ABS), 4433.0.55.006, [Disability and Labour Force Participation, 2012](#). See also: Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#), AHRC, Sydney. See also: Frohmader, C. (2014) ['Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities](#). Prepared for Women with Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1.
- 77 Australian Bureau of Statistics, [4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015](#): Aboriginal and Torres Strait Islander people with disability.
- 78 Australian Civil Society CRPD Shadow Report Working Group (July 2019) [CRPD Shadow Report Fact Sheet on Em-](#)

- [ployment](#). Prepared by Carolyn Frohmader for the Australian Civil Society CRPD Shadow Report Working Group.
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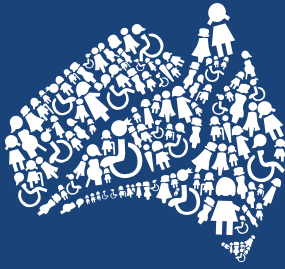
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National Human Rights Award 2001

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