



Disability Rights Now 2019

Shadow Report to the United Nations Committee on
the Rights of Persons with Disabilities: UN CRPD
Review 2019



Plain Language version

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Word bank

Interpretative Declarations	One-sided statements made to explain the meaning of part of a treaty or of its provisions.
Intersectionality	The way discrimination like racism or sexism join especially for people or groups who are marginalized.
Gender-based	Only one sex like only women or only men but not both
Jury	A group of people chosen to make a decision in a legal case
Behaviour modification	To replace unwanted behaviours with suitable ones.
Restrictive practices	Interventions and practices to restrict the rights or freedom of movement of a person with disability.
Forced sterilisation	Stopping someone's ability to have a baby without his or her consent.
Intersex variations	People born with sex characteristics that do not fit typical male or female bodies
DPOs	Disabled People Organisations
Continuity of support	To ensure people with disability currently receiving services are not disadvantaged in the transition to the NDIS
Reasonable adjustment	Changes that allow people with disability to access programs or work safely
Intimate partner	A person you are in a close relationship with like a husband or wife.

Reproductive rights	Rights to decide whether to have a baby and other health treatments like ending a pregnancy or using medicine to stop getting pregnant.
Sendai Framework	An international document about understanding the risk to people in times of disaster.
Legal capacity	The legal right to make decisions or have responsibility
Reinvestment	Putting resources back into the same program.
Redress	To fix or give payment for a wrong that has been done
Contraception	Ways to stop a pregnancy
Asylum seekers	A person who has left their home country as a refugee and is seeking to stay in another country
Assisted reproductive technologies	Treatments to help people get pregnant
Habilitation	Helping people get, keep or improve skills and functioning for daily living
Rehabilitation	Getting skills, abilities, or knowledge back that may have been lost.
Functional capacity	A persons' ability of doing tasks and activities
Pro-rata	A share or percentage of something
Over representation	More people than the average

Executive Summary

The CRPD Shadow Report Working Group is called the Working Group.

The people in the Working Group are Australian Civil Society members.

The Working Group has written this Shadow Report to give the thoughts of people with disability to the CRPD Committee.

Australia is a rich country and many people have a high standard of living.

Most Australians enjoy their human rights.

The Working Group thinks Australia should be held to very high standards in the responsibilities it has to the CRPD.

The Working Group knows that Australia has made some improvements since its first review in 2013.

For example the National Disability Insurance Scheme (NDIS) and the launch of a Royal Commission into the exploitation, violence and abuse of people with disability.

People with disability still live with

- Poverty
- Disadvantage and
- Human rights abuses.

Indigenous peoples are at much higher risk of these problems.

This Report will talk about the most important issues including the need to:

- Remove the Interpretative Declarations to articles 12, 17 and 18. These stop change and let human rights violations happen. Examples of this are
- Denial of legal capacity
- Forced treatments and
- Discrimination against non-Australian people with disability trying to come to or stay in Australia;

- Make stronger anti-discrimination laws:
 - Stop intersectional discrimination
 - Make sure people with disability can make complaints about issues like disability, hate crimes and reasonable adjustment.
- Bring in national laws to stop all gender-based violence.
- Make sure CRPD rights are part of legislation, policies and programs for children and young people.
- Make sure children and young people with disability are part of consultations, decision-making processes and policy development that affect them.
- Make accessibility mandatory in housing and transport.
- Address the over-representation of people with disability in the criminal justice system.
- Stop keeping people with disability in prison without a reason.
- Make Auslan a national language.
- Bring in laws to make sure people with disability, including Deaf people can be part of juries.
- Make an Australian framework to protect people with disability from behaviour modification and to stop all restrictive practices.
- Stop all sterilisation and unnecessary medical procedures of people with disability and people with intersex variations without their consent.
- Have a national plan to close all institutions.
- Improve community based housing and support options for people with disability.
- Take urgent action on discrimination against parents with disability and focus on the high rate of taking children from parents with disability.
- Make a national action plan with a legal framework for inclusive education
- Make a national disability employment plan to get people with disability, especially women, out of separated jobs and into mainstream jobs with equal pay.
- Change restrictions for the disability pension (DSP) and increase support payments (Newstart) to make sure everyone has a good standard of living.
- Include people with disability in decision making and implementation and checking of the CRPD in agreement with General Comment 7.

Response to List of issues prior to reporting (LOIPR)

Articles 1- 4 - Purpose and general obligations

1. There is no legal framework for the protection of human rights in Australia.
The CRPD has not been fully included into law.

The areas of rights and discrimination cover less in Australia than under international human rights law.

The **Disability Discrimination Act 1992** (DDA) and State/Territory anti-discrimination legislation have some rights under the CRPD but not enough.

Australia's Interpretative Declarations on CRPD Articles 12, 17 and 18

- Stops how the CRPD can be used
- Stops change and
- Allows human rights violations including the denial of legal capacity.

2. There are no legal frameworks to make sure people with disability, including children are included in the implementing and monitoring the CRPD in Australia.

Governments do not understand the important role of Disabled Peoples Organisations (DPOs), in line with General Comment 7.

Funding for DPOs and organisations representing people with disability (DROs) is

- Competitive
- Limits participation in international human rights activities and
- Has been reduced since the last reporting period.

The **National Disability Advocacy Program** (NDAP) was checked in 2016.

Recommendations and changes have not been implemented.

Many State and Territory Governments are reducing or stopping funding for independent disability advocacy because they think the **National Disability Insurance Scheme (NDIS)** will fix issues for people with disability.

There is not enough funding for disability advocacy across the country.

People with disability and independent reviews have both recommended advocacy funding be given back to areas where it has stopped or been reduced.

3. The **National Disability Strategy 2010-2020 (NDS)** is the national policy framework for Australian governments to meet their responsibilities under the CRPD.

The NDS is being reviewed so a new 10 year plan can start.

The final Implementation Plan under the NDS has not been released and only 2 progress reports have been written.

