

**WOMEN WITH DISABILITIES AUSTRALIA (WWDA)**

**Response to Australia’s draft sixth report under the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

**Department of Foreign Affairs and Trade**

**August 2023**

**PUBLISHING INFORMATION**

Women With Disabilities Australia (WWDA) (2023). *Response to Australia’s draft sixth report under the International Covenant on Economic, Social and Cultural Rights (ICESCR)*. August 2023. Written by Sophie Cusworth, Senior Policy Officer, Women With Disabilities Australia (WWDA): Hobart, Tasmania.

**Acknowledgments**

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

This document was written by Sophie Cusworth, WWDA Senior Policy Officer -Disability & Gender.

Formatting, editing and design by Carolyn Frohmader (WWDA) and Jacinta Carlton (WWDA).

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

**Contact**

Women With Disabilities Australia (WWDA)

Contact: Carolyn Frohmader, Executive Director

PO Box 407, Lenah Valley, 7008 Tasmania, Australia

Phone: +61 438 535 535

Email: carolyn@wwda.org.au

Email: officeadmin@wwda.org.au

Web: [www.wwda.org.au](http://www.wwda.org.au)

Facebook: [www.facebook.com/WWDA.Australia](http://www.facebook.com/WWDA.Australia)

Twitter: [www.twitter.com/WWDA\_AU](http://www.twitter.com/WWDA_AU)

Winner, National Human Rights Award 2001

Winner, National Violence Prevention Award 1999

Winner, Tasmanian Women's Safety Award 2008

Certificate of Merit, Australian Crime & Violence Prevention Awards 2008

Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2021

Nominee, National Disability Awards 2017

Nominee, French Republic's Human Rights Prize 2003

Nominee, UN Millennium Peace Prize for Women 2000

Finalist, International Zero23 Award, Information and Communication Technologies (ICT)

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

**Disclaimer**

The views and opinions expressed in this publication are those of Women With Disabilities Australia (WWDA) and not necessarily those of our funding bodies. All possible care has been taken in the preparation of the information contained in this document. WWDA disclaims any liability for the accuracy and sufficiency of the information and under no circumstances shall be liable in negligence or otherwise in or arising out of the preparation or supply of any of the information aforesaid. This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced without written permission from Women With Disabilities Australia (WWDA). © 2023 Women With Disabilities Australia (WWDA).

ABN: 23 627 650 121

ARBN: 621 534 307

**ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)**

[Women With Disabilities Australia (WWDA)](http://www.wwda.org.au/) Inc is the national Disabled People’s Organisation (DPO) and National Women’s Alliance (NWA) for women, girls, feminine identifying, and non-binary people with disability in Australia. As a DPO and an NWA, WWDA is governed, run, and staffed 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. All WWDA’s work is based on co-design with and participation of our members. WWDA projects are all designed, governed, and implemented by women and girls with disability.

Disabled People’s Organisations (DPOs), also referred to as 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. DPOs/OPDs 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 DPOs/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]](#endnote-1)

**WWDA RESPONSE TO AUSTRALIA’S DRAFT SIXTH REPORT UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**

1. Women With Disabilities Australia (**WWDA**) welcomes the opportunity to respond to the call for comments on Australia’s draft sixth report under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) (**Draft Report**). WWDA commends the Australian Government on the steps it has taken to recognise and advance the economic, social and cultural rights of the Australian public. However, WWDA is concerned that those steps are not adequate to give effect to the Covenant, and further that the Draft Report fails to substantively address a number of the questions posed by the Committee on Economic, Social and Cultural Rights (**CESCR**). We note that while the Australian Government has been asked to provide comprehensive and detailed answers to the Committee’s questions, the responses are often general in nature. Further, despite calls from the Committee to take action on certain key areas, the Draft Report fails to present a balanced picture of where and why such progress has not been made.
2. Unfortunately, due to the short timeframe provided, issues of limited resourcing, and the demands of significant reforms within the disability sector, we have been unable to prepare a fulsome response to the Draft Report. However, we set out our key concerns below and trust that our response will be of assistance to the Australian Government.

