



PEOPLE WITH DISABILITY
AUSTRALIA

**A voice
of our
own**

Arbitrary detention of people with disability in Australia

Submission to the United Nations Working Group on
Arbitrary Detention

JULY
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Arbitrary Detention of People with Disability in Australia – Submission to the UN Working Group on Arbitrary Detention

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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.

We have 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.

We are a peak, non-profit, non-government organisation that represents the interests of people with all kinds of disability.

We also represent people with disability at the United Nations, particularly in relation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Our 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.

DPOs collectively form a disability rights movement that places people with disability at the centre of decision-making in all aspects of our lives.

'Nothing About Us, Without Us' is the motto of Disabled Peoples' International.

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Introduction

We welcome the opportunity to provide this submission to the United Nations Working Group on Arbitrary Detention (UNWGAD) in advance of its 2025 Australia country visit.

This submission provides information about the places in which people with disability are arbitrarily detained in Australia and the human rights violations that occur in those places. It has been jointly developed by the following organisations and individuals:

- People with Disability Australia
- Women with Disabilities Australia
- Dr Piers Gooding (La Trobe University)
- Dr Claire Loughnan (University of Melbourne)
- Dr Linda Steele (University of Technology Sydney)
- Kate Swaffer (University of South Australia, PhD Candidate; Dementia Alliance International, Co-Founder)
- Dr Dinesh Wadiwel (University of Sydney)

Disability-specific places of detention in Australia include disability group homes, aged care homes, segregated workplaces and schools, mental health facilities and other places where restrictive practices are used against people with disability.

While not viewed as ‘traditional’ sites of detention, these disability-specific places of detention fall within the UNWGAD’s mandate and deserve attention as they satisfy the definition of a site of detention under international law, and are also sites where people with disability experience severe human rights violations. Unfortunately, the Australian Government has not prioritised the inspection of disability-specific places of detention in its implementation of the *Optional Protocol to the Convention against Torture and other Cruel*,

Inhuman or Degrading Treatment or Punishment (OPCAT), making UNWGAD's inspection of these places even more crucial.¹

This submission will set out the legal basis which establishes that these settings fall within UNWGAD's mandate. It will then outline the human rights violations that occur in these settings, including gender-based violence. The submission will then explore in detail human rights violations perpetrated against people with dementia in aged care homes and people with disability in segregated workplaces. Finally, the submission will set out Australia's current law reform context and our recommendations to the UNWGAD.

We hope our submission will be of assistance as you prepare for your visit. We invite you to contact Lisa Ira, Expert Advisor – International and Human Rights, at People with Disability Australia at lisai@pwd.org.au or +61 409 431 088 should you wish to discuss our submission further and/or arrange a time to meet during your visit to Australia.

¹ Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, (Report, September 2019) 8.

Arbitrary deprivation of liberty and the CRPD

Article 14 of the *Convention on the Rights of Persons with Disabilities* (CRPD) reinforces the rights of people with disability to not be ‘deprived of their liberty unlawfully or arbitrarily’ and obliges States Parties to ‘ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law.’

Article 14 of the CRPD should be read in conjunction with other core rights within the treaty, including the Article 5 right to freedom from discrimination, the Article 12 and 13 rights to equal recognition before the law and access to justice and Articles 14-17, which oblige States Parties to ensure protection from violence, torture and ill-treatment. Article 14 of the CRPD should also be read in conjunction with Article 19 of the CRPD, which stipulates the rights of people with disability to live independently and be included in the community, and obliges State Parties to deinstitutionalise and desegregate.²

De jure and de facto discrimination

The Guidelines developed by the UNWGAD define the contexts in which a deprivation of liberty might be regarded as ‘arbitrary’.³ This includes when ‘the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or other status, and which is aimed at or may result in ignoring the equality of human rights.’⁴

² Committee on the Rights of Persons with Disabilities, *Guidelines on deinstitutionalization, including in emergencies*, UN Doc CRPD/C/5 (10 October 2022) 9.

³ Working Group on Arbitrary Detention, *United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN Doc A/HRC/30/37. (6 July 2015) 3-4.

⁴ Ibid.