The NDS

- Has no actions and measurable outcomes to fix human rights violations
- Does not have enough to implement, monitor and evaluate across policy areas
- Is not accountable
- Does not collect data on groups such as women and children with disability.

The Department of Social Services (DSS) is responsible for the NDS.

A Senate Enquiry and DPOs have asked the Australian Government to start high level management of the NDS by the Department of Prime Minister and Cabinet.

These recommendations have been refused by Government.

4(a) The NDIS hopes to support 460,000 people with disability in Australia.

The assessment criteria for getting into the NDIS is in the **NDIS Act 2013**.

At the end of 2018 only 244,653 people had an NDIS approved plan.

The planning process for NDIS participants is

- Difficult
- Confusing and
- Is not clear.

Many NDIS participants do not know their rights and options.

People with disability have said that NDIS planners

- Develop plans that do not meet their needs.
- Are making decisions that they are not trained to make.

There have been long delays in getting plans, reviews and other information from the **National Disability Insurance Agency (NDIA)**.

Some plan reviews have large decreases in participant funding.

People are having trouble accessing the NDIS including

- People with psychosocial disability
- Indigenous people with disability
- Culturally and linguistically diverse (CALD) people with disability
- Women and children with disability
- LGBTIQ+ people with disability
- People with intellectual disability and
- People in remote areas.

These people are most at risk of poor outcomes.

The NDIA is not putting the participant at the centre of their plan.

Some NDIS participants are left without services and care because of funding differences between the NDIA and other government services.

The percentage of female participants remains at less than 37%.

DPOs have called for the development of an **NDIS Gender Strategy**.

People with disability are worried not enough money is being provided to people with disability through the NDIS.

Payments will be \$1.6 billion less in 2019-20 because moving people to the scheme has been slow.

People with disability say this is because of problems accessing the scheme and long waiting times to receive supports.

All funds not spent should be used to fix the scheme's problems.

There is no national plan to increase staff even though there is a need for 70,000 more disability workers by 2020.

4(b) People with disability over the age of 65 years are not able to access the NDIS.

They rely on an age care system that does not have the same support and does not have staff trained in specialist disability support.

Funding for a number of mental health support programs has been taken away to use this as part of the NDIS.

It is not known what supports will be available for people with psychosocial disability who do not meet the NDIS eligibility criteria.

People using disability support programs who are not eligible for the NDIS may no longer receive support.

The government decided to provide continuity of support through disability services not in the NDIS.

This means there is confusion and doubt about what services will continue to be provided and/or funded.

Some disability supports are not being provided because the responsibilities of different levels of government is not clear.

The national **Information, Linkages and Capacity Building** (ILC) program started in 2017 and State and Territory Governments started removing current ILC-type activities.

ILC is short-term and project focused.

It does not have enough funding to create accessible and inclusive mainstream communities or to build capacity of people with disability.

- 4(c) There are not enough opportunities for people with disability and their representative organisations to monitor and assess the NDIS.

NDIS Quarterly Performance Reports do not include the experiences or feedback from people with disability.

People with disability need better public reporting of NDIS review processes.

The Joint Standing Committee on the NDIS has recommended that the NDIA work with people with disability in the growth and review of its plans and guidelines.

Recommendations

That Australia:

- Take away the Interpretative Declarations on CRPD Articles 12, 17 and 18.
- Include people with disability and representative organisations in the development and implementation of legislation and policies to implement the CRPD.
- Make sure representative organisations of people with disability have enough funding and resources to participate in implementation and monitoring activities.
- Make sure all people with disability have independent advocacy to make sure their human rights and important freedoms are known under the CRPD.

Make sure the new NDS has

- Enough funding and resources.
 - Intersectional and accountable framework
 - Measurable outcomes
 - Separate data across all policy areas.
-
- Start an independent high level Office of Disability Inclusion to drive the NDS across government and to make sure it fits in with the CRPD.
 - Deal with the unfairness in the NDIS for marginalised groups and develop an NDIS Gender Strategy.
 - Change the NDIS Act to include the participation of people with disability and their representative organisations.

Article 5 - Equality and non-discrimination

5. More than 75% of people with disability have had to deal with discrimination because of their impairment.

There are major gaps in the protection of human rights for people with disability because Australia does not have a federal Charter of Rights or Human Rights Act.

The current anti-discrimination legislation Australia has does not protect against systemic and intersectional discrimination and disability hate crimes.

DPOs and other groups cannot bring complaints under the DDA for people with disability.

The denial of reasonable adjustment is a form of discrimination under the DDA.

In a recent court case a person with disability had to show that the denial of reasonable adjustment was caused by their impairment for it to be proved to be discrimination.

This means the DDA did not work in the dealing with the denial of reasonable adjustment.

Recommendations

That Australia:

- Make a Human Rights Act that has responsibilities for Australia under the CRPD and other human rights treaties.
- Make anti-discrimination laws better on intersectional discrimination.
- Allow DPOs and advocacy organisations to represent people with disability in complaints
- Allow complaints about abuse and hate crimes based on disability.
- Change the DDA to make sure people with disability can make complaints about denial of reasonable adjustment.

Article 6 - Women with disabilities

6. There is no national legislation to stop all gender based violence.

The CRPD Committee and other United Nations groups have recommended Australia makes laws about gender based violence.

The **National Plan to Reduce Violence against Women and their Children 2010-2022** is Australia's framework to stop violence against women.

The National Plan only talks about sexual assault and domestic/family violence from an intimate partner.

It hides violence in areas where women are more at risk.

These include the

- Law
- Culture and attitudes
- Reproductive rights violations and
- Many places where women with disability face violence.

Women with disability are not included in national awareness campaigns about violence against women.

The main tools used to collect data do not include women with disability.

Australia's national service to focus on and stop violence against women is through its **1800RESPECT** service.

This was started in 2010 under the **National Plan** to give private counselling, information and a referral service.

