Women
With
Disabilities
Australia
(WWDA)

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

WWDA RESPONSE TO THE ‘RIGHTS AND ATTITUDES’ ISSUES PAPER

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Women With Disabilities Australia (WWDA) has Special Consultative Status with the Economic and Social Council of the United Nations.

Awards

Winner
National Human Rights Award 2001

Winner
National Violence Prevention Award 1999

Winner
Tasmanian Women's Safety Award 2008

Nominee
UNESCO Prize for Digital Empowerment of Persons with Disabilities 2021

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 national Organisation of Persons with Disabilities (OPD) for women, girls, feminine identifying and non-binary people with disability in Australia. As an OPD, WWDA is run by and for women, girls, feminine identifying and non-binary people with disability.

WWDA uses the term ‘women and girls with disability’, on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.

WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA’s work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

Organisations of Persons with Disabilities (OPDs) are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. OPD’s are organisations of people with disability, as opposed to organisations which may represent 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 OPDs 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]

ABOUT THE DISABILITY INNOVATION INSTITUTE AT UNSW (DIIU)

UNSW has over 25 years history in disability advocacy and research. Established in 2017, the Disability Innovation Institute is a world first initiative that conducts whole of university interdisciplinary research. Conducted in partnership with people with disability it uniquely combines disability studies with STEM research applied to disability innovation. We work with others to design accessible and inclusive working, living and learning environments, generate innovative technologies, and create inclusive law, policy, services and communities.

The Disability Innovation Institute facilitates interdisciplinary disability research and educational pedagogy, driving innovations in accessible and inclusive practice and policy to produce sustainable change for people with disability.

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GLOSSARY AND ACRONYMS

2011 scoping project	Community attitudes to people with disability: scoping project
ABS	Australian Bureau of Statistics
ADE	Australian Disability Enterprises
APS	Australian Public Sector
AHRC	Australian Human Rights Commission
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
BSA	British Social Attitudes Survey
CDS	Commonwealth Disability Strategy
CESCR Committee	Committee on Economic, Social and Cultural Rights
COAG	Council of Australian Governments
Community Attitudes Survey	Survey of Community Attitudes toward People with Disability
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
Cth	Commonwealth of Australia
DDA	Disability Discrimination Act 1992 (Cth)
DIIU	Disability Innovation Institute University of NSW
DPO	Disabled People's Organisations
DPO Australia	Disabled People's Organisations Australia
Employment Consultation Paper	National Disability Employment Strategy Consultation Paper
Final Consultation Report	Right to opportunity: Consultation report to help shape the next national disability strategy

GA	United Nations General Assembly
Gender Equality Strategy	Gender Equality and Women’s Empowerment Strategy
ICESCR	International Covenant on Economic, Social and Cultural Rights
Interim Report	Interim Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
Issues Paper	Rights and Attitudes Issues Paper of the Royal Commission into Violence, Abuse and Exploitation of People with Disability
IYDP	International Year of Disabled Persons
IDPWD	International Day of People with Disability
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual, Plus
National Agreement	National Agreement on Closing the Gap
NCAS	National Community Attitudes towards Violence against Women Survey
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Commission	NDIS Quality and Safeguards Commission
NDRP	National Disability Research Partnership
NDS 2010-2020	National Disability Strategy 2010-2020
NDS Position Paper	National Disability Strategy Position Paper
New NDS	New ten-year National Disability Strategy
NGO	Non-Government Organisation
OHCHR	Office of the High Commissioner for Human Rights
Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
Senate Inquiry	Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings
Senate Sterilisation Inquiry	Senate Standing Committees on Community Affairs Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia

Shut Out report	Shut Out: The Experience of People with Disabilities and their Families in Australia
SPRC Review	Review of implementation of the National Disability Strategy 2010-2020
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organisation
WWDA	Women With Disabilities Australia

1 RECOMMENDATIONS

RECOMMENDATIONS

Legislative and policy framework

1.1 The Australian Government should establish a comprehensive, judicially enforceable Human Rights Act that incorporates Australia's obligations under the CRPD and other human rights treaties.

1.2 Australian governments should strengthen anti-discrimination laws to address intersectional discrimination; to enable representative complaints by disability representative and advocacy organisations; and to enable complaints regarding vilification and hate crimes on the basis of disability.

1.3 The Australian Government should amend the definition of 'discrimination' in the DDA to make it unlawful to not make reasonable adjustments for a person because of their disability.

1.4 The Australian Government should embrace the human rights model of disability and the contemporary human rights principles and standards in the CRPD by:

  a) Withdrawing its interpretative declarations to CRPD articles 12, 17 and 18.

  b) Working with the States and Territories and organisations of people with disability to review laws and policies for compliance with the principles and standards of the CRPD, including laws and policies that underpin care, treatment and protection frameworks, such as guardianship, mental health and justice diversion laws and policies.

  c) Replacing substitute decision-making mechanisms with a nationally consistent supported decision-making framework that supports people with disability to effectively assert and exercise their legal capacity.[2]

  d) Working with the States and Territories and organisations of people with disability to develop a nationally consistent mental health framework to replace compulsory mental health treatment and detention with non-coercive community-based interventions and peer support.[3]

  e) Amending migration laws and policies to remove discriminatory provisions and processes; and removing the exemption in the DDA to certain provisions of the Migration Act 1958 (Cth).[4]

  f) Working with the States and Territories and organisations of people with disability to develop nationally consistent targeted action plans that recognise segregation as discrimination, and that aim to end the segregation of people with disability, including in institutional living arrangements, educational settings and segregated workplaces.[5]

1.5 Australian governments should ensure that the human rights model of disability[6] and the principles and standards of the CRPD underpin the development, implementation and review of law, policy and practice frameworks. This should include by providing human rights training and guidance to policy makers and legislators at all levels of government and within all portfolio areas, to law reform bodies, to the Parliamentary Joint Committee on Human Rights, to the National Disability Insurance Agency (NDIA), the NDIS Quality and Safeguards Commission (NDIS Commission) and the Royal Commission.

1.6 In a similar way to other national strategies aimed at addressing disadvantage and discrimination, and in order to effectively implement the CRPD, the new *National Disability Strategy* should explicitly:

a) Aim to build an inclusive society where people with disability exercise their rights on an equal basis with other members of the community.

b) Recognise that human rights cannot be limited or diminished based on impairment and articulate that people with disability have the same human rights as all members of the community.

c) Articulate that ableism and other intersecting power relations are inherently harmful and the drivers of inequality and discrimination, and of violence, abuse, neglect and exploitation.

d) Recognise the mutually reinforcing relationship between fostering positive community attitudes and ensuring that law, policy and practice frameworks adhere to the CRPD.

e) Provide comprehensive measures to respond to the heterogeneity of people with disability and intersectional discrimination; and ensure a strong interface with other national action plans, such as the *National Plan to Reduce Violence against Women and their Children*,[7] *National Framework for Protecting Australia's Children*[8] and *Closing the Gap*.[9]

f) Provide comprehensive measures, informed by the CRPD Committee's concluding observations to dismantle outdated, ableist care, treatment and protection approaches to disability, and to establish new law, policy and practice frameworks that support the exercise of all human rights.

g) Contain a comprehensive measurement framework based on an intersectional data collection and evaluation methodology,[10] including longitudinal studies and underpinned by human rights indicators.[11]

1.7 Australian governments should establish an independent high-level Office of Disability Inclusion, with human rights expertise to drive the new NDS across all portfolio areas and across all levels of government, to provide evidence-based guidance, to ensure compliance with contemporary principles and standards of the CRPD and to provide regular public reports to Parliament on NDS and CRPD implementation.

1.8 Australian governments should establish formal and permanent mechanisms to ensure the full and effective participation of people with disability through their representative organisations, in the development, implementation and monitoring of legislation and policies to implement the CRPD and the NDS.[12]

1.9 Australian governments should ensure that representative organisations of people with disability, including organisations of women with disability are adequately resourced on a long-term basis to effectively participate in the development, implementation and monitoring of laws and policies and in decision-making processes affecting their lives.

1.10 Australian governments should ensure that the critical role of independent advocacy in safeguarding the human rights of people with disability, including through individual, legal, systemic and self-advocacy, is adequately resourced on a long-term basis.

Leadership and awareness raising

1.11 The Australian Government, in collaboration with organisations of people with disability, should take a leadership role in demonstrating commitment to the rights of people with disability, including by:

  a) Conducting a biennial Prime Minister's Summit on Disability[13] where each State/ Territory Premier and respective Disability Ministers provide information on actions within each jurisdiction to progress the rights of people with disability consistent with the CRPD and the outcome areas of the new NDS.

  b) Conducting a biennial National Conference on the NDS and People with Disability, which would include conference streams consistent with the outcome areas of the new NDS.

  c) Resourcing a biennial 'Citizens' Jury'[14] conducted by organisations of people with disability to evaluate the impact of the NDS on attitudinal and structural change.

  d) Establishing a process and day, modelled on 'Closing the Gap',[15] whereby the Prime Minister reports to Parliament on the rights of people with disability and progress in implementing the NDS.

  e) Appointing an Ambassador for Disability Equality[16] to advocate for the equal participation of people with disability in political, economic and social affairs, to promote disability equality and positive community attitudes and to promote a stronger voice for people with disability.

1.12 The Australia Government should provide adequate resources to the Australian Human Rights Commission to enable the Disability Discrimination Commissioner to prepare and present an Annual Report to the Australian Parliament on progress to advance the human rights of people with disability.[17]

1.13 Australian governments, in close consultation with organisations of people with disability, should develop multifaceted attitudinal change campaigns and strategies to align with outcome areas of the new NDS, and equivalent State and Territory strategies. These campaigns and strategies should promote the rights of people with disability, acknowledge disability as social construct and impairment as an equally valued aspect of human diversity, recognise intersectional groups and promote inclusion and participation in all aspects of community life, including in relation to living arrangements, education, employment, decision-making, education, bodily integrity and sexual and reproductive health and rights.

1.14 Australian political parties should develop strategies to increase the numbers of members and candidates with disability to reflect the diversity of society and to develop more innovative and responsive policy platforms.

1.15 As part of inclusive education curricula, a comprehensive suite of educational programs should be developed by Australian governments and delivered across the life span,[18] with the aim of:

  a) Fostering and valuing diversity, inclusion and intersectionality.

  b) Challenging ableism and intersecting forms of inequality and discrimination, including for women and girls with disability.

c) Building knowledge, skills and strengths in recognising rights to bodily integrity, sexual and reproductive rights, and the right to be free from violence, abuse, neglect and exploitation.

d) Increasing opportunities and participation in decision-making and in speaking up about rights.

1.16 The Australian Government should commit to investment and support to the ABC to establish a dedicated disability online portal or programming voice within the ABC,[19] to meet the obligations of the ABC Charter in respect of disability, such as a multi-media news, opinion and podcast portal to build on the former work of *ABC Ramp Up*[20] and the current work of the dedicated disability affairs reporter.[21]

1.17 Australian governments should collaborate with the media industry and organisations of people with disability to produce media content that promotes positive portrayals of people with disability in mainstream programming and to promote the employment of people with disability in all aspects of the media industry.[22]

Evidence base

1.18 The *National Disability Research Partnership* (NDRP) must ensure that all its work, including the development of a national disability research agenda is explicitly underpinned by the principles and standards of the CRPD; be based on and promote a disability inclusive research methodology; not be limited to existing service system improvement but respond to all human rights and fundamental freedoms; and provide the evidence base to transition from the ableist care, treatment and protection framework to the inclusion of people with disability in society on an equal basis with others.

1.19 Australian governments should commission a comprehensive evaluation of previous awareness raising strategies and attitudinal surveys[23] to assess their effectiveness in achieving rights-based attitudinal change and in combating ableism, and as a benchmark for designing and developing future awareness raising strategies and attitudinal surveys.

1.20 Australian governments, the NDRP and other research bodies should utilise the Human Rights Indicators on the CRPD prepared by the UN Office of the High Commissioner for Human Rights[24] to develop nationally consistent measures for the collection and public reporting of disaggregated data and to evaluate progress in achieving human rights for people with disability.

1.21 The Australian Government should design and implement a national, longitudinal survey focused on community attitudes to people with disability across a broad range of life domains, such as justice, education, employment, housing, health, home and family, similar to the *British Social Attitudes* (BSA) *Survey*,[25] and the *National Community Attitudes towards Violence against Women Survey* (NCAS).[26]

1.22 Australian governments, the *National Disability Research Partnership* and research bodies should invest in and promote disability inclusive research[27] focused on the harmful impacts of ableism and the experiences of people with disability themselves, the impact of law, policy and practice on the production and reinforcement of negative or positive community attitudes towards people with disability and on how structural change can shift individual and community attitudes towards people with disability.

Violence, abuse, neglect and exploitation

1.23 The Royal Commission should recognise the human rights framework, including the CRPD as the foundation of its human rights approach to its work, including in its research and analysis, conducting its investigations, making findings and determining recommendations. This requires a non-static interpretation of the CRPD, recognition of the outdated care, treatment and protection framework embedded in Australian law, policy and practice and adherence to the contemporary principles and standards outlined in the CPRD.

1.24 The Royal Commission should:

a) recognise ableism and intersecting power relations as essentially harmful, and as the underlying intersectional drivers of violence, abuse, neglect and exploitation of people with disability, including women and girls with disability.

b) 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.

c) make recommendations that address these root causes of violence, abuse, neglect and exploitation and that focus on cultural change and social transformation rather than existing service system improvement.

1.25 The Royal Commission should examine the sexual and reproductive rights and the right to bodily integrity of people with disability, including during the Royal Commission's public hearing on 'The health and safety of women and girls with disability' scheduled for October 2021.

1.26 The Royal Commission should examine the role of substitute decision-making regimes, compulsory treatment and detention mechanisms, including mental health laws, and restrictive practice authorisation processes in facilitating lawful violence and other forms of violence, abuse, neglect and exploitation of people with disability, including their gender-based dimensions.

1.27 The Australian Government should enact national legislation on the prevention of and response to all forms of gender-based violence, including violations of sexual and reproductive rights and the right to bodily integrity, such as forced sterilisation, forced menstrual suppression, forced contraception and forced abortion.[28]

1.28 Australian governments, in close consultation with organisations of people with disability, should develop a comprehensive, nationally consistent, evidence-based and gendered violence prevention and response strategy for people with disability that:

a) Adheres to the principles and standards of the CRPD.

b) Identifies ableism and other intersecting power relations as the drivers of violence, abuse, neglect and exploitation.

c) Develops strategies to effectively respond to these drivers, including attitudinal change strategies, eliminating lawful violence, and reviewing law, policy and practice to eliminate harmful ableist dimensions.

d) Targets all forms of violence experienced by people with disability, including disability microaggressions, individual incidents of violence, lawful and structural violence, hate crimes, violations of sexual and reproductive rights and domestic and family violence.

e) Ensures linkages with other violence prevention and response strategies, such as the *National Plan to National Plan to Reduce Violence against Women and their Children*[29] and the *National Framework for Protecting Australia's Children*.[30]

f) Develops strategies and awareness campaigns that challenge ableism as the driver of violence, abuse, neglect and exploitation, and encourages individuals, the community and organisations to take action, in a similar way to the *Stop it at the Start*[31] and *Doing nothing does harm*[32] campaigns.

g) Partners with civil society, the private sector and the community to lead and support mutually reinforcing attitudinal change, organisational reform and broad structural change.