Under international human rights law ‘not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective.’⁵ On this basis, it might be argued that the differential treatment of people with disability in relation to forms of deprivation of liberty is ‘reasonable and objective.’ However, as the Committee on the Rights of Persons with Disabilities (CRPD Committee) has made clear, Article 14 imposes an absolute prohibition on detention of persons ‘on the grounds of their actual or perceived impairment.’ Such forms of detention are ‘discriminatory in nature’ and amount to ‘arbitrary deprivation of liberty.’⁶ Further, in its guidelines to its General Comments on Articles 19 and 14 CRPD, the CRPD Committee has stated that forms of institutionalised treatment of people with disability are discriminatory:

*Institutionalization is a discriminatory practice against persons with disabilities, contrary to article 5 of the Convention. It involves de facto denial of the legal capacity of persons with disabilities, in breach of article 12. It constitutes detention and deprivation of liberty based on impairment, contrary to article 14.*⁷

The UNWGAD has held that when a person is detained in conformity with national law, it must ensure that the detention is also consistent with international human rights law.⁸ Some forms of legislation have been found by the UNWGAD to constitute *de jure* UNWGAD has held that detention may be arbitrary due to laws resulting in *de facto* or indirect discrimination.⁹ The UNWGAD has exercised the power to investigate *de jure* and *de facto* discrimination under its Methods of Work during country visits.¹⁰ Some jurists have suggested that the UNWGAD can extend its jurisprudence to a ‘more holistic

⁵ Human Rights Committee, *General comment No 18: Non discrimination*, 37th sess, (10 November 1989) para 3.

⁶ Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, UN Doc A/72/55 (11 May 2017).

⁷ Committee on the Rights of Persons with Disabilities, *Guidelines on deinstitutionalization, including in emergencies*, UN Doc CRPD/C/5 (10 October 2022).

⁸ Toomey, Leigh T, ‘Detention on Discriminatory Grounds: An Analysis of the Jurisprudence of the United Nations Working Group on Arbitrary Detention’ (2018) 50(1) *Columbia Human Rights Law Review* 185, fn 156.

⁹ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its Follow-up Visit to Malta*, UN Doc A/HRC/33/50/Add.1 (7 October 2016) para 68.

¹⁰ See, e.g. Human Rights Council, *Report of the Working Group on Arbitrary Detention on Its Mission to Greece*, UN Doc A/HRC/27/48/Add.2 (30 June 2014) para 63; Human Rights Council, *Report of the Working Group on Arbitrary Detention on its Follow-up Visit to Malta*, UN Doc A/HRC/33/50/Add.1 (7 October 2016) para 68.

approach that addresses the structural factors that drive or permit detention on discriminatory grounds' by addressing discriminatory laws.¹¹

Given the CRPD Committee's Guidelines indicating that Article 14 of the CRPD imposes an absolute prohibition on detention of persons 'on the grounds of their actual or perceived impairment', the UNWGAD may consider opining on Australian laws permitting detention for the purpose of involuntary treatment for people with a cognitive or psychiatric impairment. Such detention can occur under forensic and civil mental health frameworks, but also under various state and territory disability and guardianship frameworks, particularly for those with a cognitive impairment.

Detention that occurs as a result of provisions within mental health, disability or guardianship legislation can occur in a range of locations from large hospitals or disability-specific therapeutic facilities, through to smaller disability accommodation units, aged care facilities or even in private homes.¹²

Guardianship and involuntary psychiatric intervention legislation arguably constitute *de jure* or *de facto* disability-based discrimination. Both laws permit forms of deprivation of liberty on the basis of disability (at least partly). Mental health legislation typically requires that a person 'appears to have mental illness',¹³ along with other criteria such as risk of harm to self or others, and there being no less restrictive means reasonably available. The CRPD Committee has opined that mental health legislation of this nature constitutes *de jure* discrimination.¹⁴ In other instances, the criterion is more facially neutral, by only applying to those who lack decision-making ability.¹⁵ The CRPD Committee has opined that guardianship legislation of this nature constitutes *de facto* disability-based discrimination, because although detention (or other restrictions of legal capacity) occur on

¹¹ Toomey, Leigh T, 'Detention on Discriminatory Grounds: An Analysis of the Jurisprudence of the United Nations Working Group on Arbitrary Detention' (2018) 50(1) *Columbia Human Rights Law Review* 185, fn 156.

