



PEOPLE WITH DISABILITY
AUSTRALIA

Response to the Disability Royal Commission Final Report

January 2024

**A voice
of our own**



Copyright Information

Response to the Disability Royal Commission Final Report

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About PWDA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

The disability representative organisation has a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability are not only recognised and respected but also celebrated.

PWDA was established in 1981, during the **International Year of Disabled Persons**. It is a peak, non-profit, non-government organisation that represents the interests of people with all kinds of disability.

The organisation of people with disability helps represent the Australian disability community at the **United Nations**, particularly in relation to the international human rights outlined in the **Convention on the Rights of Persons with Disabilities** (CRPD).

PWDA's work is grounded in a human rights framework that recognises the CRPD and related mechanisms as fundamental tools for advancing the rights of people with disability.

PWDA is a member of **Disabled People's Organisations Australia** (DPO Australia), along with the **First People's Disability Network**, **National Ethnic Disability Alliance** and **Women With Disabilities Australia**.

As a Disabled People's Organisation (DPO), PWDA collectively forms a disability rights movement that places people with disability at the centre of decision-making about all aspects of their lives. This in keeping with the human rights of people with disability to be involved with legislation, policies and other issues relating to them through representative organisations, and right to equal recognition before the law, under articles **4(3)** and **12** of the CRPD.

PWDA's work also embraces the **Nothing About Us, Without Us** motto of members of the international disability community, prioritising inclusion and respect for people's right to legal capacity.

President Foreword

For over four and a half years, from April 2019 – September 2023, our community – the disability community – laid bare throughout the Disability Royal Commission the violence, abuse, neglect and exploitation we have endured and continue to experience.

PWDA stood alongside people with disability throughout our Disability Royal Commission, supporting them to share their individual experiences with the Commission and providing systemic policy submissions on various topics as we collectively called for justice and genuine change.

The Disability Royal Commission was a monumental undertaking involving nearly 8,000 submissions, 1,785 private sessions, and 710 responses to published issues papers. At the heart of these were the voices of thousands of people, including myself, who shared our experiences with the Commission.

The release of the final report and its 12 volumes and 222 recommendations on Friday 29 September 2023 was a difficult but important moment for people with disability individually and for us as a community more broadly.

Now we await the response to the report from governments and society. A response that must deliver serious positive change for people with disability.

Change that will ensure a future free from violence.



Image | Marayke Jonkers - President People with Disability Australia.

Change that delivers a future that is fully inclusive.

Change that will see people with disability use their voice at tables where decisions are being made that affect our lives.

PWDA recognises the recommendations put forward by our Disability Royal Commission are vast and complex, requiring thoughtful consideration by both our community and governments at all levels.

PWDA has opened the conversation with our members, and we are grateful to every member who engaged with us through our survey and member consultations. Close to 200 people engaged with us, whether that was through our survey or by attending our in-depth online consultations. Your contributions and voice are what has shaped the policy positioning in this document – PWDA’s Response to the Disability Royal Commission Final Report.

We hope this response is viewed as a starting point for an ongoing conversation between the disability community and governments.

A conversation that must include the issues and areas that were absent or not adequately addressed, where the voices of people with disability must be heard and acted on. Issues like transport, psychosocial disability, hate crimes, income support, sexual and reproductive rights, healthcare accessibility and post-secondary education to name but a few.

A conversation that must include how we move towards the complete desegregation in all settings, including education, housing and employment. One that recognises people with disability must define what segregation means on our terms, for our community. One that leads to the necessary legislative changes and structures to deliver this future.

A conversation that extends to the safeguarding and oversight mechanisms within the National Disability Insurance Scheme (NDIS), and more broadly across disability services. It must take us closer to a system where people with disability are not merely participants but have genuine choice and control and are assured of their safety.

As our community know, conversation alone will not be enough. People with disability, and their representative organisations, need to have a formal role in sequencing and prioritising the implementation of reforms flowing from our Disability Royal Commission. We must be at the forefront of every decision, policy, and action that emerges from the Disability Royal Commission’s recommendations and PWDA will continue advocating for this.

We hope this report supports that journey.

**Nothing About Us,
Without Us.**

Marayke Jonkers

President

People with Disability Australia

About the Disability Royal Commission

In April 2019, the Australian Government established the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Six Commissioners were appointed. They were:

- The Honourable Ronald Sackville AO KC (Chair)
- Ms Barbara Bennett PSM
- Dr Rhonda Galbally AC
- Ms Andrea Mason OAM
- Mr Alastair McEwin AM
- The Honourable John Ryan AM.

The final report was first published on 29 September 2023.



What informed this report?

The PWDA Systemic Advocacy team conducted a review of the **Disability Royal Commission Final Report** contrasting key recommendations with PWDA's public positions on the areas covered.

The PWDA Board, comprised of respected disability leaders with deep connection to the disability community, provided leadership and guidance to the team throughout this process. This work informed the development of our PWDA Disability Royal Commission (DRC) member survey.

PWDA conducted the DRC member survey from 23 October–12 November 2023 to determine the views of our membership on key recommendations out of the 222 final recommendations in the DRC Final Report. There were 134 survey respondents with 123 valid survey responses (n=11, not PWDA members).

In addition, two dedicated member consultations were held between 21–22 November 2023, with over 60 people in attendance. These dedicated member consultations refined the views of our members on key recommendations from the DRC's Final Report.

This report is a result of PWDA's member consultations, and reflects the most up-to-date information on what people with disability across Australia think about key recommendations.



Position 1 - Disability Rights Act

What did the Disability Royal Commission recommend?