2 BACKGROUND TO THE ROYAL COMMISSION

BACKGROUND TO THE ROYAL COMMISSION

2.1 The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (the Royal Commission)[33] was established after many years of campaigning by people with disability and our representative organisations at both the domestic and international level.[34]

2.2 Women With Disabilities Australia (WWDA) - including in our capacity as a founding member of Disabled People's Organisations Australia (DPO Australia)[35] - 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 (the Senate Inquiry).[36] Recommendation 1 from that Senate Inquiry was that a Royal Commission into violence against people with disability be established.[37]

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[38] of Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);[39] and was also addressed at the September 2019 review[40] of Australia's compliance with the *Convention on the Rights of Persons with Disabilities* (CRPD).[41]

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.[42] 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."*[43]

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".[44]

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."*[45]

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 (CRPD Committee) adopted its Concluding Observations following its review of Australia's compliance with the CRPD. The CRPD Committee expressly recommended that the Australian Government: *"ensure [adequate resources and] a redress mechanism for the Royal Commission"*.[46] It remains unclear as to whether the Australian Government will adopt this critical recommendation. In its Group Homes hearing, the Royal Commission heard about the limited response of a disability service to violence against group homes residents.[47] The Royal Commission observed in its Interim Report: *'it is clear that the question of redress, including compensation for serious harm, is worthy of further investigation.'* It went on to note that:

> *The Royal Commission proposes to investigate:*
>
> - *the forms of redress available to people with disability who are subjected to violence, abuse, neglect or exploitation while residing in group homes or supported accommodation.*
> - *measures that should be taken to ensure that when violence, abuse, neglect or exploitation occurs, people receive independent advice and support to enable them to pursue the remedies available to them; and*
> - *whether it is feasible to establish a scheme to compensate people with disability who have sustained serious harm from violence, abuse, neglect or exploitation in circumstances where no other redress is available to them.*[48]

2.10 As noted in the Royal Commission's *Accessibility and Inclusion Strategy*, and re-affirmed by the Royal Commission's Research Paper entitled: *'Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia'*,[49] 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"*.[50] CRPD *General Comment No. 3 on women and girls with disabilities*, published by the *Committee on the Rights of Persons with Disabilities* in 2016,[51] 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.[52]

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.

3 INTRODUCTION

INTRODUCTION

3.1 Since the emergence of the disability rights movement in the 1970s, there has been recognition that negative attitudes play a significant role in the inequality and discrimination experienced by people with disability in society. In 1981, the *UN International Year of Disabled Persons* (IYDP) focused on raising awareness and acceptance of people with disability and on developing plans of action at the national, regional and international levels to ensure equality of opportunities.[53]

3.2 Since this time, Australian governments have made concerted efforts to promote the rights of people with disability and to affect attitudinal change. In 1992, Australia enacted the *Disability Discrimination Act 1992* (DDA)[54] to provide a remedy for the discrimination experienced by people with disability. It developed frameworks for Commonwealth agencies to meet their obligations under the DDA and it has promoted attitudinal change activities largely focused on the *International Day of People with Disability* (IDPWD).[55] In 2008, Australia demonstrated its commitment to a human rights approach to disability by ratifying the *UN Convention on the Rights of Persons with Disabilities* (CRPD).[56] The *National Disability Strategy 2010-2020* (NDS 2010-2020)[57] was developed and endorsed by all Australia governments as the comprehensive framework for implementation of the CRPD.

3.3 Despite these efforts, people with disability continue to consistently report that negative and harmful attitudes are experienced in their everyday lives and have a significant detrimental impact on their human rights. The devaluing of people with disability, commonly referred to as 'ableism' underpins inequality and discrimination. The intersection of ableism with other forms of oppression, such as sexism, racism, ageism and cisheterosexism[58] results in unique and specific experiences of inequality and discrimination for different groups of people with disability, such as women, children, older persons, First Nations, those from culturally and linguistically diverse (CALD) backgrounds and those from LGBTIQA+ communities.

3.4 Negative and harmful attitudes at the intersection of gender and disability result in women and girls with disability being stereotyped as child-like, asexual or hypersexual, burdens of care, passive and genderless.[59] This not only significantly impacts on personal development and self-esteem but can facilitate violence, abuse, neglect and exploitation and lead to harmful laws, policies and practices, such as those that facilitate forced contraception, forced menstrual suppression and forced sterilisation.[60]

3.5 This submission is a response to the Issues Paper on 'Rights and attitudes'[61] (Issues Paper) prepared by the Royal Commission. It explores the factors that have prevented the efforts of Australian governments from effectively dismantling ableism and other forms of oppression, and from driving the necessary cultural change that would ensure that people with disability are valued equally in dignity and worth.

3.6 **Section 4** of this Submission outlines some of the key responses to rights awareness and attitudinal change. It highlights the opportunity provided by the development of a new *National Disability Strategy* (the new NDS)[62] to avoid ongoing investment in attitudinal change and rights awareness strategies that only achieve incremental change but do not dismantle ableism and other intersectional power relations.

3.7 The entrenched nature of ableism and intersectional power relations is outlined in **Section 5**. These power relations are embedded in contemporary law, policy and practice frameworks and in everyday individual and community attitudes. They are the basis for limiting or diminishing the rights of people with disability. Strategies and campaigns focused on racism and gender equality reflect a human rights approach explicitly articulating that these power relations drive inequality, discrimination and violence and need to be challenged. By contrast, the strategies and campaigns focused on disability are gender-neutral and welfare-oriented. They conceive of people with disability as a homogenous group that require enhancement of individual 'potential' and improvement of their lives. This welfare approach is compounded by the static interpretation of the CRPD that Australia continues to maintain, and which only serves to foster outdated, ableist law, policy and practice frameworks that segregate people with disability, deny individual autonomy and enable forced treatments and detention on the basis of impairment.

3.8 The harmful nature of ableism and other intersecting power relations is explored in **Section 6**. This harm is internalised and reinforced through everyday negative interactions or microaggressions, through navigating inaccessible environments, as the result of laws that limit rights and enable harmful practices, and through seemingly neutral 'expert' views embedded in policy and practices that devalue and harm people with disability. This is illustrated by an examination of the harmful impact of microaggressions, lawful violence, eugenic ideology and the denial of bodily autonomy on people with disability, and some of the specific impacts on women and girls with disability. This not only uncovers the deeply embedded ableism within seemingly benign law, policy and practice frameworks, it also demonstrates the inadequacy of responses to violence, abuse, neglect and exploitation experienced by people with disability. These responses commonly only focus on reforming existing service systems, enhancing regulatory frameworks, conducting training programs and proposing mechanisms to address gaps in protective frameworks. This contrasts starkly with strategies directed at preventing gender-based violence such as the *'Change the Story'* framework and the *'Stop it at the Start'* and *'Doing Nothing Does Harm'* campaigns. Ableism as the driver of violence, abuse, neglect and exploitation, and the harmful impacts of ableism need to be explicitly recognised and examined by the Royal Commission.

3.9 **Section 7** outlines that the significant investment in rights awareness and shifting community attitudes undertaken by Australian governments since the 1980s, is not underpinned by a comprehensive evidence base. There is little to no research on ableism, its intersection with other power relations, and its impact on people with disability. There is little to no research on the interconnection between negative and harmful attitudes and ableist law, policy and practice frameworks. This makes it extremely difficult to benchmark community attitudes, measure attitudinal change over time and evaluate attitudinal change strategies. Ableism is evident throughout the research process, including within research funding structures, through the lack of representation of people with disability in tertiary education and within academia, the focus of disability research restricted to service system enhancements and the lack of disability inclusive research practice. The Australian Government has provided seed funding to establish the *National Disability Research Partnership* (NDRP),[63] to build the evidence base for the new NDS. While this is positive, it is essential that the work of the NDRP is explicitly grounded in human rights principles and standards to ensure that evidence-based policy and practice goes beyond 'improving' or 'enhancing' the lives of people with disability to genuinely progress the cultural change necessary to dismantle the ableism embedded in attitudes, law, policy and practice.

3.10 A comprehensive response to ableism and other hierarchical power relationships needs to adhere to the standards and principles set out in the CRPD. **Section 8** outlines core elements of the CRPD that are interrelated and interdependent. This means that awareness raising and attitudinal change activities need to be undertaken in the context of progressing the individual rights of people with disability, and not as standalone activities.

It reflects evidence that attitudinal change is most effective when it is targeted at the levels of personal, organisational and structural change. Critically, Australia needs to embrace the human rights model of disability that is embedded in the CRPD and genuinely accept that rights can no longer be denied or diminished on the basis of impairment. This will mean transitioning from segregated systems, such as ‘special’ schools, segregated workplaces and segregated living arrangements to resourcing the full and effective participation and inclusion of people with disability in the community on an equal basis with others. It will also mean the withdrawal of Australia’s interpretative declarations to the CRPD that maintain substitute decision-making regimes, allow for compulsory treatment and detention based on impairment, and allow discrimination against people with disability in the migration visa application process.

3.11 Dismantling ableism requires embracing the social transformation that is outlined in the CRPD. The CRPD standards and principles provide the elements to drive cultural change by eliminating the power relations that underpin inequality and discrimination and that devalue people with disability and privilege people without disability.

4 RESPONSES TO ABLEISM, ATTITUDES AND RIGHTS AWARENESS

RESPONSES TO ABLEISM, ATTITUDES AND RIGHTS AWARENESS

4.1 There is a mutually reinforcing relationship between negative attitudes towards people with disability, a lack of rights awareness and violence, abuse, neglect and exploitation experienced by people with disability.[64] The *Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings* (Senate Inquiry) found that the *"root cause of violence, abuse and neglect of people with disability begins with the de-valuing of people with disability"*.[65] This de-valuing, commonly referred to as ableism, *"permeates the attitudes of individual disability workers, service delivery organisations and most disturbingly, government systems designed to protect the rights of individuals"*.[66]

4.2 The evidence outlined throughout the 2015 Report from the Senate Inquiry illustrates how societal attitudes can adversely impact the rights of people with disability and facilitate violence, abuse, neglect and exploitation.[67] The Report also highlights how law, policy and practice that does not reflect the rights set out in the CRPD can also facilitate violence, abuse, neglect and exploitation and can reinforce negative attitudes[68]. Responses to the Issues Papers and evidence provided during the public hearings of the Royal Commission are also exposing discrimination and disadvantage interlinked with negative perceptions, patronising attitudes and ingrained misconceptions that are prevalent in the community, including among support workers, service systems, professionals, government bodies and regulatory and legal mechanisms.[69]

4.3 The 2015 Report from the Senate Inquiry stressed that *"[c]ultural attitudes are hard to shift and will take a long-term concerted effort from all stakeholders, with a lead role taken by government"*.[70] Yet, successive Australian governments have frequently prioritised and invested in awareness raising strategies and policies to change community attitudes towards people with disability and to promote and progress their rights.[71]

4.4 The theme of the *International Year of Disabled Persons* (IYDP) in 1981 was 'full participation and equality', and a key objective of the IYDP was to increase public awareness, understanding and acceptance of people with disability.[72] This was reflected in Australia's 1981 national media campaign with the theme of *'Break Down the Barriers'*.[73] Since 1996, Australian governments have celebrated the *International Day of Persons with Disabilities* (IDPWD),[74] which was established in 1992 by the United Nations (UN) and which is held annually on 3 December with specific yearly themes that aim to promote the rights of persons with disability and to increase awareness of the situation of people with disability in every aspect of political, social, economic and cultural life.[75]

4.5 The introduction of the *Disability Discrimination Act 1992* (DDA)[76] was a critical development in the recognition of the rights of people with disability in Australia, providing a complaints mechanism for people with disability to seek a remedy for disability discrimination. The *Commonwealth Disability Strategy* (CDS) was introduced in 1994 to provide a framework for Australian Government agencies to meet their obligations under the DDA by providing practical guidance in removing barriers to programs, services and facilities experienced by people with disability. A 2006 review found that the CDS had achieved a range of positive outcomes for people with disability as Australian Public Sector (APS) *"employees, as customers of government and as citizens"*.[77] However, there was also inconsistency within and across departments, with improvement in attitudes by government staff viewed as important, even though these *"attitudes are not necessarily* *malicious or overtly discriminatory in intent"*.[78] The review highlighted that "an enhanced CDS" should continue to provide practical guidance for achieving the DDA through building a "corporate culture" that goes beyond compliance with legislative requirements to an implicit acceptance and understanding of the "the benefits of full inclusion" of people with disability.[79]

4.6 The CDS was superseded by the *National Disability Strategy* 2010-2020 (NDS 2010-2020).[80] The NDS 2010-2020 was agreed by all Australian governments as the signature policy framework for implementation and reporting on the CRPD, which Australia ratified in 2008. This marked Australia's commitment to a human rights approach to disability, a commitment which Australia has reaffirmed in its 2013 and 2019 CRPD periodic reports to the UN.[81] A human rights approach translates international human rights legal norms and standards to the situation of people with disability in order to frame law, policy and practice. The CRPD requires all Australian governments to ensure that all levels of government, non-State actors and civil society adopt a human rights approach to law, policy and practice.

4.7 While the CDS focused on ensuring compliance with the DDA within Commonwealth Government agencies, the NDS 2010-2020 focuses on all governments (Commonwealth, State, Territory and local governments) achieving goals across six policy outcome areas that are broadly aligned to the CRPD – inclusive and accessible communities; rights protection, justice and legislation; economic security; personal and community support; learning and skills; and health and well-being.[82] The NDS 2010-2020 also aims to provide *"leadership for a community-wide shift in attitudes"*.[83]

4.8 Despite this strong focus by Australian governments over forty years to remove barriers, promote the rights of people with disability and change negative community attitudes, people with disability continue to consistently identify attitudinal barriers and negative perceptions as impacting on their rights. In 2009, a report from the consultations informing the development of the NDS 2010-2020 was released. This report, *Shut Out: The Experience of People with Disabilities and their Families in Australia* (Shut Out report)[84] found that people with disability have experienced little progress in challenging negative social attitudes with *"widespread misconceptions and stereotypes informing the attitudes and behaviour of service providers, businesses, community groups, governments and individuals"*.[85] The report found that this led to many people with disability experiencing exclusion and discrimination as features of daily life.[86]

4.9 Ten years after the 2009 Shut Out report and the development and implementation of the NDS 2010-2020, a 2019 national CRPD survey of people with disability provided evidence that inequality, discrimination and negative community attitudes continued to be daily experiences for people with disability.[87] This CRPD survey was conducted as part of the development of *Disability Rights Now 2019*,[88] the civil society report, or 'Shadow Report' provided to the UN for its 2019 review of Australia's progress in implementing the CRPD. Key information from the CRPD survey included:[89]

- 82.5% of survey respondents indicated that the general public does not have a good understanding of disability, with numerous survey respondents commenting that negative community attitudes are a common daily experience.
- 76.5% of respondents felt discriminated against or treated unfairly because of their disability, with survey comments revealing widespread discrimination across all spheres of life, and from various sources, including from service providers, from employers and from the broader community.

