



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

WWDA **1** POSITION STATEMENT THE RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE

*All women and girls with disability have
the right to freedom from all forms of
violence, abuse, exploitation and neglect*



PUBLISHING INFORMATION

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Disclaimer

Aboriginal and Torres Strait islander peoples are respectfully advised that this publication may include images of people who are deceased.

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Contact

Women With Disabilities Australia (WWDA)
PO BOX 407 Lenah Valley, Tasmania, 7008 Australia
Contact person: Carolyn Frohmader, Executive Director

+61 438 535 123
carolyn@wwda.org.au
wwda@wwda.org.au
www.wwda.org.au
www.facebook.com/WWDA.Australia
twitter.com/WWDA_AU

-  **Winner**
National Human Rights Award 2001
-  **Winner**
National Violence Prevention Award 1999
-  **Winner**
Tasmanian Women's Safety Award 2008
-  **Nominee**
French Republic's Human Rights Prize 2003
-  **Nominee**
UN Millennium Peace Prize for Women 2000
-  **Certificate of Merit**
Australian Crime & Violence Prevention Awards 2008

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1 WWDA POSITION ON THE RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE

- ▶ WWDA believes that all women and girls with disability have the right to freedom from all forms of violence, abuse, exploitation and neglect, regardless of the setting in which the violence occurs, and regardless of who perpetrates it.
- ▶ WWDA believes all forms of violence, including physical violence, sexual violence (including forced sterilisation), abuse (including psychological abuse, financial abuse and controlling behaviours), neglect and exploitation against women and girls with disability constitute gross violations of basic human rights.
- ▶ WWDA believes that violence against women and girls with disability is a form of disability discrimination, a form of gender-based discrimination, and often occurs within, and as a result of, intersectional forms of discrimination.
- ▶ WWDA is unequivocal in its position of actively opposing all forms of violence, abuse, neglect and exploitation against women and girls with disability in all settings across Australia, including in private homes, group homes, boarding houses, supported accommodation facilities, day programs, mental health facilities, prisons, schools, hospitals, out-of-home-care, immigration detention centres, aged care facilities, other closed settings, and workplaces.
- ▶ WWDA believes that forced sterilisation, forced abortion, and forced contraception constitute egregious forms of sexual violence against women and girls with disability and are a violation of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.
- ▶ WWDA is unequivocal in its position of actively opposing sterilisation of any child, with and without disability and with or without court authorisation, unless the procedure is required, or is a by-product of, a medical life-saving emergency. WWDA is similarly unequivocal in its position of actively opposing sterilisation of any woman without her free and informed consent, unless the procedure is required, or is a by-product of, a medical life-saving emergency.
- ▶ WWDA subscribes to an inclusive definition of 'violence against women' that consistent with, and reflects Australia's international human rights obligations. 'Violence against women' occurs on a continuum that spans interpersonal and structural violence; acknowledges the structural aspects and factors of discrimination, including structural and institutional inequalities; and analyses social and economic hierarchies between women and men (inter-gender inequalities) and among women (intra-gender inequalities).
- ▶ WWDA believes the epidemic of violence against women and girls with disability is continuing unabated due to deep-rooted inequality and extreme forms of discrimination against women and girls with disability.

Recommendations

1. WWDA calls on the Australian Government to act urgently to establish a Royal Commission into Violence Against People with Disability, as recommended by the Senate Community Affairs References Committee, following the 2015 Senate Inquiry into 'Violence, abuse and neglect against people with disability in institutional and residential settings'.
2. WWDA calls on the Australian Government to take immediate action to establish an independent, statutory, national protection mechanism under specific purpose legislation, and with broad functions and powers to protect, investigate and enforce findings in relation to all forms of violence against people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it.
3. WWDA calls on the Law, Crime and Community Safety Council (LCCSC) to work with the Council of Australian Governments (COAG) to enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior fully informed and free consent.
4. WWDA calls on the Australian Government to prioritise, as a matter of urgency, funding the development of accessible and appropriate information resources and materials on violence against women and girls with disability – for women with disability themselves; frontline workers and other professionals; family, support persons, advocates and friends; and the broader community.
5. WWDA calls on the Council of Australian Governments (COAG) to update the *National Plan to Reduce Violence Against Women and their Children 2010-2022* to an inclusive and non-discriminatory framework that responds to, and addresses, all forms of violence against all women, regardless of the setting/place in which it occurs, and regardless of who perpetrates it.
6. WWDA calls on the Council of Australian Governments (COAG) to ensure that future Implementation Plans of the *National Disability Strategy (NDS) 2010-2020*, prioritise actions to respond to, and address all forms of violence against women and girls with disability, which is consistently identified by them as the most urgent and unaddressed human rights issue they face.
7. WWDA calls on the Australian Government to provide long-term support, including core support and resources for capacity building and violence prevention, to human rights based organisations constituted by, of and for women and girls with disability.
8. WWDA calls on the Australian Government to ensure decision-making, participation and capacity building of women and girls with disability are integral to all policy and programmatic efforts to end violence against women.
9. WWDA calls on the Australian Government to commission and fund a comprehensive assessment of the situation of women and girls with disability, in order to establish a baseline of disaggregated data and information against which compliance with the UN treaties (to which Australia is a party) and national policy frameworks can be measured and monitored.
10. WWDA calls on the Australian Government to immediately withdraw its Interpretative Declarations on CRPD Article 12 [Equal recognition before the law] Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].



**VIOLENCE AGAINST WOMEN IS ONE OF THE
MOST WIDESPREAD VIOLATIONS OF HUMAN
RIGHTS WORLDWIDE**

2 INTRODUCTION

Violence against women is considered as one of the most widespread violations of human rights worldwide¹ and is now firmly at the forefront of the international development agenda as an urgent human rights issue requiring national government and international action.²

International human rights law condemns violence against women in all its forms, whether it occurs in the home, schools, in institutions, the workplace, the community or in other public and private institutions, and regardless of who perpetrates it. Yet violence against women and girls with disability, in all its forms, is a global epidemic which, regardless of country or context, remains largely unacknowledged and unaddressed.

In Australia, violence against women is being described in our communities and by our political leaders as “a national human rights disaster”,³ a “national emergency”,⁴ and “a national disgrace”.⁵ As shocking as the current statistics are – showing that one in three women in Australia has experienced physical violence and almost one in five has experienced sexual violence⁶ – the picture is substantially worse for women and girls with disability.⁷ Violence against women with disability in Australia remains marginalised within policy and service responses relating to violence prevention, and from policy and service responses relating to advancing the human rights of people with disability.

Despite over-whelming, indisputable and mounting evidence of the epidemic that is violence against women and girls with disability, successive Australian governments at all levels have consistently failed to act. In their apathy and inaction, they have subsequently been complicit in, and provided de-facto permission for, the commission of acts impermissible under the international human rights treaties to which Australia is a party.⁸

It is largely through the actions of women with disability themselves – locally, nationally and globally - that this history and culture of exclusion and inaction is being challenged, and women with disability are demanding that their experiences and expertise be included in the discourse on, and service responses to, violence against women. Women with disability argue that one of the best ways to challenge oppressive practices, cultures and structures is to come together with other women with disability – to share experiences, to gain strength from one another and to work together on issues that affect them. Through organisations like WWDA – run *by* and *for* women and girls with disability - women with disability are afforded a mechanism to become actively and genuinely involved in organising for their rights – defining their issues, making decisions about factors that affect their lives, participating in the formulation and implementation of policies, programs and services and, taking individual and collective action to claim and advance their human rights and freedoms.

In this Position Statement on the Right to Freedom from all Forms of Violence, WWDA outlines key evidence concerning ongoing violations of Australian women and girls with disabilities’ right to freedom from all forms of violence. We highlight specific human rights obligations to ensure that all women and girls with disability can realise their right to freedom from all forms of violence, abuse, exploitation and neglect.

Ten recommendations are made in regard to improving the fulfillment of women and girls with disabilities’ right to freedom from all forms of violence, abuse, exploitation and neglect.

