Joint DPO submission on Australia
List of Issues Prior to Reporting, Country report task force
Human Rights Committee, 106th Session

This submission is jointly made by national, regional and global organisations of persons with disabilities (DPOs), namely:

- Australian DPOs: People with Disability Australia (PWDA), the Australian Federation of Disability Organisations (AFDO), Women with Disabilities Australia (WWDA); and

- regional and global DPOs: the Pacific Disability Forum (PDF), Disabled Peoples’ International (DPI), and the International Disability Alliance (IDA).

The joint submission includes information and proposed questions highlighting the civil and political rights of persons with disabilities in Australia as it relates to the issues of disability-based discrimination in migration, violence against women and girls with disabilities including forced sterilisation, equal recognition before the law, the right to political participation, freedom of expression and access to information.¹

The proposed questions for the List of Issues Prior to Reporting can be read at pages 10-11. Annex I compiles selected disability references in UPR recommendations and Concluding Observations of treaty bodies with respect to Australia (page 12), and Annex II includes information of the organisations making this submission (pages 16-17).

AUSTRALIA


Articles 3, 7, 23, 24, 26 Freedom from torture, cruel, inhuman or degrading treatment – violence against women and girls with disabilities

Violence against women and girls with disabilities

Women with disability are more likely than men with disability and women without disability to be victims of all forms of violence.² Furthermore, evidence indicates that the violence perpetrated against women with disability is more severe and is committed over an extended period.³ Regardless of age, ethnicity, sexual orientation or class, women with disability are

¹ The Australian Civil Society Shadow Report produced for submission to the Committee on the Rights of Persons with Disabilities in June 2012 has been used in the compilation of the submission. That Shadow report was compiled by representatives of organisations of persons with disabilities, advocacy, legal and human rights organisations.


³ National Council to Reduce Violence against Women and their Children, 'Background Paper to Time For Action: The National Council’s Plan for Australia to Reduce Violence Against Women and their Children, 2009–2021' (Background Paper, Department of Families, Housing, Community Services and Indigenous
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subjected to double the rate of exploitation, violence and abuse, including domestic and family violence as experienced by women without disability. The National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan) contains two initiatives specifically focused on improving access and responses of specialist domestic violence and sexual assault services to women with disability. These initiatives are welcome, however the National Plan does not as yet address linkages between domestic violence and sexual assault services and the disability or mental health service systems. It also does not address specific forms of violence experienced by women with disability, such as forced sterilisation and abortions. All Australian governments require disability services to comply with Disability Services Standards, which set out principles for the delivery of quality disability services. While protection from abuse and neglect is contained in the Standards, they are concerned primarily with the collection of quantitative data, they are un-gendered and adult focussed, and they rely on disability service providers to identify and respond to exploitation, violence and abuse.

Many people with disability are effectively forced to live in institutions or residential care facilities in order to receive social and personal care supports. Women in these environments are at a particularly heightened risk of physical and sexual violence and verbal, emotional, psychological or financial abuse as well as neglect and poor care, threatened and actual institutional violence and harassment perpetrated by co-residents, residential managers and support workers. It is extremely difficult to leave or escape violence, exploitation and abuse as often there are no alternative housing and support options.

The reliance on gender-neutral ‘abuse and neglect’ policies means that gender specific risks, prevention strategies and responses are often not identified or implemented. Not only are women with disability at greater risk of violence, exploitation and abuse in these settings, but they are also unlikely to receive gender-specific responses or support from domestic violence, sexual assault or women’s support services.

Gender-neutral disability services standards and ‘abuse and neglect’ policies can contribute to service practices that create significant risks for women with disability. For example, a number of representative and advocacy organisations have reported women with disability being used or ‘rostered’ for sex to address inappropriate male sexual behaviour in institutions and residential care facilities.