- many survey respondents provided comments about negative attitudes and discrimination that frequently occurs at the intersection of disability, gender, race and/or LGBTIQA+ identities, and that continues to be unacknowledged or addressed.

4.10 The 2018 research report, *Culture is Inclusion* provided evidence of the significant exposure to racism, ableism and intersectional forms of discrimination experienced by Aboriginal and Torres Strait Islander people with disability.[90] Prejudicial assumptions, name-calling, and not being believed were all common experiences across a wide range of community settings, such as at the doctor, going shopping, applying for a job, going out for a meal and catching transport.[91] This prolific exposure to discrimination results in a response pathway that starts with fear of discrimination and leads to avoidance of situations where discrimination may occur. The report named this 'apprehended discrimination',[92] noting the limitations of existing terminology to describe the recognition by Aboriginal and Torres Strait Islander people with disability that discrimination *"has become their reality, a psychological realisation that invokes an unpleasant physiological reaction"*.[93]

4.11 In September 2020, young people with disability at the *'Awareness, Access and Inclusion'* day of the *National Youth Disability Summit* identified ableism as a major barrier to experiencing inclusion in their daily lives.[94] They highlighted negative media portrayals of people with disability as either pitiful or inspirational, with "harmful, ableist attitudes" having "negative impacts" on young people and their ability to participate in the community".[95] Concern was also raised about the overall lack of representation of young people with disability in the media and society more generally.[96]

4.12 This evidence strongly suggests that while Australian governments have recognised the importance of attitudinal change and rights awareness since the 1981 IYDP, the implementation of strategies to counter negative community attitudes, raise awareness of rights and progress equality have not been sufficiently effective or successful to achieve full inclusion and participation of people with disability in society. A new ten-year NDS is currently being developed, informed by a number of reviews of the NDS 2010-2020 and a number of consultation processes.[97] This is a critical opportunity to acknowledge and proactively address key shortfalls in previous strategies and actions and to identify much stronger measures in the new NDS to ensure success.

4.13 The NDS Position Paper, which provides information about the development of the new NDS, states that the new NDS will *"continue to uphold Australia's commitments under the UN CRPD"*.[98] It also proposes a new, stronger focus on facilitating and fostering ongoing attitudinal change across all outcome areas in recognition of the connection between removing barriers to inclusion and shaping attitudes *"so that people with disability can fully participate as equal members of the community"*.[99] However, in order to achieve success, the new NDS and other strategies aimed at progressing the human rights of people with disability, need to be based on:

- a comprehensive, evidence-based understanding and response to the deeply entrenched nature of ableism in society.
- a comprehensive, evidence-based understanding and response to the interconnection between ableism and other "forms of oppression",[100] such as racism, sexism, ageism and cisheterosexism.
- the recognition that ableism produces and preserves "hierarchical power" that makes people with disability "vulnerable to direct and systemic violence, abuse, neglect, and exploitation"[101] and,
- a comprehensive response to ableism, and other hierarchical power relationships, that adheres to the standards and principles set out in the CRPD.

4.14 Without this, the risk remains of ongoing investment in attitudinal change and rights awareness campaigns and strategies that may achieve incremental or piecemeal change but that do not dismantle ableism or intersectional power relations. This is critical to equality and non-discrimination, to preventing violence, abuse, neglect and exploitation and to achieving the full and effective participation and inclusion of people with disability in all aspects of society.

5 ABLEISM AND INTERSECTIONS OF POWER RELATIONS

ABLEISM AND INTERSECTIONS OF POWER RELATIONS

5.1 Ableism is the core of the power relations that privilege people without disability and devalue people with disability. It has become an important conceptual tool for the disability rights movement to explain and challenge inequality and discrimination. Over several years, critical disability theorists have examined ableism,[102] how it underpins a system of oppression, how it intersects with other forms of oppression, such as racism, sexism, ageism and cisheterosexism, and how it produces power imbalances that facilitate violence, abuse, neglect and exploitation of people with disability.[103]

5.2 Ableism establishes the normative standard of what it means to be human. This standard underpins the view of 'disability' as a 'deficit' within the individual, a deviation from the bodily, cognitive and mental attributes of 'normal' human beings. People with disability are viewed as 'abnormal', an exception to humanness, and this underpins the devaluing of people with disability as 'less than', 'deficient', 'inferior' and 'other'. The belief that people with disability are incapable of being part of the community becomes self-evident, and the segregation and exclusion of people with disability from community life is unquestioned.

5.3 The response to this conceptualisation of 'disability' is the establishment and maintenance of 'special' laws, policies and practices to deal with the 'problem' of disability. This response facilitates medical, rehabilitation, educational, psychological and/or behavioural interventions to diagnose, treat and cure people with disability. Perceived as having 'special needs' and being 'inherently vulnerable', people with disability are confined within social welfare and health system responses that perpetuate and maintain the view that people with disability require care, treatment and protection. This is central to the dominant medical model of disability where every diagnosis of impairment:

> *"entails a shift in the balance of power that places people with disability within the sphere of influence of medical professionals, healthcare workers, administrators, and policymakers whose actions will shape their life thereafter, for better or worse."*[104]

5.4 Ableism largely remains unchallenged because it is generally internalised,[105] is often unstated, and appears natural, neutral[106] and benign. The ableist normative standard is *"embedded deeply and subliminally within culture"*.[107] It lies at the foundation of Western knowledge, "whether it is the 'species-typical body' (in science), the 'normative citizen' (in political theory), the 'reasonable man' (in law)".[108] Ableism thoroughly permeates our understanding of ourselves and the world in which we live. As Campbell explains:

> *"From the moment a child is born she/he emerges into a world where she/he receives messages that to be disabled is to be less than, a world where disability may be tolerated but in the final instance is inherently negative. We are all, regardless of our subject positions, shaped and formed by the politics of ableism."*[109]

5.5 Thus, the ableist normative standard is deeply entrenched in contemporary legal, policy and practice frameworks and in everyday individual and community attitudes. It is the basis for limiting or diminishing the human rights of people with disability under the guise of a seemingly benevolent care, treatment and protection framework. Segregation, loss of autonomy, dependence on others, inequality and discrimination become legitimised and normalised for people with disability through accepted legal and policy responses, such as 'special' institutional living arrangements, 'special' schools and workplace settings, parallel transport systems, special access arrangements, substitute decision-making arrangements, compulsory mental health detention, forced treatments and indefinite detention through justice diversions provisions.[110]

5.6 Law, policy and practice frameworks often respond to people with disability as a homogenous group. However, 'disability' is not a *"discrete, additional category of difference but instead is always coming into existence co-relationally with other dimensions of difference"*.[111] The intersection between disability and other multifaceted layers of identity and difference, such as sex, gender, gender identity, sexual orientation, intersex status, age, socio-economic status, ethnic origin and race, results in different experiences of discrimination and inequality.[112] The power relations inherent to ableism and those inherent to, for example racism, sexism, ageism and cisheterosexism, all share a common space of the devalued 'other' in contrast to the privileged norm of humanness.[113] The intersection between ableism and other forms of oppression creates *"unique forms of disadvantage and discrimination"*.[114]

5.7 Reducing people with disability to one homogenous group only further reinforces and maintains the 'othering' of the category of 'disability'. The interrelationship of difference needs to be explicitly recognised in law, policy and practice to provide effective responses to the multiplicity and diversity of the lives of people with disability. This intersectionality is critical to not only recognising and responding to the heterogeneity of people with disability, but also to understanding how ableism impacts all people and how challenging ableism can *"benefit all of us who fall into the category of negated other"*.[115]

5.8 The subliminal, entrenched nature of ableism and its intersection with other forms of oppression assists in explaining why, after many years, numerous government plans and awareness raising campaigns have not been fully successful in changing the negative community attitudes and the daily experience of inequality and discrimination reported by people with disability. While these plans and campaigns often reference the CRPD and aim to progress human rights, change community attitudes and ensure inclusion of people with disability, they have often only achieved incremental enhancements to existing community perceptions and systems rather than dismantling the ableism that underpins these attitudes and systems.

5.9 This is illustrated by the NDS 2010-2020, which has a vision of *"[a]n inclusive Australian society that enables people with disability to fulfil their potential as equal citizens"*.[116] The NDS 2010-2020 "adopts the principles set out in Article 3 of the CRPD",[117] and, for "the first time in Australia's history", it commits all governments to "a unified, national approach to improving the lives of people with disability... and to providing leadership for a community-wide shift in attitudes".[118] While drawing on the CRPD and committing to action to achieve national reform, the NDS 2010-2020 frames this in terms of the individual 'potential' of people with disability and 'improvement' in the lives of people with disability, rather than taking a human rights approach that would be explicit in its recognition of people with disability as subjects of human rights. A human rights approach would outline a coordinated, shared vision of promoting and protecting equality and non-discrimination, realising human rights inherent to all human beings and addressing ableism.

5.10 In the response to the NDS Position Paper, WWDA highlighted that the new NDS is *"framed within and underpinned by the CRPD"* and so it would be logical if the proposed vision reflected the CRPD.[119] WWDA suggested that the vision should articulate the rights of people with disability rather than their 'potential' and outlined a preferred option for the new NDS vision: *"An inclusive Australian society that enables people with disability to exercise their rights as equal members of the community"*.[120] It remains unclear as to whether the Australian Government will adopt this human rights based 'vision' for the new 10 year NDS.

5.11 Other Australian Government national plans are explicit about ending power relations and promoting and protecting equality. For example, the *National Agreement on Closing the Gap*[121] (the National Agreement) stipulates that its objective *"is to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians"*.[122] The Preamble of the National Agreement acknowledges that Aboriginal and Torres Islander people have experienced "entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism".[123] One of the "transformation elements" that governments commit to in the National Agreement is to "[i]dentify and eliminate racism".[124]

5.12 Similarly, the Australian Government's *Gender Equality and Women's Empowerment Strategy* (the Gender Equality Strategy) recognises "gender as a power relation" and "aims to address "unequal gender norms".[125] The Gender Equality Strategy is focused on gender equality and women's empowerment in Australia's diplomatic relations and international development activities, reflecting the fact that gender equality *"is a global issue, relevant to Australia and the economic, social, welfare and foreign policies of all countries"*.[126] The Gender Equality Strategy is supported by Australia's Ambassador for Gender Equality,[127] who "advocates internationally for women's equal participation in political, economic and social affairs"[128] and reflects Australia's "active commitment to promote gender equality and to give women a stronger voice".[129] Unlike the NDS 2010-2020, both the National Agreement and the Gender Equality Strategy recognise and identify the need to eliminate the power relations that underpin structural discrimination and inequality. They do not devalue and patronise by committing to improvements in life outcomes and assisting people to 'fulfil their potential.'

5.13 While there have been a number of reforms and initiatives under the NDS 2010-2020, there continues to be a reluctance by Australian governments to recognise and address law, policy and practice that is not compliant with the CRPD, that is embedded in the ableist care, treatment and protection framework, and that continues to prevent the full inclusion and participation of people with disability in society. This is particularly evident in laws, policy and practice that continue to establish, maintain and fund segregated settings, such as 'special' schools, segregated employment and institutional living arrangements, and that support substitute decision-making systems, such as guardianship, financial management and involuntary mental health systems.[130]

5.14 It is not only *"well-established funding and vested interests in disability, education, mental health, aged care and other service systems"*[131] that support and strongly influence the continuation of these settings and systems. It is also the interpretation of the CRPD that is applied by Australia,[132] which prevents reform of outdated, ableist systems because these systems are deemed to comply with the CRPD. Despite the authoritative guidance[133] to assist in CRPD implementation that has progressively been elaborated over several years by the *Committee on the Rights of Persons with Disabilities* (CRPD Committee),[134] Australia remains static in its understanding of the CRPD.[135] Australia's commitment to a human rights approach requires recognition of the evolving understanding of disability, the emergence of subsequent State practice and the ongoing elaboration of international law.[136] Australia cannot meet its human rights obligations to people with disability while it continues to rely on its interpretation of the CRPD. This point is discussed further in section 8.

3.15 Overall, this means that the NDS 2010-2020 has not led to the dismantling of key aspects of the ableist care, treatment and protection framework, but has, in effect normalised and legitimised this framework. Essentially, it has reinforced and perpetuated ableist perceptions and attitudes that justify limits to the realisation of the human rights of people with disability. Consequently, the NDS 2010-2020 has not been fully effective in realising the rights of people with disability or in leading to a community-wide shift in attitudes. It reinforces attitudes among legislators, policy makers, researchers and others in the community that people with disability are 'inherently vulnerable' and require 'special' arrangements. These views are absorbed and translated into the evidence base that maintains and leaves unquestioned these 'special' arrangements. Segregated settings and systems, substitute decision-making and involuntary treatments are then often justified by ableist assertions that these systems are in the person's 'best interests', for their 'safety and protection', to manage 'challenging behaviours', to address 'high support and complex needs', to prevent 'risk of harm to self and others' and/or to respond to 'severe and profound impairment'.[137]

5.16 The NDS 2010-2020 also fails to address the specific discrimination and disadvantage that occurs at the intersection of disability and gender. The independent review of the NDS 2010-2020 conducted by the Social Policy Research Centre at the University of NSW (SPRC Review) highlighted that *"the Strategy does not include any gender-specific measures to ensure the rights of women and girls with disability"*,[138] and gender equality was one of the key 'cross-cutting gaps' identified during the review consultations.[139] The Final Report from the first phase of the national consultations on a new NDS (Final Consultation Report) held in 2019 highlighted that many participants suggested that gender equality be specifically reflected in the new NDS.[140]

5.17 The gender neutrality of the NDS 2010-2020 was comprehensively outlined by WWDA in 2014 in its report[141] to inform the development of the second implementation plan for the NDS 2010-2020. None of the recommendations from this report were implemented. In 2020, WWDA provided a comprehensive response to the NDS Position Paper.[142] Both responses highlight that gender equality is a fundamental human rights principle, and indispensable for advancing the human rights of women and girls with disability.[143] Both stress that public policy that treats people with disability as a homogenous group results in a policy, program and service void whereby the human rights of women and girls with disability remain invisible and unaddressed.[144]

5.18 Both the SPRC Review and the Final Consultation Report identified the need for the new NDS to specifically address the disadvantage and discrimination experienced by "intersectional groups", such as women with disability, children with disability, older people with disability, culturally and linguistically diverse people with disability, First Nations people with disability and LGBTIQA+ people with disability.[145] However, the NDS Position Paper informing the development of the new NDS does not discuss intersectional groups nor recognise the critical need to identify and respond to intersectional discrimination and inequality.