3 THE EVIDENCE

Scope and Prevalence

- ▶ The right to live free from all forms of violence and abuse is consistently identified by women and girls with disability in Australia as the most urgent and unaddressed human rights issue they face.⁹
- ▶ Violence against women and girls with disability in Australia is far more extensive than violence amongst the general population and is significantly more diverse in nature and more severe than for women in general.¹⁰
- ▶ Compared to their peers, women with disability experience significantly higher levels of all forms of violence more intensely and frequently and are subjected to such violence by a greater number of perpetrators.¹¹ Their experiences of violence last over a longer period of time, and more severe injuries result from the violence.¹²
- ▶ More than 70% of women with disability have been victims of violent sexual encounters at some time in their lives.¹³
- ▶ 90% of women with intellectual disability have been subjected to sexual abuse. More than two-thirds (68%) have been sexually abused before they turn 18 years of age.¹⁴
- ▶ Women and girls with disability who live in institutional and residential settings are highly susceptible to violence (particularly sexual violence) from numerous perpetrators and frequently experience sustained and multiple episodes.¹⁵
- ▶ More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.¹⁶
- ▶ Twenty per cent (20%) of women with disability have a history of unwanted sex compared to 8.2% of women without disability.¹⁷ The rate of sexual victimisation of women with disability ranges from four to 10 times higher than for other women.¹⁸
- ▶ Women with disability, particularly those with intellectual disability and/or psychosocial impairment, who have been victims of sexual violence, are often not believed when they disclose and/or report the violence and are rarely, if ever, afforded any form of redress and justice.¹⁹
- ▶ Women with disability are 40% more likely to be the victims of domestic violence than women without disability.²⁰ In Australia, three women are hospitalised every week with a brain injury as a direct result of domestic violence.²¹
- ▶ Girls with disability are three to four times more likely to experience violence and abuse (including sexual violence) than their peers and often experience multiple and ongoing episodes.²² Many do not have the language or tools to communicate the abuse.²³
- ▶ Sexual abuse of children in Australia occurs at appallingly high rates in institutional settings, in which children with disability are significantly overrepresented.²⁴
- ▶ Women and girls with disability in Australia are more exposed to practices, which qualify as torture or inhuman or degrading treatment,²⁵ including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.²⁶

Scope and Prevalence (Cont.)

- ▶ Forced contraception through the use of menstrual suppressant drugs is widespread in Australia, particularly affecting girls and women with intellectual and/or cognitive impairment.²⁷
- ▶ Aboriginal women are 35 times more likely to suffer family violence and 80 times more likely to sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Aboriginal women.²⁸ 60% of Aboriginal and Torres Strait Islander women who experience physical violence have a disability or long-term health condition.²⁹
- ▶ More than half of all women incarcerated in Australian prisons have a diagnosed psychosocial disability and a history of sexual victimisation.³⁰ Women with psychosocial disability and intellectual or learning disability are disproportionately classified as high security prisoners and are more likely to be in high security facilities than other prisoners.³¹
- ▶ Violence is present in the lives of approximately 22 percent of women with disability who access service support.³²
- ▶ Violence and abuse perpetrated against children and young people with disability in schools, educational and childcare settings, including out-of-home care, is widespread. Restraint, seclusion, sexual violence and abuse, withdrawal of food and drink, bullying, and harassment are commonplace.³³
- ▶ More than 25% of all women with intellectual disability are subject to some form of restraint and/or seclusion.³⁴ Forty-four to 80% of people with disability who show 'behaviours of concern' are administered a form of chemical restraint,³⁵ between 50% and 60% are subjected to regular physical restraint,³⁶ and those with multiple impairment and complex support needs are subjected to even higher levels of restraint and seclusion.
- ▶ Across all age groups, three times more women than men in Australia are subject to Electro-convulsive Therapy (ECT) without their consent.³⁷ In Australia in 2007-2008, 203 ECT treatments were performed on children younger than 14, including 55 treatments on children aged four and younger.³⁸
- ▶ 67% of women with psychosocial impairment report experiencing sexual harassment during hospitalisation and almost half (45%) report experiencing sexual assault during an in-patient admission.³⁹ Eighty-five (85%) of women with psychosocial impairment report feeling unsafe during hospitalisation.⁴⁰
- ▶ Women comprise 74% of elder abuse victims⁴¹ and 75% of reported elder abuse cases involve the abuse of an older person with cognitive impairment.⁴²
- ▶ Twenty-one per cent (21%) of women with disability report feeling 'very unsafe' after dark, compared to 8% of men with disability and 4.5% of people without disability.⁴³ Only 4 in 10 Australians are aware of the greater risk of violence experienced by women with disability.⁴⁴
- ▶ The impact and effects of violence for women and girls with disability are profound, long-term and wide-ranging - with the impact over time of different types of violence and of multiple episodes found to be cumulative.⁴⁵

Legislative, Policy and Service Issues

- ▶ A recent Senate Inquiry,⁴⁶ investigating violence against people with disability in institutional and residential settings in Australia, found that violence against people with disability – particularly women and girls with disability – is so widespread and entrenched, that a Royal Commission, with investigative powers, is urgently warranted to conduct a full inquiry, and give full weight to the seriousness of this issue.⁴⁷
- ▶ Most of the current domestic/family violence laws in Australia do not contain definitions which encompass the range of settings in which women with disability may live or receive services, nor do they contain definitions which capture and encompass the various forms of violence as experienced by women and girls with disability.⁴⁸
- ▶ The lack of a clear definition and conceptual understanding of violence against women with disability in legislation and policy frameworks results in low or no, priority being given to the issue in service environments.⁴⁹
- ▶ The main service response to women with disability in Australia who experience, or are at risk of violence, is referral. Women with disability seeking support are caught in a cycle of successive referral, without ever receiving appropriate or timely interventions that ensure their pathway to safety.⁵⁰
- ▶ The multiple forms of violence women and girls with disability experience, and are at risk of, are excluded from national and state/territory policy and service responses designed to address violence against women.⁵¹
- ▶ Wide-ranging systemic failures in legislation, policies and service systems in Australia facilitate conditions that deny women and girls with disability the right to freedom from all forms of violence. These failures are evident in laws and practices that enable and facilitate egregious human rights violations such as forced sterilisation, forced abortion and forced living arrangements.⁵²
- ▶ The lack of accessible refuges and other crisis services, and/or exclusionary policies and practices, which deny women with disability access, contribute to women with disability remaining in violent relationships and being subjected to violence for significantly longer periods of time than their peers.⁵³
- ▶ Women with disability experience extensive discrimination in the justice system. A common impact of violence for mothers with disability is the removal of their children by authorities on the basis of parental disability.⁵⁴ Women with disability remain in abusive relationships and fail to report the violence due to the likelihood of losing their children.
- ▶ Crimes of violence committed against women and girls with disability often go unreported, and when they are either dismissed, ignored, covered up by service staff and or management, inadequately investigated, remain unsolved or result in minimal sentences.⁵⁵
- ▶ Regardless of setting or context, violence against women and girls with disability in Australia is regularly conceptualised and downplayed as ‘abuse’ or ‘neglect’ or ‘service incidents’, or ‘administrative infringements’ or a ‘workplace issue to be addressed’, rather than viewed as violence or crimes.⁵⁶
- ▶ Many women with disability do not recognise the violence perpetrated against them as a crime, are unaware of how to seek help and support, or are actively prevented from seeking help and support.⁵⁷ They also experience systemic exclusion from violence prevention and response services.⁵⁸
- ▶ There is a dearth of accessible and appropriate information and education resources about violence against women and girls with disability - for women with disability themselves, the service sector, and the broader community.⁵⁹ Governments and service providers rarely provide information in the full range of accessible formats, such as in as sign language, Braille, large print, audio, Easy English, plain and/or non-technical language, captioned video, in languages other than English, or through the provision of accessible and usable web sites.⁶⁰
- ▶ The denial of decision-making and participatory rights for women and girls with disability in relation to efforts and approaches to prevent violence against women in Australia, serves to compound and exacerbate the human rights violations women and girls with disability experience.⁶¹