Despite the high incidence of exploitation, violence and abuse experienced by women with disability, there is a lack of knowledge and expertise and a range of structural barriers within domestic violence, sexual assault and women’s crisis services that prevent appropriate measures and responses to support women with disability. Key barriers include:

a. lack of knowledge about the specific forms of exploitation, violence and abuse experienced by women with disability, and the inter-relationship between gender and disability and exploitation, violence and abuse;¹⁰
b. lack of connection and promotion of services to women with disability in the community or within disability service systems;
c. lack of physical access to service locations, including refuges and crisis housing, and a lack of accessible information about services for women with sensory and cognitive impairments;¹¹
d. discriminatory service policies, procedures and practices that exclude women with disability, particularly women with psychosocial and cognitive impairments; and
e. service staff who are often inadequately trained to communicate with people with hearing, vision, speech and cognitive impairments and those with psychosocial disability.¹²

Forced sterilisation
Across the world, forced sterilisation is performed on young girls and women with disabilities for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse).¹³ This practice subjects women and girls to double discrimination based on their gender and disability, and violates their physical and moral integrity, freedom from cruel, inhuman and degrading treatment, and their right to decide freely and responsibly on the number and spacing of their children. Further, forced sterilisation has been identified as a form of torture and as other cruel, inhuman or degrading treatment or punishment by the UN Special Rapporteur on Torture.¹⁴ The UN Committee on the Rights of the Child (CRC Committee) has called it a form of violence.¹⁵

Australia has failed to legislate to prohibit sterilisation of children with disabilities in all circumstances, and the prohibition of sterilisation of women with disabilities without their full and informed consent. Both the CRC and CEDAW Committees have made recommendations to Australia about the need to establish prohibitions of forced sterilisation of children with disabilities.

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¹⁴ Manfred Nowak, Special Rapporteur, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 63rd sess, UN Doc A/63/175 (28 July 2008)
¹⁵ CRC Committee, General Comment No 13: The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (18 April 2011), paras 16, 21.
sterilisation.\textsuperscript{16} (see Annex below) Also, the Human Rights Council as an outcome of the Universal Periodic Review (UPR) of Australia has made similar recommendations.\textsuperscript{17}

**Articles 7, 9, 26 Right to liberty – disability-based detention and forced treatment permitted in the law**

Despite legislative provisions for the ‘least restrictive alternatives’ or for measures of ‘last resort’, involuntary detention, seclusion and restraint are frequently used in the mental health system in Australia, “despite a lack of evidence that they offer positive health outcomes” and “are commonly associated with further trauma, risk of violence and potential human rights abuse.”\textsuperscript{18} Compulsory treatment, seclusion, restraint and involuntary detention in mental health facilities violate the right to liberty and security of the person, and the right to freedom from torture and ill-treatment.

These restrictive practices occur in the disability and mental health service settings, such as institutions, group homes, boarding houses and mental health facilities. They also occur in schools, hospitals, residential aged care facilities and prisons. Research and available data on the use of restrictive practices and the impact of these practices on people with disability is very limited in Australia. Further, there is an absence of any definitive, regular and reliable national public reporting of rates of use of restrictive practices. Where reporting is required, there is an under-reporting of the number of people who endure these practices.

Available research indicates that an estimated 44 to 80 percent of people with disability who show ‘behaviours of concern’ are administered a form of chemical restraint, between 50 and 60 percent are subjected to regular physical restraint, and those with multiple impairments and complex support needs are subjected to much higher levels of restraint and seclusion.\textsuperscript{19} Research with people with disability about their experiences and views regarding restrictive practices has found that there is a high priority on feeling safe, but many feel unsafe in the situations and environments they are faced with.\textsuperscript{20}

Deprivation of liberty and forced treatment on the basis of disability is discriminatory and runs counter to fundamental provisions of the ICCPR on non-discrimination, the right to liberty and freedom from torture and inhuman and degrading treatment or punishment, as well as violating Articles 12, 14, 17 and 25 of the CRPD and recommendations by the Special Rapporteur on Torture.\textsuperscript{21}

\textsuperscript{16} Committee on the Rights of the Child (2012) para 46; CEDAW Committee (2010) para 43. CRC Committee (2005), para 46 (see annex below)


\textsuperscript{18} National Mental Health Consumer and Carer Forum, ‘Ending Seclusion and Restraint in Australian Mental Health Services’ (Position Statement, 2009).

\textsuperscript{19} Lynne Webber, Mandy Donley and Hellen Tzanakis, ‘Chemical Restraint: What Every Disability Support Worker Needs to Know’ (Article, Office of the Senior Practitioner, 2008).