- That the Australian Government enacts a Disability Rights Act (Recommendation 4.1 and 4.2), that gives effect to the rights set out in the Convention on the Rights of Persons with Disabilities (CRPD).
- The Act would apply to government and government agencies. However, the Disability Royal Commission (DRC) wanted to consult on whether non-government entities, such as NDIS providers, should be immediately subject to the Act with Commissioners Bennett, Galbally and McEwin recommending non-government entities be included immediately (Recommendation 4.4).

Why does this matter?

Australia has signed up to the Convention on the Rights of Persons with Disabilities (CRPD), but we are not seeing these rights being translated into Australian law and policy. Existing human rights frameworks are failing to prevent and address violence, abuse, neglect and exploitation of people with disability.

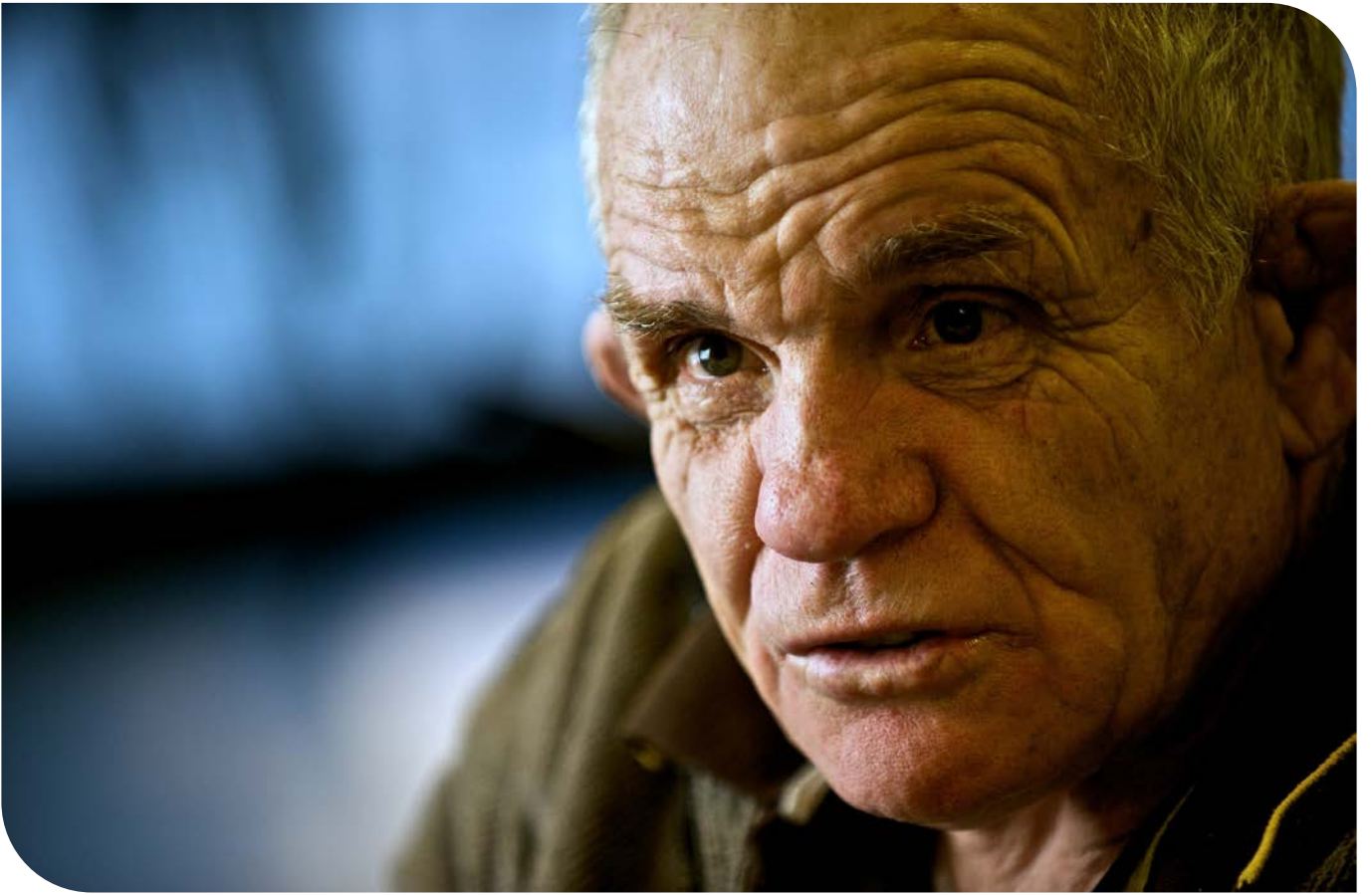
The DRC has confirmed what we already knew – our rights are not currently being upheld or respected in Australia.

That's why PWDA has previously called for rights to be embedded in legislation, because when our rights are breached, too often, there are no consequences. This means there is no deterrent for those who infringe on our rights, and no access to remedies to address the disadvantage caused.

72% of surveyed PWDA members want better laws that protect and enforce the human rights of people with disability. PWDA has long advocated for the creation of a Human Rights Act. With the current Parliamentary Review into Australia's Human Rights Framework, we asked our members how they would consider a Disability Rights Act in this context.

There was strong support for a Disability Rights Act to be enacted (93%). 46% of surveyed PWDA members support the development of a Disability Rights Act in addition to the federal Human Rights Act, and with a further 33% supporting a Disability Rights Act to be folded into a federal Human Rights Act, if that becomes a reality.

The time has come to embed our CRPD rights into Australian law.



How do we change it?