The Status of Women and Girls with Disability in Australia

- ▶ Over two-million women and girls with disability live in Australia (approximately 20% of the population of women), including approximately 100,000 girls with disability aged 0-14 and two- million women with disability aged 15 and older.⁶²
- ▶ Women and girls with disability are more likely than men and boys with disability (and other women and men) to face medical interventions to control their fertility, and experience significantly more restrictions, negative treatment, and particularly egregious violations of their sexual and reproductive rights.⁶³
- ▶ Compared to others in the population, women and girls with disability are more likely to be isolated and segregated within the range of settings in which they reside, are incarcerated, or receive support services;⁶⁴ are subjected to multiple forms and varying degrees of 'deprivation of liberty' and are more likely to be subjected to unregulated or under-regulated restrictive interventions and practices,⁶⁵ often imposed as a means of coercion, discipline, convenience, or retaliation by others.⁶⁶ Indigenous women with disability are at risk of being detained indefinitely, often without conviction, in prisons and in forensic psychiatric units throughout Australia enduring periods of indefinite detention that in some cases exceed years.⁶⁷
- ▶ Women with disability in Australia have less power and fewer resources than other women and men. They are much more likely to live in poverty than people in the general population; have to work harder to secure their livelihoods; have less control over income and assets, and have little economic security.⁶⁸ They are much more likely to be unemployed than other women and men with disability; less likely to be in the paid workforce;⁶⁹ have lower incomes from employment; are more likely to experience gender and disability biases in labour markets; and are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment.⁷⁰
- ▶ Compared to men with disability and other women, disabled women experience substantial housing vulnerability, are more likely to experience and face homelessness, and are much more likely to be affected by the lack of affordable housing.⁷¹ They are more likely to be sole parents, to be living on their own, or in their parental family than disabled men,⁷² are at higher risk of separation/divorce than men with disability and often experience difficulty maintaining custody of their children post-separation/divorce.⁷³ Mothers with disability are up to ten times more likely than other parents to have a child removed from their care by authorities on the basis of the mother's disability, rather than any evidence of child neglect.⁷⁴
- ▶ Like many women, disabled women share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, and caring for children and relatives. Women with disability are much less likely to receive service support than other women and men with disability, across all service types and sectors.⁷⁵



**THE IMPACT AND EFFECTS OF VIOLENCE FOR
WOMEN AND GIRLS WITH DISABILITY ARE
PROFOUND, LONG-TERM AND WIDE-RANGING**

4 INTERNATIONAL HUMAN RIGHTS OBLIGATIONS: THE RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE

Australia is a signatory to seven core international human rights treaties, all of which create obligations to promote equality, denounce discrimination against people with disability; people from culturally and linguistically diverse backgrounds; people from Aboriginal and Torres Strait Islander backgrounds; and against women. As a party to these treaties, Australia has chosen to be bound by the treaty requirements, and has an international legal obligation to implement the treaty provisions through its laws and policies. Together, the seven international human rights treaties to which Australia is a party – along with their Optional Protocols,⁷⁶ General Comments⁷⁷ and recommendations adopted by the bodies monitoring their implementation - provide the framework to delineate the obligations and responsibilities of governments and other duty-bearers to comprehensively promote the human rights of women and girls with disability, including their right to freedom from all forms of violence.

Critically, implementation of these treaties is not mutually exclusive. They are expected to be viewed and implemented as complementary mechanisms through which to create a holistic framework of rights protection and response for all women and girls with disability experiencing, or at risk of experiencing, violence.⁷⁸

The seven core international human rights treaties to which Australia is a party, are:

1. *Convention on the Elimination of All Forms of Racial Discrimination* 1965 ([1975] ATS 40);
2. *International Covenant on Economic, Social and Cultural Rights* 1966 ([1976] ATS 5);
3. *International Covenant on Civil and Political Rights* 1966 ([1980] ATS 23);
4. *Convention on the Elimination of All Forms of Discrimination Against Women* 1979 ([1983] ATS 9);
5. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1984 ([1989] ATS 21);
6. *Convention on the Rights of the Child* 1989 ([1991] ATS 4);
7. *Convention on the Rights of Persons with Disabilities* 2006 [2008, ATS 12].

In addition to these seven international human rights treaties, in 2009, Australia also formally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) - an international human rights instrument that sets a standard for the protection of Indigenous rights.

Included below is a non-exhaustive list of excerpts from key articles from the relevant human rights instruments to which Australia is a party and which concern women and girls with disabilities right to the freedom from all forms of violence.

Convention on the Rights of Persons with Disabilities (CRPD)

The *Convention on the Rights of Persons with Disabilities* (CRPD)⁷⁹ was ratified by Australia on 17 July 2008. Its fundamental purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disability, and to promote respect for their inherent dignity.

The CRPD recognises gender as one of the most important categories of social organisation and at Article 6 [Women with Disabilities] recognises the pervasive marginalisation and discrimination experienced by women and girls with disability. Obligations under CRPD Article 6 are of immediate nature.⁸⁰ The legal nature of Article 6 is crosscutting which means that every article of the CRPD has to be understood, viewed, implemented and evaluated from the perspective of advancing the human rights of all women and girls with disability – regardless of where they live, work or play. Because Article 6 is a “cross-cutting” article it means that when governments are developing or implementing laws, policies, programs, or services for women, for people with disability, or for the whole community, they must ALWAYS take extra actions to make sure women and girls with disability are included and can fully enjoy their rights. They must also ALWAYS consult with women and girls with disability and their organisations about the best ways to implement every article of the CRPD.⁸¹

The CRPD contains several provisions specifically regarding violence, abuse and neglect, as well as clear provisions relating to freedom from torture and other cruel, inhuman or degrading treatment or punishment. In addition, effective and meaningful participation of people with disability is at the core of the CRPD.⁸² It addresses participation as a crosscutting issue, meaning that ‘participation’ is embedded within all articles. The CRPD makes it clear that people with disability are the key interlocutors in its implementation and monitoring and full and effective participation must be afforded to all persons with disability on all matters affecting them.⁸³

Preamble

Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programs, including those directly concerning them.

Article 3 - General principles

The principles of the present Convention shall be:

- ▶ Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- ▶ Non-discrimination;
- ▶ Equality between men and women;
- ▶ Full and effective participation and inclusion in society.

Article 4 - General Obligations

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities [...], through their representative organizations.

Convention on the Rights of Persons with Disabilities (CRPD) (Cont.)

Article 6 - Women with disabilities

States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 14 – Liberty and security of the person

States Parties shall ensure that persons with disabilities, on an equal basis with others:

- ▶ Enjoy the right to liberty and security of person;
- ▶ Are not deprived of their liberty unlawfully or arbitrarily [...]

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 - Freedom from exploitation, violence and abuse

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.

States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Convention on the Rights of Persons with Disabilities (CRPD) (Cont.)

Article 17- Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Article 23 – Respect for home and family

States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: [...],

- ▶ The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- ▶ The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided; [...]

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

By ratifying the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)⁸⁴ in 1983, Australia became obliged to protect all women and girls from discrimination and ensure the achievement of equality between men and women. Although the Convention does not explicitly mention violence against women and girls, the CEDAW Committee has clarified, through CEDAW General Recommendations 12 and 19 that the Convention includes violence against women, as violence is an egregious form of discrimination against women.⁸⁵ The importance of women's participation in decision-making at all levels underpins the Convention. CEDAW further requires States Parties to take additional, special measures for women subjected to multiple forms of discrimination, including women and girls with disability.⁸⁶

Preamble

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Cont.)

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- ▶ To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- ▶ To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- ▶ To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- ▶ To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- ▶ [...]

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 5

States Parties shall take all appropriate measures:

- ▶ To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Article 15

States Parties shall accord to women equality with men before the law.

States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

Article 16

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]

International Covenant on Civil and Political Rights (ICCPR)

The *International Covenant on Civil and Political Rights* (ICCPR)⁸⁷ ratified by Australia in 1980, commits its parties to respect the civil and political rights of individuals, including for example, the rights to self-determination; to liberty and security of person; to family; to privacy; and to freedom from torture and cruel, inhuman or degrading treatment. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

Everyone has the right to liberty and security of person.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence [...].

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground [...]



**ALL WOMEN AND GIRLS WITH DISABILITY HAVE THE
RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE,
ABUSE, EXPLOITATION AND NEGLECT, REGARDLESS OF
THE SETTING IN WHICH THE VIOLENCE OCCURS, AND
REGARDLESS OF WHO PERPETRATES IT**

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR),⁸⁸ ratified by Australia in 1975, provides the legal framework to protect and preserve the most basic economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.⁸⁹ The ICESCR also calls for special protection for mothers and children,⁹⁰ including the right to protection and support in relation to motherhood, pregnancy, sexuality, and bodily integrity.⁹¹ The ICESCR addresses violence against women as a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality.⁹²

Article 2

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind [...]