5.19 Awareness raising and attitudinal change strategies promoted by governments have largely focused on galvanising government, non-government and private sector organisations and local communities to hold activities and events to celebrate IDPWD. Activities and events aim to promote the inclusion and celebrate the achievements of people with disability, such as by holding awards, appointing high profile people with disability as IDPWD Ambassadors, profiling the stories of 'ordinary' people with disability and conducting a range of community events.[146] While many of these activities can play an educational role in highlighting the contributions of people with disability to the community, too often IDPWD is used to promote the work of support organisations, service providers and carers, with events reduced to 'feel-good' activities and platitudes and media reporting focused on stories of people with disability as inspirational for 'overcoming their disability'.[147] The IDPWD slogans used to challenge stereotypes often focus the community's attention on 'ability' rather than 'disability', such as the Australia Government's 2020 IDPWD slogan, *'Challenge the way you think about disability, and see* *the ability in disability'*.[148] This only serves to reinforce ableism: focusing the community on 'ability' enables people with disability to 'measure up' or 'fit' the normative standard of humanness; people with disability can be viewed as 'normal', as overcoming 'abnormality' because they have 'abilities'. Thus, 'ability' allows the community to view people with disability as having value by devaluing the embodied reality of impairment or disability. It preserves the normative standard of humanness rather than challenging it.

5.20 In contrast, the Australian Government and other stakeholders have partnered with the Australian Human Rights Commission (AHRC) to develop the campaign, *'Racism. It Stops With Me.'*[149] This campaign provides information about racism, toolkits and videos for organisations, teachers, childhood educators, community service announcements, and material on responding effectively to racism and taking action for positive change. This campaign does not aim to focus the community on how a person's skin colour, ethnicity or country of origin 'fits' the normative standard, but explicitly names racism as discrimination, inequality and a societal problem that everyone has a responsibility to oppose:

> *"Australian people value equality, fairness and opportunity for all, which is why we cannot tolerate racism within our community. But racism does still exist. It comes in many forms and happens in many places. It can be easy to ignore, or to think it's not worth the trouble of responding – but that attitude helps make racism more acceptable. We all have a responsibility to stand against racism. We must all say no to prejudice and discrimination – together, with a united voice. That's why we say... Racism. It Stops With Me."*[150]

5.21 Efforts to change negative community attitudes and increase awareness of the rights of people with disability must explicitly name and respond to the deeply entrenched nature of ableism and its intersection with other forms of oppression. Attitudinal change activities must go beyond a focus on the 'abilities' of people with disability, to strongly expose the power relations inherent to ableism and to position people with disability as fundamentally equal in value and worth. They must engage the whole community in taking responsibility for challenging ableism. Attitudinal change activities must not be conducted in isolation from concerted action to dismantle ableist law, policy and practice frameworks that maintain and reinforce discrimination and inequality, (including the segregation of people with disability), and that allow discriminatory and harmful attitudes to flourish. The new NDS, and other future disability strategies must aim to achieve social transformation, rather than being an exercise in *"(re)forming negative attitudes, assimilating people with disabilities into normative civil society, and providing compensatory initiatives and safety nets in cases of enduring vulnerability"*.[151]

6 ABLEISM AND VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION

ABLEISM AND VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION

The ableist value system and harm

6.1 Ableism acts as a "value system" that asserts that certain typical characteristics of body and mind are "essential for living a life of value".[152] The value ascribed to the norm of humanness is dependent on the devalued 'other' to counterpose it; its value is based on the premise that it is not the 'other'. Consequently, the "ableist self" is the standard of the valued human being, "the desired choice of the global citizen" and "disability becomes the antithesis of that which is chosen or desired".[153]

6.2 Ableism is "essentially harmful",[154] but so embedded in society that the deep and enduring harm caused to people with disability is often hidden. The "unconscious beliefs of a society",[155] negative representations and devalued status of disability are not passively and uncritically absorbed;[156] they engender "the hidden process of internalised ableism".[157] Internalised ableism produces a persistent and implanted harm or "pain" for people with disability "because it convinces us that there is something fundamentally wrong with us, that we are not acceptable just as we are."[158] For people without disability, internalised ableism is validating and self-affirming in that it upholds the privileged and valued status of the 'normal' human being.

6.3 Ableism saturates the "psychic life of the community"[159] in a similar and interrelated way to the processes of other power relations, such as sexism, racism, ageism and cisheterosexism. Thus, the space of the devalued 'other' can be understood as a site of harm, where *"oppressed people are routinely worn down by the insidious trauma involved in living day after day in a sexist, racist, classist, homophobic, and ableist society"*.[160]

6.4 Living in an ableist society reinforces and perpetuates harm against people with disability in many ways, including through everyday negative interactions with others, through navigating inaccessible environments, as the result of laws that limit rights and enable harmful practices, and through seemingly neutral 'expert' views embedded in policy and practices that devalue and harm people with disability. The entrenched nature of ableism means that many harms to people with disability are not acknowledged or recognised, or they are accepted as objective and legitimate and therefore perceived as unharmful to people with disability. For people with disability, however, the harm of ableism is ever present, constantly reinforcing their devalued and inferior status in society.

This is illustrated by the following examples:

Microaggressions

6.4.1 The harmful daily prejudices, biases and interactions that "perpetuate inequalities and stereotypes against people who belong to marginalised communities" have been termed microaggressions.[161] Microaggressions can be conveyed by individuals, policies and practices and service systems, including by disability and mental health support workers, carers, medical and disability professionals and policy makers. They often appear unintentional and benevolent, or they can be conveyed with pity, contempt and even hatred, but the outcome is the perpetuation of power relations and oppression.

Microaggressions are like “death by a thousand papercuts”[162] and they directly and negatively impact on the mental and physical well-being, sense of belonging and the full development of people with disability.[163] People with disability consistently report daily experiences of negative community attitudes, misconceptions and stereotypes that are intrusive, insulting, ‘othering’ and harmful.[164] This includes people with disability being spoken to like children, being asked by strangers to explain what happened to them, being judged for having children, being asked whether they have sex, being described by offensive language and terminology and being told that they would rather be dead than be like them.[165] These negative perceptions and judgements are seamlessly woven into common everyday sayings, jokes, media reporting, social media, policies and practices and the daily decisions made by others for people with disability.

Microaggressions can be perpetrated at the intersections of many different identities, including those relating to disability, race, gender, gender identity, sexual orientation and age.[166] Microaggressions perpetrated against women and girls with disability reinforce disability and gender stereotypes, inequalities and intersectional discrimination, which makes them extremely vulnerable to violence, abuse, neglect and exploitation. For example, evidence provided to the Senate Inquiry into involuntary or coerced sterilisation of people with disabilities in Australia (Senate Sterilisation Inquiry) highlighted that parents, carers, support staff and medical professionals hold fears and concerns that make them reluctant to discuss the sexual and reproductive health needs of women and girls with disability, including menstrual management.[167] In disability care policy and practice, these views appear to contribute to the distinction between allowing support for particular bodily functions, such as the insertion of enemas, but not allowing support for the insertion of tampons.[168] The negative societal view of menstruation[169] affects all women but has a specific harmful impact on women and girls with disability as issues with menstrual management are commonly viewed as a reason to sterilise women and girls with disability.[170]

Lawful violence

6.4.2 The ableist value system can lead to people with disability being subjected to legally permissible forced interventions and treatments. Australia’s interpretation of the CRPD means that many people with disability are considered ‘incompetent’ or ‘incapable’ of providing consent to medical treatment and interventions, but treatment and interventions can still be authorised through substitute decision-making arrangements, such as by courts or tribunals.[171] This means that people with disability can be subjected to many invasive and irreversible practices without their personal consent, such as sterilisation and abortion, electroconvulsive therapy, and the administration of psychotropic medication.

Most Australian jurisdictions have laws and/or policies that regulate and authorise the use of restrictive practices to manage and control the behaviour of people with disability.[172] This means that people with disability can be subjected to physical, mechanical and chemical restraints and seclusion, regardless of the fact:

> *“that if these harmful actions occurred outside of a disability setting or in relation to any other population they would be recognised for what they are: acts of violence, abuse, false imprisonment, and/or a breach of human rights.”*[173]

While the use of restrictive practices in Australia is overseen at the national level by the *National Disability Insurance Scheme Quality and Safeguards Commission* (NDIS Commission), this Commission only has a mandate within the *National Disability Insurance Scheme* (NDIS), not the full range of settings and circumstances where restrictive practices are applied to people with disability. More critically, the NDIS Commission is only concerned with the regulation and authorisation of restrictive practices and not prohibition and criminal prosecution.[174]

The fact that forced treatments, forced interventions and restrictive practices are perpetrated through court or tribunal consent, the ‘best interests’ principle, the doctrine of necessity or legislative frameworks “does not signal the non-existence of violence. Rather, it signals the lawful status of this violence.”[175]

The Royal Commission has released an Issues Paper on restrictive practices[176] and also indicated its intention to “examine the use of restrictive practices on people with disability, and whether it is a disability-specific form of violence”.[177] However, the Royal Commission has not discussed lawful violence, including substitute decision-making as a specific area of examination, although guardianship laws and mental health laws are noted in the Issues Paper in the context of the authorisation of restrictive practices.[178] Without a thorough examination of substitute decision-making and restrictive practices within a human rights context, the Royal Commission will fail to expose the ableism at the foundation of these systems and their role in perpetrating violence, abuse, neglect and exploitation.

Sexual and reproductive rights and denial of bodily autonomy

6.4.3 Sexual and reproductive health and rights are essential for women and girls with disability to achieve gender equality and to prevent and protect them from violence, abuse, neglect and exploitation.[179] Prejudice and stereotypes based on gender and disability lead to inequality and intersectional discrimination against women and girls with disability, in particular when exercising their sexual and reproductive health and rights.[180]

Common harmful attitudes about women and girls with disability – “they are asexual, incapable, irrational, lacking control and/or hypersexual”[181] – have a deep personal impact on developing a strong identity, self-esteem and a sense of bodily integrity. They underpin systemic barriers, such as the lack of accessible information, communication and education about sexual and reproductive health, and facilitate harmful practices, such as the removal of babies from mothers with disability, denial of support to explore romantic and sexual relationships, and being subjected to forced contraception, forced menstrual suppression and forced sterilisation.[182] Consequently, many women and girls with disability lack basic knowledge and support to exercise autonomy over their sexual and reproductive health and rights, thus making them more vulnerable to sexual violence and violations of their bodily integrity.

Despite this, sexual and reproductive health and rights are completely absent from the NDS 2010-2020. WWDA’s response to the NDS Position Paper recommends the inclusion of sexual and reproductive health rights in the new NDS in outcome area, ‘Health and Wellbeing’. WWDA argues that the new NDS cannot fulfil its aim of advancing the rights of people with disability if it omits sexual and reproductive rights. This omission would “perpetuate the stereotype of people with disability as asexual, genderless human beings”, deny fundamental human rights and establish “a policy, program and service vacuum whereby the sexual and reproductive rights of people with disability remain violated, denied, ignored and trivialised.”[183]

It is critical that sexual and reproductive rights and the right to bodily integrity are specifically examined during the Royal Commission’s public hearing on ‘The health and safety of women and girls with disability’ scheduled for October 2021.

Devalued lives and eugenic ideology

6.4.4 At its most extreme, the ableist value system underpinned the global eugenics movement of the late nineteenth and early twentieth centuries.[184] Eugenics lost its appeal once the horrific reality of the Nazi mass killing programs was revealed,[185] and today, eugenics is largely rejected. However, the residue of eugenic ideology and practice is still evident in community attitudes and in law, policy and practice, and it continues to resonate and have harmful consequences in the lives of people with disability.[186]

This is evident in the following examples:

Forced sterilisation

In 1992, the High Court in Marion's case[187] found that the sterilisation of minors could only be authorised by the Family Court if it was in the child's best interests.[188] It was no longer lawful for parents, carers and the medical profession to authorise sterilisation procedures for their children.

Sterilisation procedures for adults with disability in Australia have been lawful since the 1980s if they are authorised by a tribunal, and Marion's case made it lawful for sterilisation procedures to be performed on children if authorised by the Family Court.[189] However, analysis of court decisions in relation to sterilisation have found that rather than being objective, neutral and impartial, there is evidence of the interplay between ableist and sexist value systems in the "continuing focus on issues that are disquietingly reminiscent of historical characterisations of women with disabilities used in the first half of the 20th century, when eugenics theory was popular".[190]

The 2013 Senate Sterilisation Inquiry heard evidence about how ableist judgements can support eugenic reasoning by parents, carers and medical professionals in seeking sterilisation procedures for girls with disability.[191] The Senate Sterilisation Inquiry heard evidence that analysis of court decisions demonstrated that eugenic "considerations may underlie applications for child medical procedures such as sterilisation."[192] It recommended the development of information to guide medical experts in preparing evidence for sterilisation cases, including information about issues that courts and tribunals "are not authorised to consider such as outdated and paternalistic attitudes to disability, eugenic arguments or assessments of the person's current or hypothetical capacity to care for children".[193]

Pre-natal screening

In most developed countries, including Australia it is routine practice to offer pre-natal screening to pregnant women to assess the health and development of the foetus and to identify chromosomal or structural 'abnormalities'.[194] Pre-natal screening explicitly aims to distinguish 'normal' foetuses from 'abnormal' ones, with a view to providing parents with a choice about whether to continue or terminate a pregnancy.

The government approved health information on 'Screening for Down Syndrome' notes that "[i]t's always difficult when you're told that something is wrong with your baby, especially if you're faced with a painful decision about the future of your pregnancy." [emphasis added].[195] From the outset, the diagnosis is portrayed negatively and as a tragic situation. The multifaceted potential of the unborn child is reduced to just one aspect, the diagnosis, and the information provided to prospective parents is usually not balanced but focused on developmental deficits, cost implications, daily life pressures and negative impacts on family life.[196]

After the diagnosis, many women report interactions with medical professionals who overwhelming expect that their decision will be to terminate the pregnancy, and there is ongoing need to convince surprised medical professionals about decisions not to terminate pregnancies.[197] While all women have a right to choose if they wish to terminate or continue with a pregnancy, the influence of ableist beliefs about the ideal of the perfect, normal child that is embedded in the medical profession and wider society has resulted in the normalisation of termination and an increase in prospective parents deciding not to have children with disability.[198]

There are media reports that nine out of ten women choose to terminate pregnancies where prenatal screening has diagnosed Down Syndrome,[199] and a Western Australian study concluded that prenatal testing “has reduced the birth prevalence of Down syndrome” with 93% of women choosing to terminate a pregnancy after prenatal diagnosis of Down Syndrome.[200] If these figures are reflected across Australia, then they are almost comparable to a number of European countries, particularly Iceland and Denmark where universal pre-natal screening programs are accompanied by high abortion rates that have prompted media reports about the ‘eradication’ or ‘elimination’ of Down Syndrome in those countries.[201] There is close to a 100 percent termination rate after a positive test in Iceland, with only about 1 or 2 children born with Down Syndrome per year.[202] An Icelandic geneticist has stated that “we have basically eradicated, almost, Down Syndrome from our society”, noting the impact of “heavy-handed genetic counselling” on non-medical decisions.[203]

In Denmark a 98% termination rate means that there is a trajectory towards elimination very similar to Iceland.[204] Reports indicate that the Danish Government has estimated the cost savings that can be achieved per termination of foetuses with Down Syndrome, and although Danish women are free to choose whether to terminate a pregnancy or not, there is medical and societal pressure to choose termination.[205]

The normalisation of the termination of ‘abnormal’ pregnancies after pre-natal screening reflects a eugenics ideology about the quality of life of people with Down Syndrome. It reinforces and perpetuates the message to people with disability and the community that the lives of those who are ‘healthy’ have greater value and worth than those that are viewed as ‘abnormal’ or ‘unhealthy’.[206] The introduction of methods for non-invasive prenatal testing (NIPT)[207] and the ongoing exponential increase in the capacity and speed of genetic testing technology[208] mean that these issues will become more pressing and affect more individuals, families and communities in the future.