PWDA supports the recommendation for legislation that enables people with disability to have protection of their human rights. We take a position that a Disability Rights Act, as per Recommendation 4.1, should occur, followed by development of a federal Human Rights Act. There needs to be close consultation with people with disability and their representative organisations for both pieces of legislation, and this includes determining the scope of the rights contained in each proposed legislation.

The Act must also expressly prohibit other practices that violate our rights. For example, Recommendation 4.8 articulates our right to liberty and security of the person, but the DRC has not gone far enough on ending restrictive practices being used against us.

The Disability Royal Commission provided reports of NDIS provider misconduct in [public hearing 20](#), therefore it is crucial that **NDIS providers be covered by the legislation immediately.**

Position 2 - Commonwealth, state and territory governance

What did the Disability Royal Commission recommend?

- The development of a new National Disability Agreement between the Australian Government and state/territory governments (Recommendation 5.1), with the agreement providing a framework for intergovernmental collaboration, covering reforms (including DRC reforms), Australia's Disability Strategy 2021–2031 (ADS) and National Disability Insurance Scheme.
- A review and update of Australia's Disability Strategy (ADS), as well as state and territory disability strategies and plans, to ensure they reflect the issues raised and recommendations made by the DRC (Recommendation 5.2).

Why does this matter?

National Disability Agreement

The National Disability Agreement is an agreement between the Commonwealth and the state and territory governments about the provision of disability services.

The **2019 Productivity Commission Review of the National Disability Agreement** concluded that the current agreement is out of date, and has a weak influence on policy.

People with disability are tired of missing out on crucial services and supports, because governments and government agencies are 'passing the buck'. We need a new agreement that clearly sets out responsibilities, performance reporting and accountability for all levels of government and agencies.

Australia's Disability Strategy (ADS) and state/territory strategies

The ADS is the key mechanism to implement our rights contained in the CRPD. It is important that these strategies remain up-to-date to ensure they are effective in promoting our rights.

How do we change it?

Any forthcoming agreement and strategy should not contain DRC recommendations that conflict with our CRPD rights. In addition, disability representative organisations must have a formal governance role in working with governments to support prioritisation of agendas that meet the needs of the Australian disability community.

National Disability Agreement

We support the DRC's recommendation to develop a new National Disability Agreement to provide a framework for collaboration (Recommendation 5.1). This should **be done in consultation**

with disability representative organisations. The new National Disability Agreement should include reference to implementing the CRPD in its objectives.

ADS and state/territory strategies

We support a review of the ADS and state/territory plans (Recommendations 5.2). However, the review should primarily focus on implementing our CRPD rights, and consider measures that have shared budget responsibility, to ensure action is delivered as soon as possible and in a manner that promotes inclusion across mainstream systems.



Position 3 - Composition and operation of the National Disability Commission

What did the Disability Royal Commission recommend?

- The establishment of a National Disability Commission was recommended (Recommendation 5.5).
- The Commission was recommended to have key functions like supporting compliance with the proposed Disability Rights Act (Recommendation 4.18), developing a co-designed complaints mechanism for people with disability (Recommendation 4.19), and strengthening awareness and understanding of disability rights (Recommendation 4.21).

Why does this matter?

The development of a National Disability Commission for oversight and enforcement of the proposed Disability Rights Act, could provide a clear avenue for complaint making and recourse, when a person with disability's rights have been breached.

PWDA supports an independent body to oversee disability rights and monitor outcomes for people with disability. The work of the Commission should be disability-led, and have the input of people with disability into how the Commission is run, and how it delivers its functions. 95% of surveyed PWDA members support the development of the National Disability Commission.



How do we change it?

The National Disability Commission needs to have oversight by, and be directed by, people with disability. This includes governance, executive management, and at all levels of employment in the Commission.

A National Disability Commission (NDC) Development Plan should be created in consultation with people with disability and their representative organisations, to fully meet the needs of Australians with disability.

The NDC Development Plan should echo Recommendation 5.5 that the Commission be disability-led, and extended to ensure that disability employment is prioritised across all

levels of the Commission. It should include measures for an inclusive and accessible workplace, and accessible recruitment strategies.

The development plan should also include information about who has oversight of the Commission's development, which stakeholders are involved, and how the Commission will operate (governance, leadership roles, structure and functions).

Finally, there must be no overlap: **a clear delineation between the different functions of the Australian Human Rights Commission and the Disability Rights Commission is needed** as is an understanding of how the two Commissions will collaborate.

Position 4 - Minister for Disability Inclusion

What did the Disability Royal Commission recommend?

It was recommended that the Australian Government establish new governance arrangements for disability by the end of 2024 (Recommendation 5.6) by creating:

- A **portfolio responsible for the disability and carers policies and programs**, currently the responsibility of the Social Services portfolio.
- A **ministerial position** – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs, that are currently under the remit of the Minister for Social Services.
- A portfolio responsible for a Department of Disability Equality and Inclusion.

Why does this matter?

The DRC recommended significant changes that need supporting governance to ensure change occurs and outcomes are achieved.

Issues affecting people with disability cut across multiple portfolios, represented by different ministers, across different departments; and this has led to a lack of cohesive response and information sharing on issues affecting people with disability.

Previously, PWDA has called for the responsibility of implementing Australia's Disability Strategy to sit with the Department of Prime Minister and Cabinet to drive whole-of-government change and collaboration.

Having new governance arrangements for disability would enable stronger whole-of-government responses. This would promote leadership and ownership over a broad range of actions, and inform and influence agendas that drive better outcomes for people with disability.

How do we change it?