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 10

The States Parties to the present Covenant recognize that:

- ▶ The widest possible protection and assistance should be accorded to the family [...]
- ▶ Special protection should be accorded to mothers during a reasonable period before and after childbirth.

Article 11

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions [...].

Article 12

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 13

The States Parties to the present Covenant recognize the right of everyone to education. [...]. They further agree that education shall enable all persons to participate effectively in a free society [...]

Article 15

The States Parties to the present Covenant recognize the right of everyone:

- ▶ To take part in cultural life [...]

Convention on the Rights of the Child (CRC)

The *Convention on the Rights of the Child* (CRC)⁹³ was ratified by Australia in 1990.⁹⁴ It sets out the specific ways that human rights apply to all children and young people up to the age of 18 years. Gender is a key factor in implementation of the Convention, which recognises that policies, programs and other measures should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence. The CRC specifically recognises that girls with disability are often more vulnerable to discrimination due to gender discrimination, and requires that States parties pay particular attention to girls with disability by taking the necessary measures, (and when needed extra measures), in order to ensure that they are well protected, have access to all services and are fully included in society.⁹⁵ The right of all children to be heard and taken seriously constitutes one of the fundamental values of the CRC. It is the right of every child, without exception.⁹⁶

Article 9

States Parties shall ensure that a child shall not be separated from his or her parents against their will [...]

Article 13

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information [...]

Article 16

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence [...]

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 22

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Convention on the Rights of the Child (CRC) (Cont.)

Article 23

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Article 24

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health [...]

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)⁹⁷ was ratified by Australia in 1975.⁹⁸ ICERD affirms the equality of all persons' civil, political, economic and social rights without any distinction regarding race, colour, descent, or national or ethnic origin. Implementation of, and compliance with ICERD requires States Parties to give particular attention to complex forms of disadvantage in which racial discrimination is mixed with other causes of discrimination (such as those based on age, sex and gender, religion, disability and low socio-economic status).⁹⁹

Article 5

[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction [...], to equality before the law, notably in the enjoyment of the following rights:

- ▶ The right to equal treatment before the tribunals and all other organs administering justice;
- ▶ The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- ▶ Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- ▶ Other civil rights [...]

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Australia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)¹⁰⁰ in 1989. CAT strictly prohibits torture of any kind, with torture defined as any act, physical or mental, whether at the instigation, consent or acquiescence of a public official, where severe pain or suffering was intentionally inflicted for a range of purposes including discrimination. Such acts are also prohibited if they meet the slightly lower standard of “cruel, inhuman or degrading” treatment or punishment.¹⁰¹ The mandate has stated, that torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Deprivation of legal capacity, when a person’s exercise of decision-making is taken away and given to others, is one such circumstance. The mandate has recognised that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill treatment when enforced or administered without the prior, free and informed consent of the person concerned.¹⁰²

Article 1

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

Article 14

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. [...]

Declaration on the Rights of Indigenous Peoples (DRIP)

The *United Nations Declaration on the Rights of Indigenous Peoples* (DRIP)¹⁰³ was adopted by Australia on 3rd of April 2009. The Declaration is an international human rights instrument that sets a standard for the protection of Indigenous rights. In adopting the Declaration, the Australian Government signaled its agreement to implement the provisions of the instrument in order to protect the individual and collective rights of Indigenous peoples. UNDRIP addresses the most significant issues affecting indigenous peoples - their civil, political, social, economic and cultural rights. It also bears on their right to self-determination, spirituality, language, lands, territories, resources and free, prior and informed consent.

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 7

Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 22

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.



**FORCED STERILISATION, FORCED ABORTION, AND
FORCED CONTRACEPTION CONSTITUTE EGREGIOUS
FORMS OF SEXUAL VIOLENCE AGAINST WOMEN AND
GIRLS WITH DISABILITY**

5 INTERNATIONAL HUMAN RIGHTS COMPLIANCE: THE RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE

International human rights treaties have mechanisms to ensure that States parties protect human rights not only in words but also in practice.¹⁰⁴ For more than a decade, the United Nations treaty monitoring bodies have made strong recommendations to Australia in relation to improving the human rights of women and girls with disability, including a number that the UN and civil society organisations have considered urgent.

This section of the paper highlights a non-exhaustive sample of some of the key recommendations the United Nations treaty monitoring bodies and mandates have made to Australia in relation to addressing and preventing all forms of violence against women and girls with disability.

Committee on the Rights of Persons with Disabilities

In October 2013, the *Committee on the Rights of Persons with Disabilities* released its Concluding Observations [Australia]¹⁰⁵ following its September 2013 review of Australia's compliance with the Convention on the Rights of Persons with Disabilities (CRPD). The Committee made a number of specific and urgent recommendations to the Australian Government in relation to all forms of violence against women and girls with disability.

The Committee expressed its “deep concern” at the ongoing high rates of violence perpetrated against women and girls with disability in Australia and recommended that Australian Governments act urgently to:

- ▶ Address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disability in institutional settings;¹⁰⁶
- ▶ Include a more comprehensive consideration of women with disability in public programs and policies on the prevention of gender-based violence;
- ▶ Ensure access for women with disability to an effective, integrated response system.

Re-iterating that involuntary sterilisation of women and girls with disability is an egregious form of violence that constitutes torture, the Committee emphasised its “deep concern” at its ongoing practice in Australia including the “failure” of Australia to implement previous treaty body and mandate recommendations regarding sterilisation of children and adults with disabilities.¹⁰⁷ The Committee urged the Australian Government to adopt national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.

The Committee expressed its concern at the continued use in Australia of practices of unregulated behaviour modification, and restrictive practices such as chemical, mechanical and physical restraint and seclusion, particularly as they are applied to people with intellectual impairment or psychosocial disability. The Committee urged the Australian Government to take immediate action to end such practices, including through the establishment of an independent protection and oversight mechanism.

The Committee recommended that Australia take immediate steps to replace substitute decision-making with supported decision-making and provide a wide range of measures which respect the person's autonomy, will and preferences in full conformity with article 12 of the Convention. The Committee recommended Australia “repeal all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community [...]”.

The CRPD Committee expressed its regret at the lack of data and information about women and with disability in Australia, including indigenous women and girls with disability. The Committee recommended that Australia develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations contained in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. Specifically, the Committee recommended that the Australian Government “*commission and fund a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the Convention can be measured.*”

The CRPD Committee has consistently expressed concern at the lack of attention paid to implementation of Article 6 [Women with disabilities] by States Parties to the CRPD.¹⁰⁸ In providing interpretation of Article 6, the Committee has clarified that implementation of the provisions of the Article, requires that States parties go beyond refraining from discriminatory actions, to adopting measures aimed at the development, advancement and empowerment of women and girls with disability. The Committee has identified three critical areas of concern with respect to the protection of the human rights of women and girls with disability: all forms of violence; sexual and reproductive health and rights; and discrimination. The lack of decision-making and participatory rights in the context of these three critical areas serves to compound the human rights violations women and girls with disability experience.

The CRPD Committee, in its *General Comment on Women with Disabilities*,¹⁰⁹ has provided strong evidence based commentary and recommendations on the issue of violence against women and girls with disability. It has, for example, clarified for States that certain forms of violence, exploitation or abuse perpetrated against women and girls with disability, may be considered as torture, and/or cruel, inhuman, degrading treatment or punishment and breach a number of international human rights treaties. Among these are forced, coerced and otherwise involuntary sterilisation or pregnancy; as well as any other medical procedure or intervention performed without free and informed consent, including those related to contraception and abortion; invasive and irreversible surgical practices including psychosurgery, female genital mutilation or surgery or treatment performed on intersex children without their informed consent; sexual violence (including rape); the administration of electroshocks, chemical, physical or mechanical restraints; and, isolation or seclusion.

