



Women
With
Disabilities
Australia
(WWDA)

**NATIONAL DISABILITY EMPLOYMENT
STRATEGY CONSULTATION PAPER**

WOMEN WITH DISABILITIES AUSTRALIA SUBMISSION

May 2021





Women
With
Disabilities
Australia
(WWDA)

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

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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 two 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

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1. RECOMMENDATIONS



1. RECOMMENDATIONS

This Submission from Women With Disabilities Australia (WWDA) focuses on providing responses to just some of the key themes posed in the *National Disability Employment Strategy (NDES) Consultation Paper* (the Consultation Paper).² In this section of our Submission, we provide 22 recommendations for consideration, responding to nine key areas of concern, which align with the substantive content provided in Section 3 of this Submission. Our recommendations aim to improve the employment opportunities for women and girls with disability in Australia. We consider the changes we recommend as essential to achieving an inclusive and non-discriminatory NDES that responds to and addresses **all** barriers to meaningful employment for women and girls with disability.

- 1.1 That the NDES embed and reflect Australia's obligations under the *Convention on the Rights of Persons with Disabilities (CRPD)*³ Article 6 [Women with disabilities] and acknowledge that there has been no improvement in the labour force participation of women with disability for more than two decades.⁴ Therefore, the NDES must be reworked to ensure it is based on and upholds Australia's international human rights obligations, including ensuring women and girls with disability are recognised as a group warranting specific attention and additional measures in all national policies, frameworks, and strategies.
- 1.2 That the NDES, consistent with the new National Disability Strategy (NDS), recognise the impact of intersectional discrimination as a key barrier preventing women and girls with disability from accessing equitable employment and reflect the CRPD Article 6 [Women with disabilities]⁵, CRPD General Comment No. 3⁶, *the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* Article 4(1)⁷, CEDAW General Recommendation No. 25⁸ on temporary special measures, and commit to specific measures to accelerate the participation of women with disability in employment.
- 1.3 That the NDES incorporates the recommendations from the *Willing to Work Inquiry*⁹, and contains targeted gendered measures for increasing workforce participation of people with disability, including addressing structural employment barriers.
- 1.4 That the NDES must commit to reforming all nationally funded employment programs and initiatives, such as JobAccess and Disability Employment Services (DES), including to better recognise the specific, compounded and intersectional barriers and discrimination experienced by women and girls with disability.
- 1.5 That the NDES recognise that segregation of people with disability – in all its forms – is a violation of fundamental human rights and is an ideology with resultant practices that contravene the CRPD and other human rights treaties to which Australia is a party.
- 1.6 That the NDES include a commitment to developing a transition plan to move all people with disability out of segregated employment structures, including Australian Disability Enterprises (ADEs) and into mainstream employment with award wages and all required reasonable accommodations. The development of this

plan should be in consultation with people with disability and their representative organisations, as well as employers and trade unions. The plan must also include targeted measures to address the specific needs of women and girls with disability and people with disability from other marginalised cohorts, such as those who are Aboriginal or Torres Strait Islander, Culturally and Linguistically Diverse and/or from rural and regional locations.

- 1.7 That the NDES makes explicit the need for national, state and territory government procurement policies to remove references to, and support for, all forms of segregated employment, including ADEs. Instead, procurement must include positive incentives for employment of people with intellectual and/or cognitive impairment and include a specific focus on women and girls with disability.
- 1.8 That the NDES recognises workplaces, including segregated workplaces, remain environments in which many women with disability experience violence, abuse, exploitation, and neglect. As such, the NDES should include recognition of the need for the Australian Government to develop and enact national legislation, on the prevention of all forms of gender-based violence. Such legislation should utilise the definition of ‘gender-based violence’ as articulated in the *Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2017 General Recommendation 35 ‘Gender-based Violence Against Women’*.¹⁰
- 1.9 Referencing the structure and role of the Workplace Gender Equality Agency¹¹, the NDES should outline a plan for establishing a *Workplace Disability Equality Agency* with the aim of improving and promoting equality for people with disability in the workforce.
- 1.10 That the NDES outlines the need for the creation and funding of free specialised legal and advocacy support services for women and girls with disability who experience discrimination at work, and/or when looking for work.
- 1.11 That the NDES recognise that women with disability are at a higher risk of workplace sexual harassment and ensure the NDES aligns with the strategies being developed as an outcome of *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*.¹²
- 1.12 That the NDES be aligned with relevant strategies to improve education outcomes for people with disability and have dedicated measures to support women and girls with disability in realising their right to education, to upskill and/or to find meaningful employment.
- 1.13 That the NDES recognise that the National Disability Insurance Scheme (NDIS) is a critical source of support for young people with disability in education. In this context, the NDES should include dedicated measures integrated with the NDIS to minimise pressure on disabled young people who are transitioning out of high school and into training or employment.
- 1.14 Acknowledging that the NDIS is a key source of support for people with disability in employment and recognising the long-standing gender inequity in the NDIS, the NDES should support the development an *NDIS Gender Strategy*.