Medical rationing and triage protocols for COVID 19

There has been considerable global concern expressed globally by people with disability, their representative organisations, advocates and allies about the need for governments to ensure disability inclusive public health and social and economic measures to respond to the Covid 19 pandemic.[209] This concern was provoked by the exclusion or marginalisation of people with disability from much of the pandemic planning and responses.

As resources for critical medical care became scarce, there was clear evidence of the devaluing of people with disability in many policies, protocols and guidelines that governed who is deserving and undeserving of critical health care and life-saving medical treatment.[210]

For example:

- older people and people with disability have been ‘encouraged’ to sign ‘Do Not Attempt to Resuscitate’ consent forms as part of advance care plans.[211]

- the use of a Clinical Frailty Scale to de-prioritise critical care treatment on the basis of need for daily support.[212]

- particular groups of people with disability, such as people with ‘severe and profound’ cognitive impairment being de-prioritised for ventilator support.[213]

- particular groups of people with disability identified for de-prioritisation for critical care support.[214]

These examples reignite “the harmful and antiquated perceptions of disability as a vulnerability or weakness”[215] and make ableist assumptions about the health status, quality of life and social utility of people with disability.[216] They reflect a eugenics ideology that allows for the denial of critical health care and lifesaving treatment to people who are deemed ‘unfit’ and of lesser value to ensure that the fittest and valued members of society survive.

6.5 Identifying and addressing all forms of violence, abuse, neglect and exploitation against people with disability requires personal and societal recognition and understanding that ableism and other forms of oppression are at their core. Ableism is essentially harmful, and this harm is internalised by people with disability and constantly reinforced. It cannot be reduced to expectations and assumptions that may be unintentional or that result from ignorance, as is the implication in the definition of ableism provided in the Issues Paper.[217] The example given in the Issues Paper to illustrate this definition - a teacher assuming a child with disability is unable to participate in a maths class and so provides colouring tasks instead[218] - fails to convey how ableism operates. It potentially leads to a superficial response that may consider disability awareness training for teachers as all that is required to address misguided expectations and assumptions. However, this example illustrates the power relations inherent to the ableist value system and the resulting harm caused to the child with disability, who learns and absorbs the view that they are incapable of learning what other children learn because they are inherently ‘deficient’ and not as worthy as other children. Expectations and assumptions are based in the ableist value system, and they result in cumulative harm to people with disability.

6.6 Ableism cannot be addressed by attitudinal campaigns that aim to demonstrate the ‘contributions’, ‘potentials’ or ‘abilities’ of people with disability in order to convince the community to be ‘accepting’ and ‘inclusive’ of people with disability. Dismantling ableism requires everyone taking responsibility, including governments, community members, service providers, advocates, policy makers, legislators and researchers. It requires understanding the harmful nature of ableism, recognising that this harm is normalised in the lives of people with disability, challenging the inherent power relations in accepted views about disability, analysing law, policy and practice to reveal ableist dimensions and responding to inequality and discrimination underpinned by ableism and other forms of oppression. It requires fundamental and profound attitudinal, structural and systemic transformation.

Responses to violence, abuse, neglect and exploitation

6.7 The Senate Inquiry found that the devaluing of people with disability manifests in many ways to enable violence, abuse, neglect and exploitation.[219] It found that violence, abuse, neglect and exploitation against people with disability is prolific and systemic. It is not confined to one poorly performing service or the result of one or two 'bad apple' individuals. It can be perpetrated by individuals, enabled by organisational and service culture and facilitated by laws, policies and practice, but at its foundation is ableism.[220]

6.8 Several high profile and horrific instances of violence, abuse, neglect and exploitation have been exposed and reported in the media, including the degrading and appalling death of Ann Marie Smith.[221] These have generated significant community outrage and commentary about the care and protection afforded children and adults with disability and the devaluing of people with disability within communities.[222]

6.9 Despite acknowledging the interconnection between the devaluing of people with disability and violence, abuse, neglect and exploitation, the recommendations from many inquiries, including the Senate Inquiry and the Ann Marie Smith inquiry report[223] usually focus on reforming existing service systems, enhancing regulatory frameworks, conducting training programs and proposing mechanisms to address gaps in protective frameworks. While this is necessary and critical, most inquiry recommendations do not go beyond reform of service systems to address the underlying power relations, the ableism at the core of these service systems and society in general.

6.10 The NDS 2010-2020 contains a policy direction, 'People with disability to be safe from violence, exploitation and neglect' under the outcome area, 'Rights protection, justice and legislation'. However, the main strategy to address violence, exploitation and neglect is the extremely inadequate and circular action to "develop strategies to reduce violence, abuse and neglect of people with disability".[224] The Senate Inquiry recommended that the NDS 2010-2020 "must address violence, abuse or neglect of people with disability and should be linked to domestic violence frameworks".[225] The SPRC Review found that 'Protection against violence and abuse' was an implementation gap in the NDS 2010-2020 and that it should be a priority area for the new NDS.[226]

6.11 In its response to the NDS Position Paper, WWDA recommends that the new NDS contain an additional outcome area, 'Safety from Violence and Abuse' rather than this issue being buried under outcome area, 'Rights protection, justice and legislation'.[227] WWDA argues that the latter outcome area "does not accurately reflect the right to safety to all forms of violence, nor does it do justice to the fact that violence, abuse, exploitation and neglect of people with disability remains one of the most urgent and unaddressed human rights issues for people with disability in Australia".[228] A dedicated outcome area would also recognise the role of the Royal Commission and the many recommendations that will likely align with and need to be incorporated into the new NDS.

6.12 Of critical and essential importance is the need to explicitly articulate that ableism is the foundation of inequality and discrimination of people with disability and the driver of violence, abuse, neglect and exploitation. Recognition of power relations inherent to forms of oppression is now the dominant position taken by legislative, policy and practice frameworks developed to address violence against women. Whereas previously violence against women was understood as a 'personal' or 'private' issue, it is now explicitly articulated that the driver of violence against women is gender inequality: "gender inequality is the core of the problem, so gender equality must be the heart of the solution".[229] There is also explicit recognition that the "gendered drivers" of violence against women intersect “with other forms of social, political and economic discrimination and inequality (such as racism or ableism)”[230] to reinforce each other and to impact different groups in unique and specific ways.[231]

6.13 While there are criticisms about the adequacy of the response to prevent and address violence against women, there is now concerted action in the form of state and national laws, national action plans, political commitments and budget allocations, national surveys, comprehensive website information and resources, national awareness raising and attitudinal change campaigns, research and evidence-based action, and educational programs within the school curriculum.[232] These complementary and multifaceted measures acknowledge that gender inequality operates on many levels, including social and cultural norms, economic structures, and organisational, community, family and relationship practices.[233] It is acknowledged that beliefs, behaviours and systems that excuse, justify or condone violence and inequality must be challenged and reformed. Violence against women is a “significant social problem”, which needs “a large-scale response” to achieve a “social transformation”.[234]

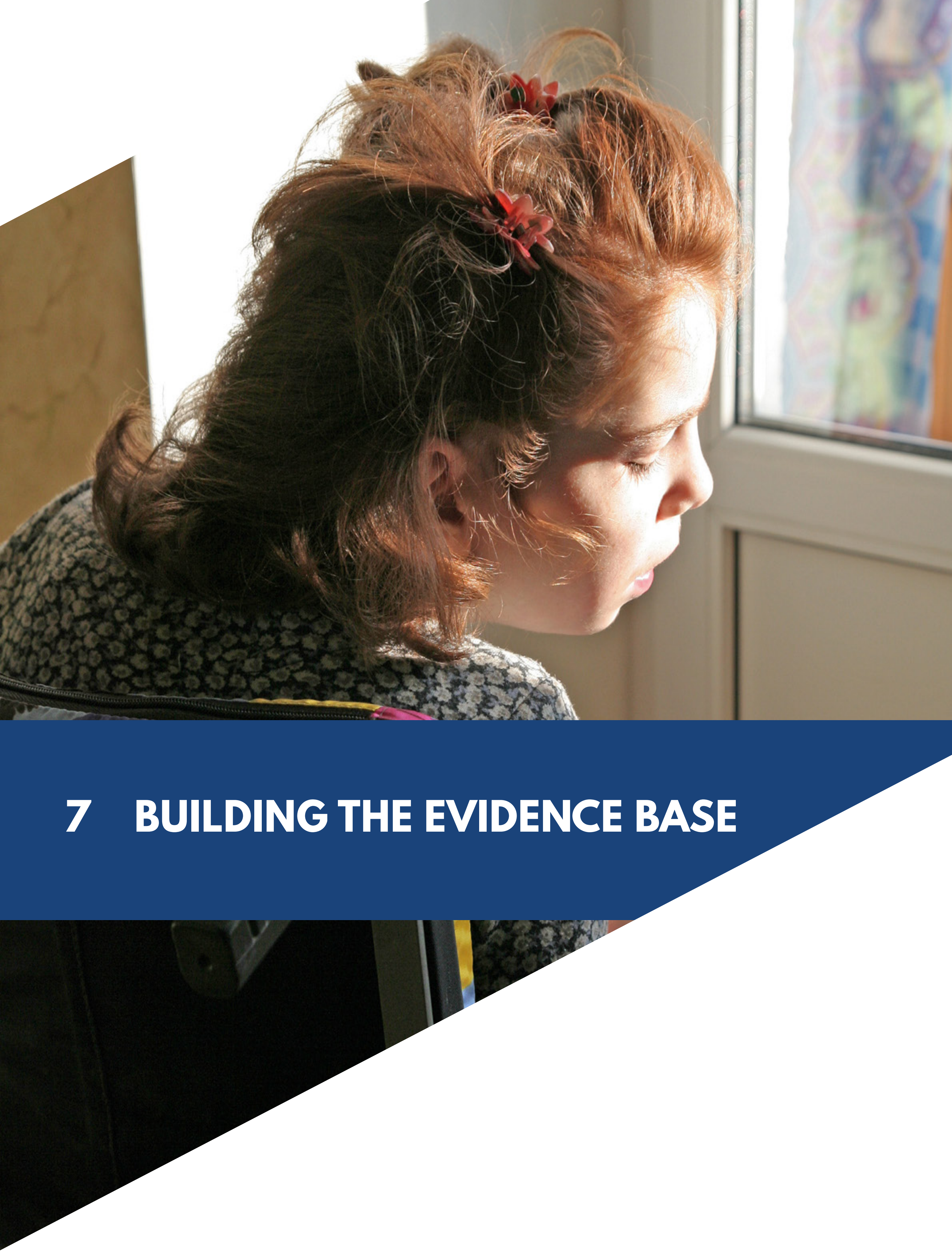
6.14 This is illustrated by the framework for the primary prevention of violence against women and their children in Australia, *Change the Story*,[235] despite the limitations in this framework for addressing all forms of gender-based violence for women and girls with disability.[236] This framework was developed “in partnership, as part of a cross-party political agenda”[237] and to contribute to the *Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022*,[238] “itself a joint, bipartisan commitment of all Australian governments”.[239] Drawing on an evidence base, it outlines key gendered drivers of violence[240] - such as men’s control of decision-making and stereotyped constructions of masculinity and femininity – and outlines a range of actions that are needed “through legislative, institutional and policy responses”[241] implemented in a broad range of settings, “such as workplaces, schools, community organisations, sports clubs, media and popular culture”.[242] These actions emphasise the need for attitudinal change as well as the need to address structural discrimination and inequality, including measures to “foster positive personal identities and challenge gender stereotypes and roles”, “promote and normalise gender equality in public and private life”, and “promote women’s independence and decision-making in public life and relationships”.[243]

6.15 The framework identifies practical strategies to reach different communities, span the life course and respond to the diversity of people’s lives. There is acknowledgement that “every sector, institution, organisation, community and individual has a role to play in preventing violence against women”,[244] through “a collaborative national approach” that enables policy and legislative reform and “the leadership and coordination necessary to drive broad, deep and sustainable social change”.[245]

6.16 Complementing the *‘Change the Story’* framework are awareness-raising and attitudinal change campaigns that encourage community members to take action against gender inequality and disrespect of women and girls. Similar to the *‘Racism. It Stops with Me’* campaign, the *‘Stop it at the Start’* campaign[246] and the *‘Doing nothing does harm’* campaign[247] are explicit in both their condemnation of unequal and disrespectful attitudes and behaviour towards women and girls and in encouraging action against it. While both these campaigns have limitations regarding the inclusion of women with disability,[248] the key point for the purpose of this submission is that both campaigns explicitly acknowledge that gender inequality and disrespect of women and girls are underlying drivers of violence against women. The *‘Stop it at the Start’* campaign is an Australian Government evidence-based initiative[249] that provides information, resources for a range of audiences, video and television community content aimed at parents, family members, teachers, coaches, community leaders and employers to reflect on their own attitudes and to positively influence the attitudes and behaviours of children and young people with regard to respect for women and girls.[250] The *'Doing nothing does harm campaign'* is an Our Watch evidence-based campaign focused on information, resources, graphics and video content to assist people to take personal action against disrespectful attitudes and behaviour towards women.[251]

6.17 In contrast to the *'Change the Story'* framework and associated attitudinal change campaigns, violence, abuse, neglect and exploitation of people with disability is still often examined narrowly within a care, treatment and protection framework. It is perceived as an individual situation or service incidence, as an issue only within the disability service system, as the failure of policies and procedures, as the inevitable consequence of the nature of impairment, the lack of qualified and accredited staff and the lack of rigorous oversight and protective mechanisms. While these factors are important, they are not understood or addressed within a comprehensive, multidimensional, evidence-based approach that explicitly names and responds to the underlying driver of violence, abuse, neglect and exploitation – ableism and other intersectional power relations. Consequently, there is little recognition of the links between discrimination and inequality and the need for a social transformation to address this situation.

6.18 The deeply entrenched and harmful nature of ableism and its intersection with other forms of oppression warrants concerted investigation and evidence-based action to combat violence, abuse, neglect and exploitation of people with disability. The harm caused by ableism is currently being reflected in the evidence being provided to the Royal Commission through its public hearings, the responses to Issues Papers, and the findings of its research reports.[252] The Interim Report notes that violence, abuse, neglect or exploitation is experienced "in almost every aspect"[253] of the lives of people with disability, and that these experiences are "not limited to discrete settings and contexts"[254] but "point to systemic and structural failures across multiple and overlapping systems".[255] The Royal Commission provides a significant opportunity to explicitly articulate that ableism and other intersecting power relations are the drivers of violence, abuse, neglect and exploitation against people with disability. It can change the narrow, ableist analysis of violence, abuse, neglect and exploitation against people with disability to a human rights analysis that exposes the inequality and discrimination embedded in community attitudes and social structures, identifies individual and systemic violence prevention and response measures, and makes recommendations to comprehensively dismantle power relations and facilitate necessary social transformation.