The CRPD Committee, through *General Comment 3 on Article 6 [Women with Disabilities]*, has urged States Parties to take all necessary measures to prevent, respond to, and address all forms of violence against women and girls with disability, through, for example:

- ▶ Repealing discriminatory laws, policies and practices that prevent women with disabilities from enjoying all the rights of the Convention; outlawing gender and disability-based discrimination and its intersectional forms; criminalising sexual violence against girls and women with disabilities; prohibiting all forms of forced sterilisation, forced abortion and non-consensual birth control; prohibiting all forms of forced gender and/or disability related medical treatment and taking all appropriate legislative steps to protect women with disabilities against discrimination;
- ▶ Collecting and analysing data on the situation of women with disabilities in all areas relevant to them in consultation with organizations of women with disabilities with a view to guiding policy planning for the implementation of article 6 [...];
- ▶ Adopting affirmative action measures for the development, advancement and empowerment of women with disabilities, in consultation with organisations of women with disabilities, aiming to immediately address inequalities and to ensure that women with disabilities have equality of opportunity with others. Such measures should be adopted particularly regarding access to justice, the elimination of violence, respect for home and the family, sexual health and reproductive rights, health, education, employment, and social protection [...];

- ▶ Supporting and promoting the creation of organizations and networks of women with disabilities and the promotion and support for women with disabilities to take leadership roles in public decision-making bodies at all levels;
- ▶ Ensuring that women with disabilities as well as the views and opinions of girls with disabilities, through their representative organizations, are included in the design, implementation and monitoring of all programs which have an impact on their lives [...]

Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

At its 34th session¹¹⁰ in 2006 and its 46th session¹¹¹ in 2010, the *Committee on the Elimination of Discrimination against Women* (CEDAW) made very strong recommendations regarding the need for urgent action by Australian governments in relation to women and girls with disability, including in relation to the right to freedom from all forms of violence, which the Committee deemed particularly urgent.

The Committee expressed its deep concern about the pervasive and high levels of violence experienced by women and girls with disability, as well as the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, services and support, and the lack of targeted measures to prevent and address all forms of violence perpetrated against women and girls with disability. The Committee has for more than a decade, called on Australian Governments to take urgent measures to address violence and abuse experienced by women and girls with disability, and has recommended that Australia address, as a matter of priority, violence and abuse experienced by women and girls with disability living in institutions or supported accommodation.

Recognising forced sterilisation of women and girls with disability as a gross violation of the right to freedom from violence, and from torture and ill-treatment, in both its 2006 and 2010 Reviews, the Committee recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.

The CEDAW Committee has also recommended that public officials, especially law enforcement officials, the judiciary, health-care providers and social services workers, are fully sensitised to all forms of violence against all women, and that the Australian Government create public awareness of violence against women as an infringement of women's human rights. The Committee has urged Australia to develop the necessary infrastructure to ensure that all women and girls with disability have access to all health and related services (including violence response and prevention services, and sexual and reproductive health services). The need for disaggregated data and information on women and girls with disability, as well as the need for significant investment and urgent measures –to improve decision-making, representation and leadership opportunities for women and girls with disability including the adoption of temporary special measures in the form of compulsory targets and quotas - has also been a consistent recommendation of the CEDAW Committee.

Committee on Economic, Social and Cultural Rights

At its 42nd session¹¹² in 2009, the *Committee on Economic, Social and Cultural Rights* reviewed Australia's compliance under the CESCR. The Committee expressed its regret that "insufficient measures have been taken by the State party to ensure an adequate standard of living for persons with disabilities," and recommended the Australian Government strengthen its efforts towards the adoption of concrete measures to enable persons with disabilities to fully enjoy the rights guaranteed by the Covenant. The Committee further recommended that the Australian Government provide human rights education and training on economic, social and cultural rights to students at all levels of education and all professions and sectors having a direct role in the promotion and protection of human rights.

The Committee was strong on its recommendations relating to violence against women. It noted with concern the increasing incidence and prevalence of violence against women in Australia. It recommended that the Australian Government ensure that the 12-year *National Plan to Reduce Violence Against Women and Their Children*, be developed to fully incorporate human rights principles. It further recommended an increase in shelters and support services for the victims.

The CESCR Committee has been consistently clear that violence against women is a form of discrimination that inhibits the ability to enjoy economic, social and cultural rights, on a basis of equality.¹¹³ Compliance with the Covenant therefore requires States to prevent and address all forms of violence against women, including acting with due diligence to prevent, investigate, mediate, punish and redress acts of violence against women by private actors. This means that the State can be held responsible under ICESCR for any act of violence against women that is perpetrated by State actors (such as the police, or disability service providers, or health workers), or when it fails to exercise due diligence to prevent, punish and provide compensation for violence committed by non-State actors (such as the members of a woman's family, unpaid carers/support persons, or the general public), when the violence restricts a woman's enjoyment of her economic, social or cultural rights.¹¹⁴

The CESCR Committee has provided authoritative guidance for States regarding people with disability and economic, social and cultural rights.¹¹⁵ In its General Comment 5 [Persons with Disabilities], published more than two decades ago, the CESCR Committee expressly stated that the obligation of States parties to the Covenant in the case of people with disability is to give preferential treatment to people with disability in order to achieve the objectives of their full participation and equality. The Committee clarified that additional resources must be made available for this purpose and that a wide range of tailored, gendered and targeted measures are required.¹¹⁶

For well over twenty years, the CESCR Committee has urged States parties to address – as a priority – the situation of women and girls with disability. It has explicitly stated that realisation of the right to health, as articulated in Articles 10 and 12, requires that women with disability must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. The Committee has been unequivocal that “both the sterilisation of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of Article 10 of the Covenant.

Committee on the Rights of the Child

The *Committee on the Rights of the Child* reviewed Australia's compliance under the CRC in 2005¹¹⁷ and again in 2012. On both occasions, it raised serious concerns at the situation of violence against children, including girls and adolescents with disability.¹¹⁸ In its 2012 Review, the CRC Committee expressed its “grave concern” at the high levels of violence against women and children prevailing in Australia, including domestic violence, lawful corporal punishment, bullying, sterilisation, and other forms of violence. Amongst other things, the Committee urged the Australian Government to prioritise the elimination of all forms of violence against children, paying particular attention to gender.

The CRC Committee further expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disability ‘is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities’. The Committee urged Australia to enact non-discriminatory legislation that prohibits non-therapeutic sterilisation of all children, regardless of disability. The Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disability. This echoed and re-iterated the recommendation to the Australian Government in 2005 by the CRC Committee, whereby it urged Australia to ‘prohibit the sterilization of children, with or without disabilities [...]’¹¹⁹

In seeking to provide clarification on sterilisation of children with disability for the international community, in 2007 the CRC Committee clearly articulated that States parties to the CRC are expected to prohibit by law the non-therapeutic sterilisation of children with disability.¹²⁰

The Committee raised specific concerns regarding the significant levels of violence against women and children, noting that ‘there is an inherent risk that the co-existence of domestic violence, lawful corporal punishment, bullying, and other forms of violence in the society are inter-linked’, and that Aboriginal and Torres Strait Islander women and children are particularly affected. The Committee made a series of recommendations on the issue of violence, including the need for Commonwealth legislation to act as a comprehensive framework to reduce violence; law that explicitly prohibits all forms of violence against children in all settings; a national system of data collection, analysis and dissemination; and a research agenda on violence against children.

The CRC Committee has clarified that having a disability and/or impairment, does not deprive a child from the right to express his or her views, nor does it reduce the weight given to the child’s views in determining his or her will and preferences. States Parties are therefore required to adopt all necessary measures – including the provision of adjustments and supports - to guarantee the exercise of equal participation and decision-making rights for children with disability in all matters affecting them.¹²¹

Human Rights Committee

Australia’s compliance with the International Covenant on Civil and Political Rights (ICCPR) was reviewed during the 95th session¹²² of the Human Rights Committee in 2009. The Committee expressed its regret that the Australian Government had not provided sufficient and adequate information for the Review. However, despite the absence of adequate information, the Committee noted its ongoing concern that, despite the efforts undertaken by the Australian Government to address violence against women, including its zero tolerance approach, disturbing levels of violence against women persists in Australia. The Committee recommended that the Australian Government strengthen its efforts towards the elimination of violence against women, especially indigenous women. The Committee urged the Australian Government to promptly implement the National Plan to Reduce Violence against Women and their Children.