¹² Senate Standing Committees on Community Affairs, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, (Final Report, November 2016) [s 8].

¹³ E.g. *Mental Health and Wellbeing Act 2022* (Vic) s 142(a).

¹⁴ Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, UN Doc A/72/55 (11 May 2017); Committee on the Rights of Persons with Disabilities, *General Comment No 1: Article 12: Equal recognition before the law*, UN Doc CRPD /C/GC/1 (11 April 2014).

¹⁵ E.g. *Guardianship and Administration Act 2019* (Vic) s 5.

the basis of decision-making ability, which may be *formally* equal, such testing will disproportionately affect people with cognitive disability in effect.¹⁶

Disability-specific detention

Historically, people with disability have been subject to systemic forms of deprivation of liberty through institutionalisation and segregation.¹⁷ Many jurisdictions today continue regimes of institutionalisation and segregation of people with disability, often, but not exclusively, in health and social care contexts.¹⁸ These ‘disability-specific’ forms of detention are understood by the CRPD Committee as occurring in a range of contexts, including:

*... social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, rehabilitation centres other than community-based centres, half-way homes, group homes, family-type homes for children, sheltered or protected living homes, forensic psychiatric settings, transit homes, albinism hostels, leprosy colonies and other congregated settings.*¹⁹

The CRPD Committee also clarifies that ‘mental health settings where a person can be deprived of their liberty for purposes such as observation, care or treatment and/or preventive detention are a form of institutionalization.’²⁰

These diverse facilities or contexts, where individuals are not ‘permitted to leave at will’, whether by *de jure* or *de facto* means, conform to emerging international definitions of ‘deprivation of liberty’. The Subcommittee on the Prevention of Torture (SPT) has recently produced a comprehensive definition of ‘places of deprivation of liberty’ which underlines

¹⁶ Committee on the Rights of Persons with Disabilities. *General Comment No 1 - Article 12: Equal recognition before the law*, UN Doc CRPD /C/GC/1 (11 April 2014).

¹⁷ In the Australian context, see Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (UNSW Press, 2005).

¹⁸ CYDA et al, *Segregation of People with Disability is Discrimination and Must End (Position paper, September 2020)* <https://dpoa.org.au/wp-content/uploads/2020/11/Segregation-of-People-with-Disability_Position-Paper.pdf>; J Cadwallader et al, ‘Institutional Violence against People with Disability: Recent Legal and Political Developments’ (2018) 29(3) *Current Issues in Criminal Justice* 259.

¹⁹ Committee on the Rights of Persons with Disabilities. *Guidelines on deinstitutionalization, including in emergencies*, UN Doc CRPD/C/5. (10 October 2022) 15.

²⁰ Ibid.

the need for a wide understanding of sites and contexts of detention.²¹ The SPT definition encompasses a wide range of settings, and explicitly highlights the implications of this understanding for people with disability:

*the deciding factor for the qualification of any place, facility or setting as a place of deprivation of liberty is not the name or title given to it or its categorization in national legislation but whether individuals are free to leave it at will. In this regard, the Subcommittee wishes to emphasize that, in some cases, an individual might be in a place that does not seem to constitute a place of deprivation of liberty but, when examined in the full context of an individual case, does indeed constitute such a place. Similarly, an individual may be free to leave a place, facility or setting at will but may be unable to exercise that freedom for physical, medical, economic or other reasons, and is therefore compelled to remain. This creates a situation where, despite a theoretical right to leave at will, a person is unable to leave in practice. In certain places, facilities or settings, individuals' inability to leave may be coupled with a high degree of vulnerability. This is particularly evident in respect of persons in situations of vulnerability, including children, women, survivors of trauma, older persons and persons with disabilities.*²²

The SPT General Comment underlines a need to take a wide focus in defining detention, and the need to include contextual factors such as the lack of power of the individual, which may, in effect, create 'a situation where, despite a theoretical right to leave at will, a person is unable to leave in practice.'