1800RESPECT supports people who face 'domestic' and 'family' violence and sexual assault from an intimate partner and/or spouse that happens in the family.

This means a lot of women with disability cannot use the service.

There have been changes to support and services to women with disability but these have been mostly time limited or one-off programs.

They need to be reliable and inclusive of everyone.

Funding has been given to large for-profit companies and other government agencies with no funding given to DPOs.

These companies do not have experience or understand the barriers to support women with disability.

Women with disability are not included to make policies about the rights of women and gender equality.

Women with disability are not included in the monitoring of the implementation of **Convention on the Elimination of all Forms of Violence against Women (CEDAW)**.

There is no government support to allow women with disability to go to or be part of the **Commission on the Status of Women (CSW)**.

Recommendations

That Australia:

- Develop national legislation to stop all gender-based violence.
- Make sure the National Plan to Reduce Violence against Women and their Children includes all areas and all perpetrators of such violence.
- Change the data tools to make them better at collecting data about violence against women with disability
- Make sure gender-based violence services include all women and girls with disability.
- Give funding and support to DPOs to focus on violence against women with disability.
- Support organisations and women with disability to be part of all plans to promote gender equality.

Article 7 - Children with disabilities

7(a)(b) There are no policies or programs on promoting the rights of children with disability.

Children with disabilities are not supported to have a voice on things that worry or matter to them.

Policies for children with disability often focus mostly on risk.

The 'best interests of the child' principle has no nationally agreed definition.

This means the states and territories all do things differently.

The **National Framework for Protecting Australia's Children 2009-2020** is the framework to ensure the safety and wellbeing of children.

Children with disability

- Are not a focus in the Framework
- Are not included in other concerns about child welfare in the Framework

Actions about disability in the Framework are not child-centred.

The Framework finishes in 2020.

There is no new national Framework being developed.

A National Children's Commissioner was chosen in 2013 but no work has been done that describes, investigates, promotes or protects the rights of children with disability.

7(c) Australia does not have a way to collect data about children and young people with disability.

Data about out of home care and national child protection does not identify disability.

7(d)(e) The National Principles for Child Safe Organisations was accepted by the Council of Australian Governments in 2019.

The Principles talk about having a way to make organisations safe for children but they are voluntary.

Indigenous children are

- 10 times more likely to be in out-of-home care and
- 9 times more likely to be on care and protection orders than other children.

There is not enough culturally suitable support for Indigenous children with disability and their families.

Recommendations

That Australia:

- Include the CRPD rights and the 'best interest of the child' principle into legislation, policies and programs about children and young people.
- Develop plans and ways to make sure children and young people with disability can be part of consultations, decision-making processes and policy development.
- Focus on the many Indigenous children in out-of-home care placements and on care and protection orders.
- Fund and resource culturally suitable and local community owned support for Indigenous children with disability.

Article 8 - Awareness raising

8(a)(b) There is no national plan to raise awareness of the rights of people with disability.

The government promotes disability awareness on International Day of Persons with Disability but activities on that day are not always about human rights for people with disability.

The National Disability Awards were stopped in 2018.

There was no consultation about this.

Several national awareness raising ideas have had funding cut since the last reporting period.

The **NDS Second Implementation Plan (2015–2018)** said that ‘Communication activities’ needed ‘increased national effort’.

There is no information about action on this.

A review of the NDS in 2018 found that awareness can be improved by promoting awareness and supporting public awareness campaigns.

8(c) There is no plan or funding for people with disability to be included in awareness-raising campaigns and strategies through representative organisations.

Recommendations

That Australia:

- Develop a national government plan to promote positive images and human rights of people with disability in line with the CRPD.

Article 9 - Accessibility

9. There have been 3 reviews of the **Disability Standards for Accessible Public Transport (2002)**.

Each review recommended a national framework.

In the framework the government need to say if the standards were being followed.

The Government has not done anything about this recommendation.

Accessible transport remains a major problem for people with disability.

It is not clear who is responsible for making changes to the Disability (**Access to Premises - Buildings) Standards 2010**.

Information about if the Standards are being followed is not collected in the same way in different states and territories.

There is not enough understanding and awareness of the Standards.

Lots of buildings are still not accessible.

The **National Standards for Disability Services (2013)** are not covered by the DDA.

Monitoring and compliance is done by independent group.

There is no public reporting on service compliance with the Standards.

10. The DDA and the **NDS** are the main legislative and policy framework for increasing equal access for people with disability.

They have not changed enough as many areas are still not accessible such as

- transport
- the built environment
- housing
- information and types of communications

11. There are no national access requirements for housing.

There are only targets for new homes called the **Liveable Housing Design Guidelines**.

This means only 5% of new housing will meet the Standards by 2020.

Regulatory intervention through the **National Construction Code** is needed to make a real change.

Recommendations

That Australia:

- Start and legislate a national framework for reporting about standards being met: **Disability Standards for Accessible Public Transport; the Disability (Access to Premises - Buildings) Standards and the National Standards for Disability Services**.
- Change the National Construction Code so that all new and improved housing have to follow guidelines about access
- Find more ways to meet the accessibility responsibilities of CRPD Article 9.

Article 10 - Right to life

People with disability die up to 20 years earlier than those without disability.

Dying early affects Indigenous people with disability more.

The rate of disability for Indigenous people including children is 2 times as high as other people.

Indigenous men die 10.6 years earlier than others and women die 9.5 years than others.

Indigenous children are 2 times more likely to die before the age of 5 than other children.

Suicide remains the leading cause of death in people aged 15 to 44 years.

This is more than 8 deaths by suicide each day.

The suicide rate amongst Indigenous people is more than 2 times the national rate.

In 2017 suicide was the leading cause of death in Indigenous children aged 5-17.

Indigenous children aged 10-14 die of suicide at 8.4 times the rate of non-Indigenous children.

A lot of people with disability have suicidal thoughts and this is mostly because of a lack of supports, poverty, and isolation.

People with intellectual disability die up to 26 years earlier than other people.