- 1.15 That the NDES include measures to support all levels of government to develop and implement skills and training initiatives specifically designed for young people with disability, including targeted initiatives which focus on cohorts of young people with disability who experience intersectional discrimination and disadvantage.
- 1.16 Reflecting Australia's obligations under CRPD Article 6 and acknowledging that there has been no improvement in the labour force participation of women with disability for more than two decades,¹³ the NDES should commit to ensuring that the *NDIS Participant Employment Strategy 2019-2022*¹⁴ be gendered.
- 1.17 Recognising that there are many women with disability who have no or minimal opportunities to engage in paid work throughout their adult life and reflecting Australia's obligations to safeguard and promote an adequate standard of living and social protection for people with disability, the NDES must re-iterate that a government provided, broadly based, adequate financial safety net is essential if economic security for women with disability is to be enhanced.
- 1.18 Acknowledging that government pensions are the main source of personal income for 42% of people with disability of working age; the median gross weekly personal income of people with disability is half that of people without disability¹⁵; and more than 40% of people with a disability live in poverty,¹⁶ the NDES must commit to the need to increase the rate of the JobSeeker Allowance, the Disability Support Pension (DSP) and other related government support pensions, and remove disincentives to employment that threaten ongoing eligibility to the DSP for women and girls with disability.
- 1.19 That the NDES includes a commitment to reform the *Disability Discrimination Act 1992* to ensure women and girls with disability are protected from discrimination in the workplace and can enforce their rights if discrimination occurs.
- 1.20 Consistent with long-standing recommendations to Australia from the CRPD and CEDAW Committees,¹⁷ the NDES should support the commission of a comprehensive assessment process, using intersectional research methodologies, on the situation and rights of women and girls with disability in Australia, to establish a baseline of disaggregated data and intersectional evidence to measure progress toward implementation of CRPD in all areas, including in employment. This national intersectional research process must include the specific experiences of those who are Indigenous, those from culturally and linguistically diverse backgrounds, those who are migrants, refugees, or asylum seekers, and those from LGBTIQ+ communities.
- 1.21 That the NDES includes comprehensive mechanisms to monitor and evaluate its implementation and outcomes to ensure it is improving employment outcomes for women and girls with disability, including greater transparency, a commitment to co-design, disaggregated data, alignment with other national monitoring frameworks and collaboration with the disability research sector.
- 1.22 That the NDES be integrated into the new National Disability Strategy (NDS) and form the 'Targeted Action Plan: Employment' of the new NDS.

2. INTRODUCTION AND CONTEXT



2. INTRODUCTION AND CONTEXT

- 2.1 The *National Disability Employment Strategy* (the Strategy) is currently being developed by the Australian Government and will outline a ten-year plan to increase employment opportunities for people with disability in Australia. To inform the development of the Strategy, the Department of Social Services developed and released the Consultation Paper for public feedback.¹⁸
- 2.2 There has been no improvement in the labour force participation of women with disability in Australia for over two decades.¹⁹ This is in comparison to the significant improvement in labour force participation of men with disability, and women without disability in Australia seen over the same period. The status quo is not working. Women and girls with disability cannot afford more of the same.
- 2.3 Improving the labour force participation of women and girls with disability can only be achieved with a greater understanding of, and urgent action to address, the underlying structural barriers standing in our way. These structural barriers include but are not restricted to: poverty; gender bias and gender inequality; the intersection of gender and disability discrimination; lack of safe, accessible, and affordable housing; lack of accessible and affordable transport; the high incidence and prevalence of gender-based violence; non-optional costs of disability; inflexible work arrangements, to name just a few. Poverty is a major structural barrier to employment for people with disability. It is virtually impossible to be ‘work ready’ when living in poverty.²⁰
- 2.4 Women with disability need, and have a right to, the implementation of specific, targeted measures to dismantle the many structural barriers that impede their right to economic participation and to an adequate standard of living.
- 2.5 Women and girls with disability do not need ‘incentives’ or ‘motivation’ to take up paid employment. What we need is the elimination of systemic discrimination and negative stereotypes from both a gender and disability perspective, which compound our exclusion from support services, social and economic opportunities, and participation in community life.²¹ We also need the implementation of specific, targeted measures to dismantle the many other structural barriers that impede our rights to economic participation and to an adequate standard of living, as clearly articulated in the CRPD.
- 2.6 However, these obligations are not adequately reflected in the Consultation Paper’s four priority areas:²²
1. *“Lifting employer engagement, capability, and demand: providing employers with the tools and abilities to confidently hire, support and develop more people with disability.”*
 2. *“Building employment skills, experience, and confidence of young people with disability: ensuring young people with disability are supported to obtain meaningful work and careers of their choice.”*