Aside from the institutional settings described above by the CRPD Committee, the SPT definition of deprivation of liberty also potentially points to a range of 'non-traditional' contexts where disability-specific forms of detention may occur, for example educational institutions or employment services. Importantly, substitute decision-making regimes

²¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General comment No 1 (2024): on article 4 of the Optional Protocol (places of deprivation of liberty)* UN Doc CAT/OP/GC/1 (4 July 2024).

²² Ibid.

interact with the definition of ‘deprivation of liberty’, and in some cases effectively deprive people with disability of the opportunity to ‘leave at will’ and can result in circumstances where people with disability are obliged to reside in living arrangements against their preferences. The CRPD Committee recognises that restricting or removing legal capacity can facilitate forced detention in institutions, as well as forced interventions such as sterilisation, abortion, contraception, female genital mutilation, and surgery or treatment performed on intersex children without their informed consent.²³

Disability-specific places of detention fall within the mandate of the UNWGAD. As will be explained below, disability-specific places of detention are also sites where people with disability experience severe human rights violations and should therefore be inspected during UNWGAD’s Australia visit.

²³ Committee on the Rights of Persons with Disabilities, *General comment on Article 6: Women with disabilities, Draft prepared by the Committee* UN Doc CRPD/C/14/R.1. (22 May 2015).

Rights violations in places of detention

People with disability in Australian detention settings face arbitrary and discriminatory violence, and violations of their human rights in the sites of detention noted previously. The scale of harm experienced by persons with disability in Australia was summarised by an alliance of four national disabled people's organisations comprised of the First Peoples Disability Network Australia, Women with Disabilities Australia, National Ethnic Disability Alliance and People with Disability Australia:

People with disability in Australia represent the most detained, restrained and violated sector of our population – significantly over-represented in prisons, institutionalised and segregated within communities, locked up in schools, confined in mental health facilities, incarcerated in detention centres, and trapped within their own homes. Wide-ranging systemic failures in legislation, policies and service systems in Australia facilitate conditions that give rise to torture and ill treatment of people with disability. These failures are embedded within and underscored by an ableist culture which sees the promotion and support of laws, systems, policies and practices which not only deny people with disability their most basic human rights but which provide a legitimised gateway through which torture and ill-treatment against people with disability can flourish.²⁴

People with disability are often subject to forms of bodily restriction and intervention, such as chemical, physical, and mechanical restraints, as well as seclusion.²⁵ These intrusions are frequently justified as measures for protecting individuals or others from harm. However, they often serve to control or repress the behaviour of people with disability (including expressions of autonomy, resistance and distress), who are viewed as the

²⁴ Carolyn Frohmader & Therese Sands, Australian Cross Disability Alliance (ACDA), Submission No 147 to the Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, (August 2015) 5.

²⁵ Lea Meredith et al, 'A Disability Aware Approach to Torture Prevention? Australian OPCAT Ratification and Improved Protections for People with Disability' (2018) 24(1) *Australian Journal of Human Rights* 70.

problem, and against any therapeutic indication. These practices are not confined to traditional institutions; they occur in group homes, schools, and other community settings. For example, concerning accounts of violence and other human rights violations have been well-documented in Australian educational facilities, closed mental health facilities and disability group homes.

Educational facilities²⁶

There have been several inquiries into the education and experience of students with disability in Australia,²⁷ that provide disturbing accounts of the use of restraint and seclusion of children with disability in educational settings. The Report of the Expert Panel on Students with Complex Needs and Challenging Behaviour, for example, was commissioned by the Australian Capital Territory's (ACT) Minister for Education and Training after a 10-year-old boy with disability was restrained in a purpose-built two-by-two-metre cage-like structure in an ACT primary school.²⁸ The Senate Community Affairs References Committee Inquiry also described multiple examples of children with disability being held down by school staff, tied down to chairs, and locked in closets.²⁹

Closed mental health settings

Closed mental health settings provide another example of a site where the rights of people with disability are commonly violated. Mental health legislation authorises involuntary psychiatric intervention, including hospital detention of people with mental health conditions, as well as the use of seclusion, physical force, using belts or straps to restrict movement, or pharmacological interventions to control behaviour. Once a person has been detained under mental health or forensic disability legislation, they are usually

²⁶ 'Educational facilities' here includes 'specialist' education settings, 'mainstream' schools, religious schools and other independent schools.