Articles 12, 13 Freedom of Movement – disability based discrimination in migration

The Migration Act 1958 (Migration Act) and the Migration Regulations 1994 (Migration Regulations) control the entry and stay in Australia of non-citizens. They describe the selection criteria and processes for all visa applications. Further, the Disability Discrimination Act 1992 (DDA) provides for an exemption of certain provisions within the Migration Act, including the health requirement contained in this legislation.

Most visa applicants must satisfy the health requirement in order to be granted a visa. To meet the health requirement the applicant must: “... not have a disease or condition which would be likely to require health care or community services; meet the medical criteria for the provision of a community service, result in significant cost to the Australian community in the areas of health care and community services; or prejudice the access on an Australian citizen or permanent resident to health care or community services, regardless of whether the applicant would use those services”. It is much more likely for persons with disabilities to be unable to meet the criteria, which constitutes discrimination. All permanent visa applicants must also take a mandatory HIV test. A positive test result will generally lead to a denial of entry. The focus of this provision is exclusively on the perceived economic cost of the applicant’s ‘condition’ and the burden this will place on public health and community resources – of which there is in reality rarely any evidence.

The health requirement may have a significant negative impact on immigrant families. All members of a family group will be denied visas on the basis that a family member with disability has failed the health requirement. This may lead to a situation where families are forced to make a difficult decision to leave behind the disabled family member. In some cases, this will mean leaving family members with disability in extremely vulnerable situations, in war, under persecution, or civil unrest.

The health requirement in the migration legislation is in violation of Article 5 of the CRPD which states that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States Parties need to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Also, Article 18 of the CRPD states that persons with disabilities have the right to acquire and change nationality and are not to be deprived of their nationality arbitrarily or on the basis of disability, however Australia has issued an interpretive declaration on this article. The UN High Commissioner for Refugees (UNHCR) has expressed concern about the discriminatory effect of the health requirement: “The present operation of the health requirement is

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22 Migration Act 1958 (Cth) s 65.
23 Migration Regulations 1994 (Cth) sch 4, 4006.
24 UN High Commissioner for Refugees, ‘Submission No 82 to the Joint Standing Committee on Migration Inquiry into the Migration Treatment of People with a Disability’ Inquiry into Migration Treatment of People with a Disability, 2009, 26; National Ethnic Disability Alliance, Submission to the Joint Standing Committee on Migration: ‘No Right to Discriminate’, Inquiry into Migration Treatment of Disability, 2009, 24.
25 Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, 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.
discriminatory in effect and endangers a number of other human rights norms.\textsuperscript{26} as have the CRC and CESCR Committees.\textsuperscript{27}

**Articles 19, 25, Right to Political Participation – denial of the right to vote and to stand for election on the basis of disability, inaccessible voting procedures**

**Denial of the right to vote and stand for election**

Although voting is compulsory in Australia, persons with disabilities face significant barriers and discrimination\textsuperscript{28} in participating in political and public life at the Federal, State, Territory and Local Government level. Provisions in the Electoral Act\textsuperscript{29}, and State, Territory and Local Government electoral legislation prevent a person from being included on the electoral roll if they are incapable of understanding the nature and significance of enrolment and voting by reason of ‘being of unsound mind’. This presumption of incapacity denies some people with disabilities, particularly people with intellectual and psychosocial disabilities, from their right to vote.\textsuperscript{30} Persons with disabilities are likely to be automatically excluded from the electoral roll instead of ensuring that support measures are put in place to guarantee their participation on an equal basis with other citizens.\textsuperscript{31}

**Inaccessible voting process**

In Australia, ballot papers are not provided in accessible formats, such as Braille, which means that people who are blind or have vision impairment are not able to vote independently. To answer to this issue, the Electronically Assisted Voting system (EAV) was trialled in the 2007 federal election, and it was proven to be very successful.\textsuperscript{32} However, the use of the system has since been discontinued. Also, a 2010 legislative development allowed for the Electoral Commissioner to determine the method of secret ballot.\textsuperscript{33} Electors who are blind or have vision impairment have the option of attending an electoral office to be connected to trained call centre operators to complete their ballot papers in private.\textsuperscript{34} However, this approach does not assure the voter of anonymity and will require the voter to travel to the divisional office to cast their vote, posing an additional burden to voters.