We support the Australian Government taking action to realign disability issues into a single portfolio under the leadership of a Minister for Disability Inclusion.

The ministerial position should be senior in Cabinet and would ideally be a person with disability, and the department supporting the position would have widespread disability representation within it.

Position 5 - Timeframe to phase out segregated housing

What did the Disability Royal Commission recommend?

- Commissioners Bennett, Galbally, Mason, and McEwin recommended a 15-year timeframe to phase out segregated housing (Recommendation 7.43).
- A generational timeframe was recommended by Commissioner Ryan (Recommendation 7.44).

Why does this matter?

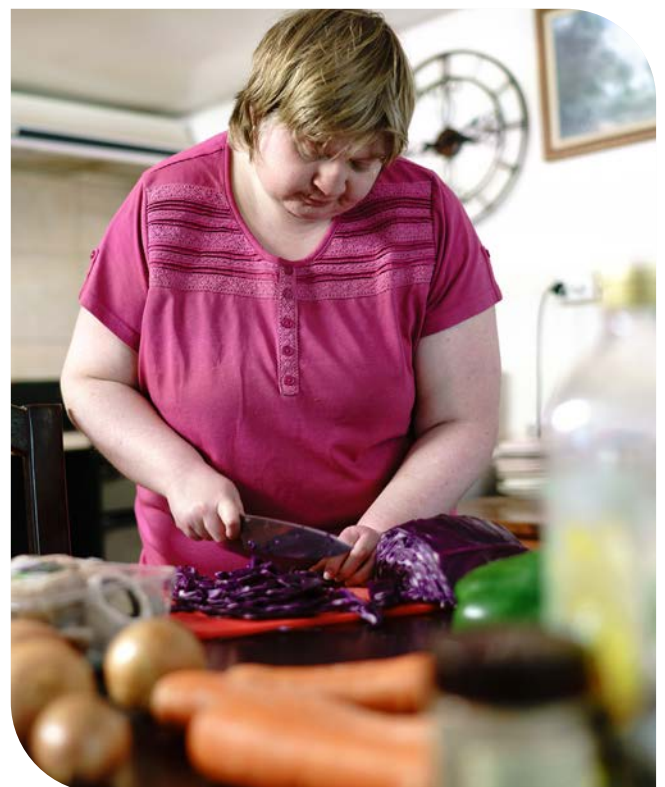
The DRC heard extensively about the high prevalence of violence and abuse occurring against people with disability within group home settings. 63% of surveyed PWDA members do not think segregated housing should exist.

It is important to ensure another generation of people with disability are not segregated in housing like group homes, because once infrastructure and segregation processes are in place, it can take decades for segregation to be dismantled.

For this reason, it is critical that we stop building new group homes. People who enter newly built group homes will linger in

the segregated living system, delaying their transition to alternative living options, if it occurs at all. The work to phase out group homes needs to begin immediately. 52% of surveyed PWDA members supported transitioning away from segregated housing as soon as possible.

PWDA has **long recommended** national, time-bound plans to phase out group homes. We called for no new people to enter group homes, and for proper resourcing for alternative, accessible, affordable and contemporary housing.



How do we change it?

Immediate action is needed to end segregation of people with disability in housing. Another generation of people with disability should not be exposed to violence and abuse in group homes.

We call on governments to act immediately and commit to ending segregated housing for people with disability and invest in increasing supply and access to alternative housing options (as per Recommendations 7.41, 7.42 and 7.43).

This needs to be coupled with a commitment that the forthcoming National Housing and Homelessness Plan and Agreement prioritise people with disability, in line with our **recent response** to consultations.

Overall, we support a roadmap to phase out group homes within 15 years, but this timeline should only be considered as a worst-case scenario. There needs to be immediate action to commence transition and progress year-on-year, as mapped by our proposed **Congregate Housing Transition Plan**. Progress milestones in our transition plan include:

- No new developments being built (Recommendation 7.43 – part d).
- No new people being moved into group homes (extending Recommendation 7.43 – part d).
- Mandating minimum accessibility standards for new developments with retrofitting of legacy housing stock (Recommendation 7.35).
- Establishing nationally consistent home modifications approach.
- Providing navigation for transition and advocacy support (Recommendations 7.40 – parts c and d; 7.42 – part c; 7.43 – parts c and d).
- Embedding governance arrangements including disability leadership.

Position 6 - Transition plan to phase out segregated housing

What did the Disability Royal Commission recommend?

- To phase out segregated housing within 15 years (Recommendation 7.43) including delivery of inclusive housing supply to meet demand; transition support for people currently living in group homes; and transition planning undertaken through co-design with people with disability and the disability community.
- To specifically review mechanisms to transition away from allowing the same provider to provide supports and housing (Recommendation 7.41 – part a).
- To improve access to alternative housing options (Recommendation 7.42).

Why does this matter?

People with disability need to have access to safe, secure, accessible, affordable and contemporary housing. At present, the ability to leave unsafe settings in group homes is challenging because of a lack of accessible and affordable housing supply.

PWDA has consistently advocated for increasing housing supply to enable greater access to social and affordable housing for people with disability. PWDA has also consistently advocated for the implementation of the Livable Housing Australia minimum standards under the National Construction Code to make all new homes accessible across Australia.

In response to the current National Housing and Homelessness Plan proposal, we continued to call for future housing stock to be accessible, and we have also called for existing housing to be made accessible through modifications. Further, we called for a transition support pathway for people with disability; a pathway would provide people with disability with assistance to move from group homes into other living arrangements, with increased oversight to ensure the safety of residents during the transition period.