They are 2 times as likely to die from a preventable death.

The rate of preventable and early deaths of people with disability in care settings is very high.

Recommendations

That Australia:

- Work with Indigenous peoples to develop actions to fix the high rate of suicide especially in children.
- Make sure the **National Mental Health and Suicide Prevention Plan** includes actions for people with disability.
- Make sure training of health professionals includes education about human rights of people with disability especially the right to life and access to proper care and treatment to continue life.

Article 11 - Situations of risk and humanitarian emergencies

12. There are no nationally reliable emergency management standards for people with disability during emergencies.

The Department of Home Affairs is responsible for reporting against the Sendai Framework.

It is also responsible for making sure implementation works at a national level but people with disability are not part of the consultation process.

The effects of climate change are making it worse for people with disability especially Indigenous people with disability in remote areas socially and economically.

Recommendations

That Australia:

- Start a system to include people with disability in the implementation and monitoring of the Sendai Framework.

Article 12 - Equal recognition before the law

13(a) The **'Equality, Capacity and Disability in Commonwealth Laws'** report was given to Government in 2014.

A main recommendation asked for better laws and frameworks about individual decision-making.

This was to be led by the **National Decision-Making Principles and Guidelines**.

It wanted supported decision-making systems based on what the person with disability wants.

5 years later the government has still not answered to the Report.

13(b) There is no training on the recognition of legal capacity of persons with disability.

Australian laws, policies and practices, including guardianship, estate management and mental health laws do not recognise people with disability as equal persons before the law or their right to the idea of legal capacity.

Australia made an Interpretative Declaration to say its laws comply with article 12.

It actually breaches and/or fails to achieve CRPD responsibilities as stated in General Comment No. 1.

Recommendations

That Australia:

- Change or cancel any law, policy, practice or custom which rejects or reduces recognition of any person with disability as a person before the law.
- Apply the recommendations from the **'Equality, Capacity and Disability in Commonwealth Laws'** report.

Article 13 - Access to justice

14. There is no separate data on the number of persons with disability in the criminal justice system.

The data that is available shows lots of people with cognitive and psychosocial disability are in prison.

A large number of Indigenous young people especially with disability are in the youth justice system, including in detention.

Indigenous people with disability are 14 times more likely to be imprisoned than the rest of the population.

Indigenous women are the fastest growing prison population in Australia.

People in prison include

- 50% with a history of psychosocial disability.
- 33% have a disability.
- 30% have an intellectual disability.

People with disability are being sent to prison because there are not enough options for courts to use.

- 15(a)(b) People with disability in the justice system face major barriers

The access to justice can be difficult, harsh and unsuccessful.

Often people do not have legal assistance.

People with disability find legal and justice staff are not trained to support them.

They are often not given the same opportunities to take part in the justice system as people without disability.

People with disability are seen as

- not reliable
- not capable of giving evidence
- unable to make legal decisions or be part of legal proceedings.

This happens because of

- unfair attitudes
- a lack of support services and programs and
- a lack of adjustments to assist people.

15(c) There are no national laws about who can sit on a jury.

Deaf persons are not allowed to be on the jury in some states.

15(d) Not having access to useful justice means many people with disability are

- Left without protection
- At risk of ongoing violence
- More likely to be jailed and
- More likely to have more contact with the criminal justice system.

15(e) The report from the **2017 National Inquiry into the Incarceration Rate of Indigenous Peoples** wanted all governments to provide support for

- An independent justice reinvestment body
- Specialist Indigenous peoples sentencing courts and
- A national inquiry into child protection laws and processes affecting Indigenous children.

The Australian Government has not responded to the report.

Recommendations

That Australia:

- Develop national Disability Justice Strategies to ensure that people with disability are supported to access the same legal protections and redress as the rest of the community.
- This needs to be done in consultation with people with disability through their representative organisations.
- Offer gender and culture specific programs and community based sentencing options instead of prison.
- They need to be joined with flexible support packages and social support programs to stop adults with disability becoming part of the criminal justice system.
- Make sure training programs for police, prison officers, lawyers, judicial officers and court staff include how to work with people with disability.
- Focus on the problem of too many Indigenous young people in the youth justice system.
- Put into action the recommendations from the **National Inquiry into the Incarceration Rate of Indigenous Peoples.**

Article 14 - Liberty and security of the person

16. There are big issues with legislative, policy and practice frameworks.

This causes detention and forced treatment of people with disability.

This is experienced mostly by

- Indigenous people with disability
- People with intellectual disability and
- People with psychosocial disability.

16(a) There are people in prisons, psychiatric units and forensic detention services under mental health laws.

These people are mostly

- Indigenous
- have intellectual or cognitive and/or psychosocial disability
- have cultural communication barriers and/or
- have hearing loss.

There are at least 100 people in prison who have not been convicted of a crime by a court.

At the 2016 Universal Periodic Review (UPR) Australia said it would make way the criminal justice system treats people with cognitive disability better.

People with cognitive disability are often found by the court to be 'not fit to plead' or 'found not guilty by reason of mental impairment'.

In 2016 Australian Governments put forward the Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment.

There has not been any action on these principles 3 years later.

16(b) Australia's Interpretative Declarations on CRPD Articles 12 and 17 allow guardianship and mental health laws take away people's rights because of disability.

People can have forced medical treatments both in institutions and in the community.

Some reviews and changes to these laws have happened but many people with intellectual, cognitive and psychosocial disability still face serious violations of their human rights.

17. The Australian Senate presented its Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in 2016.

The Government has not responded to this report.

Recommendations

That Australia:

- Stop using prisons for people with disability who have not been convicted of a crime.
- Consult with people with disability on the Draft National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment and on other ways to stop people with disability out of detention.
- Use the recommendations from the 2016 Senate Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment.
- Change or stop any law, policy, practice or custom that keeps people in detention because of their disability and stop forced medical treatments on people with disability.
- Make sure that legislative, administrative and policy frameworks are in line with the CRPD.