**Part I - General Information**

1. WWDA is concerned that, despite the Australian Government’s view that it has a strong framework for protecting and advancing human rights,[[2]](#endnote-2) Australia does not have a dedicated Human Rights Act. WWDA calls on the Government to fully incorporate its international human rights obligations into domestic law by introducing a federal, judicially enforceable Act that includes the protection of economic, social and cultural rights. Further, while acknowledging that the Australian Government does not maintain data on decisions in which the ICESCR is invoked by domestic courts, we would be grateful for references to the decisions that the Draft Report alludes to, to understand the issues that have been brought before the courts, commissions and tribunals.[[3]](#endnote-3)
2. WWDA is also concerned that the Australian Government has not taken adequate steps to provide the Australian Human Rights Commission (**AHRC**) with an explicit mandate to deal with the rights enshrined in the Covenant.[[4]](#endnote-4) WWDA considers this a critical gap, and implores the Australian Government to commit to expanding the statutory definition of ‘human rights’ to recognise the rights and freedoms contained in the ICESCR.
Moreover, we note that while the AHRC’s functions do include investigating and conciliating complaints of unlawful discrimination and human rights violations,[[5]](#endnote-5) the anti-discrimination frameworks operate only in certain areas of public life, do not protect against systemic discrimination, and do not recognise intersectional discrimination.
3. In relation to access to judicial remedies, we request that the Australian Government clarify whether people with disability are a national priority client group under the National Legal Assistance Partnership.[[6]](#endnote-6)
4. WWDA is also concerned that the Draft Report does not refer to the Sendai Framework for Disaster Risk Reduction; the Australian Disability Strategy’s Targeted Action Plan for Emergency Management; or how the Australian Government otherwise seeks to address the disproportionate impact of climate change on the human rights of people with disability,[[7]](#endnote-7) per the 2019 Concluding Observations of the Committee on the Rights of Persons with Disabilities.[[8]](#endnote-8) Similarly, WWDA is concerned that the Draft Report’s address of COVID-19 does not outline a clear and continued national focus on the transmission of COVID-19,[[9]](#endnote-9) despite this remaining a significant issue for people with disability.

**PART II - Issues relating to the general provisions of the Covenant**

1. In relation to the Australian Government’s efforts to address poverty, WWDA seeks clarification as to when the Government will implement the recommendations of the CESCR and a number of other treaty monitoring bodies in relation to a national poverty strategy and identifying an official poverty line.[[10]](#endnote-10)
2. WWDA is also concerned that the Draft Report does not detail steps taken to address protection gaps in the anti-discrimination frameworks beyond the *Sex Discrimination Act* *1984* (Cth) and the Respect@Work reforms.[[11]](#endnote-11)
3. WWDA acknowledges the strategies implemented by the Government to realise the rights of people with disability, but is deeply concerned that the Draft Report does not adequately engage with the issues identified by the Committee. For example, in relation to the National Disability Insurance Scheme, we note that no progress has been made towards improving the inclusion of women and girls with disability, who remain under-represented as participants within the Scheme. Further, we object to the use of the term ‘profound disability’,[[12]](#endnote-12) which is underpinned the deficit model of disability.
4. In relation to employment, we are concerned that the Government has not acknowledged the segregated and discriminatory nature of Australian Disability Enterprises, nor addressed the Concluding Observations of the Committee on the Rights of Persons with Disabilities regarding employment.[[13]](#endnote-13) We note that existing measures to support people with disability in open employment, such as the Employee Assistance Fund, remain inaccessible. Finally, we request that data on the rates of Australian Public Service employees with disability be reported, noting that the Draft Report provides current workforce composition data in relation to gender, but not disability.[[14]](#endnote-14)
5. The most concerning aspect of the Draft Report, however, is the Government’s failure to report on any steps taken to prohibit forced sterilisation.[[15]](#endnote-15) Forced sterilisation of people with disability remains legal and sanctioned by Australian Governments despite being recognised as an act of violence, a form of social control, and a form of torture by the UN Special Rapporteur on Torture.[[16]](#endnote-16) Since 2005, United Nations treaty bodies, the Human Rights Council, United Nations special procedures, and international medical bodies have recommended that Australia enact national legislation prohibiting forced sterilisation.[[17]](#endnote-17) However, by its own admission, the Australian Government continues to condone and legitimise this inhuman practice, and the guardianship and substitute decision-making regimes that enable it. To assist the Government in this regard, we have provided a copy of our submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on the Sexual and Reproductive Rights of Women and Girls with Disability, alongside this response.
6. In relation to measures to combat gender-based violence, WWDA considers that the Draft Report does not reflect the breadth of work undertaken in consultation with representative organisations.[[18]](#endnote-18) We recommend that the Department of Foreign Affairs and Trade liaise with the Family Safety Branch of the Department of Social Services to obtain a more accurate and comprehensive understanding of these matters.