People with disability require greater choice and control about who they live with, where they live, and in what setting they live, as per **Article 19 (living independently and being educated in the community)** and **Article 28 (adequate standard of living and social protection)** of the CRPD.

Choice and control must be predicated on the complete separation of housing provision from the provision of other supports, in line

with the United Nations Committee on the Rights of Persons with Disabilities' **General Comment No.5**. This will remove the power imbalance, and potential for abuses of that power, that can occur when one organisation provides all or most of a person with disability's supports.



How do we change it?

We need government investment to expand housing stock availability to include more accessible, social and affordable housing, including a mandate for all states and territory governments to ensure all legacy and future social housing stock meets minimum Livable Housing Australia accessibility standards.

This approach needs to be coupled with the **NDIA mandating the complete separation of housing provision from supports** – both cannot be provided by the same provider. 85% of surveyed PWDA members support this.

To meet outcomes under Recommendations 7.41–7.43, and to invest in safe, secure, accessible, affordable and contemporary housing for people with disability, **we call on governments to implement our proposed Targeted Housing Action Plan for people with disability and Congregate Housing Transition Plan**, setting out transition milestones to phase out group homes (for further plan details, see our **National Housing and Homelessness Plan response**).

Position 7 - Timeframe and transition plan to phase out segregated education

What did the Disability Royal Commission recommend?

- To complete transition away from segregated education by 2051, recommended by Commissioners Bennett, Galbally and McEwin (Recommendation 7.14).
- No timeframe for complete transition was recommended by Commissioners Ryan and Mason (as per Recommendation 7.15, which outlined alternative approaches to co-locate non-mainstream schools and units within or close to mainstream schools).

Why does this matter?

Under **Article 24 (education)** of the CRPD, students with disability should be able to access inclusive education on the same basis as students without disability.

The DRC heard repeatedly that segregated school settings have enabled violence and abuse against people with disability. 63% of surveyed PWDA members do not think segregated education should exist.

Previously, PWDA has called for a national time-bound plan that adopts a definition of inclusive education consistent with United Nations Committee on the Rights of Persons with Disabilities' **General Comment No.4**, that reverses the increasing rate of segregated education, redirects resources to an inclusive education system, recognises the denial of reasonable adjustment as unlawful discrimination, contains measurable actions and accountability mechanisms for transition from segregated education to inclusive education, and that prohibits the use of restrictive practices in schools.

How do we change it?

Immediate action to transition from segregated education is needed.

We strongly call on all governments to commit to phasing out segregated education, commencing immediately, and completing transition within 5–10 years.

Governments need to provide adequate resourcing to support the transition and to equip mainstream schools for fully inclusive and accessible education.

This includes investment in more teachers, specialist disability assistant staff, and teaching resources in the school system, plus disability rights and inclusive education training for teaching and administrative staff.

We need an urgent shift in practice so students with disability are not automatically segregated and excluded from mainstream education. 52% of surveyed PWDA members supported transition to end segregation within nine years.

Further, **existing funding for special/ segregated schools needs to be redirected into the Transition Fund** (fund proposed in DRC Recommendation 7.14)

Finally, **people with disability need to be employed in decision-making roles** about mainstream, inclusive and accessible education.



Position 8 - Timeframe and transition plan to phase out segregated employment

What did the Disability Royal Commission recommend?

- To complete the transition away from segregated employment by 2034, supported by Commissioners Bennett, Galbally, Mason and McEwin (Recommendation 7.32).
- To develop a plan to assist people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment (Recommendation 7.30).
- To support transition away from segregated employment, Commissioners recommended an information campaign regarding wages and the Disability Support Pension (Recommendation 7.28).
- To support transition away from segregated employment, Commissioners recommended an 'open employment first' approach in the NDIS Participant Employment Strategy (Recommendation 7.29).

Why does this matter?

People with disability are often forced along a polished pathway from segregated schooling, to segregated employment and housing. This does not support inclusion, instead it supports segregation along the life course. People with disability need choice for their education, work and home environments.

People with disability need economic security, meaningful social engagement, and the ability for community participation through work. They also need choice in what work they do, where they work, and how they work. Under **Article 27 (work and employment)** of the CRPD, people with disability have a human right to access employment on an equal basis as others.

Segregation in employment has enabled working conditions that have allowed people with disability to be paid sub-minimum wage, leading to economic insecurity. Further, people with disability have been forced to work separated from the broader community, often in unsupportive or unsafe environments. 72% of surveyed PWDA members do not think segregated employment should exist.

PWDA has previously advocated for a national, time-bound plan to eradicate segregation in employment. 57% of surveyed PWDA members support an immediate end to segregated employment.

PWDA **previously called for** all governments to commit to phasing out segregated employment, including Australian Disability Enterprises (ADEs), to support people to self-determine their transition into open employment, to increase income support payments, and for the forthcoming Centre of Employment Excellence to deliver

capacity building and training, coordinate a Community of Practice, develop evidence-based guides based on research, and support best practice specialist DES providers.

Phasing out segregated employment should be completed within the next five years.

How do we change it?

We need immediate action to commence phasing out segregated employment, and provide open employment for people with disability, with an additional mandate to end sub-minimal wages.

We need a structural and industry-wide transition plan away from segregated employment in ADEs, to supported and inclusive open employment for people with disability. This must include investment by government in appropriate resourcing to support people with disability through the transition to open employment.

Under this transition plan, there is an opportunity for the proposed

Centre of Employment Excellence to drive policy reform, framework development and research to guide best practice approaches to drive transition planning and execution.