\textsuperscript{26} UN High Commissioner for Refugees, ‘Submission No 82 to the Joint Standing Committee on Migration Inquiry into the Migration Treatment of People with a Disability’ Inquiry into Migration Treatment of People with a Disability, 2009, 11.

\textsuperscript{27} See Concluding Observations of the CRC Committee, CRC/C/AUS/CO/4, 2012, paras 56, 57(g), and CESCR Committee Concluding Observations, E/C.12/AUS/CO/4, 2009, para 16 (in Annex below)

\textsuperscript{28} In Fittler v NSW Electoral Commission, the tribunal held that failing to provide a ballot paper in Braille to a blind or vision impaired person was unlawful discrimination. Later, Mr Fittler was provided with a Braille ballot form in the next local government election, allowing him to vote independently for the first time.

\textsuperscript{29} The Electoral Act 1918

\textsuperscript{30} Similar provisions exist at a state level: Parliamentary Electorates and Elections Act 1912 (NSW) s 21(a); Electoral Act 1992 (Qld) s 64; Electoral Act 1985 (SA) s 29(1)(d); Electoral Act 2001 (Tas) s 31; Electoral Act 1907 (WA) ss 18(1)(a), 18(1)(cd). No such provision exists in Victoria.


\textsuperscript{33} The Electoral and Referendum Amendment (Close of Rolls and other Amendments) Bill 2010 was tabled in the Australian Senate on 10 March 2010.

\textsuperscript{34} Senate debates, ‘Electoral and Referendum Amendment (Close of Rolls and Other Measures) Legislation’ (2010) <www.openaustralia.org/senate/?id=2010-03-09.57.2>.
The Electoral Act permits an elector to apply for a postal or pre-poll vote if they will not be within eight kilometres of the nearest polling place. As many polling places are inaccessible for persons with disabilities, the nearest accessible polling place is often situated further than eight kilometres. This is especially seen in the situation of persons with disabilities in remote and rural areas; particularly Aboriginal and Torres Strait Islander people, who often do not have accessible transport or sufficient means to attend an accessible polling place on election day. Further, information of the locations of accessible polling venues are not being made available to persons with disabilities in accessible formats or in a timely manner.

Many persons with disabilities face additional barriers due to their living conditions. People who live in residential facilities have limited access to voting.

Article 29 of the CRPD guarantees persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others. States parties must ensure 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 in elections and public referendums without intimidation. Persons with disabilities are to be able to stand for elections, and to effectively hold office and perform all public functions at all levels of government. Governments must facilitate the use of assistive and new technologies where appropriate, and guarantee the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allow assistance in voting by a person of their own choice.

Article 16 Equal Recognition before the Law – denial of the exercise of legal capacity on the basis of a disability

Persons with disabilities experience widespread abuse, neglect and exploitation because of regimes that take away their power to make decisions about their own lives and give this decision-making power of another person. There is furthermore a lack of appropriate support for their exercise of legal capacity, in relation to managing their financial affairs, giving informed consent, and making important decisions.

Article 12 of the CRPD states that persons with disabilities have the right to recognition everywhere as persons before the law, and that they enjoy legal capacity on an equal basis with others in all aspects of life. Each jurisdiction in Australia has specific guardianship legislation and a number of other policies and practices, all of which are in violation of this.
article. States are expected to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Disabled citizens’ legal capacity can be denied in for instance in:

- Financial services — People with disability may be refused access to a bank account, or if they have a bank account, the financial institution may refuse to allow them to operate it independently. Banks also frequently refuse to recognise informal support people, such as family members from whom a person may wish to receive assistance to operate a bank account.

- Access to Justice — People with disability may be unable to obtain equal benefit and protection of the law because they do not receive supports to enable them to take action to protect their interests. For example, some people with disability cannot obtain a personal violence order unless supported to do so.

- Will making and disposition — People with disability may require support that is proportional to their needs and that is without undue influence and conflicts of interest to ensure that they can exercise their right to make a will on an equal basis with all other persons.

- The capacity of people with cognitive impairments to participate as witnesses in court proceedings is not supported and this has led to serious assault, sexual assault and abuse crimes going unprosecuted.