²⁷ E.g. Department of Education and Training. 2016. Review of the program for students with disabilities. Melbourne: Victorian Government Printer; Shaddock, A., S. Packer, and A. Roy. 2015. *Report of the Expert Panel on Students with Complex Needs and Challenging Behaviour*. https://www.education.act.gov.au/_data/assets/pdf_file/0003/856254/Attach-4-Expert-Panel-Report-Web.pdf; Urbis. 2015. *2015 review of the disability standards for education 2005: Final report*. Sydney: Urbis.

²⁸ Shaddock, A., S. Packer, and A. Roy. 2015. *Report of the Expert Panel on Students with Complex Needs and Challenging Behaviour*. https://www.education.act.gov.au/_data/assets/pdf_file/0003/856254/Attach-4-Expert-Panel-Report-Web.pdf

²⁹ Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of aboriginal and torres strait islander people with disability, and culturally and linguistically diverse people with disability (Final Report, November 2015)*.

required to comply with treatment and management regimes determined by, or in collaboration with, clinicians.³⁰ Aside from loss of liberty, detention usually is also accompanied by other forms of deprivation, such as rights to a family life, and/or restriction on sexual activity.³¹ Minkowitz contends that all involuntary psychiatric interventions – encompassing detention, involuntary treatment in community settings, and the forcible administration of specific medications and other medical procedures – contravene freedom from torture obligations in international law. This argument has received mixed responses among UN treaty bodies and mechanisms.³² Regardless, harms related to coercion in mental health services have been well-documented and include ongoing trauma and psychological distress,³³ physical harm and death.³⁴

The next sections of this submission provide an in-depth analysis of the heightened risk of human rights violations that women with disability face in Australia and human rights violations that occur in Australian aged care homes and segregated workplaces.

³⁰ The extent to which medical treatment of forensic patients can be formally coerced varies between jurisdictions. To give one example, the NSW Mental Health Review Tribunal can impose conditions relating to 'care, treatment and review' and 'medication' on conditional release orders to which forensic patients may be subject: *Mental Health (Forensic Provisions) Act 1990*, s. 75(1).

³¹ Perlin ML and AJ Lynch, *Sexuality, Disability, and the Law: Beyond the last Frontier?* (Palgrave Macmillan, 2016).

³² B McSherry and P Gooding, 'Torture and Ill-Treatment in Health Care Settings: Lessons from the United Nations' [2013] 20 *Journal of Law and Medicine* 712-718; Martin W and Gurbai S, 'Surveying the Geneva impasse: Coercive care and human rights' [2019] 64 *Int J Law Psychiatry* 117-128 < <https://pubmed.ncbi.nlm.nih.gov/31122621/> >.

³³ Steinert T et al, 'Subjective Distress After Seclusion or Mechanical Restraint: One-Year Follow-Up of a Randomized Controlled Study' (2013) 64(10) *Psychiatric Services* 1012–1017 <<https://doi.org/10.1176/appi.ps.201200315>>; Bartl G et al, 'A qualitative meta-synthesis of service users' and carers' experiences of assessment and involuntary hospital admissions under mental health legislations: a five-year update' (2024) 24(1). *BMC Psychiatry* <<https://doi.org/10.1186/s12888-024-05914-w>>; Randall R et al, 'I was having an anxiety attack and they pepper sprayed me: police apprehension in mental health contexts in Australia' (2024) 35(1) *Policing and Society* 85-100 <<https://doi.org/10.1080/10439463.2024.2372354>>; Vogt KS et al, 'Safer, Not Safe': Service Users' Experiences of Psychological Safety in Inpatient Mental Health Wards in the United Kingdom' (2024) 33(6) *International Journal of Mental Health Nursing* 2227-2238 <<https://doi.org/10.1111/inm.13381>>.