3. *Improving systems and services for jobseekers and employers: making it simpler for job seekers with disability and employers to navigate and utilise government services and driving better performance from service providers.*
4. *Changing community attitudes: changing people's perception and expectation about the capability of people with disability in the workplace.”²³*

- 2.7 While these priority areas are broadly appropriate, WWDA believes significant gaps remain in the Consultation Paper's proposed responses to these priority areas. The NDES must address these gaps if it is to deliver the change needed to improve employment outcomes for people with disability, particularly women and girls with disability.
- 2.8 The primary focus and priority of the NDES must be to end discrimination against all people with disability in the workplace, including dismantling all forms of segregated work. The strategy must clearly articulate and recognise that the under-representation of people with disability, particularly women and girls with disability, in the workforce is the result of systemic ableist attitudes that can be found in all areas of our society.
- 2.9 While WWDA supports strategies that develop the “*employment skills, experience and confidence*”²⁴ of women and girls with disability, but it must be acknowledged that such programs treat the symptoms of low workforce participation rates, not the cause. Blame or responsibility must lie solely with systemic failures, and not disabled people. People with disability do not need “fixing” and should not feel pressure to change their behaviour, or hide their disability, to fit the “abled-bodied” stereotype of a desirable employee. All people with disability have a right to access work and this must be clearly articulated through the NDES' priority areas.

3. KEY AREAS OF CONCERN



3. KEY AREAS OF CONCERN

3.1 Upholding Australia's human rights obligations

- 3.1.1 The right to paid work is a fundamental human right that benefits not only individuals, but families, communities, and the broader society. This right is recognised in the seven core international human rights treaties to which Australia is a signatory.²⁵ As a party to these treaties, Australia has chosen to be bound by the treaty requirements and has an international obligation to implement the treaty provisions through its laws and policies. This includes the NDES, which must uphold and promote the human rights of women and girls with disability to work and to economic security.
- 3.1.2 The CRPD clearly outlines the actions State Parties, including Australia, must take to ensure the human rights of people with disability are upheld – not just in theory or word, but in practice.
- 3.1.3 The CRPD Article 27 [Work and employment] sets out the rights to work and employment of persons with disability²⁶. These are the right to work on an equal basis with others, and opportunity to gain a living by work freely chosen.²⁷ The freely chosen work should be in a labour market and work environment that is open, inclusive, and accessible to all persons with disability.²⁸ There are many actions the Australian Government must take to meet their obligations under CRPD Article 27 [Work and employment]. These responsibilities include, but are not limited to:²⁹
- People with disability are entitled to choose the job they want. This means that people with disability have the right to a meaningful job, not just any job.
 - Taking all necessary actions to ensure people with disability are treated with respect and dignity when looking for a job and once they get a job.
 - Ensuring places where people with disability work or study are safe and healthy. This includes making sure that women with disability in the workplace are safe from all types of violence, exploitation, and harassment.
 - People with disability have the right to be paid properly for the work they do.
 - Ending all forms of segregated work.
 - Delivering services and supports to assist people with disability to find and keep a job.
 - Employing people with disability in all government departments and agencies.
 - Providing reasonable accommodations or adjustments people with disability need to be able to look for, gain and retain a job.

- 3.1.4 The CRPD Article 6 [Women with disabilities] prioritises women and girls with disability as a group warranting specific attention and additional measures.³⁰ It obliges governments to take positive actions and measures to ensure that disabled women and girls enjoy all human rights and fundamental freedoms.³¹ It requires that national policies, frameworks, and strategies make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and that such policies and frameworks include focused, gender-specific measures to ensure that women and girls with disability experience full and effective enjoyment of their human rights.³²
- 3.1.5 The CRPD Article 6 [Women with disabilities] is a cross-cutting article, meaning that the rights of women with disability must be specifically identified and addressed in the implementation and monitoring of all CRPD Articles, including Article 27 [Work and employment].³³ However, it is clear (including through the omission of the specific situation of women and girls with disability in the Consultation Paper), that in the Australian context, this is yet to occur.
- 3.1.6 The CEDAW Article 11 also requires State Parties to act to stop all forms of discrimination against all women in the workplace.³⁴ As a signatory to the CEDAW, the Australian Government has an obligation to ensure that women have the same employment rights as men as well as things like maternity leave, special protection against harmful work during pregnancy, and the right to safe working conditions and environments.³⁵
- 3.1.7 Intersectionality is a key element of the human rights approach to disability required by international treaties, including the CRPD and CEDAW. Intersectional discrimination acknowledges that people with disability do not experience discrimination in the same way as a homogenous group. It recognises the “*multidimensional layers of identities, statuses and life realities*”³⁶ that “*interact with each other at the same time in such a way as to be inseparable*”.³⁷