7 BUILDING THE EVIDENCE BASE

BUILDING THE EVIDENCE BASE

7.1 The Issues Paper outlines a range of research findings that demonstrate the role of attitudes in the marginalisation, exclusion and discrimination of people with disability and in increasing the risk of violence, abuse, neglect and exploitation.[256] However, the significant investment in rights awareness and shifting community attitudes undertaken by Australian governments since the 1980s does not appear to be driven by a comprehensive evidence base. There is little research and evaluation of the effectiveness of attitudinal change and rights awareness strategies that have been undertaken in Australia. The 2011 scoping project on community attitudes towards people with disability (2011 scoping project) undertaken for the Australian Government[257] found that, despite being described as successful, there is little formal evaluation data to assess the effectiveness of policies, plans and strategies in changing community attitudes towards people with disability in Australia.[258] Rather, policy recommendations to drive attitudinal change were "usually based on experience, professional knowledge and common sense rather than on formal evaluation results".[259]

7.2 Despite the fact that negative and harmful community attitudes are an expression of ableism, there is no explicit articulation of ableism and its inherent power relations within research on community attitudes. In general, there is very little Australian research on attitudes towards people with disability, on the impact of negative and harmful community attitudes on people with disability or on the drivers of these attitudes. There is also little or no research on the impact of ableist law, policy and practice frameworks on the fostering and reinforcement of negative and harmful attitudes towards people with disability.

7.3 There is also very little disability inclusive research[260] that examines the kinds of attitudes, impacts and experiences of people with disability themselves, including disability inclusive research examining the specific experiences of women and girls with disability, children with disability, First Nations people with disability, culturally and linguistically diverse people with disability and those from LGBTIQA+ communities. The available research has found that negative attitudes can be compounded by the multiple or intersectional identities and differences of people with disability and can enable intersectional discrimination and disadvantage.[261] The CRPD Survey found that 50% of respondents from migrant backgrounds, 60% of First Nations people and 38% of women experienced discrimination on the basis of their race or gender as well as disability.[262]

7.4 The limited available Australian research on community attitudes focuses on individual and societal perceptions, thoughts and beliefs about people with disability. There is little research on the interconnection between law, policy and practice and community attitudes. The Issues Paper outlines research that has found that segregation and limited contact with people with disability appears to contribute to negative community attitudes.[263] However, there appears to be no research on the attitudes embedded in law, policy and practice, the impact of law, policy and practice on the production and reinforcement of negative or positive community attitudes towards people with disability or how structural change can shift individual and community attitudes towards people with disability. This is particularly critical given Australia's static interpretation of CRPD which promotes and maintains laws, policies and practices that allow segregated service systems and substitute decision-making regimes.

7.5 The focus of measures to achieve attitudinal change is usually on individuals and the community, rather than on law, policy and practice reform to drive attitudinal change and rights awareness. The 2011 scoping project identified that strategies to change community attitudes are most effective when they target the levels of personal, organisational and structural change, they include people with disability in the design and implementation, they are adequately resourced and sustained to shift negative attitudes and they address the diversity of disability.[264] Attitudinal change needs to be viewed as cultural change, and this requires more than awareness-raising strategies to shift individual and community attitudes; it also requires evidence-based government policy and legislative reform across all sectors and jurisdictions to promote equality and address discrimination, including intersectional discrimination.

7.6 Without an evidence base, it is extremely difficult to benchmark community attitudes, measure attitudinal change over time and evaluate attitudinal change strategies. In 2018, the results of the *Victorian Survey of Community Attitudes toward People with Disability*[265] (Community Attitudes Survey) were released. This survey examined "personally-held and perceived societal attitudes about people with disability"[266] with the aim of providing "a baseline understanding of attitudes" for the Victorian disability plan, *Absolutely Everyone: State Disability Plan 2017-2020*.[267] The findings from the Community Attitudes Survey are being used to identify and focus efforts to change attitudes and to track attitudinal change over time. While this is critical, the researchers acknowledged several limiting factors of the survey that prevent a comprehensive understanding of attitudes about people with disability, including the representative nature of participants, social desirability bias and inability to determine participant understanding of disability.[268]

7.7 The Community Attitudes Survey "was designed to measure overall attitudes about people with disability",[269] so does not provide information on participant responses to different impairment types or attitudes towards different population groups of people with disability, such as women with disability, children with disability, older people with disability, culturally and linguistically diverse people with disability, First Nations people with disability and LGBTIQA+ people with disability. While the Community Attitudes Survey does acknowledge that "greater inclusion of people with disability in schools and workplaces" is likely to assist community members to "feel more comfortable around people with disability, navigate interactions more competently, and improve overall attitudes toward people with disability",[270] it is unable to provide information about necessary structural change required to address the interconnection between community attitudes and law, policy and practice. The limitations of the Community Attitudes Survey also limits the quality and depth of measurement indicators of future attitudinal change under the Victorian disability plan, given that the five indicators are high-level, general 'agree-disagree' statements that aim to track change over time[271] - "People are unsure how to act toward people with disability", "People with disability are a burden on society", "People with disability are a burden on their families", "Children with disability should only be educated at special schools", "Employers should be allowed to refuse to hire people with disability".[272]

7.8 Ableism is evident throughout the research process, including within research funding structures, through the lack of representation of people with disability in tertiary education and within academia, the focus of disability research confined to service system enhancements and the lack of disability inclusive research practice.[273] Research in Australia has primarily been funded by government departments responsible for disability with a focus on enhancing and improving service systems and evaluating disability policy. Research is usually concentrated within faculties of arts, social sciences and health and reflects a care, treatment and protection framework. There are few people with disability undertaking academic research, and they are often confined to the arts and social sciences. Disability is often omitted from broad, mainstream research, and where disability is included, such as in technology, it is usually confined to a specific disability element, such as assistive technology rather than how technology could be inclusive of disability. All these factors have a detrimental impact on the evidence base that drives policy and practice reform, as it retains the "asymmetrical power relations between people with disabilities who are intended to benefit from the policies and other stakeholders including government, service providers and academic researchers".[274] It continues to privilege the 'experts' who speak on behalf of people with disability and reinforces and confirms ableist policy and practice.[275]

7.9 While the new NDS proposes a new, stronger focus on facilitating and fostering ongoing attitudinal change across all outcome areas, it is unclear how this attitudinal change will differ from previous initiatives when there is no comprehensive disability inclusive evidence base to drive, measure or evaluate change. The Australian Government has provided seed funding to establish the *National Disability Research Partnership* (NDRP),[276] to build the evidence base for the new NDS. The NDRP seeks "to drive a collaborative and inclusive disability research program that builds the evidence for successful innovation in policy and practice".[277] It is currently in the process of developing a ten-year national disability research agenda to shape policy and practice.[278] While the NDRP is a positive development, it is essential that its work, including the national disability research agenda is explicitly grounded in human rights. Disability inclusive research "conducted within the normative rights framework of the CRPD can guide researchers towards a form of inclusive practice that is capable of generating transformative evidence".[279] It would enable examinations of ableism and its intersection with other power relations and recognise ableism as the driver of discrimination and inequality, including violence, abuse, neglect and exploitation. This would ensure that evidence-based policy and practice goes beyond 'improving' or 'enhancing' the lives of people with disability to genuinely progress the cultural change necessary to dismantle the ableism embedded in attitudes, law, policy and practice.

7.10 In relation to measuring success, the new NDS would benefit from understanding the elements that make up the comprehensive measurement framework that accompanies the *'Change the Story'* framework. *Counting on change: A guide to prevention monitoring*[280] is a companion guide for policy makers, researchers and advocates on "how to comprehensively track short, medium, and long-term progress toward prevention at the population-level".[281] Counting on change identifies "5 long-term indicators, 33 medium-term indicators, and 43 suggested measures"[282] to assess change in "the drivers and reinforcing factors of violence against women" and to develop 'a picture of progress' to assess success.[283] Counting on change recognises that "intersectional methodologies for collecting and analysing population data are still evolving" but it identifies ways for ensuring that monitoring of progress "can be informed by an intersectional approach".[284] This includes establishing an intersectionality advisory group, finding and reporting on population group disaggregated data sets, highlighting gaps in intersectional data, and asking "intersectionality questions" when analysing data, such as 'who is missing from the data and are the data accurate for all women?'[285]

7.11 The new NDS would also benefit from understanding the theory of change approach applied by Our Watch in developing the *'Change the Story'* framework in partnership with the Australia's National Research Organisation for Women's Safety (ANROWS). In explaining its theory of change, Our Watch notes:

> *"Specifically, [our theory of change] envisages that an evidence-based framework that identifies the drivers of violence against women will enable the development of strategies that can effectively reduce these drivers of violence. It anticipates the need for many stakeholders to contribute; for governments, civil society, the private sector and communities to lead, coordinate, resource and support diverse yet mutually reinforcing kinds of prevention work, including policy, legislation, strategies, programs and advocacy. This consistent, evidence-based approach to the long-term task of cultural change is required to prevent violence against women from occurring in the first place."*[286]

8 DISMANTLING ABLEISM

DISMANTLING ABLEISM

8.1 The CRPD is a significant legal and policy shift in the context of disability. Its standards and principles provide the elements to drive the cultural change necessary to dismantle ableism by eliminating the power relations that underpin inequality and discrimination and that devalue people with disability and privilege people without disability. The CRPD provides the roadmap for social transformation.[287]

8.2 The CRPD acts as an interpretative matrix,[288] in that it contains interrelated and intersecting components that all interact with one another rather than in isolation.[289] This interaction "provides a holistic perspective by which the experience of people with disability can be comprehensively understood and areas of structural reform can be effectively identified".[290] This means that interpretation and implementation of the CRPD cannot be reduced to an analysis of one article in isolation from other intersecting components of the CRPD.

8.3 In relation to attitudes and rights awareness, article 8 of the CRPD[291] obliges governments to raise awareness of the rights and dignity of people with disability and to "combat stereotypes, prejudices and harmful practices".[292] Article 8 is a cross-cutting measure[293] that facilitates the implementation of the individual rights of the CRPD,[294] such as the right to employment, education, health, equal recognition before the law and freedom from exploitation, violence and abuse. Individual rights cannot be implemented in isolation from the cross-cutting obligations, and the cross-cutting obligations are only effective when they are applied in the implementation of individual rights. This means that awareness raising, and attitudinal change activities need to be undertaken in the context of progressing the individual rights of people with disability, and not as standalone activities. In this respect, the legal obligations of the CRPD reflect the evidence found in the 2011 scoping project that strategies to change community attitudes are most effective when they target the levels of personal, organisational and structural change.

8.4 The NDS Position Paper proposes that the new NDS should have "a stronger emphasis on improving community attitudes across all outcome areas".[295] If implemented effectively, this proposal has the potential for awareness raising activities to target the personal, organisational and structural levels in order to progress rights in the proposed outcome areas of the new NDS – economic security; inclusive and accessible communities; rights protection, justice and legislation; personal and community support; learning and skills; and health and well-being.[296] This would reflect the cross-cutting nature of article 8 in facilitating the implementation of rights for people with disability.

8.5 Article 31, Statistics and data collection is also a cross-cutting measure obliging States to collect disaggregated data for the formulation and implementation of policies, such as the new NDS. While the NDS Position Paper states that data is "essential for measuring outcomes and tracking progress" and "to improve outcomes for all people with disability",[297] it only discusses data collection in the context of "service choices" and "service usage and service delivery".[298] This focus reduces people with disability to service recipients and the role of the new NDS to a focus on service enhancements and improvements. For the new NDS to genuinely uphold Australia's obligations under the CRPD, data collection needs to facilitate the achievement of rights across all the new NDS outcome areas. This should include a focus on mechanisms to gather evidence on ableism and its impact on attitudes to people with disability, how ableism manifests in law, policy and practice to produce and reinforce negative community attitudes and how structural change can shift individual and community attitudes towards people with disability.

While this data may not be currently available, there should be measures to enable data collection in these areas, including through the NDRP and the development of the ten-year research agenda.

8.6 The CRPD recognises "that disability is one of several layers of identity"[299] and that people with disability experience discrimination differently.[300] This intersectional or multiple discrimination is specifically articulated in the CRPD in article 6 Women with disabilities and article 7 Children with disabilities. Both these articles are cross-cutting articles, and this means that the issues and concerns of women and girls with disability and children with disability need to be specifically addressed in measures taken to achieve individual rights. While the CRPD does not contain specific cross-cutting articles for other population groups, intersectionality is a critical cross-cutting principle that is embedded in the CRPD,[301] making it clear that measures to implement the CRPD must be intersectional. In the context of achieving attitudinal change, this means that awareness raising measures to facilitate the implementation of rights must address the specific situation of different groups of people with disability, including women and girls, children, older people, First Nations people, people from culturally and linguistically diverse backgrounds and those from LGBTIQA+ communities.

8.7 Through article 4(3) of the CRPD, Australian governments have an obligation to "closely consult and actively involve persons with disabilities, including children with disabilities, through their representative organisations"[302] in the development and implementation of laws and policies and other decision-making processes. Article 33(3) obliges Australian governments to ensure the involvement and participation of people with disability in the CRPD implementation and monitoring process. These are also cross-cutting obligations that apply to all measures taken to achieve individual rights for people with disability, and they are critical in achieving attitudinal change. These CRPD articles respond to the care, treatment and protection framework and historical and ongoing segregation of people with disability that has resulted in their exclusion and marginalisation from law and policy development, research, program design, political participation and community life in general.[303] This has produced and reinforced the beliefs and unquestioned attitudes that people with disability are not capable of participating in these processes. Often the views of people with disability are not sought or are ignored and given lesser weight than those of 'experts', such as professionals, academics, parents, carers, service providers and guardians.

8.8 Ensuring that people with disability through their representative organisations[304] are closely consulted and actively engaged provides a catalyst to shift the power relations between the so-called 'experts' and people with disability who are the genuine experts in the lived experience of disability. The CRPD Committee has noted that full and effective participation of people with disability through their representative organisations "can also be a transformative tool for social change, and promote agency and empowerment of individuals", as well as strengthen the ability "to advocate and negotiate", to "more solidly express their views, realise their aspirations and reinforce their united and diverse voices".[305] Following its September 2019 review of Australia, the CRPD Committee recommended the establishment of "formal and permanent mechanisms" to ensure the full and effective participation of persons with disabilities, through their representative organisations, in law and policy development and implementation, "ensuring adequate resources and the provision of necessary support".[306]

8.9 At the core of the CRPD is the human rights model of disability,[307] which affirms that human rights apply to all people with disability on an equal basis with others. The human rights model refutes ableism by asserting that people with disability are of equal worth and value in their humanness. They are entitled to the human rights and fundamental freedoms due to all human beings without discrimination and on an equal basis with others. This means that human rights cannot be limited or taken away because of the existence, degree or type of impairment, diagnosis or disability. No longer can impairment, diagnosis or disability be used to justify outdated, ableist care, treatment and protection approaches to disability, such as segregated systems, substitute decision-making and compulsory treatment regimes.