In March 2016, Australia submitted its Sixth Periodic Report to the United Nations Human Rights Committee on Australia’s compliance with the ICCPR. It was required to submit its response to the List of Issues Prior to Reporting (LOIPR),¹²³ (adopted by the Human Rights Committee at its 106th session) and is scheduled to appear for review by the Human Rights Committee in July 2017. Under the heading of ‘Violence Against Women’, the LOIPR for Australia contains specific questions relating to a women and girls with disability, to which the Australian Government is expected to respond.¹²⁴ Specifically, the Human Rights Committee, in its LOIPR, states:

- ▶ *Please provide information on whether sterilisation of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilisation.*
- ▶ *In the light of the Committee’s previous recommendations¹²⁵ please provide updated information on the legislative, administrative and other measures taken towards the elimination of all forms of violence against women, especially perpetrated against indigenous women and women with disabilities. Additionally, please provide updated information on the availability and adequacy of legal and social services for women victims of domestic violence and sexual assault, especially in rural and remote areas.*

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**VIOLENCE AGAINST WOMEN AND GIRLS
WITH DISABILITY IS A FORM OF DISABILITY
DISCRIMINATION, A FORM OF GENDER-
BASED DISCRIMINATION, AND OFTEN
OCCURS WITHIN, AND AS A RESULT OF,
INTERSECTIONAL FORMS OF
DISCRIMINATION**



Committee Against Torture

The *Committee Against Torture* last reviewed Australia's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2014 at its 53rd session.¹²⁶ One of its principal areas of concern related to violence against women, particularly violence against women with disability, and indigenous women. The Committee urged the Australian Government to "redouble its efforts" to address violence against women, particularly women with disability, and indigenous women, by:

- ▶ Ensuring the effective enforcement of the existing legal framework by promptly, effectively and impartially investigating all reports of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;
- ▶ Strengthening public awareness-raising activities to combat violence against women and gender stereotypes;
- ▶ Increasing its efforts to address violence against indigenous women and women with disabilities;
- ▶ Guaranteeing in practice that all victims benefit from protection and have access to sufficient and adequately funded medical and legal aid, psychosocial counseling and social support schemes, which take into account their special needs, and that victims not placed under the "safe at home" model have access to adequate shelters;
- ▶ Taking measures to facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them;
- ▶ Further intensifying community-based approaches to addressing violence against women, with the involvement of all relevant stakeholders.

The Committee Against Torture is unequivocal in its determination of forced sterilisation as a form of torture, and in its most recent review of Australia, expressly re-iterated the recommendation that Australia "enact uniform national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation without the prior, free and informed consent of the person concerned, and that it ensure that, once adopted, this legislation is effectively applied".

The over-representation of indigenous people in prisons, particularly women, was a further area of concern with the Committee recommending that the Australian Government "increase its efforts to address the over-representation of indigenous people in prisons, in particular its underlying causes." The Committee also made a number of strong recommendations in relation to immigration detention and asylum seekers, noting that the mandatory detention "creates serious physical and mental pain and suffering".

The Committee Against Torture has emphasised that gender is a key factor in implementation of the Convention.¹²⁷ Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.¹²⁸

The Committee Against Torture has also clarified that there are forms of violence against women which clearly meet the definition of 'torture' as articulated in Article 1 of the Convention. These forms of violence include, but are not restricted to, rape and other forms of sexual violence, forced abortion, as well as denial of access to safe abortion to women who have become pregnant as a result of rape or whose welfare is at risk, forced sterilisation, domestic violence, female genital mutilation, human trafficking, forced marriage and other forms of violence against women, such as gender hate crime and violence committed in the name of 'honour' such as dowry-related violence.¹²⁹

Universal Periodic Review (UPR) - Human Rights Council

The Universal Periodic Review (UPR) is a process undertaken by the United Nations and involves the “peer” review of the human rights records of the 192 Member States once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The UPR is one of the key elements of the Human Rights Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of the UPR mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.¹³⁰

Australia has been reviewed under the UPR in 2011¹³¹ and again in 2015.¹³² The situations of women and girls with disability, Aboriginal and Torres Strait Islander women; women from culturally and linguistically diverse backgrounds, and women in immigration detention – have been identified by UN member States, as warranting significant and urgent action by Australian Governments. In the 2015 UPR, a total of 290 recommendations, endorsed by the UN Human Rights Council, were made to Australia by its UN member State peers, spanning a number of key thematic areas, including: women’s rights, Indigenous Australians, disability rights, children and youth, and sexual orientation, gender identity and intersex rights.

The issue of violence against women, particularly violence against women and girls with disability and violence against indigenous women, was a key and urgent recommendation from many of Australia’s UN member State peers. The urgent need for concrete measures to address violence, exploitation and abuse experienced by women and girls with disability in institutional settings was identified, as was the urgency to enact national legislation to prohibit forced sterilisation.

In responding to the 290 recommendations adopted by the Human Rights Council following the 2015 UPR of Australia, the Australian Government formally stated its commitment to:

*eradicating violence against women, especially family violence [...]. Australia is implementing its National Plan to Reduce Violence against Women and Their Children as well as the recently announced \$100 million Women’s Safety Package. The Australian Government will continue to implement measures under these activities that pertain to women and girls with disabilities, those from culturally and linguistically diverse backgrounds, and Indigenous women.*¹³³

UN Special Procedures

The issue of violence against women with disability has been the subject of specific global studies and thematic reports over several years from several of the United Nations Special Rapporteurs. The *UN Special Rapporteurs* constitute part of the UN ‘Special Procedures’,¹³⁴ appointed by the Human Rights Council. They serve in their personal capacities as independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.

In 2012, through the Human Rights Council, the UN Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, tabled the report of her global thematic study on violence against women with disability.¹³⁵ She made several strong recommendations to States, addressing a range of areas such as the urgent need for the development of information resources and training materials on the prevention of and response to violence against women with disability for all sectors, developed, in collaboration with women with disability. Amongst a range of specific recommendations, the Special Rapporteur strongly urged States to respect, involve and enhance support for, Disabled Peoples Organisations (DPO’s) in all efforts combat violence against women with disability, including in related dialogue, strategy and institution-building processes.

Also in 2012, the Office of the High Commissioner for Human Rights (OHCHR) pursuant to a request from the Human Rights Council,¹³⁶ released its Report from a global thematic study¹³⁷ on the causes and manifestations of violence against women and girls with disability. The study analysed national legislation, policies and programs for the protection and prevention of violence against women and girls with disability. It highlighted the remaining challenges in addressing the root causes of violence against women and girls with disability and incorporating women and girls with disability into gender-based violence programs. The study Report provides a series of recommendations on legislative, administrative, policy and programmatic measures to address violence against women and girls with disability, with emphasis on the need for a holistic approach aimed at eliminating discrimination against women and girls with disability, promoting their autonomy and addressing specific risk factors that expose them to violence.

The UN Special Rapporteur on Torture [and other cruel, inhuman or degrading treatment or punishment], Juan E. Mendez, has provided substantial guidance to States in relation to violence against women with disability, particularly in relation to sexual violence and reproductive rights violations.¹³⁸ He has clarified that ensuring special protection of marginalised groups and individuals is a critical component of the obligation to prevent torture and ill-treatment, and States have a heightened obligation to protect vulnerable and/or marginalized individuals from torture, as such individuals are generally more at risk of experiencing torture and ill-treatment. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.¹³⁹

The Special Rapporteur on Torture has further clarified that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non- consensual treatments are performed on people from marginalised groups, such as people with disability, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the administration of non-consensual medication or involuntary [forced] sterilisation - often claimed as being a necessary treatment for the so-called 'best interest' of the person concerned - satisfies both intent and purpose required under the Article 1 of the Convention against Torture.¹⁴⁰

The mandate has also declared that there is no therapeutic justification for the use of solitary confinement and prolonged restraint of people with disability in psychiatric and other institutional settings; and that both prolonged seclusion and restraint may constitute torture and ill-treatment. The Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on people with psychosocial and/or intellectual disability constitutes cruel, inhuman or degrading treatment.¹⁴¹

In 2016 the UN Special Rapporteur on Disabilities, Catalina Devandas Aguilar, submitted to the Human Rights Council her report from the thematic study on the right of persons with disabilities to participate in decision-making.¹⁴² The report provides authoritative guidance and recommendations to States in relation to decision-making and participatory rights of people with disability, making it clear that the CRPD mandates participation of people with disability in all matters affecting them.