3.2 Recognising intersectional discrimination

- 3.2.1 Improving the employment of women with disability requires a dedicated approach to addressing the underlying structural barriers that deny women with disability equal access to the workforce. Women with disability need, and have a right to, the implementation of specific, targeted measures to dismantle the many structural barriers that impede their right to economic participation and to an adequate standard of living.
- 3.2.2 It remains the case that in the Australian legislative, policy and service context, people with disability are still often treated as asexual, genderless human beings. This gender-neutrality means systemic issues are often misidentified and policy responses are ineffective, allowing gender-based discrimination to perpetuate.³⁸
- 3.2.3 Both the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee) have for more than a decade, consistently expressed

their concerns about the lack of specific, targeted measures taken by successive Australian governments to address the labour force participation of women with disability and have repeatedly called on Australia to address the underlying structural barriers to their workforce participation.³⁹ These recommendations have not been enacted, and there remain no policies or targeted programs that address the lack of employment participation of women with disability, including addressing the structural barriers to their workforce participation.

- 3.2.4 Despite decades of economic growth and rising wealth in Australia, the reality is that inequality has become entrenched in the national economy over recent decades.⁴⁰ The benefits of our growing economy have not been evenly shared, with women continuing to be worse off than men in terms of employment, incomes, and superannuation balances, and with intersecting forms of discrimination such as ableism, racism, and homophobia/transphobia the risks of poverty are compounded.⁴¹ In practice this means that women with disability have far fewer opportunities, lower status and less power and influence than men with disability (and non-disabled women), and far less chance of realising substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social, and political development, and to make decisions concerning their circumstances and conditions.⁴²
- 3.2.5 Men with disability (51.3%) are much more likely to be employed than women with disability (44.4%).⁴³ Women with disability in the labour force have lower incomes; are more likely to be in precarious, informal, subsistence and vulnerable employment, and are much more likely to be in lower paid jobs than men with disability.⁴⁴ Women with disability have a much higher rate of part-time employment (56% of women with disability who are employed) than men with disability (22% of men with disability who are employed). Women with disability (5.9% of women with disability who are employed) are much more likely to be under-employed than men with disability (3.9% of men with disability who are employed).⁴⁵
- 3.2.6 Many women with disability are often given marginal jobs far below their capacity. They are denied opportunities for further training and job advancement. They are often unable to enforce industrial rights. Women with disability have reported being typically treated like children and not given credit when they have performed well on the job because attitudes in their workplace were such that no one believed that they could have done the job on their own.⁴⁶ There is evidence that women, including women with disability, have a lower level of information about, and understanding of, personal finances, including superannuation, than men.⁴⁷
- 3.2.7 More broadly, women in Australia on average have 42% less superannuation at retirement than men, which equates to a gap of around \$114,000.⁴⁸ There is no data or information available on the superannuation situation of women with disability, which points to the larger issue of a lack of disaggregated data, which will be addressed later in this submission.
- 3.2.8 As previously stated, the Consultation Paper's omission of any reference to the specific experiences and rights of women with disability to employment, is deeply concerning.

- 3.2.9 The fact that women and girls with disability are more likely to experience discrimination at work than both men with disability and women and girls without disability warrants a concerted and specific focus in the NDES. An intersectional analysis should be integral to all its work, including making recommendations and taking specific actions to improve the employment and economic security of women and girls with disability.
- 3.2.10 Additionally, the NDES must include a plan to ensure all nationally funded employment programs and initiatives, such as *JobAccess* and DES, recognise the different barriers and experiences for women with disability and include specific actions in their policies to address these challenges.