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

18(a) Australia has not cancelled legislation, policies or practices about behaviour modification or restrictive practices against people with disability including children.

Many people with disability including children are

- Given psychotropic medication
- Physically restrained
- Secluded.

This is done under 'behaviour management' policies and practices in

- Schools
- Disability and mental health facilities
- Hospitals
- Aged care settings.

Children with disability are not protected from behaviour modification and restrictive practices in schools.

Children with disability are being held and restrained in adult detention centres and experience major violations of their human rights.

The use of forced treatments and restrictive practices on people with psychosocial disability has increased in recent years.

Data about a type of treatment called electroconvulsive 'therapy' (ECT) shows it is forced on women 3 times more than men.

18(b) The **National Framework for Reducing and Eliminating the Use of Restrictive Practices (2014)** and the **NDIS (Restrictive Practice and Behaviour Support) Rules 2018** have major limits and still let States and Territories to allow the use of restrictive practices.

They focus on when and how to use restrictive practices but do not stop their use.

In 2017 Australia ratified the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** and started Australia's National Preventive Mechanism (NPM).

The Commonwealth Ombudsman is the NPM Coordinator.

It is responsible for inspecting detention centres and some closed psychiatric and disability centres.

People with disability are not involved in making it an inclusive NPM.

Australia has not done the things recommended to protect people with disability by the Committee Against Torture in their 2014 report.

Recommendations

That Australia:

- Stop detaining and restraining children with disability in adult detention centres.
- Make laws and policies to protect people with disability from behaviour modification and stop restrictive practices across all areas.
- Start and fund participation of people with disability in the design, development, implementation and monitoring of disability inclusive NPMs.
- Apply the recommendations about people with disability from the Committee Against Torture's report.

Article 16 - Freedom from exploitation, violence and abuse

19(a) The **Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability** was announced in April 2019.

The Terms of Reference includes all forms of violence and abuse against people with disability in all settings.

People with disability are worried that some Commissioners have held senior positions within service systems that will be investigated as part of the Commission.

This means there will be conflicts of interest.

There is also no redress or compensation scheme in the Terms of Reference.

There is no national process to

- Record the rate, frequency, size, type, causes and effect of violence, abuse, exploitation and neglect against people with disability.
- Report on data of the experiences of people with disability
- Find and fill data gaps.

More than 33% of people with disability experience violence or abuse.

Almost 50% of people with disability feel unsafe where they live.

19(b) There is no national system for people with disability who have experienced violence, abuse, exploitation and neglect to complain and to get support and help

The **NDIS Quality and Safeguards Commission** was started in July 2018.

It is only for NDIS participants which is less than 10% of people with disability.

By February 2019 the Commission had

- 1,459 reportable incidents
- 18 service providers under investigation
- More than 600 complaints.

19(c). Specialist trauma counselling services funded by the Australian Government only provide telephone counselling.

This is inaccessible for many people with disability especially people in institutions.

Recommendations

That Australia:

- Make sure there is a redress scheme in the **Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability**.
- Review the conflicts of interest of Commissioners chosen for the Royal Commission.
- Remove Commissioners who have worked in service systems that will be investigated.
- Start a national and accessible complaint and redress means for all people with disability who experience violence, abuse, exploitation and neglect in all settings.

Article 17 - Integrity of the person

20(a) Forced sterilisation of people with disability especially women and girls is allowed by Australian Governments.

UN treaty bodies, the Human Rights Council and international medical groups have wanted Australia to pass legislation to stop forced sterilisation.

State governments still control forced sterilisation of women and girls with disability.

Australia only focuses on regulation and guidelines rather than banning the practices.

The Interpretative Declaration to CRPD article 12 means that it is legal to sterilise children and adults with disability against their will if they 'lack capacity' and the procedure is in their 'best interest'.

Forcing women with disability to take contraception happens a lot and is not monitored or reviewed.

Forcing men and boys with disability to have treatment to control sex drive and function is not controlled and happens often.

20(b) Surgery and other medical treatments on infants and children with intersex variations happens regularly.

These are aggressive and permanent treatments and known in General Comment 3 "as cruel, inhumane or degrading treatment or punishment".

A Senate Committee report in 2013 and the CEDAW Committee in 2018 had recommendations to stop medical treatment on intersex children until consent can be given.

These recommendations have not been applied.

Recommendations

That Australia:

- Develop a national legislation to stop the sterilisation of children and adults without their consent.
- Stop the administration of medication and treatments to stop periods and sex drive and function.
- Develop a national legislation to stop unnecessary medical treatments including surgery on intersex children and adults without their consent.

Article 18 - Liberty of movement and nationality

21. The Interpretative Declaration on Article 18 protects Australia's current legislation on handling visa applications.

Australia's migration arrangements and treatment of disability do meet equal protection responsibilities under CRPD Article 5.

People applying for a visa must meet the health requirements but this can discriminate against people with disability.

People with disability are seen as a cost problem.

Children or family members with disability are seen as a health risk and this can stop the child or family from coming to or staying in Australia.

Asylum seekers or people on non-permanent visas cannot apply for the NDIS.

People cannot get the support pension until they have lived in Australia for 10 years.

This means migrants with disability are at a higher risk of human rights violations.

Australia's asylum seeker laws, policies and practices cause

- Violations of people rights including torture and ill-treatment;
- Serious physical and mental pain and suffering
- Life-long disability and impairments.

More than 33% people in detention have a psychosocial disability.

Female asylum seekers experience rape and sexual abuse but there is no independent investigation tool.

When incidents are reported no investigation or punishments happen.

Recommendations

That Australia:

- Remove the exemption in the DDA to make sure Australia's migration arrangements and treatment of disability meet equal protection responsibilities under CRPD Article 5.
- Improve justice for migrants and refugees with disability applying for a visa.
- Remove the 10 year wait for migrants to access support pensions.
- End mandatory detention of asylum seekers.

