



Australian
Human Rights
Commission

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

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1 Introduction

The Australian Human Rights Commission (the Commission) welcomes the opportunity to provide a written submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission).

The Commission is Australia's National Human Rights Institution, with recognised independent status and roles in United Nations human rights fora. The Commission's purpose is to provide independent and impartial services to promote and protect human rights and fundamental freedoms. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.

The Royal Commission provides an important opportunity to prevent and redress violence, abuse, neglect and exploitation of people with disability. More generally, the Royal Commission has the potential to play a key role in upholding the equality, dignity and autonomy of people with disability and ensuring their full participation and inclusion in Australian society. Ultimately this will benefit all Australians, with and without disability.

The Commission welcomes the endorsement of a human rights-based approach in the Royal Commission's Terms of Reference. The Commission also welcomes the recognition in the Terms of Reference of the intersectional nature of discrimination and disadvantage, noting that the specific experiences of people with disability are multilayered and can be influenced by experiences associated with age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin and race.

This submission addresses Australia's implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The submission provides: an overview of the CRPD and its effect on Australian legislation and policy; and an analysis of Australia's implementation of individual articles of the CRPD. Overall, the Commission aims to provide a human rights perspective on particular issues that were not raised in its previous submissions to the Royal Commission or remain unresolved and of critical importance, and provide a number of recommendations to improve the rights of people with disability in Australia.

1.1 Engagement with the Royal Commission to date

The Commission's contribution to the Royal Commission includes attendance at hearings by Commissioners:

- Race Discrimination Commissioner Chin Tan's appearance at public hearing 29 on 27 October 2022: The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities.
- A statement issued by Disability Discrimination Commissioner Dr Ben Gauntlett on 3 December 2020 outlining the details of the Commission's 24 September 2020 submission and other relevant recommendations.
- Disability Discrimination Commissioner Dr Ben Gauntlett's appearance at public hearing 9 on 11 December 2020: Pathways and barriers to open employment for people with disability.

The Commission has made the following four submissions to the Royal Commission since its establishment:

- Response to the *Inclusive Education for People with Disability Issues Paper* (19 December 2019)
- Response to the *People with Disability and the Criminal Justice System Issues Paper* (20 March 2020)
- Response to the *People with Disability and Employment Issues Paper* (24 September 2020)
- National Preventive Mechanisms: a formal safeguard for people with disability (23 September 2022).

1.2 Need for additional time and clarity as to approach of Royal Commission

The Commission acknowledges the broad nature of the Royal Commission's Terms of Reference and the challenges for the Royal Commission in undertaking its work during a multi-year global pandemic. During this time, there have also been significant ongoing legislative and policy reviews relating to people with disability in Australia. This has meant the issues to be examined by the Royal Commission have changed over time.

People with disability, Disability Representative Organisations and Disabled Peoples' Organisations have been required to make themselves available for significant amounts of consultation and draft submissions for numerous

enquiries. Combined with the effect of the global pandemic, this has meant that already resource-constrained individuals and organisations have had a significant workload.

Territory, State and Federal Human Rights or Anti-Discrimination bodies have been similarly resource-constrained. For example, over the period of the Royal Commission, the Disability Rights Team at the Commission has had a maximum policy staffing in the team of a Commissioner and two policy staff. At material times throughout the life of the Royal Commission, the team has had one or no policy staff to assist the Commissioner with policy matters.

Given the unique circumstances of the Royal Commission, the Commission is concerned the final submission date of 31 December 2022 will prevent the critical input of people with disability into the Royal Commission's final recommendations. The interim report of the Royal Commission was released over two years ago in October 2020.¹ The interim report considered the emerging themes and key issues in general terms.

Since that time, eight leading Disability Representative Organisations have filed a joint submission on *Identified gaps in the scope of work undertaken by the Disability Royal Commission as at November 2022*.² Although some of these gaps may have been dealt with by the Royal Commission in private sessions, closing submissions to public hearings of Counsel Assisting the Royal Commission or through commissioned research, it is unclear how the views or experiences of people with disability will be considered by the Royal Commission in developing its final recommendations. For many people with disability, it can be challenging to keep up-to-date with hearing schedules and review submissions. Furthermore, it appears as though further public hearings are scheduled in 2023, beyond the final 31 December 2022 deadline for written submissions.

As a consequence, and especially given the unique operating environment the Royal Commission has been working in, the Commission submits it would be worthwhile for the Royal Commission to consider extending its call for written submissions, and releasing a further interim report with draft final recommendations and reasons for contemplating these recommendations and ask specific questions as to the proposed content and justification of the final recommendations. The Commission would be willing to comment on any proposed draft final recommendations.

Recommendation 1: The Royal Commission should release a further interim report with guidance as to its proposed final recommendations and seek specific feedback on the content of the proposed recommendations.

1.3 Summary of recommendations

Recommendation 1: The Royal Commission should release a further interim report with guidance as to its proposed final recommendations and seek specific feedback on the content of the proposed recommendations.

Recommendation 2: The Australian Government should withdraw its interpretive declaration to the Convention on the Rights of Persons with Disabilities concerning articles 12, 17 and 18.

Recommendation 3: The Royal Commission should review the actions taken by the Australian Government in response to the recommendations made by the CRPD Committee in each of the communications made under the Optional Protocol to the CRPD.

Recommendation 4: The Australian Government should implement the recommendations to reform federal discrimination laws outlined in the Australian Human Rights Commission's Position Paper, *Free & Equal: A reform agenda for federal discrimination laws*.

Recommendation 5: The Australian Government should enhance human rights protections in a federal Human Rights Act.

Recommendation 6: The Australian Government should establish an Office of Disability Strategy, which

- **sits within the Department of Prime Minister and Cabinet to increase attention given to Australia's Disability Strategy and the Convention on the Rights of Persons with Disabilities;**
- **oversees the work of departments in implementing the Strategy and ensures effective coordination between the federal and state levels;**
- **sets the terms for the Strategy's Outcome Framework, Targeted Action Plans and Associated Action Plans;**
- **is properly resourced and provided with the necessary authority to fulfil the above mandate.**

Recommendation 7: The Australian Government should bring domestic laws and practice into conformity with the principles and provisions of the CRC and CRPD, including by ensuring that effective remedies are available.

Recommendation 8: The Australian, State and Territory Governments should seek and take into account the views and experiences of children and young people with disability, and their families, when developing and

monitoring laws, policies and practices, including through consultations, interviews, forums, youth groups, advisory groups, and surveys.

Recommendation 9: Service providers that receive government funding should ensure that the service delivery systems are designed in accordance with the expressed needs of children, young people, and families with people with disabilities in them to ensure that they are able to access the services and supports they need.

Recommendation 10: Services for diagnosing disability in children and young people should be affordable, accessible, and available to diagnose in a timely manner.

Recommendation 11: The Australian, State and Territory Governments should increase awareness about the harms to children and young people caused by discrimination based on disability in the workplace, including through education and support for workplaces on how to be inclusive.

Recommendation 12: The Australian, State and Territory Governments should increase access to learning supports at school for children and young people with disabilities to help them achieve their full potential.

Recommendation 13: Children with disabilities should be provided with appropriate treatment and therapeutic support in the community. State and Territory Governments should divert children with developmental delays or neurodevelopmental disorders or disabilities from involvement in the youth justice system.

Recommendation 14: State and Territory Governments should ensure that children are screened for all types of disability, including Foetal Alcohol Spectrum Disorders (FASD), in early childhood. Disability screening and treatment should be a priority for all children involved with the child protection system and at early stages of youth justice involvement.

Recommendation 15: The Australian, State, Territory and Local Governments should develop a series of long-term interventions, co-designed with people with disability, aimed at removing attitudinal barriers that prevent people with disability realising their human rights to fully participate in everyday life on an equal basis to others in a manner consistent with Article 8 of the CRPD.

Recommendation 16: All States and Territories should be required to adopt the Liveable Housing Design Standard minimum accessibility provisions in the National Construction Code for new homes and apartments.

Recommendation 17: The Australian Government should implement the recommendations made by the Australian Law Reform Commission in the 2014 report, *Equality, Capacity and Disability in Commonwealth Laws*.

Recommendation 18: The Australian Government should collaborate with State and Territory Governments, in the implementation of the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness to:

- **include people with disability as a priority cohort**
- **align the agreement with Australia's Disability Strategy.**

Recommendation 19: The Australian Government should develop a national poverty reduction plan that addresses disability as a cross-cutting issue.

Recommendation 20: The Australian Government develop a housing Targeted Action Plan under Australia's Disability Strategy, which should include considerations for:

- **security and different types of tenancy**
- **design**
- **location**
- **availability**
- **affordability**
- **accessibility.**

Recommendation 21: The Australian Government work with State and Territory governments to develop an action plan under Australia's Disability Strategy committing to:

- **all people with disability having access, on an equal basis with others, to affordable, accessible, quality and culturally sensitive health services, including sexual and reproductive health and mental health services, with particular consideration of people in rural and remote areas and Aboriginal and Torres Strait Islander peoples with disability**

- all health care services and programmes being based on a human rights approach to disability, are non-discriminatory and seek informed consent prior to any medical treatment
- health-care practitioners being provided with training on the human rights-based approach to disability to enhance their capacity to provide accessible, quality health care to people with disability.

Recommendation 22: The Australian Government redouble their efforts to achieve the Closing the Gap targets, including by adequately funding the National Aboriginal and Torres Strait Islander Health Plan, the Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability and targeting programs to address the social determinants of health.

Recommendation 23: The Australian Government, and State and Territory governments, adopt uniform legislation prohibiting, in the absence of the free, prior and informed consent of the person concerned:

- a. the administration of contraceptives and abortion procedures on women and girls with disability
- b. the sterilisation of adults and children with disability.