3.3 Ending segregated employment

- 3.3.1 In line with WWDA's recommendations to the Royal Commission into Violence, Abuse, Neglect and Exploitation (the Disability Royal Commission),⁴⁹ WWDA emphasises that the NDES must start from the premise and recognition that segregation of people with disability – including in Australian Disability Enterprises (ADEs), and other forms of segregated settings and environments – remain State sanctioned practices that enable violence, abuse, neglect, and exploitation to flourish.
- 3.3.2 Australian Disability Enterprises (ADEs), (colloquially known as 'sheltered workshops') remain a form of State-sanctioned segregation of people with disability. Segregation of people with disability – in all its forms - must be understood as a violation of fundamental human rights.
- 3.3.3 The Universal Declaration of Human Rights (UDHR) stipulates that everyone is entitled to all human rights and fundamental freedoms without distinction of any kind, such as distinctions based on "*race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status*".⁵⁰
- 3.3.4 The prohibition of 'separate' standards for 'separate' groups is reinforced in the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).⁵¹ In its general comments, or guidance papers on interpretation and implementation of ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR Committee) outlines that disability-based discrimination includes segregation, isolation and separation based on impairment.⁵²
- 3.3.5 The CRPD Article 5 [Equality and non-discrimination] affirms the established principle in international human rights law that segregation is inherently unequal and discriminatory.⁵³ Legitimising segregated systems for people with disability is a direct contravention of the CRPD and the human rights normative standard of equality and non-discrimination. This normative standard means that a key purpose and objective of the CRPD is to undo the legacy of inequality and discrimination, including the segregation of people with disability. This requires reviewing existing practices of segregation and eliminating them.⁵⁴

- 3.3.6 The CRPD Committee has provided guidance on the interpretation and implementation of Article 5 through its '*General comment No. 6 (2018)*' on equality and non-discrimination.⁵⁵ It makes clear that the segregation of people with disability is discrimination and that measures must be taken to end this discrimination.⁵⁶ This is reinforced by the CRPD Committee in its general comments specifically relating to the right to inclusive education,⁵⁷ which includes a definition of segregation,⁵⁸ and the right to live independently and be included in the community.⁵⁹
- 3.3.7 While the CRPD allows for specific measures to achieve equality for people with disability, these measures must be positive and affirmative measures that must not result in the maintenance of segregation, isolation and stigmatisation.⁶⁰ Segregation and segregated facilities cannot be justified as a specific measure to meet higher support, complex, 'challenging behaviour' needs or any other needs of people with disability.⁶¹ The ongoing investment in segregated workplaces, including ADEs, cannot be justified as transitional measures to achieve equality. Investment in segregation and segregated facilities is discrimination under the CRPD.⁶²
- 3.3.8 Segregated employment for people with disability in ADEs allows employers to pay people with disability substantially lower wages than people without disability, and while ADEs often tout themselves as a transitional measure into mainstream employment, less than 1% of people with disability working in ADEs move into mainstream paid work.⁶³
- 3.3.9 ADEs are often male-dominated and by their very nature, are isolated and segregated work environments. Because of this, women with disability are much more likely to be exposed to greater risk of violence, abuse, exploitation and neglect, as it is recognised that that gender-based violence is more likely to occur in male-dominated workplaces.⁶⁴ The sheltered and/or 'hidden' nature of segregated work environments and a lack of independent oversight means it is difficult for women with disability to speak up about violence, harassment or abuse in their workplace, make a complaint, or seek information or assistance. Women with disability remain largely invisible in the discourse about violence, abuse, exploitation and neglect in the workplace.⁶⁵
- 3.3.10 The NDES needs to clearly reject segregated employment. It must outline a pathway to mainstream employment for all people with disability who want to work, and a transition plan for people with disability currently working in ADEs. The NDES must include a commitment to no new employees entering ADEs, no more NDIS funded supports entering ADEs and a long-term funded transition for existing ADE employees that supports their individual needs as they move into mainstream employment. To not do so, means that the NDES is complicit in the violations of the rights of people with disability to equality and non-discrimination.

3.4 Violence against women with disability in the workplace

- 3.4.1 Many women with disability experience violence, abuse, exploitation, and neglect in the workplace – whether this be in open or segregated work settings. Women with disability are often so 'grateful' to have a job, that they are reluctant to report

any form of violence or abuse, and anecdotal evidence to WWDA for more than two decades, indicates that even when women with disability do report violence and abuse in the workplace (including sexual violence), they are rarely believed, and/or the ‘incident’ is downplayed, and/or not responded to, investigated or treated as a crime.⁶⁶