³⁴ Kersting XAK, Hirsch S & Steinert T, 'Physical Harm and Death in the Context of Coercive Measures in Psychiatric Patients: A Systematic Review' (2019) 11(10) *Frontiers in Psychiatry* 400 <<https://doi.org/10.3389/fpsy.2019.00400>>.

Gender-based violence

In its General Comment No. 3 on Article 6 – Women and Girls with Disabilities, the CRPD Committee recognised that women with disability are denied their right to legal capacity more often than men with disability, and are also more likely to be subjected to forced interventions and practices.³⁵ As General Comment No. 3 provides:

*Violations relating to deprivation of liberty disproportionately affect women with intellectual or psychosocial disabilities and those in institutional settings. Those deprived of their liberty in places such as psychiatric institutions, on the basis of actual or perceived impairment, are subject to higher levels of violence as well as cruel, inhuman, degrading treatment or punishment, are segregated and exposed to the risk of sexual violence and trafficking within care and special education institutions.*³⁶

Article 6 of the CRPD recognises the compounded discrimination that women with disability experience at the intersections of gender and disability, and requires that States parties take measures to ensure the full and equal enjoyment by women with disability of all human rights and fundamental freedoms. Yet, gender-based violence against people with disability persists, including in sites of disability-based detention, and is regularly ignored, downplayed, or dismissed.³⁷

Regardless of setting or context, violence against women with disability continues to be conceptualised not as violence or criminal behaviour, but as abuse or neglect, a ‘service incident’ or a workplace issue to be dealt with in an administrative manner. This is particularly the case in institutional and service settings where women with disability are

³⁵ Committee on the Rights of Persons with Disabilities, *General comment on Article 6: Women with disabilities*, Draft prepared by the Committee UN Doc CRPD/C/14/R.1. (22 May 2015).

³⁶ Ibid.

³⁷ See e.g. Carolyn Frohmader, *Dehumanised: the forced sterilisation of women and girls with disabilities in Australia* (Women with Disabilities Australia, 2013); Aminath Didi et al, ‘Violence against Women with Disabilities: Is Australia Meeting its Human Rights Obligations?’ (2016) 22(1) *Australian Journal of Human Rights* 159; Linda Steele, ‘Policing Normalcy: Sexual Violence Against Women Offenders with Disability’ (2017) 31(3) *Continuum* 422; Rosemary Kayess, Therese Sands and Karen Fisher, ‘International power and local action - implications for the intersectionality of the rights of women with disability’ (2014) 73(1) *Australian Journal of Public Administration* 383; Lauren Krnjacki et al, ‘Prevalence and Risk of Violence against People with and without Disabilities: Findings from an Australian Population-Based Study’ (2016) 40(1) *Australian and New Zealand Journal of Public Health* 16.

detained, in which violence is minimised, excused, covered up, and normalised,³⁸ or in the case of forced practices and interventions – legitimised.

As a 2015 Senate inquiry reported, '[u]nder the guise of "therapeutic treatment", people with disability can be subjected to forcible actions that could be considered assault in any other context'.³⁹ Forcible actions against people with disability that would constitute violence in any other context, including those which are considered 'therapeutic treatment', should be viewed as a form of 'disability-specific lawful violence'.⁴⁰ Critically, the lack of recognition of disability gender violence across sites of detention, and in legal and service systems, prevents women with disabilities from obtaining legal protection, access to justice, and redress for the harms they experience.

³⁸ See, e.g. Jessica Cadwallader et al, 'Institutional Violence against People with Disability: Recent Legal and Political Developments' (2018) 29(3) *Current Issues in Criminal Justice* 259.

³⁹ Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, (Final Report, November 2015).

⁴⁰ Linda Steele, 'Disability, Abnormality and Criminal Law: Sterilisation as Lawful and Good Violence' (2014) 23(3) *Griffith Law Review* 467.

Aged care homes and people with dementia

The World Health Organisation defines dementia as a major cause of disability and dependence of older people globally.⁴¹ There are many older people with disability, and in particular, with dementia, who reside in Residential Aged Care Facilities in Australia.