**Article 19 Freedom of Expression and access to information – failure to provide information in accessible formats; no official recognition of sign languages**

Many people with disability, including children with disability in Australia are unable to enjoy freedom of expression and opinion. Some of the broad factors that restrict the ability of people with disability to access information and express their opinion include:

- information not being provided in the format or language of choice, or there being a delay or significant cost involved in attaining information in the appropriate format or language;
- insufficient government action to lead private business and mass media to adopt accessible formats and languages; and
- lack of funding, provision or acknowledgement of the need for communication aids and techniques, including augmentative communication aids required by some people with disability to provide their opinions, to access information and to participate in consultations.

The National Disability Strategy (NDS) includes a policy direction focused on accessible, reliable and responsive communication and information systems for people with disability. The key measure to address this is the implementation of the National Broadband Network. Implementation is still in the early stages but there are no clear measures included in the NDS to ensure that accessible design and enabling platforms are incorporated.

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39 People With Disability Australia; Consultation Reports; Comments received from non-government organisations on the first draft NGO CRPD Shadow Report.

40 This has been identified by disability advocacy organisations as a particular issue for people with disability who have little or no access to advocacy or other support.

41 Nicholson & Ors v Knaggs & Ors [2009] VSC 64

Information is typically provided in accessible formats only when the information relates to disability itself. It is not usually made available at all in Australian Sign Language (Auslan) even when this is requested. The vast majority of other information intended for the general public remains in an inaccessible format and language. Problems are not simply limited to government policy brochures and information documents, but extend to information given at police stations, hospitals, schools and other support services.

No official recognition of Auslan
There is currently no Australian law or policy that recognises Auslan as an official language or ensures that services are provided in Auslan. There is no official recognition of the communication requirements of people who are DeafBlind, including requirements for the provision of DeafBlind interpreters. There are no accredited courses specific to DeafBlind interpreting, and so there is significant variation and proficiency in the interpreting available to people who are DeafBlind.

Article 21 of the CRPD requires that States Parties take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. This means that information intended for the general public is also provided to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. States need to recognize and promote the use of sign languages, and to accept and facilitate the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.

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44 Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).


Joint DPO submission on the LoIPR for Australia

IDA proposed questions for the List of Issues Prior to Reporting:

Articles 3, 7, 9, 23, 24, 26

- What steps are being taken to address the heightened risk for women and girls with disabilities of becoming victims of violence, abuse, and exploitation in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information to victims with disabilities, including training of police and other interlocutors?
- Please provide information on measures taken to provide holistic and coordinated responses and strategies across different services (domestic violence and sexual assault, disability, mental health service systems) to prevent and combat violence against women and girls with disabilities, including the incorporation of gender, disability and child-friendly perspectives, the collection of such disaggregated data and meaningful consultation with women and girls with disabilities and their representative organisations for effective policy-making?
- What steps is the Australian Government taking to comply with the recommendations of the CEDAW & CRC Committees, and the Human Rights Council to enact national legislation prohibiting the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent?
- What steps is the Australian Government taking to redress the human rights violations against women and girls with disabilities who have been sterilised without their consent?
- What measures are being adopted to ensure that all health care and services, provided to persons with disabilities, including all mental health care and services, are based on the free and informed consent of the person concerned (and cannot be substituted by third party decision-makers such as family members or guardians)?
- What measures are being taken to eliminate the use of coercion and restraint, including chemical restraint on persons with disabilities in psychiatric facilities and other institutions?
- What steps are being taken to repeal all provisions that authorize involuntary treatment and involuntary confinement, including arbitrary arrest and detention, in conformity with CRPD Articles 12, 14, 17 and 25 and recommendations of the Special Rapporteur on Torture? In particular, what steps have been taken both to develop and ensure sufficient and quality community based housing and support services for persons with psychosocial and intellectual disabilities, including Aboriginal Australians?
- How is the provision of reasonable accommodation in prisons recognised in the law and ensured in practice to uphold the rights of prisoners with disabilities?
- What steps are being taken to ratify the Optional Protocol to the Convention against Torture (OPCAT)?

Articles 12, 13, 23, 26

- What steps have been taken to ensure that migration law, policies and practices prohibits disability based discrimination?
Articles 16, 26
- What steps has Australia taken to repeal law and policy which has the purpose or effect of denying or diminishing recognition of any person as a person before the law, or of denying or diminishing any person’s ability to exercise legal capacity?