Recommendation 24: The Australian Government review and amend the Family Law Rules 2004 relating to Medical Procedure Applications so that they align with the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

Recommendation 25: The Australian Government, with State and Territory governments, develop a nationally consistent human rights-based approach to decision-making about medical interventions on children with variations in sex characteristics based on the following principles outlined in the Australian Human Rights Commission's *'Ensuring health and bodily Integrity'* report:

- bodily integrity
- children's agency
- precautionary principle
- medical necessity

- independent oversight.

Recommendation 26: The Australian Government ensure that policies and procedures are in place to protect people with disability from being impacted by COVID-19 without limiting their ability to continue to engage in all aspects of society on an equal basis with others.

Recommendation 27: The Australian Government should prioritise the design and development of the National Disability Data Asset.

Recommendation 28: The Australian Government should ensure adequate, secure and long-term funding for independent and systemic representation and advocacy.

2 The role of the CRPD in Australia

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is 'the roadmap for the social transformation required to end the inequality, discrimination and segregation that are the enablers of the violence, abuse, neglect and exploitation experienced by people with disability'.³

Article 4(2) of the CRPD provides that 'each State Party undertakes to take measures to the maximum of its available resources ... with a view of achieving progressively the full realisation' of rights. The concept of progressive realisation constitutes a recognition of the fact that full realisation of rights will generally not be able to be achieved immediately or in a short period of time. It nonetheless imposes an obligation to move as expeditiously and effectively as possible towards that goal and acts against any deliberately retrogressive measures.

Obligations contained in international treaties are binding as a matter of international law. Australia ratified the CRPD in 2008. Article 4 of the CRPD obliges Australia and other signatory State Parties to adopt legislative measures to implement the rights recognised in the CRPD. However, treaties are not binding as a matter of domestic law until their provisions are adopted into domestic legislation.⁴

As the Royal Commission has heard, the CRPD is not yet fully legally binding in this country because Australia has not enacted legislation to give effect to all of its provisions.

The CRPD continues to act as an aspirational standard for law and policy reform, a benchmark against which to 'measure current domestic laws'.⁵

2.1 Interpretive declaration

Some State Parties choose to publish 'interpretive declarations' to make known their understanding of the scope and applicability of a treaty article. An interpretive declaration is a unilateral statement by a party to a treaty that purports to specify or clarify the meaning or scope of a treaty or certain provisions of a treaty.⁶ An interpretive declaration does not modify treaty obligations. It may only specify or clarify the meaning or scope that the treaty party attributes to a treaty or certain provisions of a treaty. This may be one factor taken into account in interpreting the treaty in accordance with the general rules of treaty interpretation. Also taken into account would be any

approval of or opposition to the interpretative declaration by other treaty parties.⁷

Upon ratification of the CRPD, Australia made an interpretive declaration in relation to articles 12, 17 and 18. The declaration clarifies that Australia understands that the CRPD:

- allows for substituted decision making where necessary as a last resort and subject to safeguards;
- allows for compulsory assistance or treatment where necessary as a last resort and subject to safeguards; and
- does not create a right for a non-national to enter or remain in Australia, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

The CRPD Committee has asked that the declaration be urgently withdrawn, citing the negative impact on social transformation. The Commission is of the view that the interpretive declaration is 'a significant barrier to the necessary reform of law, policy and practice framework',⁸ and encourages the Australian Government to withdraw its interpretive declaration to the CRPD concerning articles 12, 17 and 18 as it is inconsistent with the Committee's jurisprudence and prevents the full and effective implementation of the CRPD in Australia.

Recommendation 2: The Australian Government should withdraw its interpretive declaration to the Convention on the Rights of Persons with Disabilities concerning articles 12, 17 and 18.

3 Monitoring implementation of the CRPD

3.1 International monitoring: the CRPD Committee

Articles 35 and 36 of the CRPD establish the mechanisms for monitoring implementation of the CRPD at the State Party level. There are two main mechanisms for monitoring at an international level:

- (a) periodic reviews by the CRPD Committee
- (b) individual communications to the CRPD Committee.

Periodic reviews

The primary mechanism for measuring implementation is through periodic reviews by the CRPD Committee.

Since its ratification of the CRPD, Australia has provided an initial report in 2010 and undergone two periodic reviews, in 2013 and 2019, with concluding observations and recommendations made by the CRPD Committee.

The Commission notes the Royal Commission's October 2020 research report, by Emeritus Professor Ron McCallum AO, *The United Nations Convention on the Rights of Persons with Disabilities: an assessment of Australia's level of compliance*, which provides a further assessment (up to 2020) of Australia's implementation of individual CRPD articles.

It is disappointing to observe that many of the concluding observations and recommendations made by the CRPD Committee in 2013 were repeated in the 2019 periodic review. The next periodic review of Australia is scheduled for August 2026, providing the Royal Commission with a real opportunity to drive compliance through its final recommendations.

Communications to the CRPD Committee

A secondary mechanism to drive implementation with the CRPD is through communications made by individuals or groups of individuals alleging violations of the CRPD to the CRPD Committee under the Optional Protocol to the CRPD. Australia signed and ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities in 2009.

Individuals or groups of individuals can lodge a communication to the CRPD Committee where they allege that one or more of their CRPD rights have been breached and all available domestic remedies have been exhausted. Individuals may only lodge a communication about States that have ratified both the CRPD and its Optional Protocol.

The individual must lodge a communication with the CRPD Committee. The Committee then conducts an inquiry into the matters raised by the author of the communication to make an assessment on the papers, based on submissions from the author and the State Party.

The CRPD Committee forms a view as to the necessary individual remedy and law reform, and the State Party is required to respond within 6 months.

To date, the CRPD Committee has adopted only around 60 views on communications across all signatory State Parties.⁹ Of these, 13 views (over 21%) have related to communications made about Australia.

The table provided in the Appendix is an overview of all 13 accepted individual communications for Australia, with a summary of the complaint issues, recommendations made by the CRPD Committee and reform undertaken by the Australian Government. The table illustrates how the process of communications is lengthy; and the views of the CRPD Committee are regularly published a number of years after the initial communication is lodged. It is often the case that the views of the CRPD Committee are submitted in a different political and legislative landscape than when the initial events making up the complaint occurred.

In its submissions in response to Counsel Assisting's Submission in respect of Public Hearing 18 of the Royal Commission, the Australian Government points to the fact that the complaints made to the CRPD Committee against Australia relate to events from several years ago, and that the Royal Commission hearing 'did not seek to consider the question of whether and to what extent the laws and practices the subject of each complaint (including the laws and practices of the relevant states and territories) have, in the time since each complaint was addressed by the CRPD Committee, changed in response to the views adopted by the CRPD Committee in respect of each of the complaints'.¹⁰

Notwithstanding efforts made towards the progressive realisation of the CRPD, the summary table in the Appendix demonstrates that, at the present date, substantial law reform has not yet occurred in response to, or as a result of, individual complaints made to the CRPD Committee. For the most part, the matters raised, such as the indefinite detention of individuals found unfit to stand trial, continue to limit the rights of people with disability.

Similar to the recommendations made by the CRPD Committee in the context of periodic reviews, the views stemming from individual communications are not legally binding, nor are they enforceable. State Parties are required to respond to findings made by the CRPD Committee, but the nature of that response can be cursory in nature.¹¹ The lack of further enforcement mechanisms means that there are minimal consequences for non-compliance and limited incentives to drive improvements.

The Royal Commission represents an opportunity to hold the Australian Government to account to its international commitments under the CRPD, and the Commission makes the following recommendation.

Recommendation 3: The Royal Commission should review the actions taken by the Australian Government in response to the recommendations made

by the CRPD Committee in each of the communications made under the Optional Protocol to the CRPD.

3.2 Domestic monitoring: Present role of the Commission

The Australian Human Rights Commission is an 'A status' National Human Rights Institution (NHRI) established and operated in compliance with the Paris Principles. As an NHRI, the Commission provides independent advice to the CRPD Committee on the implementation of the CRPD in Australia. For instance, the Commission provided the Committee with reports on Australia's compliance with the CRPD in the 2013 and 2019 periodic reviews.

The Commission is established under the *Australian Human Rights Commission Act 1986* (Cth), as well as under other federal laws that seek to ensure freedom from discrimination. The remit of the Commission is to support individuals in realising their human rights, as well as to embed human rights issues at a national level through collaboration and systemic change.

The Commission has statutory complaint-handling functions with respect to unlawful discrimination, as well as alleged breaches of human rights against the Commonwealth and its agencies. Most of the individual communications brought to the CRPD Committee were first brought before the Commission.

For the past 15 years, the Commission has consistently received more complaints alleging discrimination under the Disability Discrimination Act than complaints under any of the other federal discrimination laws it administers. Of all the complaints received each year by the Commission since 2008, complaints under the Disability Discrimination Act amount to between 30% and 50% of the total complaints received.

The demands on the Commission substantially increased over the course of, and as a consequence of, the COVID-19 pandemic. The Commission experienced an unprecedented increase in the overall number of complaints received. As indicated in the Commission's 2021–2022 Annual Report,¹² complaints received under the Disability Discrimination Act alone, which constituted over half of all complaints received by the Commission, increased by approximately 120% since 2018–2019.

The persistently high level of complaints under the Disability Discrimination Act reinforces the crucial role played by the Commission in addressing specific

instances of disability discrimination and the importance of ongoing support for this work by government. However, the high level of complaints under the Disability Discrimination Act also highlights the need for more effective implementation of the CRPD and law reform.

4 Implementation of CRPD articles

4.1 Australia's legal and policy framework

Article 4(1) of the CRPD requires State Parties to 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised' in the CRPD.

The legal and policy framework for the protection of human rights of people with disability in Australia includes:

- the *Disability Discrimination Act 1992* (Cth), (Disability Discrimination Act), which adopts a non-discrimination model protecting people with disability against negative discrimination;
- the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act), which establishes the National Disability Insurance Scheme (NDIS) and the National Disability Insurance Agency (NDIA) and sets out the objects and principles under which the scheme operates;
- the *Disability Services Act 1986* (Cth), which provides a framework for the Australian Government to provide services to people with disability, and to certify service providers and specify standards in the provision of services;
- State and Territory legislation; and
- Australia's Disability Strategy 2021-2031, which lays out some of the policy framework for implementing the CRPD.