In 2021- 2022, approximately 54% of all those living permanently in Residential Aged Care in Australia were living with dementia.⁴² However the Royal Commission into Aged Care Quality and Safety estimated that the figure could be as high as 70% due to undiagnosed dementia.⁴³ They are often kept separate from other residents, segregated, and prevented from moving in and out of the site. Their rights are often routinely breached.⁴⁴

Australia's Aged Care Sector is regulated by Federal legislation– the *Aged Care Act 1997* (Cth).⁴⁵ Some of the key elements of the Act relate to the regulation of funding, provider approvals, standards, quality of care, the rights of people receiving care, and non-compliance. In addition, the sector is subject to quality monitoring under the Aged Care Quality and Accreditation Standards. Unfortunately, these standards and the provisions of the Act were insufficient to prevent widespread human rights violations perpetrated against those living in Residential Aged Care Facilities. Such failings were documented by the Royal Commission into Aged Care Quality and Safety, established in 2018. Its report into the sector, released in 2021, included key recommendations relating to people with dementia. As the report noted:

Substandard dementia care was a persistent theme in our inquiry. We are deeply concerned that so many aged care providers do not seem to have

⁴¹ 'Dementia', *World Health Organization* (Webpage, 31 March 2025) < <https://www.who.int/news-room/fact-sheets/detail/dementia>>.

⁴² 'Dementia in Australia', Australian Institute of Health and Welfare (Webpage, 13 September 2024) 69. <<https://www.aihw.gov.au/reports/dementia/dementia-in-aus/contents/aged-care-and-support-services-used-by-people-with/residential-aged-care>>.

⁴³ Ibid 167.

⁴⁴ Linda Steele, Kate Swaffer, Lyn Phillipson, and Richard Fleming (eds) *Human Rights for People Living with Dementia: An Australian Anthology* (2020, University of Technology Sydney, Sydney). ISBN: 978-0-646-81571-8.

⁴⁵ *Aged Care Act 1997* (Cth).

the skills and capacity required to care adequately for people living with dementia'.⁴⁶

The report found that there was insufficient training amongst staff to care for people with dementia, and that restrictive practices and restraints were commonly used against people with dementia, including chemical restraints, with limited review of their effectiveness.⁴⁷ It recommended improvements in dementia-specific training for staff and a reduction in the use of restrictive practices, such as chemical and physical restraint.

Relevance of OPCAT to aged care

Although growing concerns about human rights violations against people with dementia emerged after significant evidence of abuse, neglect and violence in the sector, this has persisted after the release of the report of the Royal Commission, and there remains a persistent reluctance to engage with aged care sites as places of human rights violations.⁴⁸ Australia's Federal Government has refused to bring this sector under the remit of OPCAT. The effect is that the monitoring of treatment of people with disability in aged care, is remarkably limited.

Despite this, aged care settings should be examined as places of detention. They share many parallels with 'traditional' detention sites, despite their differences. They are typically 'closed sites', marked by segregation, the use of restrictive practices, and institutionalised control. The confinement and detention of people with dementia in locked institutional 'assisted-living' settings, and those segregated in secure dementia units is a critical issue for all Australians. Preventative measures under OPCAT monitoring would provide an important assurance of human rights protections,⁴⁹ especially for people with dementia. This is necessary to uphold the rights of people with dementia and all others in locked institutional settings specifically dedicated to aged care. It would also more appropriately

⁴⁶ 'Dementia in Australia', Australian Institute of Health and Welfare (Webpage, 13 September 2024) 69 <<https://www.aihw.gov.au/reports/dementia/dementia-in-aus/contents/aged-care-and-support-services-used-by-people-with/residential-aged-care>>.

⁴⁷ Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (Report, February 2021) Volume 4A <<https://www.royalcommission.gov.au/system/files/2021-03/final-report-volume-4a.pdf>>.

⁴⁸ Loughnan C, 'The scene and the Unseen: Neglect and Death in Immigration Detention and Aged Care' (2022) 3(2) *Incarceration* <<https://doi.org/10.1177/2632666322110344>>.