- 3.4.2 Women with disability are much more likely to experience violence (particularly sexual violence) in residential and institutional settings, including segregated employment settings,⁶⁷ where they frequently experience sustained and multiple episodes.⁶⁸ The overwhelming majority of perpetrators of sexual violence and abuse of women with disability in institutions are male caregivers/support workers/staff. Lack of reporting and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,⁶⁹ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators.
- 3.4.3 People with disability are more likely than those without disability to have experienced workplace sexual harassment. In 2018, the Australian Human Rights Commission’s *Everyone’s Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* found 44% of people with disability said they had been sexually harassed in the workplace in the last five years, compared to 32% of people without disability.⁷⁰
- 3.4.4 While both women and men with disability were more likely than those without disability to have experienced workplace sexual harassment, once again, women with disability are at significantly higher risk. In the last five years, 52% of women with disability compared to 35% of men with disability said they experienced workplace sexual harassment.⁷¹
- 3.4.5 As part of the *Respect@Work: Sexual Harassment National Inquiry* (the Inquiry) the Human Rights Commission found workers with disabilities were more reluctant to report sexual harassment compared to workers without a disability. Reasons included fears of not being taken seriously or having assumptions made about their capacity.⁷² This was particularly true for people with intellectual disabilities, with the Inquiry finding they felt less likely than other workers to be believed when reporting their experiences of sexual harassment.⁷³
- 3.4.6 The Inquiry also heard from women and girls with disability that they often felt “subject to people ignoring or stereotyping their sexuality”.⁷⁴ Women with Disabilities Victoria provided evidence to the Inquiry that this increased the risk of sexual harassment for people with an intellectual disability, cognitive, communication and/or sensory impairments or high support needs.⁷⁵
- 3.4.7 In response to these findings, Recommendation 8 of the Inquiry called for greater investment in primary prevention initiatives, stating that: “Immediate priorities for action should include targeted, evidence-based prevention strategies to address sexual harassment of populations who are at higher risk.”⁷⁶ The Inquiry specifically identified people with disability as one of the “populations who are at higher risk.”⁷⁷

- 3.4.8 Government programs such as *JobAccess*, provide minimal information about violence and abuse in the workplace.⁷⁸ The *JobAccess* website, for example, provides a list of agencies/phone numbers that people with disability can contact if “*you wish to complain about disability services that you are receiving*”.⁷⁹ This information is not provided in accessible formats (such as Easy Read) and provides no contextual information about for example, what violence, abuse, neglect and exploitation might look like in employment settings, how to identify it, how to seek advocacy support to report it, and so on.
- 3.4.9 Similarly, with DES there is minimal information provided for DES participants regarding how to recognise, identify, report, violence, abuse, exploitation and neglect in the *Disability Employment Services*.⁸⁰ The *DES Code of Conduct*⁸¹ provides no information in relation to the prevention of, or response to, violence and abuse in DES services.

3.5 Challenging ableist attitudes around employment

- 3.5.1 The NDES must acknowledge that the low workforce participation rates for people with disability are largely underpinned by ableism - the harmful social norms and beliefs that devalue people with disability as ‘less than’, as ‘deficient’, as ‘other’. Ableism underpins the inequality and discrimination experienced by people with disability and ableism is an enabler of violence, abuse, neglect and exploitation. Ableism appears neutral, benign and natural,⁸² and the ableist response to disability appears in all stages of the employment process.
- 3.5.2 Too often ableist assertions are used to justify not hiring people with disability and are shrouded by the language of ‘benevolent paternalism’, including being ‘in our best interests’, for ‘our safety and protection’, to address ‘high support and complex needs’, to respond to ‘severe and profound impairment’, to manage ‘challenging behaviours’, to prevent ‘risk of harm to self and others’ and to address the lack of alternative options and resources.⁸³ However, impairment, diagnosis or disability cannot be used to justify segregation and exclusion from meaningful employment.
- 3.5.3 WWDA acknowledges there are many Australian employers that want to hire people with disability, but do not have access to the tools or services to “confidently hire, support and develop” disabled staff.⁸⁴ Additionally, as outlined earlier in the submission, current nationally funded programs, including the DES and the *JobAccess* Program, do not adequately support and assist women with disability to find and keep a job. Additionally, these programs are not widely recognised or understood by employers or potential employers of people with disability.
- 3.5.4 This leads to common employer misconceptions continuing to limit employment opportunities for people with disability. For example, WWDA members report that employers often incorrectly believe that hiring women and girls with disability will mean they will need to cover the cost of expensive modifications, equipment, and extra human resources work.

- 3.5.5 As the Consultation Paper notes, these assumptions are inaccurate. However, despite years of ‘awareness campaigns’ this message has failed to reach or persuade employers. Too often ‘awareness campaigns’ have become a superficial solution to a systemic issue.
- 3.5.6 WWDA believes that changing employer attitudes requires the development of a suite of programs, policies, initiatives and support services that comprehensively challenge outdated attitudes. To oversee this work, WWDA has argued, including in our submission on the *National Disability Strategy 2020-2030*, for the establishment of a Workplace Disability Equality Agency.⁸⁵
- 3.5.7 A Workplace Disability Equality Agency could be established under special purpose legislation modelled on the Workplace Gender Equality Agency (WGEA) with the aim of improving and promoting equality for people with disability in the workforce. Similar to the *Workplace Gender Equality Act 2012*, a Workforce Disability Equality Act, could:⁸⁶
- promote and improve disability equality (including equal remuneration between disabled persons and non-disabled persons) in employment and in the workforce.
 - support employers to remove barriers to the full and equal participation of people with disability in the workforce.
 - promote, amongst employers, the elimination of discrimination based on disability in relation to employment matters.
 - foster workplace consultation between employers and employees on issues concerning disability equality in employment and in the workforce.
 - improve the productivity and competitiveness of Australian business through the advancement of disability equality in employment and in the workforce.