The Australian Government, in its reports to the CRPD Committee's two periodic reviews and in its submissions to this Royal Commission, considers that it is compliant 'with its obligations under the CRPD and that it has given effect to the CRPD through legislation, policy and practice'.¹³ In its submission to Counsel Assisting the Royal Commission, the Australian Government states that 'none of the CRPD Committee's concerns or recommendations [in its 2019 concluding observations of Australia's 2019 periodic review] were expressed in language to the effect that Australia had not fully implemented the CRPD or that there were gaps in its implementation'.¹⁴

The Australian Government reiterates Australia's commitment to respecting the rights of people with disability, but nonetheless approaches compliance and implementation in a binary fashion so as to frame compliance in an 'all or nothing' approach. In its view, Australia is compliant with its CRPD obligations. It is unclear from the Australian Government's submissions what the ongoing effect of the CRPD is on policy makers.

Counsel assisting the Royal Commission views the above position as standing in clear contrast with the evidence of other witnesses before the Royal Commission.¹⁵ The Commission's view is that there are known gaps in the implementation of the CRPD in Australia, and that further efforts are required to make progress towards the recognition of CRPD rights for people with disability.

The Commission made 68 recommendations in its 2019 report to the CRPD Committee. In the section below, the Commission reviews how Australia is tracking with the implementation of individual CRPD articles, building upon observations and recommendations made in 2019 and in previous submissions to the Royal Commission.

This is not intended as an exhaustive report, but rather seeks to update the Commission's 2019 assessment and address areas that were not considered in the Commission's previous submissions, with a view to inform the Royal Commission of required reform or further investigation. For instance, in its submission to the Royal Commission's Employment Issues Paper, the Commission focused on experiences of financial and economic abuse, violations of dignity, economic advantage being taken of people with disability, and improper use of labour or employment, and therefore these topics are not addressed in this submission.

4.2 Article 4: Law reform

In essence, article 4 of the CRPD requires that State Parties to the CRPD enact laws that are consistent with the CRPD, and repeal or amend laws that are inconsistent with it.

Legal framework

In its 2019 periodic review of Australia, the CRPD Committee expressed concern about 'the insufficient harmonisation of the domestic legal framework with the Convention'.¹⁶ Many CRPD rights fall within the responsibility of States and Territories. As Counsel Assisting the Royal Commission submits: 'an important consequence of this is that deficiencies in implementation of the CRPD by the

States and Territories can mean that Australia as a whole has failed to implement the CRPD'.¹⁷ The Commission's assessment is that, due to there being many rights in the CRPD that have not yet been incorporated into domestic law and as a result of Australia's federal model, some jurisdictions are further progressed in their implementation of the CRPD than others.

The Disability Discrimination Act and State and Territory anti-discrimination legislation incorporate important CRPD rights. The Disability Discrimination Act adopts a non-discrimination model, making it unlawful to discriminate against a person in employment, education, obtaining goods and services, renting or buying a house or unit, and accessing public places, because of their disability.

The CRPD Committee has suggested that the Disability Discrimination Act be amended;¹⁸ a recommendation that is supported by the Commission for the reasons explained below.

It is worth noting here that the Disability Discrimination Act pre-dates the CRPD, which does not preclude it from reflecting some CRPD rights, by seeking to 'promote ... the principles that persons with disabilities have the same fundamental rights as the rest of the community'.¹⁹ However, the scope of protected rights and grounds of discrimination in that Act is much narrower than under international human rights law.

The Disability Discrimination Act provides protection against discrimination on the ground of disability in several areas of public life, but it does not fully implement all of the rights in the CRPD. For example, the Disability Discrimination Act does not recognise positive economic, social and cultural rights nor does it thoroughly address intersectional discrimination in the same way that the CRPD does. Instead, there is a suite of federal anti-discrimination laws operating alongside each other that deal, separately, with different forms of discrimination.

One drawback of the current legislative framework in relation to unlawful discrimination is that it remains largely remedial in nature. It requires a 'person aggrieved' (the victim) to make a complaint and tends to focus on discrimination that has already occurred. As noted in the Commission's *Respect@Work* report,²⁰ dealing with sexual harassment in the workplace, this places significant responsibility on individual complainants and means that employer practices are often only externally scrutinised after an allegation of sexual harassment (or discrimination) has been made, and the issue goes to the liability of the employer. The same issue exists in disability discrimination matters.

The Commission has previously recommended to the Royal Commission that the Australian Government amend the Disability Discrimination Act to address the implications of the *Sklavos v Australian College of Dermatologists* decision,²¹ by creating a new standalone provision for a positive duty to make reasonable

adjustments unless doing so would involve an unjustifiable hardship.²² This issue is remains unaddressed for people with disability.

The Commission is also concerned that, in the absence of comprehensive human rights protections in Australia, people with disability are not adequately protected from intersectional discrimination. The effects of intersectional discrimination and disadvantage on Aboriginal and Torres Strait Islander people with disability are particularly pronounced.

In its 2021 Position Paper, *Free & Equal: A reform agenda for federal discrimination laws*, the Commission proposes a reform agenda to modernise federal discrimination laws by placing a greater focus on prevention of discrimination. The proposed reforms would go some, but not all the way, to increasing compliance with the CRPD.

Recommendation 4: The Australian Government should implement the recommendations to reform federal discrimination laws outlined in the Australian Human Rights Commission's 2021 Position Paper, *Free & Equal: A reform agenda for federal discrimination laws*.

Another key area for law reform relates to the absence of a national human rights framework. Australia is an anomaly among all other liberal democracies, in that it has not implemented key rights contained in human rights treaties through a cohesive legislative framework or Constitution. The current gaps and inconsistencies in the legal protection of the rights of people with disability will continue in the absence of comprehensive human rights laws in Australia.²³

Recommendation 5: The Australian Government should enhance human rights protections through a federal Human Rights Act.

There are other federal, state and territory laws in Australia that protect and/or promote the rights of persons with disability. Among these, some reference the CRPD. For example, the objects of the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act) include to 'give effect to Australia's obligations' under the CRPD'.²⁴ This should not be taken as sufficient to implement the CRPD. First, the coverage of the NDIS Act is limited to a small subset of the population. Approximately 500,000 of the 4.4 million people with disability in Australia are eligible for the scheme, which significantly limits the reach of the Act. It is also worth noting that some provisions in the NDIS Act are inconsistent with the CRPD, for instance, in allowing for substitute decision-making. Further harmonisation across federal, state and territory law is required to fully protect and enliven CRPD rights for all Australians with disability.

Policy Framework

State Parties can, and must, consider treaty obligations when developing policies, and Australia's Disability Strategy 2021-2031 is the policy framework developed by the Australian Government to drive the implementation of commitments under the CRPD.²⁵ All Australian jurisdictions are signatories to the Strategy, with shared responsibility to address the outcome areas and implement actions to achieve its priorities.

Following Australia's ratification of the CRPD in 2008, the Australian, state and territory governments developed the National Disability Strategy (NDS), which was launched in 2011. The NDS set out a ten-year national strategic plan (2010–2020) to implement the CRPD, but was criticised for its slow progress, the lack of data made available to track its implementation, and the constrained resourcing dedicated to resources and programs to achieve its objectives.²⁶

Australia's Disability Strategy (2021–2031) was developed through more than two years of engagement with people with disability, their families and carers and informed by the outcomes and recommendations from several reviews and evaluations of the NDS.

Australia's Disability Strategy outlines a vision for a more inclusive and accessible Australian society where all people with disability can fulfil their potential as equal members of the community. Its purpose is to:

- provide national leadership towards greater inclusion of people with disability;
- guide activity across all areas of public policy to be inclusive and responsive to people with disability;
- drive mainstream services and systems to improve outcomes for people with disability;
- engage, inform and involve the whole community in achieving a more inclusive society.²⁷

The Strategy is organised along seven outcome areas, each with its own Targeted Action Plan laying out key steps to achieve success. The Strategy has an increased focus on evaluation and public reporting.

Outcome areas

- **Employment and Financial Security** — Outcome: People with disability have economic security, enabling them to plan for the future and exercise choice and control over their lives.
- **Inclusive Homes and Communities** — Outcome: People with disability live in inclusive, accessible and well-designed homes and communities.

- **Safety, Rights and Justice** — Outcome: The rights of people with disability are promoted, upheld and protected, and people with disability feel safe and enjoy equality before the law.
- **Personal and Community Support** — Outcome: People with disability have access to a range of supports to assist them to live independently and engage in their communities.
- **Education and Learning** — Outcome: People with disability achieve their full potential through education and learning
- **Health and Wellbeing** — Outcome: People with disability attain the highest possible health and wellbeing outcomes throughout their lives.
- **Community Attitudes** — Outcome: Community attitudes support equal inclusion and participation in society for people with disability.

Australia's Disability Strategy is still in its early stages. The Disability Strategy Advisory Council was established in December 2021, with all members being people with disability. The Disability Discrimination Commissioner chairs the Council. The role of the Council is to advise Australian governments and disability ministers on progress against the Strategy's outcome areas.

The Council is an aspect of the Strategy's governance framework. So, too, is the recent establishment of Australia's Disability Strategy branch within the Department of Social Services (DSS), which has a co-ordination role. To avoid repeating the failures of the NDS, the Commission recommends the added establishment of an Office of Disability Strategy within the Department of Prime Minister and Cabinet (PM&C). PM&C is best placed to provide independent oversight of the work of government departments (including DSS, a service delivery agency) as it relates to the Strategy. This recommendation is derived from a recommendation made by the Senate Community Affairs References Committee in its inquiry into the delivery of outcomes under the National Disability Strategy 2010–2020,²⁸ and repeated by the CRPD Committee in its 2019 concluding observations.²⁹

In part, implementation of the Strategy will be advanced through the implementation of an Outcomes Framework, Targeted Action Plans and Associated Action Plans.³⁰

However, additional arrangements are required to create a robust and formal monitoring mechanism. At present, States and Territories have to agree to the terms of any Outcome Framework, Targeted Action Plan or Associated Action Plan. This creates a disincentive to set goals or outcome measures that highlight areas of improvement for the different levels of government in Australia.