**PART III - Issues relating to the general provisions of the Covenant**

1. In relation to the Australian Government’s reported initiatives to increase job opportunities, we note that people with disability are not included in the list of population cohorts facing systemic barriers to economic participation.[[19]](#endnote-19) This is concerning in light of the limited progress made towards open workforce participation for people with disability, and in particular women with disability.
2. WWDA is also disappointed that the Draft Report does not address the segregation of students with disability into special schools, despite the concerns expressed by various treaty monitoring bodies, including the CESCR.[[20]](#endnote-20) The Australian Government’s response regarding the availability, accessibility and quality of inclusive education fails to engage with the concept of inclusive education as endorsed by treaty monitoring bodies.[[21]](#endnote-21)

**Conclusion**

1. Once again, WWDA thanks the Australian Government and the Department of Foreign Affairs and Trade for the opportunity to provide this response.
1. Committee on the Rights of Persons with Disabilities, General Comment No. 7 on the Participation of Persons with Disabilities, Including Children with Disabilities, through Their Representative Organizations, in the Implementing and Monitoring of the Convention, UN Doc CRPD/C/GC/7 (9 November 2018). [↑](#endnote-ref-1)
2. Draft Report Part I, 1.2.. [↑](#endnote-ref-2)
3. Draft Report Part I, 1.5. [↑](#endnote-ref-3)
4. Draft Report Part I, 2.2. [↑](#endnote-ref-4)
5. Draft Report Part I, 2.3. [↑](#endnote-ref-5)
6. Draft Report Part I, 2.7. [↑](#endnote-ref-6)
7. Draft Report Part I, 3. [↑](#endnote-ref-7)
8. Committee on the Rights of Persons with Disabilities (2019) Concluding observations on the combined second and third periodic reports of Australia, adopted by the Committee at its 511th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3. [↑](#endnote-ref-8)
9. Draft Report Part I, 5. [↑](#endnote-ref-9)
10. Committee on Economic, Social and Cultural Rights (2017) Concluding observations on the fifth periodic report of Australia; 11 July 2017; UN Doc. E/C.12/AUS/ CO/5. [↑](#endnote-ref-10)
11. Draft Report Part II, 8. [↑](#endnote-ref-11)
12. Draft Report Part II, 9.1. [↑](#endnote-ref-12)
13. Committee on the Rights of Persons with Disabilities (2019) Concluding observations on the combined second and third periodic reports of Australia, adopted by the Committee at its 511th meeting (20 September 2019) of the 22nd session; UN Doc. CRPD/C/AUS/CO/2-3. [↑](#endnote-ref-13)
14. Draft Report Part II, 9.19. [↑](#endnote-ref-14)
15. Draft Report Part II, 9.21. [↑](#endnote-ref-15)
16. Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. The UN Special Rapporteur on Torture also clarified that: *“Forced interventions often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.”* See: Juan E. Mendez, Opcit., para 64. [↑](#endnote-ref-16)
17. See: CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), [Female Contraceptive Sterilization](http://wwda.org.au/wp-content/uploads/2013/12/FIGOGuidelines2011.pdf). See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) [Global Bodies call for end to Forced Sterilization: Press Release](http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/), 5 September 2011. [↑](#endnote-ref-17)
18. Draft Report Part II, 12. [↑](#endnote-ref-18)
19. Draft Report Part III, 13.1. [↑](#endnote-ref-19)
20. Committee on Economic, Social and Cultural Rights (2017) Concluding observations on the fifth periodic report of Australia; 11 July 2017; UN Doc. E/C.12/AUS/ CO/5. [↑](#endnote-ref-20)
21. Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (at Para.67); Committee on the Rights of Persons with Disabilities, *General Comment No 4: Right to inclusive education,* UN DOC CRPD/C/GC/4 (entered into force 2 September 2016), [39]. [↑](#endnote-ref-21)