Article 19 - Living independently and being included in the community

22(a) There is no national framework to close residential institutions.

More than 5% of people with disability live in accommodation like group homes with another almost 3% living in other supported accommodation.

People with disability in residential care die 25 years earlier than everyone else.

22(b) Many people with disability including people supported by the NDIS who need social and personal support are forced to live in

- Institutions
- Residential care
- Aged care homes.

More than 5% of younger people in aged care homes are not able to get NDIS funding.

Many people with disability do not have access or money for the supports they need.

People with disability do not have access to suitable, accessible and affordable housing.

The NDIS has not fixed this.

A lot of NDIS participants will not have their housing needs met in the first 10 years of the scheme.

There are more than 200,000 people on waiting lists for public and social housing.

Social participation outcomes for people with disability have got worse since the last reporting period.

Many people with disability have feelings of major social isolation.

Almost 16% of people with disability are not able to leave their home as much as they want because of the attitudes and expectations of other people.

Recommendations

That Australia

- Develop a national plan to close all residential institutions
- Develop community based housing and support options for people with disability.
- Increase the range of accessible and affordable public and social housing to make sure people with disability have independence and freedom.
- Make sure people with disability are able to choose where and who they live with.

Article 20 - Personal mobility

The NDIS has helped some people with disability get better mobility and accessibility supports and equipment but not everyone.

Indigenous people with disability in remote areas cannot use the equipment they have because of

- inaccessible houses
- no footpaths
- no services
- isolation.

More than 50% of people with disability have problems moving through Australia and overseas because of their disability.

There are limits to how long a person can travel overseas and keep the **Disability Support Pension (DSP)**.

Less than 30% of people with disability are able to access the public and private spaces that they want.

Recommendations

That Australia

- Fix physical barriers that stop the use of aids and equipment in remote areas in consultation with Indigenous people with disability, their representative organisations and communities.
- Change international travel restrictions for people with disability on the DSP.

Article 21 - Freedom of expression and opinion, and access to information

23(a) Australian Sign Language (Auslan) is not accepted as a national language.

23(b) There are no Information and Communication standards to make sure information is fully accessible.

There are no minimum standards to make sure information and services are accessible including web accessibility.

23(c) No communication support and limited access to information means people with disability have no choice and control.

Government information is not accessible or is hard to understand for more than 67% of people with disability.

Recommendations

That Australia

- Make sure Auslan is accepted as a national language.
- Develop Information and Communication Standards to make sure information is fully accessible and communication supports are always available.
- Develop a 'Plain Writing Act' that requires government agencies to use clear communication that everyone can understand.

Article 23 - Respect for home and the family

A parent with disability is 10 times more likely than other parents to have a child removed from their care because of their disability.

The Australian Council of Human Rights Agencies (ACHRA) recommended the government take action on discrimination against parents with disability in 2013.

This recommendation has not been applied.

More than 15% of people with disability have trouble accessing support services to help with being a parent.

People with disability experience gross violations of their sexual and reproductive rights.

Women with disability and LGBTIQ+ people with disability experience major discrimination in accessing assisted reproductive technologies.

Recommendations

That Australia:

- Orders a national review into the legal, policy and social supports systems that allow babies and children being taken from parents with disability.
- Make sure women and LGBTIQ+ people with disability have equal access to assisted reproductive technologies.
- Make sure there is inclusive gender and culturally specific parenting and family supports for parents with disability.

Article 24 - Education

24. There is no national data on the suspension, restraint and seclusion of students with disability.

Evidence shows high rates of bullying, restraint and seclusion.

Reports of children with disability being put in 'withdrawal spaces' in fenced spaces, cages or cupboards is increasing.

25. There is no framework for inclusive education that complies with Article 24 and CRPD General Comment 4 including the **Disability Standards for Education (2005)**.

Only 36% of people with disability aged 15-64 years finish secondary school compared to 60% of people without disability.

28% of school aged people with disability do not attend school at all.

Students with disability often experience

- Discrimination
- No support
- Poorly trained teachers
- Culture of low expectations.

75% of people with disability have difficulties at school.

This is often because of the trouble people have with

- Fitting in socially
- Communication difficulties
- Learning difficulties.

The number of Indigenous students finishing school is much lower than non-Indigenous students.

26. Separation of students with disability has increased over the last 10 years.

Students with disability are not going to mainstream schools.

The number of students with disability attending special schools increased by 35% between 2003 and 2015.

A child with disability gets more funding if they attend a special school rather than a mainstream school.

The Committee on Economic, Social and Cultural Rights expressed concern about the increase in segregated education in May 2017.

It recommended that Australia take action to make sure children with disability have access to inclusive education.

Australia is not upholding its human rights obligations by asking the Committee to agree “that States Parties may offer education through specialist classes or schools consistently with article 24”.

Recommendations

That Australia:

- Develop a national Action Plan for Inclusive Education that includes a framework that meets the terms of Article 24 and CRPD General Comment 4.
- Fix the increasing rate of separation of students with disability and make sure there is enough resources for inclusion in mainstream schools.
- Start culturally owned and operated programs to increase the education of Indigenous students in consultation with Indigenous people and their representative organisations.

Article 25 - Health

27(a)(b) People with disability are 10 times more likely than people without disability to have poor health.

Over 50% of people with disability

- do not have access to health care and treatments they need
- Think health care providers do not understand their needs.

20% of people with disability do not see a doctor due to the cost.

66% do not see a dentist because of the cost.

42% of medical conditions in people with intellectual disability are not diagnosed.

There is not enough training in their health care needs.

Women with disability have trouble getting health information and services.

Especially in sexual and reproductive health and cancer screening services.

The illness and death rates for Indigenous people with disability are much worse than for others.

More than 700,000 Australians have a severe mental illness in any 1 year.

Only 64,000 people with psychosocial disability will be eligible for the NDIS.

Mental health services do not have enough resources for the needs of people.