Recommendation 6: The Australian Government should establish an Office of Disability Strategy, that:

- **sits within the Department of Prime Minister and Cabinet to provide whole-of-government coordination and increase attention to Australia's Disability Strategy and the Convention on the Rights of Persons with Disabilities;**
- **oversees the work of departments in implementing the Strategy and ensures effective coordination between the federal and state levels;**
- **sets the terms for the Strategy's Outcome Framework, Targeted Action Plans and Associated Action Plans;**
- **is properly resourced and provided with the necessary authority to fulfil the above mandate.**

4.3 Article 7: Children with disabilities

Australia has obligations to uphold both Article 7 of the CRPD, and Article 23 under the Convention on the Rights of the Child (CRC), which concerns the rights of children with disabilities. Despite these obligations, there is an implementation gap between these human rights that Australian governments have agreed to uphold, and the actual protections in our laws, policies and processes of government. Both the CRPD and the CRC have been implemented in domestic legislation in limited form.

While the Commission can investigate and conciliate complaints of breaches of human rights in the CRPD and the CRC, there is no right for an aggrieved complainant to go to court or to get a remedy if the government does not agree to negotiate an outcome for the person. This is in contrast to matters covered as 'unlawful discrimination' under the Disability Discrimination Act.

Recommendation 7: The Australian Government should bring domestic laws and practice into conformity with the principles and provisions of the CRC and CRPD, including by ensuring that effective remedies are available.

Recommendation 8: The Australian, State and Territory Governments should seek and take into account the views and experiences of children and young people with disability, and their families, when developing and monitoring laws, policies and practices that affect them, including through consultations, interviews, forums, youth groups, advisory groups, and surveys.

In the National Children's Commissioner's [date] report *'Keeping Kids Safe and Well – Your Voices'*, children and young people with disabilities and their families, as

well as families where one or both parents have disabilities, mentioned multiple complex issues apart from the disability, including lack of access to mental health services, income support and housing and significant barriers to accessing education that affect their wellbeing.

Children and young people with disabilities and their families told the National Children's Commissioner that they faced barriers when trying to access the services and supports they need. This includes access to the support they need at school and in education settings, and navigating systems such as Centrelink, housing and the NDIS.³¹

Recommendation 9: Service providers that receive government funding should ensure that the service delivery systems are designed in accordance with the expressed needs of children, young people, and families with people with disabilities in them to ensure that they are able to access the services and supports they need.

Recommendation 10: Services for diagnosing disability in children and young people should be affordable, accessible, and available in a timely manner.

In *'Keeping Kids Safe and Well – Your Voices'*, young people with disabilities told the National Children's Commissioner that they wanted better support to enter the workforce, including through skill building, and supportive workplaces. Recent statistics indicated that for people with disabilities aged 15–64 years, 53.4% were in the labour force, compared with a labour force participation rate of 84.1% for those without disabilities.³²

Recommendation 11: The Australian, State and Territory Governments should increase awareness about the harms to children and young people caused by discrimination based on disability in the workplace, including through education and support for workplaces on how to be inclusive.

In *'Keeping Kids Safe and Well – Your Voices'* consultations, children and young people with disabilities and parents of children with disabilities expressed concern about the adequacy of support at school. Young people and parents reported that a lack of diagnosis or recognition of a child's disabilities created barriers to receiving support at school. Some young people emphasised the importance of early diagnosis as it enables children to receive the support they need from the outset.

Recommendation 12: The Australian, State and Territory Governments should increase access to learning supports at school for children and young people with disabilities to help them achieve their full potential.

Disability advocacy organisations have argued that the high incarceration rate of people with disability is due to the failures in mental health, child protection, housing, disability and community service systems to provide appropriate assessment and supports for children with disability.³³ The United Nations Committee on the Rights of the Child, in their General Comment 24 on Children's Rights in the Child Justice System in 2019, recommended that:

Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, foetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.³⁴

In addition to the Commission's previous submission and associated recommendations in relation to people with disability and the criminal justice system, and noting the concerns of the CRPD Committee in its 2019 Concluding Observations, particularly around the overrepresentation of convicted young persons with disabilities in the youth justice system, especially male youth from Indigenous communities, the Commission also makes the following recommendations specifically regarding children:

Recommendation 13: Children with disabilities should be provided with appropriate treatment and therapeutic support in the community. State and Territory Governments should divert children with developmental delays or neurodevelopmental disorders or disabilities from involvement in the youth justice system.

Recommendation 14: State and Territory Governments should ensure that children are screened for all types of disability, including Foetal Alcohol Spectrum Disorders (FASD), in early childhood. Disability screening and treatment should be a priority for all children involved with the child protection system and at early stages of youth justice involvement.

4.4 Article 8: Awareness raising

The Commission's complaints data provided in this submission highlights there is more work to be done to improve community attitudes towards people with disability.

In a 2021 national survey on attitudes toward people with disability,³⁵ the Centre for Research Excellence in Disability and Health notes:

[The CRPD] declares full and active participation in society as a fundamental right of people with disability. With negative attitudes and consequent discriminatory behaviours known to be a key limiting factor to full participation, the results of this survey indicate that Australia still has a long way to go in meeting its obligations.³⁶

Attitudes have concrete impacts on outcomes for people with disability. For example, 20% or 1 in 5 people in the 2021 national survey agreed that employers should be able to refuse to hire a person with disability³⁷ and 13% held the view that children with disability 'should only be educated in special schools'.³⁸

Every initiative that aims to include people with disability in our communities, whether it be in employment, education, or social settings, is likely to have a positive attitudinal impact. Further, the inclusion of an outcome within Australia's Disability Strategy specifically to ensure that 'Community attitudes support equality, inclusion and participation in society for people with disability' demonstrates a recognition of the impact of community attitudes as a key factor impacting inclusion of people with disability in all aspects of their lives.

The Commission supports the recommendations outlined in the Centre for Research Excellence in Disability and Health national survey,³⁹ particularly the development and ongoing monitoring and evaluation of a series of long-term interventions, co-designed with people with disability, aimed at removing attitudinal barriers that prevent people with disability realising their human rights to fully participate in everyday life on an equal basis to others. This position is broadly consistent with the CRPD Committee's position in the 2019 Concluding Observations relating to Article 8 of the CRPD.⁴⁰

However, any awareness raising campaign needs to be cognisant of the need to target all levels of the education system and reflect the concept of disability contained in the CRPD. Linking awareness raising campaigns to Article 8 of the CRPD ensures greater efficacy of any campaign undertaken. Although there is a Community Attitudes Targeted Action Plan under Australia's Disability Strategy⁴¹, the actions suggested are general in nature and do not highlight the need to recognise and advance the human rights of people with disability.

Recommendation 15: The Australian, State, Territory and Local Governments should develop a series of long-term interventions, co-designed with people with disability, aimed at removing attitudinal

barriers that prevent people with disability realising their human rights to fully participate in everyday life on an equal basis to others in a manner consistent with Article 8 of the CRPD.

4.5 Article 9: Accessibility

The Disability Discrimination Act is supplemented by a series of Disability Standards that provide certainty on the operation of the Disability Discrimination Act. There are currently three sets of Standards in operation in relation to transport, education, and access to premises.⁴²

The Commission is concerned that the lack of measures to ensure nationally consistent implementation, enforceability, monitoring and compliance under the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) and the *Disability (Access to Premises—Buildings) Standards 2010* (Building Standards) has limited the effectiveness of both Standards. This is coupled with a lack of progress and insufficient resources allocated to implement the recommendations made following the statutory reviews of the standards every five years.

In Australia, 96% of people with disability live in private dwellings in the community.⁴³ Despite this, research completed in 2020 by the University of Melbourne found that 74% of respondents with mobility limitations were living in housing that does not meet their needs.⁴⁴ The Organisation for Economic Cooperation and Development (OECD) highlights the importance of housing quality, as ‘it is a major driver of health status with effects for both mental and physical health.’⁴⁵ There is evidence of the impact that poor quality housing has on the community and the economy.⁴⁶ Yet the availability of appropriate accessible housing remains a challenge for many of the 4.4 million people with disability in Australia.

A regulatory intervention has been needed to introduce a mandatory minimum standard of accessibility for all private dwellings in Australia. An amendment of the National Construction Code (NCC) is the most viable way to introduce this standard. The recently published Liveable Housing Design Standard, which the Australian Building Codes Board (ABCB) intends to be a minimum necessary provision, is a good initial framework for a minimum mandatory national standard.

The decision made at the Building Ministers’ Meeting (BMM) in April 2021, to include minimum accessibility provisions for new residential houses and apartments in the NCC 2022, is an important step for Australia in discharging its human rights obligations. Previous efforts to increase the availability of accessible housing have been undertaken on a voluntary basis, including through the use of the National Disability Strategy (NDS) and National Dialogue

on Universal Housing Design. Despite the aspirational target in the NDS that all new homes would meet agreed universal standards by 2020,⁴⁷ research has demonstrated that only 5% of newly built houses in this time met this target.⁴⁸ The introduction of mandatory standards through the NCC provides an effective means for increasing the availability of housing which meets the needs of all Australians. At this time, all States other than New South Wales and Western Australia have agreed to include minimum accessibility provisions in the NCC.

Recommendation 16: All States and Territories should be required to adopt the Liveable Housing Design Standard minimum accessibility provisions in the National Construction Code for new homes and apartments.