Articles 19, 25, 26
- What steps have been taken to guarantee the right of persons with disabilities to vote in elections on an equal basis with others by removing Section 93(8)(a) of the Electoral Act 1918 (Cth) (‘unsound mind’ provision)?
- What measures are being adopted to ensure the accessibility of polling stations, booths and voting material, including by permitting an individual an assistant of their own choice to help them to vote, without external surveillance or by using the Electronically Assisted Voting (EAV) system? How is information on elections and political campaigns being made accessible in the lead up to elections?
- What measures are in place to guarantee access to information in Australian Sign Language and accessible formats (such as Braille, plain language, electronic formats) by the government and private actors?
- What steps are being taken to officially recognise in the law Deaf people’s right to use Auslan as Australia’s official sign language?
- What steps are being taken to formally recognise the communication requirements of people who are DeafBlind, and to establish and resource nationally consistent accreditation courses for DeafBlind interpreters?
ANNEX II- Selected disability references in UPR recommendations and Concluding Observations of treaty bodies with respect to Australia

Universal Periodic Review – Australia, A/HRC/17/10, 2011

Conclusions and/or recommendations
86. The following recommendations will be examined by Australia which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:

86.39. Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women concerning the sterilization of women and girls with disabilities (Denmark); enact national legislation prohibiting the use of non-therapeutic sterilization of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent (United Kingdom); repeal all legal provisions allowing sterilization of persons with disabilities without their consent and for non-therapeutic reasons (Belgium); abolish non-therapeutic sterilization of women and girls with disabilities (Germany);

86.40. Continue its laudable measures to address the plight of persons with disabilities, in particular through pursuance of the draft National Disability Strategy, and share its experience in this regard (Botswana); 86.41. Complete as soon as possible a general framework of measures to ensure equality of chances for people with disabilities (Republic of Moldova);

86.42. Ensure that its efforts to harmonize and consolidate Commonwealth anti-discrimination laws address all prohibited grounds of discrimination and promote substantive equality (United Kingdom); 86.43. Enact comprehensive equality legislation at the federal level (Pakistan); grant comprehensive protection to rights of equality and non-discrimination in its federal law (India);

86.44. Enact comprehensive legislation which prohibits discrimination on all grounds to ensure the full enjoyment of all human rights by every member of society (South Africa);

86.45. Continue its efforts to harmonize and consolidate its domestic legislation against all forms of discrimination on the basis of international standards (Argentina);

86.46. Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular children, persons in detention and persons with disabilities (Morocco);

86.47. Take firm measures to end discrimination and violence against women, children and people from vulnerable groups so as to enhance a better respect for their dignity and human rights (Viet Nam);

Concluding Observations of the CRC Committee, CRC/C/AUS/CO/4, 2012

A. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

Violence against children and women

45. The Committee is gravely concerned at the high levels of violence against women and children prevailing in the country and notes that there is an inherent risk that the co-existence of domestic violence, lawful corporal punishment, bullying, and other forms of violence in the society are inter-linked, conducing to an escalation and exacerbation of the situation. The Committee is particularly concerned that:

(b) Sterilisation of women and girls with disabilities continues;

(c) Programmes for the reintegration of child victims of domestic violence remain inadequate including because of the absence of monitoring systems of children victims who are reintegrated with their families;

(e) There are no regular and systematic evaluations of the existing measures addressing violence against children in the school, Internet and other contexts.

46. Emphasising the State party’s obligations under articles 19 and 37(a) of the Convention and the Committee’s General Comment 13 (2011) on the right of the child to freedom from all forms of violence, the Committee urges the State party to develop federal legislation as a general framework to reduce violence and promote the enactment of similar and complementary legislation at state and territory level. It also recommends that the State party adopt a specific plan of action to make operational the provisions under the National Plan to Reduce Violence against Women and Their Children (2010-2022), including such measures as: (a) Ensuring that
the factors contributing to the high levels of violence among Aboriginal women and children are well understood and addressed in national and state/territory plans;

(b) Developing and enforcing strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent;
(c) Establishing mechanisms for ensuring effective follow-up support for child victims of domestic violence upon their family reintegration;
(d) Developing alternatives for cases where a parent or other family member is the perpetrator; and
(e) Monitoring implementation of anti-violence measures (including corporal punishment and bullying in schools, through Internet, and in other settings) within specific plans and as part of the 3-year action plan of the National Framework for Protecting Australia’s Children.

E. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

56. The Committee appreciates the State party’s assessment of its disability support system with its Productivity Commission in July 2011. However, taking note of the findings of the Commission, the Committee shares the concerns that the current disability support system is “under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports, with children with disabilities frequently failing to receive crucial and timely early intervention services, support for life transitions, and adequate support for the prevention of family or carer crisis and breakdown.” Furthermore, while noting the State party’s five-year implementation of its Disability Standards for Education 2005, the Committee remains concerned that a significant disparity remains between educational attainments for children with disabilities compared to children without disabilities. Further elaborating on its concerns on the non-therapeutic sterilization stated earlier in this report, the Committee is seriously concerned that the absence of legislation prohibiting such sterilisation is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities. Furthermore, the Committee is concerned that the State party’s legislation allows for disability to be the basis for rejecting an immigration request.

57. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to:
(a) Establish a clear legislative definition of disability, including for learning, cognitive and mental disabilities, with the aim of promptly and accurately identifying children with disabilities to effectively address their needs in a non-discriminatory manner;
(b) Strengthen support measures for parents to care for their children with disabilities, and, where such placement in care is considered, to ensure that it is done with full regard to the principle of the best interests of the child;
(c) Adopt a social model approach that is in accordance with the Convention on the Rights of Persons with Disabilities, addressing attitudinal and environmental barriers that hinder the full and effective participation of children with disabilities in society on an equal basis, and train all professionals working with or for children with disabilities accordingly;
(d) Undertake greater efforts to make available the necessary professional (i.e. disability specialists) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups;
(e) Ensure that children with disabilities are able to exercise their right to education, and provide for their inclusion in the mainstream education system to the greatest extent possible, including by considering developing a Disability Education Action Plan to specifically identify current inadequacies in resources, establishes clear objectives with concrete timelines for the implementation of measures to address the educational needs of children with disabilities;
(f) Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities; and
(g) Ensure that all of the State party’s legislation, including its migration and asylum legislation, does not discriminate against children with disabilities and is in full
compliance with its legal obligations under article 23 of the Convention on the Rights of Persons with Disabilities.

Concluding Observations of the CEDAW Committee, CEDAW/C/AUL/CO/7, 2010

Temporary special measures
26. The Committee notes with concern that, despite a large number of policies and programmes adopted by the State party to address underrepresentation of certain vulnerable groups of women, including indigenous women, women with disabilities, migrant women, women from culturally and linguistically diverse backgrounds and women from remote or rural communities, there has been slow progress in ensuring their equal participation in leadership and decision-making positions, in public and political life and their equal access to education, employment and health. The Committee continues to be concerned that the State party does not favour adoption of temporary special measures in the form of compulsory targets and quotas to address the underrepresentation of women in decision-making bodies, in political and public life and the persistent inequality of their access to education, employment opportunities and health-care services.

27. The Committee reiterates its recommendation in its previous concluding observations (CEDAW/C/AUL/CO/5, para. 17) that the State party fully utilize the Sex Discrimination Act and consider the adoption of temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation No. 25, to increase further the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, including indigenous women and women from ethnic minorities.

Political participation and participation in public life
34. The Committee notes with appreciation the positive developments in increased women’s representation in senior ranks of public office, that 30 per cent of all Australian parliamentarians are women, that women constitute 58 per cent of the public service and that three out of seven High Court judges are women. The Committee, however, remains concerned that the measures taken to enhance the participation of Aboriginal and Torres Straits Islander women and women with disabilities in public life remain inadequate.

35. The Committee recommends that the State party adopt targeted measures, including temporary special measures with clear time frames, in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation No. 25, to ensure the equal participation and representation of women in public and political life, with a particular focus on Aboriginal and Torres Straits Islander women and women with disabilities.

Disadvantaged groups of women
42. The Committee is concerned that women with disabilities are almost entirely absent from key leadership and decision-making positions and continue to be disadvantaged with regard to educational and employment opportunities. It is concerned about the high levels of violence experienced by women, particularly those living in institutions or supported accommodation. The Committee also notes with concern that non-therapeutic sterilizations of women and girls with disabilities continue to be practiced in some states in Australia and notes that the Commonwealth Government considers this to be a matter for state governments to regulate.