People with disability experience human rights violations that cause bad health like

- Forced medical treatments
- Lack of freedom
- Restrictive practices
- Denial of legal capacity
- Other forms of violence.

There is no national tool to collect data on the health of people with disability.

There is not enough data on the use of mainstream health services by people with disability.

Health-related data does not identify if a person has disability.

Recommendations

That Australia:

- Bring in actions to fix the poor health outcomes of people with disability especially
 - Indigenous people
 - Women
 - People with intellectual disability
 - People with psychosocial disability.
- Fund a national network of intellectual disability health specialists.
- Provide better funding for peer managed mental health services and programs to support people with psychosocial disability with NDIS funding and without.
- Develop a national tool to collect separate data on the health of people with disability.

Article 26 - Access to habilitation and rehabilitation

28(a) The implementation of the NDIS has changed how people with disability access services.

The differences between the NDIS and mainstream service systems has created barriers. These barriers stop care for people with disability including habilitation and rehabilitation supports.

Changing from state based funded programs to the NDIS has made service gaps worse and reduced community-based therapy services especially for people who do not receive NDIS funding.

The way the NDIS and mainstream services work together is led by the **Principles to Determine the Responsibilities of the NDIS and Other Service Systems.**

These Principles are often not clear.

This means there are issues between services and about funding that can mean people with disability end up with less or no services.

The Principles let people with disability in prisons and detention to receive disability supports but it is not clear how or when this support will happen

The focus on permanent diagnosis means lots of people with disability cannot get support from the NDIS.

The assessment of functional capacity and needs should be used to decide if someone is able to get support from the NDIS.

Good support through the NDIS can help people with cognitive and/or psychosocial disability and Indigenous people with disability stay out of prison but the NDIS is stopped when a person is in custody.

This stops habilitation or rehabilitation support to help people fit back into the community.

Forced treatment is allowed under guardianship and mental health laws in Australia.

Recommendations

That Australia:

- Make sure people with disability in prison and other detention can use their NDIS package.
- Change legislation to fix access the NDIS and make sure assessments are based on functional capacity and needs not a medical diagnosis.

Article 27 - Right to work

29. The rate of people with disability without a job is double that of the general population.

The number of people with disability with jobs has dropped by 3.0% in the past 10 years while the number of working age people without disability with jobs increased by 23%.

Only 9% of people with disability have the same job opportunities as other people.

Complaints about discrimination in jobs are a large part of complaints made to anti-discrimination agencies.

The review of the National Employment Framework was cut to only focus on the Disability Employment Services (DES) program.

It has not provided the change needed.

DES provide poor job outcomes for people with disability.

29(a) Jobs for people with disability through Australian Disability Enterprises (ADEs) allows employers to pay people with disability lower wages than other people.

Less than 1% of people with disability working in ADE's move to mainstream jobs.

The Business Services Wage Assessment Tool (BSWAT) has been stopped but there are still other wage assessment tools being used.

The Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015 gave a one-off payment of \$100 or more to some ADE employees with an intellectual disability.

This Scheme ended in 2018 and did not include all ADE employees or people with disability paid under the BSWAT after 2014.

29(b) The Supported Wage System (SWS) allows people with disability to be paid a pro-rata percentage of the minimum wage for their business.

The pay is worked out according to a person's ability.

29(c) There has been no increase in women with disability having job in the last 20 years.

Men with disability are much more likely to get a job than women with disability.

There are no policies or programs that help women with disability get jobs or take away barriers that stop them getting jobs.

30. The recommendations from the 2016 Willing to Work Inquiry report have not been applied.

The Inquiry made recommendations to change laws and actions that need to be taken to stop job discrimination.

Recommendations

That Australia:

- Develop a national disability employment strategy that includes recommendations from the Willing to Work Inquiry and actions to increase jobs and take away barriers for people with disability especially women.
- Put into action a change from separated work to training and skill building opportunities that will help people move into mainstream jobs and equal pay.
- Take on actions to make sure people with disability can access employment services that meet their needs and are focused on long-term results.

Article 28 - Adequate standard of living and social protection

31. 45% of people with a disability live in poverty.

Over 11% of people with disability experience constant disadvantage.

This rate is much higher for Indigenous people with disability.

61% of people with disability cannot pay for their basic needs with their pay.

42% of people with disability of working age rely on Government pensions.

The average weekly pay for people with disability is half that of people without disability.

Pay, pension and tax systems in Australia do not acknowledge the cost of disability that people with disability have throughout their lifetime.

The **Disability Support Pension** (DSP) is not enough to support people with disability.

Around 30% of people with disability are now receiving the much lower Newstart unemployment payment due to changes in who is eligible for the DSP.

The number of people receiving the DSP has dropped but there is not more jobs or financial security for people with disability.

People with psychosocial disability are the fastest growing group accessing the Specialist Homelessness Services

The number has doubled in the past 5 years and they are mostly women with psychosocial disability.

Family violence and psychosocial disability are now the most common causes of homelessness.

97% of public housing was full in June 2018.

29% of people living in public housing are on the DSP and spend 33% of their money on housing.

Almost 81% of people with disability are living in public housing that does not meet their needs.

Many people with disability do not have enough money to be able to rent on the private market or to buy their own homes.

Recommendations

That Australia:

- End the restrictions for the DSP and increase the rate of Newstart and other support payments to make sure people with disability have a suitable standard of living.
- Prioritise the right to a suitable standard of living and social protection for Indigenous people with disability.
- Focus on homelessness for people with psychosocial disability and women with disability.

Article 29 - Participation in political and public life

- 32(a) The 'unsound mind' terms in electoral legislation means some people especially people with cognitive and psychosocial disability do not have the right to vote.
- 32(b) The right of people with disability to vote on their own and in private in elections does not happen as there are too many barriers to voting.

Recommendations

That Australia:

- Uphold the right of people with disability to vote in elections on an equal basis with others by removing the 'unsound mind' terms in the Electoral Act 1918 and/or bring in different legislation to make sure that people with disability can vote and use choice.