Further, we need an **increase in income support payments and protections** for people with disability, to provide a dignified quality of life and aid transition to open employment. An information campaign about payments and wages (Recommendation 7.28) is also needed. It is important that people with disability have access to accurate information about how wages affect payments, to support decision-making around their personal finances.

Position 9 - Raising the subminimum wage

What did the Disability Royal Commission recommend?

- To raise the sub-minimum wage through a scheme to ensure that people with disability are paid at least half the minimum wage (Recommendation 7.31).
- To develop a model and pathway to lift minimum wages to 100% of the minimum wage by 2034 (Recommendation 7.31).

Why does this matter?

People with disability being paid sub-minimum wage infringes on our human rights. Economic insecurity impacts the ability to access safe and secure housing, health, education, and other supports. It leads to social isolation and poor outcomes across wellbeing, health, education and access to community.

People with disability must be able to access economic security on the same basis as people without disability; the current situation of people with disability receiving sub-minimum wages is unacceptable.

89% of surveyed PWDA members support an immediate end of sub-minimum wages.

How do we change it?

All people with disability must be paid at least the minimum wage and this needs to be prioritised immediately. It is unacceptable that any person with disability is receiving less than the minimum wage.

The proposed transition period of 11 years to raise subminimum wages to 100% of the minimum wage is unacceptable. Action needs to happen now to prevent deepening economic insecurity for an already socioeconomically disadvantaged cohort.

Position 10 - Public sector employment of people with disability

What did the Disability Royal Commission recommend?

- To establish specific and disaggregated targets for disability employment in the public sector (Recommendation 7.18).
- To establish specific disability employment targets for new public service hires in agencies and departments (Recommendation 7.19).
- To clarify the application of the merit principle in public sector recruitment (Recommendation 7.20).
- To introduce consistent adjustment principles and adjustment passports (Recommendation 7.21).
- To introduce public reporting on public sector disability employment strategies and targets (Recommendation 7.22).

Why does this matter?

Disability representation is lacking across government public services. For example, the **2020 Australian Public Service Employee (APS) Census** indicated that 8.5% of employees identified as having a disability (compared to population prevalence of nearly 20%).

The APS Census also shows a lower executive-level employment of people with disability comparative to people without disability.

The work of public services across Australia often directly and indirectly impacts the lives of people with disability. Therefore, this work needs to be disability-led and reflective of the views of people with direct lived experience of disability.



How do we change it?

There needs to be a **higher percentage of people with disability employed, at all levels**, across the APS and state/territory government public services.

We need all government employers across Australia to **have a more ambitious target for disability employment** (for example, it is currently 7% in the **APS Disability Employment Strategy 2020–25**).

This needs to extend across the workforce to **all levels of employment, including executive level**

(Recommendations 7.18 and 7.19).

Contrasting this to international public service models, the United Kingdom reported in 2019–2020 that there was a **public service workforce prevalence**

of 23.7% of people with disability, which was above the recorded UK population statistical prevalence of disability of **17.7% in 2021**.

An ambitious Australian target needs to be underpinned by an **approach to the workplace that embeds accessibility and inclusion** in all processes and practices.

Inclusive and accessible practices across public services **need to be driven by consultation and design with employees with disability** across the workforce. The recommended Adjustment Principles and Passport (Recommendation 7.21) need to be developed as part of this process.

Position 11 - Public sector procurement policies and disability employment

What did the Disability Royal Commission recommend?

To strengthen disability employment procurement policies, including working with organisations that openly demonstrate inclusive disability recruitment practices and support Information and Communications Technology (ICT) meeting ICT accessibility standards (Recommendation 7.23).

Why does this matter?

Under **Article 27 (employment and work)**, people with disability should be able to access workplaces that are 'open, inclusive and accessible to persons with disabilities.'

People with disability need to be able to work in inclusive and accessible environments, including the Australian Public Service (APS), and state and territory government workplaces. This includes environments using ICT that is compliant with accessibility standards and compatible with assistive technologies that a person with disability may use in the workplace e.g., screen reading technology.

All Australian governments should also use their significant purchasing power to exert market pressure on private sector suppliers to deliver inclusive and accessible employment practices and ICT systems.

How do we change it?

All public services must also **update their procurement policies and rules to give preference to organisations that pay employees with disability at least the minimum wage, and can demonstrate they provide open, inclusive and accessible employment for people with disability.**

Position 12 - Disability discrimination laws

What did the Disability Royal Commission recommend?

- The Disability Discrimination Act 1992 (Cth) should be reformed to incentivise employers, schools, service providers and other duty-holders **to take active steps to prevent disability discrimination** (Recommendation 4.27).
- The reforms would also make it unlawful for someone to offend, insult, humiliate, intimidate or vilify a person because of their disability (Recommendation 4.29).
- The government should review laws that allow it to refuse visa applications based on the person's disability (Recommendation 4.31).

Why does this matter?

Discrimination

People with disability have a right to live a life free from discrimination. Unfortunately, this right is not being upheld in Australia. We face discrimination in so many areas of our lives, such as housing, work and education.

The Disability Discrimination Act is meant to address discrimination against us. However, given developments in case law, it is very hard to bring a case for many instances of discrimination.

We need stronger laws that place duties on people to prevent discrimination as well as make all forms of discrimination illegal.

Migration Discrimination

Currently, the Australian Government is able to refuse some visa applications due to the 'cost' of a person's disability. This is based on outdated ableist attitudes, and breaches our right to liberty of movement.

How do we change it?

Discrimination

PWDA supports the DRC's recommendations to strengthen the Disability Discrimination Act (Recommendations 4.23–4.34), including through incentivising duty-holders to take active steps to prevent disability discrimination, and by making it unlawful to offend, insult, humiliate, intimidate, or vilify a person because of their disability.