The Special Rapporteur on Disabilities specifically addresses the situation of women and girls with disability, highlighting the fact that despite the widespread human rights violations affecting them, the intersectionality between gender and disability-based issues is still not fully included in the work of the different stakeholders promoting the rights of people with disability or the rights of women. The Special Rapporteur has urged States to engage with women and girls with disability and secure their direct participation in all processes of public decision-making, and guarantee that such participation and consultation is conducted in a safe environment, particularly in processes relating to the development of legislative or policy measures regarding violence and sexual abuse.

Commission on the Status of Women (CSW)

The *UN Commission on the Status of Women* (CSW), established in 1946, is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. During the Commission's annual two-week session, representatives of UN Member States, civil society organisations and UN entities gather at UN headquarters in New York. They discuss progress and gaps in the implementation of the 1995 Beijing Declaration and Platform for Action, the key global policy document on gender equality, and the 23rd special session of the General Assembly held in 2000,¹⁴³ as well as emerging issues that affect gender equality and the empowerment of women. Member States agree on further actions to accelerate progress and promote women's enjoyment of their rights in political, economic and social fields. Member states agree to implement the outcomes and recommendations of each session.

In 2013, the 57th of CSW addressed the elimination and prevention of all forms of violence against women and girls. The *Agreed Conclusions* document from the 57th session¹⁴⁴ reaffirmed that the core international human rights treaties provide the international legal framework and a comprehensive set of measures for the elimination and prevention of all forms of discrimination and violence against women and girls. The CSW57 Agreed Conclusions make strong reference to the multiple forms of violence perpetrated against women and girls with disability, and call on governments the world over to take all appropriate legislative, administrative, social, educational and other measures to address these multiple forms of violence forms of exploitation, including in the workplace, educational institutions, in health care settings, the home, and other settings.¹⁴⁵ The Agreed Conclusions call on States to condemn and take action against forced procedures or those conducted without informed consent, specifically, forced hysterectomy, forced cesarean section, forced sterilisation, forced abortion, and forced use of contraceptives, especially for women with disability.



**WIDE-RANGING SYSTEMIC FAILURES IN
LEGISLATION, POLICIES AND SERVICE
SYSTEMS IN AUSTRALIA FACILITATE
CONDITIONS THAT DENY WOMEN AND
GIRLS WITH DISABILITY THE RIGHT TO
FREEDOM FROM ALL FORMS OF
VIOLENCE**

6 RECOMMENDATIONS: THE RIGHT TO FREEDOM FROM ALL FORMS OF VIOLENCE

Mandated through Australia's international human rights obligations, and based on the evidence, voices, experiences, and expertise of women and girls with disability, WWDA offers the following key recommendations as critical to promoting the right to freedom from all forms of violence for all women and girls with disability.

1. WWDA calls on the Australian Government to act urgently to establish a Royal Commission into Violence Against People with Disability, as recommended by the Senate Community Affairs References Committee, following the 2015 Senate Inquiry into 'Violence, abuse and neglect against people with disability in institutional and residential settings'.
2. WWDA calls on the Australian Government to take immediate action to establish an independent, statutory, national protection mechanism under specific purpose legislation, and with broad functions and powers to protect, investigate and enforce findings in relation to all forms of violence against people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it.
3. WWDA calls on the Law, Crime and Community Safety Council (LCCSC) to work with the Council of Australian Governments (COAG) to enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior fully informed and free consent.
4. WWDA calls on the Australian Government to prioritise, as a matter of urgency, funding the development of accessible and appropriate information resources and materials on violence against women and girls with disability – for women with disability themselves; frontline workers and other professionals; family, support persons, advocates and friends; and the broader community.
5. WWDA calls on the Council of Australian Governments (COAG) to update the National Plan to Reduce Violence Against Women and their Children 2010-2022 to an inclusive and non-discriminatory framework that responds to, and addresses, all forms of violence against all women, regardless of the setting/place in which it occurs, and regardless of who perpetrates it.
6. WWDA calls on the Council of Australian Governments (COAG) to ensure that future Implementation Plans of the National Disability Strategy (NDS) 2010-2020, prioritise actions to respond to, and address violence against women and girls with disability, which is consistently identified by them as the most urgent and unaddressed human rights issue they face.
7. WWDA calls on the Australian Government to provide long-term support, including core support and resources for capacity building and violence prevention, to human rights based organisations constituted by, of and for women and girls with disability.
8. WWDA calls on the Australian Government to ensure decision-making, participation and capacity building of women and girls with disability are integral to all policy and programmatic efforts to end violence against women.
9. WWDA calls on the Australian Government to commission and fund a comprehensive assessment of the situation of women and girls with disability, in order to establish a baseline of disaggregated data and information against which compliance with the UN treaties (to which Australia is a party) and national policy frameworks can be measured and monitored.
10. WWDA calls on the Australian Government to immediately withdraw its Interpretative Declarations on CRPD Article 12 [Equal recognition before the law] Article 17 [Protecting the integrity of the person] and Article 18 [Liberty of movement and nationality].

7 SPEAKING OUT AND ACCESSING SUPPORT

If you, a child or another person is in immediate danger CALL 000.

If you are deaf, have a hearing or speech impairment, there are a number of ways to contact emergency services:

- ▶ **TTY** - dial 106
- ▶ **Internet relay** – and ask for Triple Zero (000)
- ▶ **Captioned relay** – and ask for Triple Zero (000)
- ▶ **SMS relay** – text 0423 677 767
- ▶ **Video relay** – login to Skype and contact one of the National Relay Service (NRS) contact names
- ▶ **Ordinary phone** - dial 1800 555 727 and ask for Triple Zero (000)

Call 1800RESPECT on 1800 737 732. This is the National Sexual Assault, Domestic Family Violence Counseling Service. These services are available for all women and are free.

Visit 1800RESPECT online at <http://www.1800respect.org.au>

Visit or contact a disability advocacy service in your area. <http://finder.dss.gov.au/disability/ndap/>

Speak with someone you trust or call an advocacy, violence or crisis service in your area.

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- 87 United Nations General Assembly (12 January 2016) OpCit.
- 88 International Covenant on Economic, Social and Cultural Rights, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- 89 Centre for Women, Peace and Security, International Covenant on Economic, Social and Cultural Rights; accessed July 2016 at: <http://blogs.lse.ac.uk/vaw/int/treaty-bodies/international-covenant-on-economic-social-and-cultural-rights/>
- 90 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, UN Doc. E/1991/23, available at: <http://www.unhcr.org/refworld/docid/4538838e10.html> [accessed 22 June 2010]; See also: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights; UN Doc. No. E/C.12/2005/4; 11 August 2005.
- 91 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities. UN Doc. No. E/1995/22. See Paras 19, 30, 31.
- 92 Rights of Women (2011) From Rights to Action: Using international rights and mechanisms on violence against women in the UK. Rights of Women, London.
- 93 Convention on the Rights of the Child, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- 94 The CRC generally defines a child as any human being under the age of eighteen years, and requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind.
- 95 See: UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence, 17 February 2011, CRC/C/GC/13; UN Committee on the Rights of the Child (2013) General comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Article. 24); UN Doc. CRC/C/GC/15; 14 March 2013.
- 96 The Committee on the Rights of the Child has identified the right to be heard (article 12) as one of the four general principles of the Convention. See: Committee on the Rights of the Child (2014) Working methods for the participation of children in the reporting process of the Committee on the Rights of the