Article 31 - Statistics and data collection

33(a) There are no national tools to collect and report on separate data about the responsibilities included in the CRPD.

33(b) Australia has not funded an assessment of

- Women with disability
- Children and young people with disability
- Indigenous people with disability.

This was a recommendation from UN treaty monitoring bodies.

There is serious concern that without data Australia cannot meet the terms of the CRPD.

This data is also needed to monitor and evaluate the implementation of the NDS and the Sustainable Development Goals (SDGs).

Recommendations

That Australia:

- Agree to an assessment of women with disability, children and young people with disability, and Indigenous people with disability.
- Develop a national tool to collect and report separate data about the responsibilities in the CRPD.

Article 32 - International cooperation

34. Australia made a commitment to go ahead with the **2030 Agenda for Sustainable Development, to its Development for All: 2015-2020 Strategy** and its international **Indigenous Peoples Strategy 2015-2019** at the Universal Periodic Review in 2016.

An assessment of **Development for All** in 2018 recommended Australia should commit to disability-inclusive development as a human rights priority and build on improvement already happening.

There is no information on the **Development for All Strategy** after 2020.

There is no tool to include people with disability and DPOs in the implementation and monitoring of the SDGs in Australia.

Recommendations

That Australia:

- Start engagement with people with disability on the implementation and monitoring of the CRPD and the SDGs.

Article 33 - National implementation and monitoring

35. The Department of Social Services (DSS) and the Attorney-General's Department (AGD) work together to manage the implementation of the CRPD.

This means implementation sits under the NDS which is underfunded.

Recommendations from UN treaty reviews about the rights of people with disability are not included in actions in frameworks including the NDS.

A Universal Periodic Review (UPR) website page has been made by the AGD to give progress reports against UPR recommendations.

The progress reports come from government agencies but does not include information from or engagement with people with disability.

The Australian Human Rights Commission does not have enough resources to monitor CRPD implementation.

There is no official engagement with DPOs to make sure people with disability are included in national implementation and monitoring.

Recommendations

That Australia:

- Start engagement of people with disability in the implementation and monitoring of the CRPD, other human rights treaties and UPR recommendations.
- Adequately fund DPOs to be part of the implementation and monitoring of CRPD.

Endorsements - Organisations

ACT Council of Social Service (ACTCOSS)

Advocacy for Inclusion

All Means All

Australian Centre for Disability Law

Australian Council of Social Service (ACOSS)

Australian Disability + Development Consortium

Australian Federation of Disability Organisations

Australian Network for Universal Housing Design

Australian Women Against Violence Alliance

Blind Citizens Australia

Brain Injury Matters

Canberra Community Law

Centre for Disability Research and Policy, University of Sydney

Children and Young People with Disability Australia

Children by Choice

Communication Rights Australia

Community Legal Centres NSW

Council for Intellectual Disability NSW

Deafblind Association (NSW) Inc

Deafness Forum of Australia

Disability Advocacy Network Australia

Disability Advocacy NSW

Disability Discrimination Legal Service

Disabled People's Organisations Australia

Disability Resource Centre

Domestic Violence NSW

Down Syndrome Australia

Elizabeth Evatt Community Legal Centre

Engender Equality

Equality Lawyers

Family Planning NSW

First Peoples Disability Network

Gold Coast Domestic Violence Prevention Centre

Immigration Advice and Rights Centre

Intellectual Disability Rights Service

Intersex Human Rights Australia

JFA Purple Orange

Kingsford Legal Centre

Macleod Accommodation Support Service Inc

Marie Stopes Australia

National Association of Community Legal Centres

National Council of Single Mothers & their Children

National Ethnic Disability Alliance

National Mental Health Consumer and Carer Forum

National Rural Women's Coalition Ltd

NSW Council of Social Service (NCOSS)

People with Disabilities ACT (PwDACT)

People with Disabilities WA

People with Disability Australia

Physical Disability Australia

Physical Disability Council of NSW

Public Interest Advocacy Centre Ltd

Queensland Advocacy Incorporated

Queensland Collective for Inclusive Education

Queensland Voice for Mental Health

Queenslanders with Disability Network Ltd

Rape & Domestic Violence Services Australia

Rights and Inclusion Australia

Rights in Action

Save the Children Australia

Sisters Inside

South West Sydney Legal Centre

Speak Out Advocacy

Speaking Up For You inc. (SUFY)

Sussex Street Community Law Service

Sydney Queer and Disability Community

Tasmanian Council of Social Service (TasCOSS)

Tenants Union of NSW

The Foundation for Independence Recreation & Social Training Inc

The Institute for Advocacy and Leadership Development

University of Sydney's Disability Action Plan Consultative Committee

Victorian Mental Illness Awareness Council

Villamanta Disability Rights Legal Service Inc.

WA Council of Social Service (WACOSS)

Wagga Women's Health Centre

Welfare Rights Centre

WESNET

Women With Disabilities ACT

Women with Disabilities Australia

Women with Disabilities Victoria

Women's Legal Service NSW

Women's Legal Services Australia

Women's Safety NSW

Endorsements - Individuals

Individuals

Heidi La Paglia

Dr Joseph Naimo

Dr James M. Cregan

Dr Joan Beckwith (PhD)

Ken Steele OAM, Chair Consumer and Carer Mental Health Advisory Council

Emeritus Professor Odwyn Jones AO

Lyn Mahboub

Sue Boyce, former Chair of the Senate Standing Committee for Community Affairs (2013-2014)

Dr Suzanne Covich (PhD)

Greg Lynn

Professor Jaya Dantas, President of Australian Graduate Women and Graduate Women Western Australia

Dr Raelene West, RMIT University Social Researcher

Dr Christina David, RMIT University Social Researcher

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Jenny Malone, RMIT University PhD candidate

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Stephanie Gotlib

Wendy Taylor, RMIT University Industry fellow

Elizabeth Hudson, RMIT University PhD candidate