43. The Committee urges the State party, in the light of its recent ratification of the Convention on the Rights of Persons with Disabilities, to undertake a comprehensive assessment of the situation of women with disabilities in Australia. The Committee recommends that the State party address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation. The Committee further recommends that the State party adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets, in accordance with article 4, paragraph 1, of the Convention and the Committee’s general recommendation No. 25. The Committee recommends that the State party enact
national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.

Concluding Observations of the CESCR Committee, E/C.12/AUS/CO/4, 2009

D. Principal subjects of concern and recommendations
16. The Committee regrets that insufficient measures have been taken by the State party to ensure an adequate standard of living for persons with disabilities. In particular, it notes with concern that section 52 of the Disability Discrimination Act 1992 exempts migration laws, regulations, policies and practices, from the effects of the Act, leading to negative immigration decisions based on disability or health conditions. The Committee expresses concern at the fact that this situation has had a particularly negative impact on the families of asylum-seekers. (arts. 2, para. 2; 10 and 11)

The Committee encourages the State party to strengthen its efforts towards the adoption of concrete measures to enable persons with disabilities to fully enjoy the rights guaranteed by the Covenant. It recommends that the Migration Act 1958 and the Disability Discrimination Act 1992 be amended to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.
Annex III - Information of the submitting organisations

People with Disability Australia Incorporated (PWD) is a national peak disability rights and advocacy organisation. Our primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD also has a large associate membership of other individuals and organisations committed to the disability rights movement. Founded in 1981, the International Year of Disabled Persons, People with Disability Australia seeks to provide people with disability with a voice of our own. We have a cross-disability focus representing the interests of people with all kinds of disability. PWD is a non-profit, non-government organisation, and a member of Disabled Peoples' International (DPI).

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The Australian Federation of Disability Organisations (AFDO) is the peak national body for organisations of people with disability. AFDO was incorporated in 2003 and became operational in November 2004. Our vision is to achieve a community where people with disability can participate in all aspects of social, economic, political and cultural life. Our mission is to champion the rights of people with disability in Australia and help them participate fully in Australian life. We work to achieve this by:

- lobbying governments and other institutions on disability issues
- advising government, disability organisations and other organisations about their disability policies
- informing and educating the general community about disability
- supporting disability organisations and people with disability and,
- researching disability issues

AFDO is a member of the Pacific Disability Forum.

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Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally. WWDA’s work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. This rights based approach recognises that equal treatment, equal opportunity, and non-discrimination provide for inclusive opportunities for women and girls with disabilities in society. It also seeks to create greater awareness among governments and other relevant institutions of their obligations to fulfil, respect, protect and promote human rights and to support and empower women with disabilities, both individually and collectively, to claim their rights.

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The Pacific Disability Forum (PDF) was established in 2002 and officially inaugurated in 2004, to work towards inclusive, barrier-free, socially just, and gender equitable societies that recognize the human rights, citizenship, contribution and potential of people with disabilities in Pacific Countries and territories. PDF promotes and facilitates Pacific regional cooperation on disability-related concerns for the benefit of people with disabilities. PDF is a member of the International Disability Alliance.

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Disabled Peoples’ International (DPI) is a network of national organizations or assemblies of disabled people, established to promote human rights of disabled people through full participation, equalization of opportunity and development. The Goals of DPI are to: Promote the human rights of disabled persons; Promote economic and social integration of disabled persons; and Develop and support organizations of disabled persons. DPI is a member of the International Disability Alliance.

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The International Disability Alliance (IDA) is a unique international network of global and regional organisations of persons with disabilities, of which EDF is a regional member. Established in 1999, each IDA member represents a large number of national disabled persons’ organisations (DPOs) from around the globe, covering the whole range of disability constituencies.

Member Organisations of the International Disability Alliance:
- Disabled Peoples’ International
- Pacific Disability Forum
- Down Syndrome International
- Inclusion International
- International Federation of Hard of Hearing People
- World Blind Union
- World Federation of the Deaf
- World Federation of the DeafBlind
- World Network of Users and Survivors of Psychiatry
- Arab Organization of Disabled People
- European Disability Forum,
- Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias (RIADIS)

IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world’s largest – and most frequently overlooked – minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

Victoria Lee