4.6 Article 12: the right to equal recognition before the law

The essence of this article is summed up by Professor Ron McCallum in his 2020 research report:

In order to be a full legal person, an individual must be recognised as a rights holder (possessing legal status / standing) and legal agent (free to exercise their rights). Together, these elements make up legal capacity, a mechanism by which rights and responsibilities are granted or denied to an individual. The recognition of universal, full legal capacity is therefore a precondition for the exercise of all other human rights and fundamental freedoms.⁴⁹

As previously mentioned, in ratifying the Convention, Australia made an interpretive declaration that ‘the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards’.⁵⁰

In 2013, the CRPD Committee recommended that Australia review its interpretive declaration with a view to its withdrawal.⁵¹ Specifically, in relation to article 12, the CRPD Committee recommended that Australia:

Repeal any laws and policies, and end practices or customs, which have the purpose or effect of denying or diminishing recognition of any person with disabilities as a person before the law;

[and]

Implement a nationally consistent supported decision-making framework, as recommended in the Australian Law Reform Commission’s 2014 report, ‘Equality, Capacity and Disability in Commonwealth Laws’.⁵²

However, in its Combined Second and Third Periodic Reports of September 2018, Australia stated that it did not intend to withdraw its interpretive declaration.⁵³ For as long as Australia maintains its interpretative declaration, it facilitates the continuation of legislation, which is not only inconsistent with the CRPD, but increasingly outmoded. As heard in the evidence provided by Gerard Quinn, Special Rapporteur to the UN, article 12 is critical and foundational in recognising the inherent personhood of people with disability, and therefore is the ‘heart of the flip between the medical model and the human rights model’.⁵⁴

It is worth acknowledging that, broadly, the trajectory of changes over the last decade to the suite of laws that pertain to the exercise of legal capacity have generally been in keeping with the principles enshrined in article 12 – including a slow but gradual drift toward the recognition and provision of various forms of assisted or supportive decision-making.⁵⁵ Victoria’s *Guardianship and Administration Act 2019* is an example of state-level shifts in this direction.

Notwithstanding the above, the absence of a nationally consistent decision-making framework at the Commonwealth level, as recommended in the *Equality, Capacity and Disability in Commonwealth Laws* report by the Australian Law Reform Commission,⁵⁶ remains an issue of concern. A national decision-making model which closely adheres to article 12 would not only embed compliance with article 12 into federal law, it would assist States and Territories to ensure a uniform approach to decision-making models across jurisdictions.

Recommendation 17: The Australian Government should implement the recommendations made by the Australian Law Reform Commission in the 2014 report, *Equality, Capacity and Disability in Commonwealth Laws*.

4.7 Article 28: Adequate standard of living and social protection

Article 28 of the CRPD requires State Parties to recognize²⁸ the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability. State Parties must also ensure access by persons with disabilities to social protection programs and poverty reduction programs.

General Comment No 5 (2017) on living independently and being included in the community recognises that:

Cash transfers such as disability allowances represent one of the forms in which States parties provide support for persons with disabilities in line with articles 19 and 28 of the Convention. Such cash transfers often acknowledge disability-related expenses and facilitate the full inclusion of persons with disabilities in the

community. Cash transfers also tackle situations of poverty and extreme poverty that persons with disabilities may face.⁵⁷

State Parties have a responsibility to recognise that many people live in poverty and that there is a critical need to address the negative impact of poverty on people with disability.⁵⁸ The requirement to support people with disability who are living in poverty is not limited to those who are unable work due to a permanent impairment as is the current purpose of the Disability Support Pension (DSP).

The NDIS and Australia's Disability Strategy are landmark achievements that each go some way towards fulfilling the obligations outlined in article 28. However, neither of these significant reforms go far enough to ensure an adequate standard of living for all people with disability.

The Commission remains concerned about the limited consideration of persons with disability in poverty and homelessness reduction strategies and lack of accessible housing in Australia, which is a contributing factor to homelessness for people with disability. As mentioned in the Commission's 2019 report⁵⁹ to the CRPD Committee:

- the National Housing and Homelessness Agreement does not comprehensively include people with disability, including those with intellectual and psychosocial disabilities, as a national homelessness cohort with specific priority measures
- Australia currently lacks a national poverty reduction plan, and
- Australia has yet to agree to a consistent national definition of 'poverty'.

Recommendation 18: The Australian Government should collaborate with State and Territory Governments, in the implementation of the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness to:

- **include people with disability as a priority cohort**
- **align the agreement with Australia's Disability Strategy.**

Recommendation 19: The Australian Government should develop a national poverty reduction plan that addresses disability as a cross-cutting issue.

The Commission supports advice in the Productivity Commission's 2022 study report, *In Need of Repair*, that the next National Housing and Homelessness Agreement 'should align with Australia's Disability Strategy' and that the Strategy should include a housing Targeted Action Plan or a disability housing objective within the existing Safety Targeted Action Plan to assist all jurisdictions to include actions to address the availability of affordable and accessible housing for people with disability in their own strategies.⁶⁰

Recommendation 20: The Australian Government develop a housing Targeted Action Plan under Australia's Disability Strategy, which should include considerations for:

- **security and different types of tenancy**
- **design**
- **location**
- **availability**
- **affordability**
- **accessibility.**

4.8 Article 25: Health

Broadly article 25 concerns the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and requires State Parties to take all appropriate measures to ensure access for persons with disabilities to health services.

Access to health care

The Commission is concerned that people with disability continue to face a range of barriers in accessing health services on an equal basis with others, without discrimination, including mental health services.

People with intellectual disability experience substantially elevated mortality rates above the general population, with over twice the rate of avoidable deaths (with at least 38% of deaths potentially avoidable) and lower rates of preventative healthcare and illness detection.⁶¹ Health professionals face challenges communicating with people with intellectual disability, distinguishing health problems from disability, and diagnosing complex health conditions.⁶²

Aboriginal and Torres Strait Islander peoples with disability face unique, intersectional discrimination in accessing health services. People with disability in rural and remote areas also face considerable challenges to accessing

affordable, accessible, quality and culturally sensitive health services. People with disability and their carers report travelling long distances, extensive waiting times and workforce shortages resulting in difficulties accessing therapy and high levels of unmet need.⁶³ Physiotherapy, occupational therapy, speech pathology, and early intervention services are examples of services that are not readily available in regional and remote areas, yet these play an important role in supporting people with disability to participate in society on an equal basis with others. This lack of support is particularly exacerbated for children living in rural areas.⁶⁴

As noted by the Productivity Commission, there are concerns that ‘a lack of clarity at the interface of the NDIS and mainstream service systems, particularly the health system, is leading to people missing out on, or experiencing delayed access to, some services’.⁶⁵ This includes services for people with psychosocial disability.⁶⁶

Recommendation 21: The Australian Government work with State and Territory governments to develop an action plan under Australia’s Disability Strategy committing to:

- **all people with disability having access, on an equal basis with others, to affordable, accessible, quality and culturally sensitive health services, including sexual and reproductive health and mental health services, with particular consideration of people in rural and remote areas and Aboriginal and Torres Strait Islander Peoples with disability**
- **all health care services and programs being based on a human rights approach to disability, are non-discriminatory and seek informed consent prior to any medical treatment**
- **health-care practitioners being provided with training on the human rights-based approach to disability to enhance their capacity to provide accessible, quality health care to people with disability.**

Recommendation 22: The Australian Government redouble its efforts to achieve the Closing the Gap targets, including by adequately funding the National Aboriginal and Torres Strait Islander Health Plan, the Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability and targeting programs to address the social determinants of health.

Article 25 of the CRPD requires health professionals to provide care on the basis of free and informed consent, and the issue of forced contraceptive treatment and sterilisation also touches upon article 6 of the CRPD which seeks to 'ensure the full development, advancement and empowerment of women'.⁶⁷

The Commission remains deeply concerned that the sterilisation of people with disability, particularly women and girls with disability, continues to take place in Australia without their free, prior and informed consent.⁶⁸ The Commission is also concerned by the forced administration of contraceptives and abortion procedures.⁶⁹

The recommendations below are partly informed by the Commission's 2021 Report *'Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics'*⁷⁰, which looks specifically at the implementation of CRPD rights of people born with variations in sex characteristics in the context of consenting to medical intervention.

Recommendation 23: The Australian Government, and state and territory governments, adopt uniform legislation prohibiting, in the absence of the free, prior and informed consent of the person concerned:

- a. the administration of contraceptives and abortion procedures on women and girls with disability
- b. the sterilisation of adults and children with disability.

Recommendation 24: The Australian Government review and amend the Family Law Rules 2004 relating to Medical Procedure Applications so that they align with the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

Recommendation 25: The Australian Government, with state and territory governments, develop a nationally consistent human rights-based approach to decision-making about medical interventions on children with variations in sex characteristics based on the following principles outlined in the Australian Human Rights Commission's *'Ensuring health and bodily Integrity'* report:

- bodily integrity
- children's agency
- precautionary principle
- medical necessity
- independent oversight.

COVID-19 and Long COVID

Data gathered by the UK Office of National Statistics shows that, ‘when modelling the risk of death involving COVID-19, after adjusting for age, residence type, geography, socio-economic and demographic factors, health characteristics, and vaccination status, a significantly greater risk of death remains for all disabled people compared with non-disabled people’.⁷¹

In relation to persons with disabilities, particularly women and girls, the evidence indicates that during the pandemic they were, and continue to be, directly affected and disproportionately disadvantaged due to the increased risk of infection, morbidity, and mortality.⁷²

In its recent Health Equity report, the World Health Organisation notes that many people are experiencing post COVID-19 conditions. Initial studies demonstrate that 1 in 5 people will have a new disability when assessed six months after COVID-19 hospitalization. However, the evidence on how COVID-19 impacts disability prevalence in populations is still evolving.⁷³

It is now recognised that approximately 10% of individuals who catch COVID-19 develop persistent and often relapsing and remitting symptoms beyond 4 to 12 weeks after infection, according to 2020 data from the UK Office of National Statistics.⁷⁴ With other studies suggesting likelihood may be higher than this.^{75 76}

What we are seeing is both that COVID-19 impacts people with disability disproportionately, and is also being termed a ‘mass disabling event’ with significant implications for the disabled community and Australian society more broadly.⁷⁷ Not only should protections continue to be provided for as long as COVID-19 presents a significant risk to people with disability, we also need to ensure that what protections are in place do not have the effect of isolating, segregating or stigmatising people with disability.