8.10 The CRPD has not been fully incorporated into domestic law and there is no federal human rights act in Australia that would enable comprehensive, uniform legislative, administrative and judicial human rights protections.[308] Australia has scheduled the CRPD under the Human Rights Commission Act 1986 (Cth), which empowers the AHRC to receive complaints under the CRPD. However, this provision provides a right of action but does not provide a remedy; it only enables a report of the complaint, including recommendations for action, to be provided to the Attorney General who may table the report in Parliament.[309] Three Australian jurisdictions have enacted human rights legislation, all with some limitations, including being largely confined to civil and political rights.[310]

8.11 The DDA and State and Territory anti-discrimination legislation do not cover all of Australia's CRPD obligations and are limited in rights protection, including by a lack of protection against intersectional discrimination, failures to address systemic discrimination and a reliance on individuals with disability to lodge claims for breaches of discrimination law to enforce their rights.[311] The effectiveness of the DDA has been significantly compromised by the impact of two High Court cases. The 2003 case[312] has resulted in people with disability having great difficulty in demonstrating that disability is the cause of the discrimination they have experienced. Amendments to the DDA in 2009[313] to address this have perversely resulted in findings in a 2017 case[314] that now means that people with disability have to prove that a denial of reasonable accommodation was directly caused by the person's impairment in order to constitute discrimination.[315] Despite only minor amendments being required to resolve this issue, the Australian Government does not view this as a priority.[316]

8.12 These piecemeal legislative protections mean that people with disability have been largely reliant on the NDS 2010-2020 and will be reliant on the new NDS to provide the national framework for Australian governments to meet their obligations under the CRPD. However, as outlined throughout this submission, the NDS 2010-2020 has not been fully effective in dismantling ableist attitudes and the ableist care, treatment and protection framework. It is therefore critical that the new NDS embeds the human rights model of disability by recognising that there can be no diminishment or limitations on human rights based on impairment. To achieve this, the new NDS must explicitly recognise people with disability as rights bearers, and articulate that ableism and other intersecting power relations are the drivers of inequality and discrimination. It must include comprehensive actions to address these power relations. It must provide measures to dismantle outdated, ableist care, treatment and protection approaches to disability, and to establish a new law, policy and practice framework that supports the exercise of all human rights for people with disability. This is the foundation of meeting obligations under the CRPD.

8.13 A fundamental step to dismantle outdated, ableist care, treatment and protection approaches to disability is the withdrawal of Australia's interpretative declarations to CRPD article 12 [Equality before the law], article 17 [Protecting the integrity of the person] and article 18 [Liberty of movement and nationality]. These interpretative declarations were made by Australia at the time of its ratification of the CRPD over a decade ago. Since this time, the CRPD Committee has developed its jurisprudence to ensure that States Parties to the CRPD "are not fixed or static in their approach to implementation of the CRPD".[317] However, despite this jurisprudence and despite recommendations from the CRPD Committee for Australia to withdraw its interpretative declarations,[318] Australia is unwavering in its retention of them.

8.14 The interpretative declaration on article 12 outlines that Australia understands the CRPD to allow “for fully supported or substitute decision-making where necessary, as a last resort and subject to safeguards”.[319] The interpretative declaration on article 17 outlines that Australia understands the CRPD to allow for “compulsory assistance or treatment where necessary, as a last resort and subject to safeguards”.[320] Both these interpretative declarations validate existing substitute-decision making arrangements, such as guardianship systems, and compulsory treatment regimes, such as mental health laws. They retain an outdated protection approach that focuses on determining the safeguards needed to limit or diminish human rights based on impairment. This approach upholds the ableist value system which perceives limitations on the rights of people with disability as justified because people with disability are ‘deficient’ in their humanness, and so in need of ‘special’ care, treatment and protection frameworks.

8.15 Australia’s interpretative declaration on article 18 outlines that Australia understands the CRPD to not “impact on Australia’s health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria”.[321] The interpretative declaration preserves the current legislative and administrative approach to processing visa applications, with almost all visa applicants needing to satisfy Australia’s health requirement in order to be granted a visa. The purpose of the health requirement is to protect Australians from public health threats being brought into the country and to contain public health expenditure.[322] Most people are able to satisfy the health requirement, but for people with disability, the health requirement has been found to be discriminatory.[323] It is almost impossible for people with disability to satisfy a requirement that focuses on disability as a ‘deficit’ and a ‘cost burden’ to society.[324] A recent finding by the CRPD Committee in relation to an individual communication[325] outlines that Australia’s use of the health requirement amounts to indirect discrimination and violates articles 4, 5 and 18 of the CRPD.[326] The CRPD Committee made a number of recommendations including to remove discriminatory provisions under national legislation.[327]

8.16 Aside from the withdrawal of the interpretative declarations, it is critical that Australia recognises that the CRPD requires measures to transition from segregated systems and structures based on disability to full and equal inclusion and participation in all aspects of society.[328] Segregated systems and structures enable and foster negative community attitudes that continue to view people with disability as ‘deficient’ and ‘incapable’ and in need of ‘special’ arrangements rather than being part of community life. The CRPD affirms the established principle in international human rights law that segregation is inherently unequal and discriminatory.[329] This means recognising that existing laws, policy and practice that continue to establish, maintain and fund segregated settings, such as ‘special’ schools, segregated employment and institutional living arrangements are discriminatory.[330] The CRPD Committee has made recommendations to Australia focused on ending segregation and segregated facilities, particularly in relation to ‘special’ education, institutional living arrangements and segregated employment.[331] The Committee on the Rights of the Child (CRC Committee) and the Committee on Economic, Social and Cultural Rights (CESCR Committee) have made recommendations to Australia focused on ensuring the right to inclusive education,[332] and the CESCR Committee has also issued a general comment affirming that segregated employment for people with disability does not comply with the ICESCR.[333]

8.17 However, Australia continues to be reluctant to recognise segregation as discrimination and continues to foster and legitimise these systems. For example, the *National Disability Employment Strategy Consultation Paper* (Employment Consultation Paper)[334] notes Australia’s commitment to the CRPD but also notes that Australian Disability Enterprises (ADEs) “may provide a more holistic support system for a subset of people with disability”.[335] The Employment Consultation Paper goes on to note that the ADE program has transitioned to the NDIS which has expanded options for NDIS participants to purchase supports from a variety of employment settings.[336] However, genuine commitment to the CRPD requires adhering to its principles and standards. Segregated employment, such as the ADE program does not for example, provide a “work environment that is open, inclusive and accessible”,[337] provide “equal remuneration for work of equal value”,[338] allow the exercise of “labour and trade union rights on an equal basis with others”[339] or enable opportunities to transition to open employment,[340] all of which are obligations under the CRPD. The ongoing support for ADEs reinforces community attitudes that people with disability, or ‘a subset of people with disability’ can have their rights limited because of their impairment, and this undermines Australia’s position that it is committed to upholding its obligations under the CRPD.

8.18 The Australian Government has also provided a Background Paper to the Royal Commission that outlines its position on the right to education, particularly the principle of inclusive education contained in CRPD article 24 Education.[341] The Background Paper notes that Australia meets its obligations under article 24 of the CRPD by providing an education system that allows “different education modalities” to enable people with disability “to participate in a range of education options”, such as mainstream classes in mainstream schools, specialist classes in mainstream schools and specialist schools.[342] The Background Paper argues against the view of ‘inclusive education’ elaborated by the CRPD Committee in its general comment on the right to inclusive education, which outlines that inclusive education involves the inclusion of people with disability in a mainstream education system that has been transformed to ensure an equitable and participatory learning experience for all.[343]

8.19 The main argument by the Australian Government is that the view of the CRPD Committee is not consistent with the international law principles for treaty interpretation set out in the *Vienna Convention on the Law of Treaties*[344] – the plain and ordinary meaning[345] of article 24 “does not support a view that specialist schools are prohibited under article 24”[346]; and it is also not supported by the preparatory works[347] of the CRPD.[348] However, while CRPD article 24 does not explicitly state that special schools or special classes in mainstream schools should be prohibited, it also does not state that specialist education systems should be maintained. The plain and ordinary meaning of article 24 does not support the Australian Government’s position that article 24 allows for special education systems.

8.20 In addition, the preparatory works of the CRPD that the Australian Government’s argument relies upon is limited to one initial preparatory document that informed the CRPD negotiations.[349] In understanding the intent of the States Parties in negotiating a treaty, it is critical to refer to all preparatory material.[350] The initial preparatory document was prepared in 2004 at the beginning of the CRPD negotiations by a small working group of the UN Ad Hoc Committee charged with negotiating the CRPD.[351] This preparatory document reflected a compilation of positions and drew on existing international law and policy guidance[352] and existing State practice, and so it contains elements of both specialist and inclusive education positions. This preparatory document gives a narrow point of time reference to the negotiations. The elements in this preparatory document were debated over several meetings by States Parties until the adoption of the CRPD in December 2006. During this time, there was a range of preparatory documents[353] that demonstrate that States Parties shifted away from special or segregated education positions towards a position of inclusive education within mainstream settings. This shift was supported by existing international norms that set out the principle of inclusive education.[354]

8.21 Australia articulated its inclusive education position in 2006 during the 7th session of the Ad Hoc Committee. During this session, it proposed draft text that stated that, in achieving the right to education for people with disabilities, States Parties shall “ensure an inclusive education system", ensure "that all persons with disabilities can access inclusive and accessible education in their own community", and provide reasonable accommodation, including accessible physical environments; accessible curriculum, teaching methodologies and technologies; alternative and augmentative communication modes, sign language, Braille; alternative learning strategies; and specialised training for teachers to enable full participation of students with disability."[355]

8.22 The Background Paper presents another argument to support its position on article 24 that draws on article 13(3) of the ICESCR. The Background Paper provides a simplistic interpretation of article 13(3) to argue that parents are able to choose to place their children with disability in mainstream or specialist education.[356] However, article 13(3) is specific to a limited right of parents to choose an alternative private school for their children to enable education that conforms with their religious and moral convictions.[357] This right does not extend to disability-based segregation nor a dual State funded education system. The principles and standards of equality and non-discrimination in international human rights law do not permit systems of segregated education based on disability.[358]

8.23 Inclusive education is a facilitator of cultural change. It has a key role in challenging ableism and the stereotypes, prejudices, inequality, discrimination and harmful practices that arise from ableism. The Australian Government position on education is not only based on a narrow and simplistic interpretation of international human rights law, it also undermines the cultural change and social transformation that inclusive education can facilitate. Education involves "formal, informal, incidental and vicarious learning that goes beyond facts to attitudes and values that inherently shape an individual's understanding and expectations of life."[359] One of the first role models for our communities and society is the school:

> *"If the school values, embraces and caters for pluralism and human diversity then those will be the civic and citizenship understanding and expectations of its community. Inclusive education, by its very nature, underscores the universality of human rights and the inherent dignity and worth of all members of the human family."*[360]

8.24 The development of a new NDS provides an opportunity for all Australian governments to take a leadership role in dismantling ableist law, policy and practice frameworks and to shift away from reforming and maintaining these frameworks and the hierarchical power relations that underpin them. By fully embedding a human rights model of disability, engaging with the contemporary interpretation of international human rights law and embracing the human rights standards and principles in the CRPD, Australia can begin the process of social transformation in law, policy and practice. This transformation is the basis for facilitating and fostering ongoing attitudinal change that would recognise people with disability as equal in worth, dignity and humanity.

8.25 Social transformation in law, policy and practice will be challenging, but since Australia's ratification of the CRPD in 2008, there have been a number of government reviews and parliamentary inquiries;[361] international developments in State practice;[362] UN guidance material[363] and authoritative guidance from the CRPD Committee[364] that outline practical implementation measures. These recommendations and guidance materials present Australian governments, in consultation with representative organisations of people with disability, with the opportunity to shift from outdated ableist approaches to disability to a human rights approach.

8.26 The Royal Commission has a critical role in exposing and challenging ableism by affirming and applying the contemporary human rights standards and principles of the CRPD.

The Terms of Reference of the Royal Commission explicitly recognise that Australia has obligations to give effect to the CRPD.[365] However, the Royal Commission appears to view these obligations as only applying to the Australian Government.[366] The CRPD is a binding human rights treaty that obligates Australia to ensure that all levels of Commonwealth, State and Territory governments, non-State actors and civil society achieve human rights for people with disability. Of great concern is the view by the Royal Commission that 'human rights' is one of four main "theoretical approaches" informing its work.[367] The implication is that human rights can be debated or analysed in the context of differing human rights theories, when in fact, human rights are agreed, legally binding normative standards and principles set out in international human rights law. Confining human rights to a theoretical approach is not only erroneous, but also potentially undermines the work of the Royal Commission if it accepts the outdated, static interpretation of the CRPD held by Australia[368] and/or makes findings and recommendations that deviate from the normative standards and principles of the CRPD. The human rights approach used by the Royal Commission should not only be "informed by the human rights framework";[369] the human rights framework, including the CRPD should be the foundation of the human rights approach of the Royal Commission, including in its research and analytic approach, conducting its investigations, making findings and determining recommendations.

8.27 The rights of people with disability and attitudes towards people are inextricably linked. Ableism, the devaluing of people with disability underpins negative and harmful community attitudes and promotes and maintains the care, treatment and protection frameworks that govern the lives of people with disability. Social transformation is required to dismantle ableism, and the CRPD is the roadmap to achieve this. If ableism and other power relations remain unchallenged, and social transformation does not occur, then the ableist value system will continue to drive inequality and discrimination, including violence, abuse, neglect and exploitation of people with disability.

9 ENDNOTES

ENDNOTES

1 Committee on the Rights of Persons with Disabilities (2018) General comment No. 7, UN Doc No. CRPD/C/GC/7.

2 As recommended by the Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws (ALRC Report 124) Commonwealth of Australia 2014.

3 As outlined in recent guidance from World Health Organisation (WHO), Guidance on community mental health services – Promoting person-centred and rights-based approaches, World Health Organisation 2021.

4 As recommended by the Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) paras 36(a).

5 See the recommendations contained in Women With Disabilities Australia, People with Disability Australia, First Peoples Disability Network, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Children and Young People with Disability Australia, Disability Advocacy Network Australia, Inclusion Australia, 'Segregation of People with Disability is Discrimination and Must End', (Position Paper, September 2020), p. 12.

6 The human rights model of disability recognises disability as a social construct, impairment as a valued aspect of human diversity and human dignity, and that human rights cannot be denied or limited on the basis of impairment. Human rights apply to people with disability on an equal basis with others.

7 Council of Australian Governments (2011) National Plan to Reduce Violence against Women and their Children 2010-2022, Canberra.

8 Council of Australian Governments (2009) National Framework for Protecting Australia's Children 2009-2020, Canberra.

9 'National Agreement on Closing the Gap' (July 2020) Agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments.

10 See paragraph 7.10 in this submission on intersectional approaches to data collection.

11 See Office of the High Commissioner for Human Rights (OHCHR), Human Rights Indicators on the Convention on the Rights of Persons with Disabilities (CRPD), United Nations 2020.

12 For example, New Zealand's Independent Monitoring Mechanism (IMM) was designated by the New Zealand Government in 2010 to fulfil obligations under Article 33 (National implementation and monitoring) of the CRPD. It is made up of the Human Rights Commission, the Office of the Ombudsman and the Disabled People's Organisations (DPOs) Coalition. The role of the IMM is to independently promote, protect and monitor the implementation of the CRPD in New Zealand.