Migration discrimination

We welcome the DRC's recommendation to review Australia's discriminatory migration laws, particularly section 52 of the Migration

Act 1958 (Cth) (Recommendation 4.31), but we need to amend discriminatory laws and end the discrimination against people with disability looking to migrate to Australia.

This recommendation is supported by the ongoing **Review of Australia's visa Significant Cost Threshold (SCT)** by the Department of Home Affairs, that is reviewing the policy settings created by the Migration Regulations 1994. The Significant Cost Threshold is a cut-off amount currently set at \$51,000 for a visa applicant's estimated health and community costs. This threshold is currently denying many people with disability with access to visas.



Position 13 - Interpretative declarations

What did the Disability Royal Commission recommend?

Commissioners Bennett, Galbally, Mason and McEwin recommended that Australia withdraws its interpretative declaration to **Article 12 (equal recognition before the law)** of the CRPD (Recommendation 6.20).

The interpretative declaration interprets Article 12 as allowing substitute decision-making arrangements where 'necessary, as a last resort and subject to safeguards.'

Why does this matter?

Article 12 of the CRPD has been interpreted by the Committee on the Rights of Persons with Disabilities to mean that substitute decision-making is not allowed. However, Australia has maintained its interpretative declaration to Article 12 that construes the Article as allowing substitute decision-making in certain situations.

This is problematic as it creates confusion about the meaning of Article 12 and hinders reform efforts. The world has 'moved on' since Australia made the interpretative declaration and there have been significant developments towards supported decision-making regimes, notably as an alternative option for people under guardianship orders.

However, we are disappointed that the DRC did not similarly recommend the withdrawal of Australia's interpretative declaration to **Article 17 (protecting the integrity of the person)**, and **Article 18 (liberty of movement and nationality)**.

The interpretative declaration to Article 17 allows for the compulsory assistance or treatment of people with disability without free, prior and informed consent. The interpretative declaration to Article 18 allows for Australia's migration health requirements to remain discriminatory, a conclusion that the Australian Parliament's Joint Standing Committee on Migration found and **recommended** reform back in 2010.

How do we change it?

We support action in line with Recommendation 6.20 and call on Australia to withdraw its interpretative declaration to Article 12.

PWDA calls for action **to remove all three interpretative declarations which would bring Australia into line** with the Committee on the Rights of Person's with Disabilities' jurisprudence and recommendations from its last **Concluding observations on the combined second and third reports of Australia** in 2019.

Position 14 - Supported decision-making

What did the Disability Royal Commission recommend?

- Proposed a national supported decision-making framework to be adopted by states and territories (Recommendation 6.6), where people with disability would be supported to make their own decisions, where necessary (Recommendation 6.5).
- A 'representative' decision maker would only be appointed as a last resort (Recommendation 6.9).

Why does this matter?

Article 12 of the CRPD sets out our right to make our own decisions, and to receive support to make decisions where needed. Australia must transition away from guardianship and substitute decision-making models and practices and move towards a national supported decision-making model, consistent with Australia's obligations.

Some people with disability choose to appoint someone to make decisions for us. However, when a person is appointed and we have no say, a lot of room is left for abuse.

Regimes of substitute decision-making originate from ableist attitudes, that view us as incapable of knowing what we really want. We must shift this view and start respecting

and supporting people with disability to make their own decisions.

How do we change it?

We need a national supported decision-making framework that is based on Article 12 of the CRPD. **The framework must allow people with disability to make their own decisions.**

All Australian governments must provide us with supports to make decisions, that are easily and readily available. **Supported decision-making measures must respect and follow the will and preference of the person with disability.**

If all support options have been exhausted and it is not possible to determine the will and preferences of a person with disability, **a representative decision-maker may be appointed.** However, the representative must make decisions based on the 'best interpretation' of the person with disability's will and preference.

If it is still not possible to determine the person's will and preference, **the representative should make decisions with reference to the person's human rights.**

Position 15 - Authorising, review and oversight of restrictive practices

What did the Disability Royal Commission recommend?

- The DRC recommended that certain restrictive practices must be outlawed (Recommendation 6.36).
- However, it did not recommend a whole-sale elimination of restrictive practices. Rather, the DRC recommended that restrictive practice authorisation, review and oversight practices must be reformed.

Why does this matter?

Restrictive practices

Restrictive practices are discriminatory and must end. For too long, people with disability have been subject to violent practices such as restraint and seclusion. 76% of surveyed PWDA members do not support restrictive practices.

Restrictive practices can impose life-long trauma and a distrust in services. This trauma is experienced even when restrictive practices are 'authorised'. There must be a better way forward.

How do we change it?

We welcome Recommendation 6.36 to immediately prohibit the use of certain restrictive practices, including **specific forms of physical restraint and punitive approaches** that the former Disability Reform Council agreed upon in 2019. However, we are disappointed that the DRC did not recommend the elimination of all restrictive practices.

The **DRC's own research report sets out a pathway to eliminating restrictive practices**, and we believe this should have been given more weight in the recommendations and considered in more depth.

We seek a **commitment from the governments to eliminate restrictive practices. Until restrictive practices are eliminated, we need clear reporting** on when they are used, **strategies in place to reduce their use** and **accountability for misuse** through a mechanism with 'teeth'.

Position 16 - Restrictive practices in health, mental health and education settings

What did the Disability Royal Commission recommend?

The DRC recommended that state and territory governments should immediately provide that a range of restrictive practices are not permitted in mental health, health and education settings (Recommendation 6.36).