Recommendation 26: The Australian Government ensure that policies and procedures are in place to protect people with disability from being impacted by COVID-19 without limiting their ability to continue to engage in all aspects of society on an equal basis with others.

4.9 Article 31: Data collection

Data gaps impede Australia’s capacity to monitor and report on the CRPD and the wellbeing of people with disability. There is a lack of data on people with disability disaggregated by age, location, socio-economic status, cultural

background, disability, lesbian, gay, bisexual, trans and intersex (LGBTI) status and priority population groups, including Aboriginal and Torres Strait Islander peoples with disability.

This was a criticism of the National Disability Strategy, and the subject of a recommendation by the CRPD Committee. It is important that a different approach be taken to monitor against the outcome benchmarks in Australia's Disability Strategy.

The Australian Government established a new National Disability Data Asset some years ago to link data sets from different government agencies and services, to have greater visibility of outcomes from policies and services for people with disability. However, it appears this work has stagnated.

Recommendation 27: The Australian Government should prioritise the design and development of the National Disability Data Asset.

4.10 Article 33: National implementation and monitoring

The Commission recommends the Australian Government establish stronger mechanisms for the full and effective engagement of people with disability and their representative organisations in the policy development, implementation and monitoring of actions relating to the CRPD. Positive developments are underway with the creation of the Advisory Council to Australia's Disability Strategy and new appointments made to the Board of the NDIA, for instance, but more is required to be fully compliant with CRPD obligations.

The Commission welcomes the funding from the Australian Government to develop Good Practice Guidelines for the Engagement of People with Disability, as part of Australia's Disability Strategy Engagement Plan. This will be a valuable resource and benchmark for policy makers and other organisations engaging with people with disability. It is crucial that the Guidelines be consistent with the CRPD.

Finally, the Commission is aware that independent advocacy support for people with disability is limited. This means advocates are not resourced to respond to all need and to fully engage in systemic advocacy. The Commission supports the request made by Disability Representative Organisations in a recent letter to the Royal Commission for:

- independent advocacy and representation, including funding to address currently unmet demand and need
- targeted approaches to meet the needs of marginalised demographic groups

- the removal of barriers to advocacy and representation for people with disability in segregated or isolated settings such as boarding houses, group homes, mental health services, prisons and any other settings where access can be denied/limited by the service provider or government body responsible for the service.⁷⁸

Recommendation 28: The Australian Government should ensure adequate, secure and long-term funding for independent and systemic representation and advocacy for people with disability.

5 Appendix

5.1 Summary of individual communications made in relation to the CRPD and Optional Protocol for Australia

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
<i>M.N. v Australia</i> (7/2012)	12 April 2012	Articles 5 (1), 12, 13, 14 (1) (b), 14 (2) and 15	WA	The author was found to be “unfit to plead”, in violation of his right to enjoy legal capacity on an equal basis with others. He also submits that he continues to be deprived of the reasonable accommodation he required to exercise his legal capacity, to effectively enter a plea of not guilty and to have the evidence against him tested, in violation of articles 12 (3) and 13 (1) of the Convention.	On 2 September 2016, the CRPD Committee requested the State party to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations contained in its concluding observations (CRPD/C/AUS/CO/1, para. 32) and requires the State party to: (i) Adopt the necessary amendments of the Mentally Impaired Defendants Act (Western Australia) and all equivalent or related federal and state legislation, in close consultation with persons with disabilities and their representative organizations, ensuring its compliance with the principles of the Convention and with the Committee’s guidelines on article 14 of the Convention;	Not implemented. The Australian Government disagreed with some of the CRPD Committee’s views. While the Mentally Impaired Defendants Act has been amended since the communication was made, it can still permit indefinite detention.

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					<p>(ii) Ensure that adequate support and accommodation measures are provided to persons with mental and intellectual disabilities to enable them to exercise their legal capacity before the courts whenever necessary;</p> <p>(iii) Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on the exercise of legal capacity by persons with intellectual and mental disabilities, is provided to staff of the Review Board, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary.</p>	
<i>G.B. v Australia</i> (11/2013)	29 April 2013	Articles 2, 4, 5, 9, 12, 13, 21 and 29	NSW	The author, who was deaf, was refused Auslan interpretation, thereby preventing her participation in jury duty.	<p>On 1 April 2016, the CRPD Committee requested the State party to take measures to prevent similar violations in the future, including by:</p> <p>(i) Ensuring that every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his/her request for adjustment is carried out and all reasonable</p>	<p>Not implemented.</p> <p>The Australian Government did not accept the CRPD Committee's views.</p> <p>The federal court is seeking to harmonise its jury selection and participation manuals with the CRPD, however</p>

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					<p>accommodation is duly provided to enable his/her full participation;</p> <p>(ii) Adopting the necessary amendments to the relevant laws, regulations, policies and programs, in close consultation with persons with disabilities and their representative organizations;</p> <p>(iii) Ensuring that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is provided to local authorities, such as the Sheriff, and the judicial officers and staff involved in facilitating the work of the judiciary.</p>	legislation in most jurisdictions continues to exclude people with disability from jury service.
<i>M.L. v Australia</i> (13/2013)	8 April 2013	Articles 2, 4, 5, 9, 12, 13, 21 and 29 and Optional Protocols 2 (d) and (e)	NSW	The author, who was deaf, was denied the use of steno-captioning to be able to participate in jury duty, and was informed that he would not be permitted to participate in the jury selection process as he was deaf.	<p>On 1 April 2016, the CRPD Committee requested the State party to take measures to prevent similar violations in the future, including by:</p> <p>(i) Ensuring that every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his or her request for adjustment is carried out, and all reasonable accommodation is duly provided to enable his or her full participation;</p> <p>(ii) Adopting the necessary amendments in the relevant laws, regulations, policies</p>	<p>Not implemented.</p> <p>The Australian Government did not accept the CRPD Committee's views.</p> <p>The federal court is seeking to harmonise its jury selection and participation manuals with the CRPD, however legislation in most jurisdictions continues to exclude people with</p>

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					and programs, in close consultation with persons with disabilities and their representative organizations; (iii) Ensuring that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is provided to local authorities, such as the Sheriff, and the judicial officers and staff involved in facilitating the work of the judiciary.	disability from jury service.
<i>M.R. v Australia</i> (16/2013)	14 August 2013	Articles 13, 22, 23 and 28	Not recorded	The matter related to adapted social housing and funding for support services to enable de-institutionalisation.	The CRPD Committee made the decision to discontinue the consideration of communication once the author was no longer institutionalised.	N/A
<i>G.J.D. v Australia</i> (36/2016)	29 March 2016	Articles 12, 14, 15, 16, 17 and 21 and Optional Protocols 1 (1) and 2 (d) and (e)	Victoria	The author claims that by subjecting him to forced hospitalization in a psychiatric hospital with involuntary treatment, including electroconvulsive therapy, the State party has violated his rights under articles 12, 14, 15, 16, 17 and 21 of the Convention.	The CRPD Committee found the communication to be inadmissible	N/A Compulsory treatment continues to be lawfully permitted in all jurisdictions, although the Royal Commission into Victoria's mental health system has made a recommendation for

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
						targets be set to reduce its use and duration.
<i>Sherlock v Australia</i> (20/2014)	24 February 2014	Articles 4–5 and 18 and Optional Protocols 1 (1)	Victoria	The author, who had MS, claimed that the State party failed to recognize her right to liberty of movement and freedom to choose her residence on an equal basis with others. She argued that she was unable to obtain a subclass 457 visa on an equal basis with others because she failed to satisfy the health requirement due to the cost of her treatment, which included taking a specific medicine on a monthly basis.	On 19 March 2021, the CRPD Committee requested the State party to take measures to prevent similar violations in the future, including by ensuring that barriers to the enjoyment by persons with disabilities of the right to utilize immigration proceedings on an equal basis with others are removed under national legislation. As the State party's law does not prohibit any private arrangements between an employee and their employer concerning the payment or reimbursement of health-care costs, the Committee recommends that such arrangements be part of the visa criteria and thus be taken into consideration.	Not implemented. The Australian Government did not accept the CRPD Committee's views.
<i>L.H. v Australia</i> (56/2018)	3 October 2018	Articles 4 (1), 4 (2) and 5 (3), 9(1)(b) and 30(1)(b) and Optional Protocols 2 (d-e)	Australian Government	The author claimed violation of her rights under the Convention, as the State party failed to enable her, as a person with a disability, to live independently and participate fully in all aspects of life by not providing audio description on free-to-air television.	On 19 March 2021, the CRPD Committee requested the State party to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party to: (i) Adopt action plans and strategies to identify existing barriers to accessibility –including the provision of audio description services to visually impaired persons-, set time frames with specific deadlines and provide both the human	Not implemented. The Australian Government argued that it had taken appropriate measures and made 'measurable progress' to progressively achieve the full realisation of the right to accessibility. The Australian Government noted the

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					<p>and material resources necessary to remove the barriers, such action plans and strategies should be strictly implemented. The State party should also strengthen their monitoring mechanisms in order to ensure accessibility and it should continue providing sufficient funds to remove barriers to accessibility and train monitoring staff.</p> <p>(ii) Take the necessary legislative and policy measures with a view to ensuring the provision of audio description services to visually impaired persons.</p> <p>(iii) Educate persons with disabilities about their rights under the Convention, and in particular about accessibility as a crucial means to enable them to live independently and participate fully in all aspects of life.</p> <p>(iv) Ensure that appropriate and regular training and awareness raising activities on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is provided to all service providers of free-to-air television and other relevant stakeholders, to ensure that these are fully accessible in compliance with the</p>	<p>resource and regulatory burden of implementing legislative change, 'at a time of decreasing free-to-air audiences and increasing financial challenges'.</p>

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					Convention. Awareness-raising should be carried out in cooperation with persons with disabilities, their representative organizations and technical experts.	
<i>S.K. v Australia</i> (15/2013)	14 August 2013	Articles 14, 18, 19, 22, 23, 26 and 28	Queensland	The author was receiving rehabilitation services for an Acquired Brain Injury (ABI) but was discharged by the service because it deemed that 'no further rehabilitation outcomes' were likely to be achieved. He was found eligible for social housing, but he would not be allocated social housing unless he was first provided with community disability support services.	The author discontinued the communication in 2019.	N/A
<i>D.R. v Australia</i> (14/2013)	14 August 2013	Articles 4, 5(2), 14, 18, 19, 22, 26 and 28	Queensland	The author was receiving rehabilitation services for an Acquired Brain Injury (ABI) but was discharged by the service as suitable for discharge, on the basis that community based accommodation and disability support services would be available to him. Over a period of 10 years (2000-2010), referrals were made but were unsuccessful.	The CRPD Committee found the communication to be inadmissible.	N/A
<i>C.L. v Australia</i> (17/2013)	19 September 2013	Articles 5, 12, 13, 14, 15, 19, 25, 26 and 28	Northern Territory	The author was charged with assault and determined unfit to stand trial due to mental impairment. He spent 5 years and 10 months in custody, in harsh and isolated conditions, almost six times the period of custody he would have been	On 30 August 2019, the CRPD Committee requested the State party to: (i) Amend part IIA of the Northern Territory Criminal Code and all equivalent or related federal and state	Not implemented.