3.6 Disability discrimination in the workplace

- 3.6.1 Discrimination in the workplace is the most common of all disability discrimination complaints made to Australian anti-discrimination agencies.⁸⁷ Data by the Australian Bureau of Statistics (ABS) shows that:⁸⁸
- 45.2% of employed people with disability report experiencing unfair treatment or discrimination due to their disability from their employer in the past 12 months.
 - Two in five employed people with disability (42.0%) report that they experienced unfair treatment or discrimination due to their disability from their work colleagues.
- 3.6.2 In 2018, the Australian NGO CRPD Shadow Report Coordinating Committee undertook a national survey of people with disability to help inform the development of the *CRPD NGO Shadow Report for Australia’s 2019 CRPD review*.⁸⁹ Of the almost 900 respondents, 72% were women with disability.⁹⁰ The national survey found:⁹¹

- Only 9% of people with disability believe they have the same employment opportunities as other people.
- Only 30% believe they receive the same pay for their work as a person without a disability would.
- Despite 65% of respondents knowing about discrimination laws, just 12% believe that discrimination laws help.

3.6.3 When combined with the data on disability discrimination complaints from the ABS, these findings point to the need for significant reform of the *Disability Discrimination Act 1992* (DDA) to ensure it is an effective deterrent against discrimination. Specific issues with the DDA that must be addressed include:

- Strengthening reasonable adjustments provisions, which have been left largely ineffective and unenforceable due to the *Sklavos v Australian College of Dermatologists* (2017) decision.⁹²
- Mitigating the cost risk for people with disability who take action in response to discrimination at work.
- Streamlining requirements for complaints relating to intersectional discrimination, particularly discrimination that occurs at the intersection of both gender and disability.⁹³

3.6.4 Even with reform, the DDA will remain an ineffective deterrent to discrimination if people with disability are not aware of, or do not understand their rights under the law.

3.6.5 People with disability face significant barriers when trying to access legal and advocacy support.⁹⁴ Free specialist disability legal services are scarce and remain significantly under resourced, meaning most people with disability, including women and girls, who come forward with complaints of discrimination in the workplace are unable to access these services. Private legal services are too expensive for most people with disability, but particularly disabled women, who are more likely to be living on low incomes. In practice, this means women and girls with disability are often unable to access the information and support they need to make a disability discrimination complaint and enforce their rights under the DDA.

3.7 Transitioning from education to employment

3.7.1 The NDES must align with existing strategies to improve education outcomes for people with disability and have a dedicated focus on supporting girls with disability as they transition from school to higher education, training, or employment.

3.7.2 For girls with disability who are excluded from education, often because of their disability, accessing paid work becomes much more difficult. Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.⁹⁵ 28% of school aged people with disability do not attend school.⁹⁶ Students with disability report that their disability is the main reason they

cannot attend school.⁹⁷ Further, there is no data on part time attendance of students with disability despite the frequently reported direct experience of many children not being “allowed” to attend school on a full-time basis.⁹⁸

- 3.7.3 For girls with disability who do complete high school, the transition from school to higher education, training or employment can be particularly difficult. This transition period includes additional barriers for young people with disability – from the inability to access work experience, a lack of accessible and affordable internships or work placements, trying to navigate inaccessible tertiary education systems, to few options for accessing mainstream/open employment. These barriers can often be even greater for girls with intellectual and/or cognitive impairments.⁹⁹
- 3.7.4 The amount of decision making during this transition can also be overwhelming for all young people, but particularly girls with disability. For people with disability, there are additional changes to contend with and make decisions around, including changes to their NDIS plans, moving into the adult health system and the end of familiar community activities that often include an age limit.
- 3.7.5 The NDIS is a critical source of support for young people in education. The NDES should include dedicated measures that are integrated with the NDIS to minimise pressure on disabled young people transitioning out of high school and into training or employment.¹⁰⁰
- 3.7.6 Additionally, the NDES must acknowledge the gender inequity in the NDIS. The percentage of female participants in the NDIS has remained at 37% or lower since the Scheme’s inception.¹⁰¹ This means that women and girls with disability, particularly Autistic women and girls,¹⁰² do not have equal access to the supports they need to access employment. The NDES should support the development an NDIS Gender Strategy.
- 3.7.7 The NDES should include dedicated measures that work across government agencies and support services to minimise pressure on disabled young people transitioning out of high school to ensure they have sufficient time, space, and support to make informed decisions.
- 3.7.8 Additionally, governments at all levels must develop skills and training initiatives specifically designed for young people with disability. These initiatives must be developed in consultation with girls with disability to ensure they are not excluded from high-paying, traditionally male-dominated jobs. Such initiatives could include the quarantining a percentage of apprenticeships for young people with disability, including girls with disability.