This includes, for example, seclusion and restraint not associated with an immediate risk of harm, and secluding children and young people.

Why does this matter?

When people with disability enter mental health settings, they often lose many of their rights - one of which is the right to be free from violence. Regardless of the setting, no person with disability should be subject to practices that rob them of their human rights.

Restrictive practices, such as seclusion and chemical or physical restraint constitute acts of violence. Even when used with 'good intentions', they often leave us feeling traumatised and violated.

We need mental health, health and education settings to use other trauma-informed and person-centred methods to support us with our needs. These sites should be safe spaces where we can learn, seek treatment and support - rather than be traumatised.

How do we change it?

The goal should be to eliminate, rather than reduce all forms of restrictive practices. We support the DRC's recommendation (Recommendation 6.36) to immediately end certain forms of restrictive practices. However, **we emphasise that this must be done with a view to eliminating all restrictive practices over a set period of time.**

Position 17 - Independent oversight and complaint mechanisms

What did the Disability Royal Commission recommend?

The DRC made numerous recommendations to improve disability complaint mechanisms. These include:

- Strengthening the NDIS Quality and Safeguards Commission and making it more accessible (Recommendations 10.11–10.33).
- Creating a ‘one-stop-shop’ complaint reporting, referral and support mechanism for each state and territory (Recommendation 11.3).
- Australia establishing a national 1800 number and website for complaints (Recommendation 11.4).
- Enshrining key provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (Recommendations 11.6 and 11.11).

Why does this matter?

Constant media has revealed shocking details about abuse and neglect perpetrated by disability service providers. It also revealed that the current oversight mechanisms, including the NDIS Quality and Safeguards Commission, need to do so much more to hold perpetrators to account.

In addition, people with disability find making service provider complaints confusing and ineffective.

It is crucial that people with disability can make complaints and receive just outcomes. Effective complaint mechanisms are key to upholding our rights.



How do we change it?

We support the DRC's recommendations to strengthen the NDIS Quality and Safeguards Commission's monitoring, compliance and enforcement activities (Recommendation 10.25) and to **make its complaint processes more accessible** (Recommendation 10.20).

We also **support a 'one-stop-shop' complaint reporting and referral mechanism** for each state and territory (Recommendation 11.3) and the **establishment of a national 1800 number for complaints** (Recommendation 11.4).

We emphasise that accessible awareness raising will be crucial to inform people of these new complaint mechanisms.

All efforts to implement these recommendations must be done in consultation with people with disability and disability representative organisations.

We support the additional measure to **enshrine key provisions of OPCAT** as a safeguarding mechanism for people with disability against experiencing torture and similar treatment or punishment (Recommendations 11.6 and 11.11).

Position 18 - Community Visitor Schemes

What did the Disability Royal Commission recommend?

To urgently implement Community Visitor Schemes (CVS) with national consistency for people with disability in all states and territories, with resourcing to conduct frequent visits (Recommendation 11.12).

Why does this matter?

Community Visitor Schemes (CVS) are an essential safeguard for people with disability. However, to be effective, they need to be sufficiently resourced and have the power to address and proactively prevent violence, abuse and neglect. 97% of surveyed PWDA members are supportive of Community Visitors Schemes being well-funded and working under a consistent set of rules.

It is also crucial that visits are unannounced — unfortunately we have heard that this is not always the case.

It is important that these schemes are nationally consistent to ensure all jurisdictions are engaging in best practice.

How do we change it?

PWDA welcomes Recommendation 11.12, that says that **Australia must have sufficiently resourced, nationally consistent, Community Visitor Schemes operating in all states and territories**. We support ensuring that community visitor schemes have the capacity to attend services without announcing their visits.

Governments should consider the potential role of CVSS as a 'National Preventative Mechanism' (the body that conducts inspections in closed environments), as part of obligations Australian governments have under OPCAT.

Position 19 - Redress scheme

What did the Disability Royal Commission recommend?

To require NDIS providers to consider redress and forms of support to a NDIS participant where the NDIS Quality and Safeguards Commission forms the view that the service provider bears responsibility for the violence, abuse, neglect, or exploitation experienced by the NDIS participant (Recommendation 10.16).

Why does this matter?

A National Redress Scheme in response to the DRC would provide an avenue for justice, accountability, and healing for people with disability who have been traumatised and injured through violence, abuse, neglect and exploitation.

PWDA heard from our DRC Member Survey that 83% of surveyed PWDA members support a National Redress Scheme following the DRC. People with disability who shared their experiences of violence, abuse, neglect, and exploitation want the Scheme for:

- Recognition of experiences of violence, abuse, neglect and exploitation; closure and healing; justice and accountability; providing an avenue for improving systems in places of abuse etc.

- Financial support for ongoing medical and/or psychological support to support healing from their experiences.

How do we change it?

We need a National Redress Scheme to be established.

The scheme needs to include all people with disability who have experienced violence, abuse, neglect or exploitation, as heard throughout the DRC. **Eligibility criteria needs to be established, but should go beyond experiences in disability services and include services that perpetrated the violence, abuse, neglect and exploitation of people with disability.**

The establishment of the Redress Scheme needs to **be driven by lessons learnt about what has been effective or ineffective during the National Redress Scheme in response to the Royal Commission into Institutional Responses to Child Sexual Abuse.**

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

For individual advocacy support contact PWDA between 9 am and 5 pm (AEST/AEDT) Monday to Friday via phone (toll free) on 1800 843 929 or via email at pwd@pwd.org.au

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**A voice
of our own**



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