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
				required to serve had he been convicted of the offence.	<p>legislation, in close consultation with persons with disabilities and their representative organizations, in such a way as to comply with the principles of the Convention and with the Committee's guidelines on the right to liberty and security of persons with disabilities;</p> <p>(ii) Ensure without further delay that adequate support and accommodation measures are provided to persons with intellectual and psychosocial disabilities to enable them to exercise their legal capacity before the courts whenever necessary;</p> <p>(iii) Protect the right to live independently and be included in the community by taking steps, to the maximum of its available resources, to create community residences in order to replace any institutionalized settings with independent living support services;</p> <p>(iv) Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on the exercise of legal capacity and access to justice, is provided to staff working with persons with intellectual and</p>	

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					psychosocial disabilities, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary, and avoid using high-security institutions for the confinement of persons with intellectual and psychosocial disabilities.	
<i>M.D. v Australia</i> (18/2013)	19 September 2013	Articles 5, 12, 13, 14, 15, 19, 25, 26 and 28	Northern Territory	The author was incarcerated at a high security section of prison, he was found unfit to stand trial due to mental impairment, and following a special hearing, he was found not guilty of the offence by reason of mental impairment and liable to supervision. He was placed on a custodial supervision order. He spent a total of four years and nine months in custody, almost five times the period of custody required had he been convicted of the offence.	On 30 August 2019, the CRPD Committee requested the State party to (i) Amend part IIA of the Northern Territory Criminal Code and all equivalent or related federal and State legislation, in close consultation with persons with disabilities and their representative organizations, in such a way as to comply with the principles of the Convention and with the Committee's guidelines on the right to liberty and security of persons with disabilities; (ii) Ensure without delay that adequate support and accommodation measures are provided to persons with intellectual and psychosocial disabilities to enable them to exercise their legal capacity before the courts whenever necessary; (iii) Protect the right to live independently and be included in the community by taking steps, to the maximum of its available resources, to	Not implemented.

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					<p>create community residences in order to replace any institutionalized settings with independent living support services;</p> <p>(iv) Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on the exercise of legal capacity and access to justice, is provided to staff working with persons with intellectual and psychosocial disabilities, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary, and avoid using high-security institutions for the confinement of persons with intellectual and psychosocial disabilities.</p>	
<i>F.G. v Australia</i> (19/2014)	27 November 2013	Articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and (3), 9 and 29 (a) (i), (ii) and (iii)	New South Wales	<p>The author requested access to electronic assisted voting to enable her to vote by secret ballot in a federal election. The adjustment was required because she had limited mobility and no speech, due to cerebral palsy.</p> <p>Her request was refused on the basis that under the <i>Electoral Act 1918</i> (Cth) electronic voting systems are only</p>	<p>On 16 February 2018, the CRPD Committee required the s the State party to:</p> <p>(i) Consider amending the Electoral Act in order to ensure that electronic voting options are available and accessible to all people with disabilities who so</p>	<p>Not implemented.</p> <p>The Australian Government did not accept the CRPD Committee's views.</p> <p>The Australian Electoral Commission has undertaken some work,</p>

Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
				<p>available to persons with visual impairments.</p> <p>She requested assistance of a polling booth presiding officer to secretly cast her ballot, but was made to be assisted by her assistant, against her will and preventing her from casting a secret ballot.</p>	<p>require, whatever the types of impairment;</p> <p>(ii) Uphold, and guarantee in practice, the right to vote for persons with disabilities, on an equal basis with others, as required by article 29 of the Convention, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use, and protect the right of persons with disabilities to vote by secret ballot through the use of assistive technologies;</p> <p>(iii) Consider amending the Electoral Act in order to ensure that, in cases where assistance by another person may be necessary to enable a voter to cast his or her vote, the person providing such assistance is under an obligation to maintain the confidentiality of that vote.</p>	<p>through its Disability Advisory Committee, to promote greater accessibility, inclusion and participation in the electoral system.</p> <p>The Australian Law Reform Commission in 2014 made recommendations in line with the views of the CRPD.⁸⁰</p> <p>The Electoral Act was amended in 2021 and 2022⁸¹, but the amendments do not give effect to the CRPD Committee recommendations.</p>
<i>J.H. v Australia</i> (35/2016)	12 February 2016	Articles 5(2) and (3), 12 (2) and (3) and 21 (b) and (e)	Western Australia	The author, who was born deaf and uses Australian Sign Language (AusLan), was summoned to attend jury service. She was later excused from the summons as the court was unable to provide her with the necessary means (i.e. an AusLan interpreter) to enable her to serve effectively as a juror.	<p>On 13 August 2018, the CRPD Committee required the State party to:</p> <p>(i) Ensure that every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his/her request for adjustment is conducted and all reasonable accommodation is duly provided to enable his or her full participation;</p>	<p>Not implemented.</p> <p>The Australian Government did not accept the CRPD Committee's views.</p> <p>The federal court is seeking to harmonise its jury selection and participation manuals with the CRPD, however</p>

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Case name	Date of communication	Articles of the CRPD	Jurisdiction	Summary of the matter	General views made by the CRPD Committee ⁷⁹	Implementation status
					<p>(ii) Adopt the necessary amendments to the relevant laws, regulations, policies and programs, in close consultation with persons with disabilities and their representative organizations;</p> <p>(iii) Ensure that appropriate and regular training on the scope of the Convention and the Optional Protocol, including on accessibility for persons with disabilities, is provided to local authorities and the judicial officers and staff involved in facilitating the work of the judiciary, such as the manager of jury services.</p>	<p>legislation in most jurisdictions continues to exclude people with disability from jury service.</p>

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- ¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Interim Report, October 2020).
- ² Disability Representative Organisations, Joint Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Identified gaps in the scope of work undertaken by the Disability Royal Commission as at November 2022* (21 November 2022) (*Identified gaps in the scope of work undertaken by the Disability Royal Commission*).
- ³ Rosemary Kayess and Therese Sands, 'Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, September 2020) 46.
- ⁴ *Bradley v Commonwealth* (1973) 128 CLR 557 at 582 (Barwick CJ and Gibbs J); *Dietrich v The Queen* (1992) 177 CLR 292 at 305 (Mason CJ and McHugh J); *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 286–287 (Mason CJ and Deane J) and 315 (McHugh J).
- ⁵ Transcript of Proceedings, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Public hearing 18, 8 November 2021) 44 [25] (Natalie Wade).
- ⁶ International Law Commission, *Guide to Practice on Reservations to Treaties* (2011), submitted to the General Assembly as part of the ILC's report covering the work of its sixty-third session: UN Doc A/66/10, para 75 at [1.2].
- ⁷ *Ibid* [4.7.1].
- ⁸ Kayess and Sands (n 3) 44.
- ⁹ 'CRPD Committee's Views on Individual Communications under the Optional Protocol', *International Disability Alliance* (Web Page) <<https://www.internationaldisabilityalliance.org/crpd-committee-interpretation>>. (Note: This page lists 44 views delivered up to 30 September 2020., There have been 4 sessions since the 23rd session of the CRPD, with 16 views adopted, including 3 relating to Australia, giving the total of 60).
- ¹⁰ Australian Government, Submission No 0022.0001.0001 to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 18: The human rights of people with disability and making the Convention on the Rights of Persons with Disabilities a reality in Australian law, policies and practices* (15 February 2022) 5 [14] ('Submission No 00.22.0001.0001').
- ¹¹ Optional Protocol to the Convention on the Rights of Persons with Disabilities, art 6(4).
- ¹² Australian Human Rights Commission, *AHRC Annual Report 2021 – 2022* (Report, November 2022).
- ¹³ See Exhibit 18-21, CTD.9999.0030.0001, Response to Questions in letter from the Office of the Solicitor Assisting the Royal Commission dated 6 October 2021 - 1 November 2021, [365]-[366].
- ¹⁴ Submission No 0022.0001.0001 (n 10) 5 [13].
- ¹⁵ Counsel Assisting, Submission No 0022.0001.0026 to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 18: The human rights of people with disability and making the Convention on the Rights of Persons with Disabilities a reality in Australian law, policies and practices* (14 December 2021) [246].
- ¹⁶ The Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) ('CRPD Committee concluding observations').
- ¹⁷ Counsel Assisting, Submission No 0022.0001.0026 to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Public hearing 18: The human rights of people*

with disability and making the Convention on the Rights of Persons with Disabilities a reality in *Australian Law* (14 December 2021) 72 [245].

¹⁸ CRPD Committee concluding observations (n 15) 3 [9]-[10].

¹⁹ *Disability Discrimination Act 1992* (Cth) s 3(c).

²⁰ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual harassment in Australian Workplaces* (Report, 29 January 2020) 549.