13 Such a summit could be similar to the 2016 and 2018 Council of Australian Government's (COAG) National Summit on Reducing Violence Against Women and Their Children.

14 See e.g. the NDIS Citzen's Jury that was conducted in 2015, and which involved Australian citizens who fund the NDIS and NDIS participants to evaluate, through a deliberative democracy process, the staged roll out of the NDIS in six trial sites.

15 Department of Prime Minister and Cabinet, 'Closing the Gap 2020' (Web Page).

16 This role would be similar to the role of the Australian Ambassador for Gender Equality, except it would focus on the domestic Australia context.

17 This would be similar to the Children's Rights Reports prepared by the National Children's Commissioner and the Social Justice and Native Title Reports prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

18 See similar programs, such as the Respectful Relationships program delivered by the Victorian Department of Education and Training.

19 A similar portal and dedicated programming is conducted by the BBC, see OUCH.

20 ABC Ramp Up (Web Page).

21 See the ABC, Nas Campanella, disability affairs reporter.

22 For example, a number of ABC initiatives such as 'Employable Me Australia', 'One Plus One', 'You Can't Ask That' and 'The Set' provide positive portrayals of people with disability, show people with disability in regular media roles and debunk stereotypes about disability. These types of programs need to be part of mainstream media, not just the public broadcaster.

23 Such as campaigns for International Day of People with Disability, the former National Disability Awards, the NSW 'Don't Dis My Ability' campaign and the Victorian Government Survey of Community Attitudes towards People with Disability.

24 Office of the High Commissioner for Human Rights (OHCHR), Human Rights Indicators on the Convention on the Rights of Persons with Disabilities (CRPD), United Nations 2020.

25 British Social Attitudes, Natsen Research, UK. See also: HM Government, Office for Disability Issues, Public Perceptions of Disabled People: Evidence from the British Social Attitudes Survey 2009.

26 ANROWS, National Community Attitudes towards Violence against Women Survey (NCAS).

27 Disability Innovation Institute UNSW, 'Doing Research Inclusively: Guidelines for Co-Producing Research with People with Disability' (Disability Innovation Institute, UNSW, 2020).

28 See e.g., Council of Europe, 'Istanbul Convention – Action against violence against women and domestic violence' (Web Page).

29 Council of Australian Governments (2011) National Plan to Reduce Violence against Women and their Children 2010-2022, Canberra.

30 Council of Australian Governments (2009) National Framework for Protecting Australia's Children 2009-2020, Canberra.

31 Australian Government, 'When We Excuse Disrespect It Can Grow into Violence' (Web Page 2021).

32 Our Watch, 'Understanding disrespect towards women' (2020).

33 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

34 See 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.

35 Disabled People's Organisations Australia.

36 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.

37 Ibid. p. xv.

38 Committee on the Economic, Social and Cultural Rights, ‘Concluding observations on the fifth periodic report of Australia’, UN Doc E/C.12/AUS/C/5 (11 July 2017) paras 35-36.

39 International Covenant of Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

40 Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the combined second and third periodic reports of Australia’, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) paras 31-32.

41 Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

42 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Terms of Reference.

43 Ibid.

44 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Terms of Reference, paragraph (e).

45 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Terms of Reference, paragraph (g).

46 Committee on the Rights of Persons with Disabilities (2019) ‘Concluding observations on the combined second and third periodic reports of Australia’, UN Doc. CRPD/C/AUS/CO/2-3 (20 September 2019) paras 31-32.

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101 Shane Clifton, op. cit., p. 6.

102 A number of theorists distinguish between 'ableism' and 'disablism' in examining the discrimination, inequality and 'othering' of people with disability, where 'ableism' is the production of the valued body/ human subject and 'disablism' is the production of the 'disabled'/the devalued other. See e.g. Fiona A. Kumari Campbell (2008) 'Exploring internalized ableism using critical race theory', Disability & Society, 23:2, 151-162, p. 152-153; Dan Goodley, Dis/ability Studies: Theorising Disableism and Ableism, Routledge New York 2014. In this submission, the term 'ableism' is used to refer to the production of the valued human subject and its symbiotic relationship to the production of the devalued other, and to reflect its common usage in Australia to convey the devaluing and 'othering' of people with disability that underpins discrimination, inequality and prejudice.

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131 Ibid. p. 8.

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133 The interpretation of conventions is guided by the Vienna Convention on the Law of Treaties (VCLT). Australia takes a narrow approach to the interpretation of article 32 of the Vienna Convention on the Law of Treaties (VCLT), which is not in line with international law orthodoxy that recognises article 32 as providing non-exhaustive guidance of supplementary materials to aid in the interpretation of treaty provisions. Australia's narrow approach means that it does not view the jurisprudence of the Committee on the Rights of Persons with Disabilities as constituting 'supplementary material' to aid CRPD interpretation. See The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities, Part 1 – Australia's position and interpretive approach (16 June 2020) p. 5.

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292 Convention on the Rights of Persons with Disabilities, art 8(b).

293 For a discussion of cross-cutting articles within the CRPD see Rosemary Kayess and Therese Sands, op. cit., pp. 36.

294 Individual rights are outlined in articles 5, 10, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30. Individual or substantive rights are the human rights that apply to all people on the basis of their humanity; they are inherent to the dignity of every human being. See Rosemary Kayess and Therese Sands, op. cit., pp. 37.

295 Department of Social Services, National Disability Strategy Position Paper, p.8

296 Ibid. p. 6.

297 Ibid. p. 10.

298 Ibid.

299 Committee on the Rights of Persons with Disabilities, 'General comment No. 6 (2018) on equality and non-discrimination', UN Doc CRPD/C/GC/6 (26 April 2018), para 9.

300 Committee on the Rights of Persons with Disabilities, 'General Comment No. 3 (2016) on women and girls with disabilities', op. cit., para 49(c).

301 Preambular paragraph (p) of the CRPD states: "Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or 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".

302 Convention on the Rights of Persons with Disabilities, art 4(3).

303 See e.g., Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Interim Report, op. cit., p. 15; Rosemary Kayess and Therese Sands, op.cit., pp. 3-6; Fisher, Karen & Kayess, Rosemary, op. cit., pp. 147-149.

304 The CRPD Committee has clarified that 'representative organisations' mean organisations of people with disability, which "are led, directed and governed by persons with disabilities" and where the majority of members are people with disability. See 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 organisations, in the implementation and monitoring of the Convention', UN Doc CRPD/C/GC/7 (9 November 2018) para 11.

305 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 organisations, in the implementation and monitoring of the Convention', op. cit. para 33.

306 Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia', op. cit., para 8.

307 For further discussion on the human rights model of disability, see Committee on the Rights of Persons with Disabilities, 'General comment No. 6 (2018) on equality and non-discrimination', op. cit., paras 8-11; Theresia Degener, 'Disability in a Human Rights Context', Laws 2016, 5(3), 35.

308 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Interim Report, op. cit., p. 342.

309 Australian Human Rights Commission, ‘Complaints about breaches of human rights’ (Web page).

310 The Human Rights Act 2004 (ACT); The Charter of Human Rights and Responsibilities Act 2006 (Vic); Human Rights Act 2019 (Qld).

311 Australian Disabled People’s Organisations (DPOs), Disability Representative Organisations (DROs) and Disability Advocacy Organisations, op. cit., p. 15.

312 Purvis v New South Wales (Dept of Education and Training) (2003) 217 CLR 92.

313 The Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 Cth) added a note to the definition of disability in section 4 of the DDA to reflect the state of law following the 2003 High Court decision: “To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability”.

314 Sklavos v Australasian College of Dermatologists [2017] FCAFC 128.

315 Australian Disabled People’s Organisations (DPOs), Disability Representative Organisations (DROs) and Disability Advocacy Organisations, op. cit., p. 15.

316 People with Disability Australia and Public Interest Advocacy Centre, ‘Federal Government Must Fix Gaping Hole in the Disability Discrimination Act’ (Media Release, 11 February 2019).

317 Rosemary Kayess and Therese Sands, op. cit., p. 44.

318 Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the combined second and third periodic reports of Australia, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) para 6(b); Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)’, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) para 9.

319 ‘Combined second and third periodic reports submitted by Australia under article 35 of the Convention, due in 2018’, op. cit., para 15(a).

320 Ibid. para 15(b).

321 Ibid. para 15(c).

322 Joint Standing Committee on Migration, ‘Enabling Australia – Inquiry into the Migration Treatment of Disability’ (June 2010) Commonwealth of Australia, para 1.2.

323 Ibid. para 1.3; see also, François Crépeau, ‘Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru’, UN Doc A/HRC/35/25/Add.3. (24 April 2017) paras 54 and 92.

324 National Ethnic Disability Alliance, ‘No Right to Discriminate: Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability’ (Submission, October 2009).

325 Committee on the Rights of Persons with Disabilities, ‘Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 20/201’, UN Doc CRPD/C/24/D/20/2014 (30 April 2021).

326 Ibid. para 8.8.

327 Ibid. para 9(b).

328 Convention on the Rights of Persons with Disabilities, articles 3(b), 3(c), 5, 19.

329 See e.g., Prof. Gerard Quinn, Prof. Grainne de Búrca, Prof. Lisa Waddington, Prof. Mark Bell, Prof. Anna Lawson, Prof. Michael Stein, Prof. Titti Mattsson and Prof. Luke Clements, 'Segregation and segregated facilities as a prima facie form of discrimination. The impermissibility of using the ESIF to invest monies in long term care residential institutions for persons with disabilities' (Legal Memo, 17 March 2018); Women With Disabilities Australia, People with Disability Australia, First Peoples Disability Network, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Children and Young People with Disability Australia, Disability Advocacy Network Australia, Inclusion Australia, op. cit., pp. 5-6.

330 Women With Disabilities Australia, People with Disability Australia, First Peoples Disability Network, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Children and Young People with Disability Australia, Disability Advocacy Network Australia, Inclusion Australia, op. cit.

331 Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of Australia, op. cit., paras 37, 38, 45, 46, 49, 50; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)', op. cit., paras 41, 42, 45, 46.

332 Committee on the Rights of the Child, 'Concluding observations on the combined fifth and sixth periodic reports of Australia', UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) para 47(c); Committee on Economic, Social and Cultural Rights, 'Concluding observations on the fifth periodic report of Australia', UN Doc E/C.12/AUS/CO/5 (11 July 2017) paras 55, 56.

333 Committee on Economic, Social and Cultural Rights, '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)', UN Doc E/C.12/GC/237 (April 2016) para 47(c).

334 Department of Social Services, 'National Disability Strategy – Consultation Paper' (April 2021), Commonwealth of Australia.

335 Ibid. p. 15.

336 Ibid.

337 Convention on the Rights of Persons with Disabilities, article 27(1).

338 Ibid. Article 27(1)(b).

339 Ibid. Article 27(1)(c).

340 Ibid. Article 27(1)(e)(f).

341 The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities, Part 2 – The right to education in article 24 (17 June 2020).

342 Ibid. Para 24.

343 Committee on the Rights of Persons with Disabilities, 'General comment No. 4 (2016) on the right to inclusive education', UN Doc CRPD/C/GC/4 (25 November 2016).

344 Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

345 Vienna Convention on the Law of Treaties, article 31.

346 The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities, Part 2 – The right to education in article 24, para 18.

347 Vienna Convention on the Law of Treaties, article 32.

348 The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities, Part 2 – The right to education in article 24, para 16.

349 As noted in footnote 133, the Australia Government takes a narrow approach to the international law principles for treaty interpretation that is not in line with international law orthodoxy, and which means that it does not consider the jurisprudence of the CRPD as supplementary material to aid CRPD interpretation.

350 Unlike the negotiations for other treaties, there is no single preparatory work, known as the 'travaux préparatoires' that has been compiled for the CRPD negotiations.

351 UN Enable, 'Working Group on a Convention' (UN Enable, 2007).

352 Standard Rules on the Equalisation for Opportunities for Persons with Disabilities, GA Res 46/96, UN Doc A/RES/48/96 (4 March 1994, adopted 20 December 1993); UNESCO, The Salamanca Statement and Framework for Action on Special Needs Education, (adopted by the World Conference on Special Needs Education Access and Quality, 7-10 June 1994); Committee on the Rights of the Child, 'Children with Disabilities', UN Doc CRC/C/66 (1998) Annex V, para 338(d).

353 All relevant preparatory work, such as the compilation of daily summaries, draft facilitators text, interventions from delegations, reports of the meetings during the negotiations from 2002-2006, Chair's letter and Chair's text from October 2005 have been archived on the UN Enable website.

354 Standard Rules on the Equalisation for Opportunities for Persons with Disabilities, GA Res 46/96, UN Doc A/RES/48/96 (4 March 1994, adopted 20 December 1993); UNESCO, The Salamanca Statement and Framework for Action on Special Needs Education, (adopted by the World Conference on Special Needs Education Access and Quality, 7-10 June 1994); Committee on the Rights of the Child, 'Children with Disabilities', UN Doc CRC/C/66 (1998) Annex V, para 338(d).

355 UN Enable, 'Seventh Session' (Web page).

356 The Australian Government's Background Paper on the United Nations Convention on the Rights of Persons with Disabilities, Part 2 – The right to education in article 24, para 25.

357 Rosemary Kayess and Therese Sands, op. cit., pp. 23-25.

358 Ibid.

359 Rosemary Kayess and Jennifer Green, 'Today's Lesson is on Diversity' in Peter Blanck and Eilionóir Flynn (eds), Routledge Handbook of Disability Law and Human Rights, Routledge, 2017 p. 53.

360 Ibid.

361 See e.g., Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws (ALRC Report 124) Commonwealth of Australia 2014; Community Affairs References Committee, 'Indefinite detention of people with cognitive and psychiatric impairment in Australia' (Final Report, November 2016); Australian Human Rights Commission, 'Equal before the law – Towards Disability Justice Strategies' (Report, February 2014).

362 See e.g., Dr Bryan Dague, 'There's no sheltered workshops in Vermont' in Voice – The Journal of Down Syndrome Australia (August 2018) pp. 5-7; Antonio Luis Martinez, 'Legal Capacity and Supported Decision-Making: Lessons From Some Recent Legal Reforms', in Laws, 2019, 8, 4, doi:10.3390/laws8010004.

363 See e.g., World Health Organisation (WHO), Guidance on community mental health services – Promoting person-centred and rights-based approaches, World Health Organisation 2021; Office of the High Commissioner for Human Rights (OHCHR), Human Rights Indicators on the Convention on the Rights of Persons with Disabilities (CRPD), United Nations 2020; Office of the High Commissioner for Human Rights (OHCHR), 'COVID-19 and the Rights of Persons with Disabilities' (United Nations, 29 April 2020).

364 The CRPD Committee has released several general comments, including on women and girls with disability, inclusive education, equal recognition before the law and equality and non-discrimination; guidelines on article 14 and the right to liberty and security of the person; and issued numerous concluding observations, or recommendations following State Party reviews, including to Australia in 2013 and 2019.

365 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Terms of Reference.

366 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Interim Report, p. 342.

367 Ibid.

368 See the discussion in this section on the ongoing maintenance of Australia's interpretative declarations and the discussion on Australia's ongoing maintenance and fostering of segregation for people with disability.

369 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Interim Report, p. 342.

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