Child, UN Doc. No. CRC/C/66/2

- 97 International Convention on the Elimination of All Forms of Racial Discrimination, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
- 98 Note: From 2007 until December 2010, the Northern Territory Intervention (NTI) legislation suspended the operation of Australia's legal protection from racial discrimination, the Racial Discrimination Act 1975 (Cth) (RDA), to acts done under, or for the purposes of, the NTI. See: <http://www.hrlrc.org.au/files/Fact-Sheet-2-NT-Intervention.pdf>
- 99 Centre for Women, Peace and Security, International Convention on the Elimination of All Forms of Racial Discrimination, accessed July 2016 at: <http://blogs.lse.ac.uk/vaw/int/treaty-bodies/convention-on-the-elimination-of-all-forms-of-racial-discrimination/>
- 100 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>
- 101 Grossman, C. and McCormack, F. (2012) The Relevance of the Convention Against Torture in Preventing and Redressing Violence Against Women. Accessed June 2016 at: <https://www.monash.edu/law/centres/castancentre/public-events/events/2012/grossman-lecture>
- 102 Méndez, J. E. (2013) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly; UN Doc A/HRC/22/53.
- 103 Declaration on the Rights of Indigenous Peoples; at: <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>
- 104 The international human rights treaties monitoring bodies are responsible for monitoring States parties' compliance with their legal obligations under the treaties. A key mechanism to monitor and analyse compliance is through periodic reviews of States parties under the treaties they have ratified. The Treaty Bodies issue Concluding Observations and Recommendations which provide authoritative interpretation of States parties' treaty obligations, summarise their assessment of progress and deficits in the implementation of the treaties and give recommendations for an improved realisation. For more information on the international human rights treaty monitoring bodies, go to: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>
- 105 Committee on the Rights of Persons with Disabilities (October 2013) 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.
- 106 'institutional and residential settings' is broadly defined to include the types of institutions that people with disability often experience, including, but not restricted to: residential institutions; boarding houses; group homes; workplaces; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out-of-home care; special schools; boarding schools; school buses; hospitals; juvenile justice facilities; disability services; and aged care facilities. See: Commonwealth of Australia (November 2015) Senate Community Affairs References Committee 'Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability'. Canberra.

- 107 Committee on the Rights of Persons with Disabilities (October 2013) 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.
- 108 Committee on the Rights of Persons with Disabilities (2016) General comment No. 3. Article 6: Women and girls with disabilities. 2nd September 2016, UN Doc. No. CRPD/C/GC/3
- 109 Ibid.
- 110 Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia, 3 February 2006, CEDAW/C/AUL/CO/5.
- 111 Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7, Op Cit.
- 112 Committee on Economic, Social and Cultural Rights (CESCR) (2009) Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia, 12 June 2009, UN Doc. E/C.12/AUS/CO/4.
- 113 Rights of Women (2011) OpCit.
- 114 Ibid.
- 115 Committee on Economic, Social and Cultural Rights (CESCR) (1994) General comment No. 5: Persons with disabilities. UN Doc. No. E/1995/22.
- 116 Ibid.
- 117 Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia, 20 October 2005. UN Doc. CRC/C/15/Add.268.
- 118 Committee on the Rights of the Child; Consideration of reports submitted by States parties under article 44 of the Convention; Concluding observations: Australia; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4.
- 119 UN Committee on the Rights of the Child, OpCit, UN Doc. CRC/C/15/Add.268
- 120 CRC General Comment No.9 [at para.60] states: 'The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.'See: Committee on the Rights of the Child (CRC), General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, UN Doc. CRC/C/GC/9.
- 121 Committee on the Rights of the Child (2009) General Comment No 12. The right of the child to be heard. UN Doc. No. CRC/C/GC/12. See also: Committee on the Rights of the Child (2013) General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration. UN Doc. No. CRC/C/GC/14.
- 122 Human Rights Committee, International Covenant on Civil and Political Rights, Consideration of reports submitted by states parties under article 40 of the covenant, Concluding observations of the Human Rights Committee: Australia, Ninety-fifth session, UN Doc No. CCPR/C/AUS/CO/5, 7 May 2009.
- 123 Since Australia was last reviewed in 2009, the Human Rights Committee has developed a new optional process for the review of states, known as the List of Issues Prior to Reporting (LOIPR). The Human Rights Committee develops a LOIPR on the basis of previous Concluding Observations and information provided by the Office of the High Commissioner on Human Rights (OHCHR), the Universal Periodic Review (UPR), the UN Special Procedures, NGOs and National Human Rights Institutions. The LOIPR on Australia was adopted by the Human Rights Committee at its 106th session in late 2012.

- 124 Human Rights Committee, International Covenant on Civil and Political Rights; List of issues prior to the submission of the sixth periodic report of Australia (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012.
- 125 (CCPR/C/AUS/CO/5, para. 17), and the State party's follow-up responses (CCPR/C/AUS/CO/5/Add.1, Add.2 and Add.3)
- 126 Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, 53rd sess, UN Doc No. CAT/C/AUS/CO/4-5 (23 December 2014).
- 127 Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2.
- 128 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.; The right to be free from torture and cruel, inhuman or degrading treatment or punishment carries with it non-derogable state obligations to prevent, punish, and redress violations of this right.
- 129 Rights of Women (2011) OpCit.
- 130 Universal Periodic Review, at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- 131 Human Rights Council (2011) Seventeenth session, Agenda item 6: Universal Periodic Review, Report of the Working Group on the Universal Periodic Review Australia. UN Doc. No. A/HRC/17/10.
- 132 Human Rights Council (2015) Report of the Working Group on the Universal Periodic Review: Australia. UN Doc. No. A/HRC/31/14, 13 January 2016.
- 133 Human Rights Council (February 2016) Report of the Working Group on the Universal Periodic Review, Australia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. UN. Doc. No. A/HRC/31/14/Add.1
- 134 UN 'Special procedures' are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group composed of five members, one from each of the five United Nations regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group. The Special Rapporteurs, Independent Experts and members of the Working Groups are appointed by the Human Rights Council and serve in their personal capacities. They undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. They are not United Nations staff members and do not receive financial remuneration. The independent status of the mandate-holders is crucial for them to be able to fulfil their functions in all impartiality. A mandate-holder's tenure in a given function, whether it is a thematic or country mandate, is limited to a maximum of six years. The Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. See: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
- 135 Manjoo, R. (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations General Assembly, UN Doc No. A/67/227.
- 136 UN General Assembly (2011), Human Rights Council, Seventeenth session, Agenda Item 3: Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in protection. UN Doc. No. A/HRC/17/L.6.
- 137 UN General Assembly (2012), Human Rights Council, Twentieth session, Agenda items 2 and 3: Thematic study on the issue of violence against women and girls and disability. Report of the Office of the United Nations High Commissioner for Human Rights. UN Doc. No. A/HRC/20/5.
- 138 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.;

- 139 Ibid.
- 140 Ibid.
- 141 Ibid.
- 142 United Nations General Assembly (12 January 2016) Report of the Special Rapporteur on the rights of persons with disabilities. Human Rights Council, Thirty-first session. UN Doc. No. A/HRC/31/62
- 143 The General Assembly held its 23rd Special Session at UN Headquarters in New York from 5-10 June 2000. The Session, entitled “Women 2000: Gender equality, development and peace for the 21st century,” was attended by a total of 2,003 government delegates, along with 2,043 NGO representatives from 1,036 organizations. Delegates negotiated and adopted an outcome document, “Review and appraisal of progress made in the implementation of the 12 critical areas of concern in the Beijing Platform for Action, and Further actions and initiatives for overcoming obstacles to the implementation of the Beijing Platform for Action.” The special session reaffirmed the importance of gender mainstreaming in all areas and at all levels and the complementarity between mainstreaming and special activities targeting women. Certain areas were identified as requiring focussed attention, including sexual and reproductive rights, and prevention of all forms of violence. In all, 199 actions to be taken at the national and international levels by Governments, the United Nations system, international and regional organisations, including international financial institutions, the private sector, non-governmental organisations and other actors of civil society were agreed on. See UN Doc. No. A/RES/S-23/2 and UN Doc. No. A/RES/S-23/3
- 144 Commission on the Status of Women (2013), The elimination and prevention of all forms of violence against women and girls: Agreed conclusions; Fifty-seventh session, 4 – 15 March 2013; Accessed online July 2015 at: <http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?v=1&d=20140917T100700>
- 145 The CSW57 Agreed Conclusions (57th session) make strong reference to the issue of violence against women and girls with disabilities, including, for example the need for governments to: a) take all appropriate legislative, administrative, social, educational and other measures to protect and promote the rights of women and girls with disabilities as they are more vulnerable to all forms of exploitation, violence and abuse, including in the workplace, educational institutions, the home, and other settings; b) take appropriate measures to ensure the human rights of and protect women and girls deprived of their liberty and/or under State custody or State care from all forms of violence, in particular sexual abuse; and, c) condemn and take action to prevent violence against women and girls in health care settings, including sexual harassment, humiliation and forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilisation, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, such as women with disabilities.



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