²¹ *Sklavos v Australasian College of Dermatologists* (2017) FCAFC 128.

²² Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021).

²³ The Australian Human Rights Commission's upcoming report, *Bringing Rights Home: A human rights act for Australia*, to be published in February 2023, will make the case for a federal human rights Act.

²⁴ *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(a).

²⁵ Department of Social Services, Commonwealth of Australia, *Australia's Disability Strategy 2021-2031* (2021) 5 ('*Australia's Disability Strategy 2021-2031*').

²⁶ Senate Community Affairs References Committee, Commonwealth of Australia, *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities* (Report, 29 November 2017) ('Senate inquiry into delivery of outcomes under the NDS 2010-2020').

²⁷ *Australia's Disability Strategy 2021-2031* (n 24) 5.

²⁸ Senate inquiry into delivery of outcomes under the NDS 2010-2020 (n 25).

²⁹ CRPD Committee concluding observations (n 15).

³⁰ *Australia's Disability Strategy 2021-2031* (n 24) 5.

³¹ Australian Human Rights Commission, *Keeping Kids Safe and Well – Your Voices* (Report, December 2021) 96.

³² Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (Web Page, 24 October 2019) <<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>>.

³³ Senate Community Affairs References Committee, Commonwealth of Australia, *Protecting vulnerable children: A national challenge* (2005) ch 5.

³⁴ United Nations Committee on the Rights of the Child, *General Comment No 24: Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) [28].

³⁵ Bollier, A-M et al, 'Attitudes Matter: Findings from a National Survey of Community Attitudes Toward People with Disability in Australia' (2021) *Centre of Research Excellence in Disability and Health, The University of Melbourne* <[Community Attitudes towards People with Disability – National Survey results – CRE-DH \(credh.org.au\)](https://www.credh.org.au/research/attitudes-matter)>.

³⁶ *Ibid* 5.

³⁷ *Ibid* 16.

³⁸ *Ibid*.

³⁹ *Ibid* 24.

⁴⁰ CRPD Committee concluding observations (n 15).

⁴¹ Department of Social Services, Commonwealth of Australia, *Community Attitudes Targeted Action Plan*,

⁴² *Disability Standards for Accessible Public Transport 2002* (Cth); *Disability Standards for Education 2005* (Cth); *Disability (Access to Premises – Buildings) Standards 2010* (Cth).

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- ⁴³ Australian Institute of Health and Welfare, Australian Government, *People with disability in Australia 2022* (Report Catalogue No DIS 72, 5 July 2022) 204.
- ⁴⁴ Ilan Wiesel, Submission to Australian Building Codes Board RIS, *Lived experience and social, health and economic impacts of inaccessible housing* (University of Melbourne, 31 August 2020) 5.
- ⁴⁵ OECD, 'How's life? Measuring well-being' (2020), <<https://www.oecd-ilibrary.org>>.
- ⁴⁶ Roys M, Davidson M, Nicol S, Ormandy D and Ambrose P *The real cost of poor housing* (2010),
- ⁴⁷ Department of Social Services, Commonwealth of Australia, *National Disability Strategy 2010 – 2020* (2011) 34.
- ⁴⁸ Australian Building Codes Board, *Accessible housing: Options Paper* (September 2018) 10.
- ⁴⁹ Ron McCallum, 'The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia's Level of Compliance' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020) 46.
- ⁵⁰ *Convention on the Rights of Persons with Disabilities Declaration 2009* (Australia) sch 2.
- ⁵¹ The Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th sess, UN Doc CRPD/C/AUS/co/1 (21 October 2013) [9].
- ⁵² CRPD Committee concluding observations (n 15) [24].
- ⁵³ Attorney-General's Department, Commonwealth of Australia, *Combined Second and Third Periodic Reports Submitted by Australia under article 35 of the Convention*, UN Doc CRPD/C/Aus/2-3 (7 September 2018) [16] and [147].
- ⁵⁴ Transcript of Proceedings, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Public Hearing 31, Monday 12 December 2022) 54 (Gerard Quinn).
- ⁵⁵ Ron McCallum, 'The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia's Level of Compliance' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020) 54.
- ⁵⁶ Australia Law Reform Commission, *Final Report: Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, August 2014) ('*Final Report: Equality, Capacity and Disability in Commonwealth Laws*').
- ⁵⁷ Committee on the Rights of Persons with Disabilities, *General Comment No 5: on living independently and being included in the community*, UN Doc CRPD/C/GC/5 (27 October 2017) 12 [62].
- ⁵⁸ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) Preamble para 20 ('CRPD') <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/preamble.html>>.
- ⁵⁹ Australian Human Rights Commission, 'Information Concerning Compliance with the *Convention on the Rights of Persons with Disabilities*', Submission to the United Nations Committee on the Rights of Persons with Disabilities, 25 July 2019.
- ⁶⁰ Productivity Commission, Australian Government, *In need of repair: The National Housing and Homelessness Agreement* (Study Report, August 2022).
- ⁶¹ Julian Trollor et al, 'Cause of Death and Potentially Avoidable Deaths in Australian Adults with Intellectual Disability Using Retrospective Linked Data' (2017) 7(2) *BMJ Open* e013489; Julian Trollor and Jacqueline Small, 'Health Inequality and People with Intellectual Disability' (Research Summary, Faculty of Medicine, Department of Developmental Disability Neuropsychiatry 3DN, University of New South Wales, April 2019).
- ⁶² Julian Trollor et al, 'Cause of Death and Potentially Avoidable Deaths in Australian Adults with Intellectual Disability Using Retrospective Linked Data' (2017) 7(2) *BMJ Open* e013489; Faculty of Medicine, The Department of Developmental Disability Neuropsychiatry 3DN, 'Health Inequality and People with Intellectual Disability - Research Summary' (April 2019).

- ⁶³ Australian Human Rights Commission, Submission No 33 to The Senate Economics References Committee, Parliament of Australia, *The Indicators of, and Impact of, Regional Inequality in Australia* (30 April 2018).
- ⁶⁴ For example, 32% of children living in rural or remote NSW are unable to access the health services they need: Royal Far West, *The Invisible Children: The State of Country Children's Health and Development in Australia* (Report, September 2017).
- ⁶⁵ Productivity Commission, Commonwealth of Australia, *Review of the National Disability Agreement* (Study Report, January 2019) 12–13.
- ⁶⁶ *Ibid* 14, 85.
- ⁶⁷ CRPD (n 53) art 6.
- ⁶⁸ Australian Human Rights Commission, *Information Concerning Australia's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women, Submission to the United Nations Committee on the Elimination of Discrimination Against Women*, 12 June 2018, 25; Australian Human Rights Commission, *Information Relating to Australia's Joint Fifth and Sixth Report under the Convention on the Rights of the Child, Second Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and Second Report on the Optional Protocol on the Involvement of Children in Armed Conflict*, 36; Australian Human Rights Commission, *Information Concerning Australia's Compliance with the International Covenant on Civil and Political Rights – Submission to the UN Human Rights Committee* (18 September 2017); Australian Human Rights Commission, 'Submission by the Australian Human Rights Commission under the Universal Periodic Review Process' (April 2015), 26; Australian Human Rights Commission, 'The Involuntary or Coerced Sterilisation of People with Disabilities in Australia – Submission to the Senate Community Affairs References Committee' (Submission No.5, 20 November 2012).
- ⁶⁹ Australian Human Rights Commission, Submission No 5 to the Senate Community Affairs References Committee, Parliament of Australia, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (20 November 2012).
- ⁷⁰ Australian Human Rights Commission, *Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics* (18 October 2021).
- ⁷¹ Office for National Statistics, 'Updated estimates of coronavirus (COVID-19) related deaths by disability status, England: 24 January 2020 to 9 March 2022'.
<<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbydisabilitystatusenglandandwales/24january2020to9march2022>>.
- ⁷² *Ibid* 35.
- ⁷³ World Health Organisation, 'Global report on health equity for persons with disability' (2022) 26
- ⁷⁴ 'The prevalence of long COVID symptoms and COVID-19 complications', *Office for National Statistics* (Web Page, 16 December 2020)
<<https://www.ons.gov.uk/news/statementsandletters/theprevalenceoflongcovidsymptomsandcovid19complications>>.
- ⁷⁵ 29.2% according to a 2022 study: see Arjun et al, 'Prevalence, characteristics, and predictors of Long COVID among diagnosed cases of COVID-19' (2022).
<<https://www.medrxiv.org/content/10.1101/2022.01.04.21268536v1.full>>. The US Center for Disease Control notes 'the prevalence of post-COVID conditions has been challenging to estimate, with estimates ranging widely (5–30%)...(nearly 1 in 5) of U.S. adults who reported ever having

had COVID-19 currently have symptoms of long COVID, defined as symptoms lasting 3 or more months that were not present prior to having COVID-19.' See 'Post-COVID Conditions: Information for Healthcare Providers', *Centre for Disease Control and Prevention* (Web Page, 16 December 2022) <<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/post-covid-conditions.html>>.

⁷⁶ CDC/National Center for Health Statistics, 'Nearly One in Five American Adults Who Have Had COVID-19 Still Have "Long COVID"'.
<https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220622.htm>.

⁷⁷ ABC Radio National, 'Mass disabling event': Long COVID is hitting Australian workplaces' (broadcast 26 Jun 2022) <https://www.abc.net.au/radionational/programs/this-working-life/mass-disabling-event-long-covid-is-hitting-australian-workplaces/13944890>.

⁷⁸ *Identified gaps in the scope of work undertaken by the Disability Royal Commission* (n 2).

⁷⁹ For every communication, the CRPD Committee also produces views and recommendations for the State Party to provide effective remedy to the individual or group of individuals affected. These recommendations are not included in the table.

⁸⁰ *Final Report: Equality, Capacity and Disability in Commonwealth Laws* (n 51).

⁸¹ 'Recent and proposed changes to electoral law', *Australian Electoral Commission* (Web Page, 18 February 2022) <https://www.aec.gov.au/news/electoral-laws.htm>>.