3.8 Transitioning from education to employment

- 3.8.1 It is virtually impossible to be ‘work ready’ when living in poverty. The Disability Support Pension (DSP)¹⁰³ is inadequate to support people with disability.¹⁰⁴ DSP eligibility has been tightened to such a degree that 25-30% of people with disability are now receiving the much lower JobSeeker payment (formerly known as the Newstart Allowance),¹⁰⁵ which has further entrenched poverty.

- 3.8.2 The rate of successful DSP claims has declined markedly – from 69% in 2011 to 29.8% in 2018.¹⁰⁶ While governments have significantly reduced the number of people receiving the DSP, this has not translated into increased employment and economic security for people with disability.¹⁰⁷
- 3.8.3 It is unrealistic to think that employment of people with disability will improve without an increase to the rate of the DSP and JobSeeker. Research has found that people with disability ineligible for the DSP live in poverty on JobSeeker and are unable to afford necessities such as for example, food, baby formula and sanitary pads.¹⁰⁸ The low rate of JobSeeker additionally means that people with disability cannot afford medication, attend medical appointments, and/or purchase necessary medical aids and equipment.¹⁰⁹
- 3.8.4 Additionally, it is essential that disincentives to move to employment are removed from the DSP. These disincentives do not take into account the variable nature of many disability types and therefore make the transition to work for many women with disability unsustainable.¹¹⁰ Removing these disincentives may require ongoing secure access to the DSP, with no penalties for ceasing employment if needed. People with disability will continue to be reluctant to take on employment if it risks their access to the DSP if their disability worsens.

3.9 Effective monitoring and evaluation

- 3.9.1 The NDES must acknowledge that without reliable and intersectional data on the current employment environment for people with disability, it will be unable to accurately evaluate the success of any of its measures.
- 3.9.2 The CRPD Article 31 [Statistics and data collection] obliges Australia to collect appropriate statistical data, to disaggregate, as appropriate, and use this data to help assess the implementation of the CRPD, and to disseminate this data and ensure its accessibility to people with disability.¹¹¹
- 3.9.3 Currently, there is a serious shortage of disaggregated data, research and studies around disability, particularly those that apply an intersectional analysis.¹¹² This lack of data makes it extremely difficult to understand the current situation for women and girls with disability. This intersectional understanding is also critical for identifying the necessary specific measures to improve workforce participation for women and girls with disability.¹¹³
- 3.9.4 The NDES must include comprehensive mechanisms to monitor and evaluate its implementation and outcomes to ensure it is improving employment outcomes for women and girls with disability.
- 3.9.5 The NDES' monitoring and evaluation framework must be:
- Transparent with a commitment to annual public reporting.
 - Developed in co-design with people with disability.
 - Disaggregated to show outcomes for priority groups, including women and girls with disability.

- Be integrated with other national monitoring frameworks, including the National Disability Strategy Outcomes Framework and NDIS employment indicators.
- Informed by the disability research sector and inform ongoing improvements in the collection of data on people with disability.

4. CONCLUSION



4. CONCLUSION

- 4.1 WWDA welcomes the opportunity to make this Submission in response to the Consultation Paper, and thanks the Australian Government for the opportunity to contribute.
- 4.2 WWDA does so in the recognition that an un-gendered NDES, that ignores or pays lip-service to gender equality, will result in little to no improvement in employment opportunities for women and girls with disability in Australia. Such a strategy would tragically fail Australian women and girls with disability, setting them up for another decade of being largely excluded from the Australian workforce.
- 4.3 Australia's international human rights obligations on disability, employment and gender are clear. The CRPD recognises that the rights of women with disability must be addressed when interpreting, implementing and monitoring every article of the Convention, including Article 27 [Work and employment]. Women with disability need, and have a right to, the implementation of specific, targeted measures to dismantle the many structural barriers that impede their right to economic participation and to an adequate standard of living. This must be reflected in the NDES' vision, priorities, and actions.
- 4.4 WWDA has developed the 22 recommendations in this submission to ensure the NDES delivers on its stated vision to create *"an inclusive Australian society where all people have access to meaningful work opportunities"*¹¹⁴ and in doing so turns decades of rhetoric on equal employment opportunities for women and girls with disability into reality.

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- ⁷ UN General Assembly, [Convention on the Elimination of All Forms of Discrimination Against Women](#), 18 December 1979, United Nations, Treaty Series, vol. 1249 p.13.
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- ⁹ Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#).
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