⁴⁹ Grenfell et al 2021.

respond to the provisions of the OPCAT, which apply to ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’⁵⁰

Police intervention and the use of force

We also wish to bring attention to the use of force through police intervention, where it appears that calls for police intervention to ‘manage’ or respond to behaviour by people with dementia, is becoming a standard protocol.

This is typically defended as a necessary response to the ‘risk’ posed by people with dementia. Although we do not have precise figures on the number of incidents involving police intervention, the case of Claire Nowland is not an isolated one.⁵¹ Importantly, such intervention by police leads to significant distress for the aged care residents, and in the case of Ms Claire Nowland, residing at an Aged Care Facility in Cooma, NSW, led to her preventable death.⁵² Ms Nowland died from critical head injuries a week after she fell when she was allegedly tasered by Senior Constable Kristian White in May 2023. Ms Nowland's family lodged a civil case against the state of NSW following her death. The case was dropped after a confidential settlement was made.⁵³ However, Senior Constable Kristian White was found guilty of manslaughter and sentenced to a two-year community correction order, avoiding jail-time.⁵⁴

Police intervention in such cases is entirely inappropriate: police are untrained in dementia and often resort to the use of unnecessary force. Moreover, police are subject to limited

⁵⁰ Cited in Loughnan C and Caruana S, ‘Aged Care and the Convention Against Torture: It Was Like Guantanamo Bay’ In Weber L and Marmo M (eds), *A Research Agenda for a Human Rights Centred Criminology* (Palgrave Macmillan, Cham 2024) 225 <https://doi.org/10.1007/978-3-031-46289-4_15>.

⁵¹ See e.g. Jessica Bahr, ‘What are the rules around use of force in aged care?’ (Media Release, SBS, 23 May 2023) <<https://www.sbs.com.au/news/article/what-are-the-rules-around-use-of-force-in-aged-care-homes/gpf6a33d5>>.

⁵² Jordyn Beazley, ‘Clare Nowland's son says decision not to imprison police officer who killed her a slap on the wrist’ (Media Release, *The Guardian*, 28 March 2025. <<https://www.theguardian.com/australia-news/2025/mar/28/former-nsw-police-officer-kristian-white-sentenced-shooting-95-year-old-clare-nowland-ntwnfb>>.

⁵³ Ibid.

⁵⁴ *R v White* [2025] NSWSC 243.

accountability in aged care settings. Yet ensuring accountability is critical to ensuring the safety and wellbeing of people with and without dementia living in nursing homes.

Under the introduction of the Serious Incident Response Scheme (SIRS)⁵⁵ aged care providers are required to report certain types of incidents, including of a criminal nature, to both the Aged Care Quality and Safety Commission, and to the police.⁵⁶ Additionally, the Accountability Principles 2014 under the Aged Care Act 1997 mandate that relevant employees, contractors, and volunteers working in government subsidised aged care services, therefore including nursing homes, must undergo national criminal history record checks.⁵⁷ Whilst this helps ensure that staff, volunteers and contractors with a history of criminal behaviour are not employed in roles that could pose a risk to residents, the scheme has been open to misuse. Its application to cases of 'behaviour management' of people with dementia is a worrying trend in the sector that warrants monitoring and scrutiny. The 'safeguards' that were thus intended to be delivered under the SIRS do not ensure accountability for the harm done to residents due to inadequate dementia awareness and appropriate conduct in the sector.

It is concerning when aged care staff call the police to manage a resident instead of implementing a more positive approach to perceived challenging behaviours, where education and training would have led to the de-escalation of 'behaviours', without police intervention or force. Disturbingly, the SIRS has led to the erosion of the rights of people with dementia, even though it was set up to protect the rights of our elders. In some instances, police have been called to aged care homes as a standard protocol when there is a difficult situation or reported assault that staff feel they cannot manage. However, this approach can escalate the situation when a person has cognitive impairments of dementia. In Clare Nowland's case, she could barely have been described as a risk: she only weighed 45 kilograms, was approaching staff with a kitchen knife slowly, using a walker.⁵⁸

⁵⁵ See Aged Care Quality and Safety Commission < <https://www.agedcarequality.gov.au/>>.

⁵⁶ Accountability Principles 2014, made under section 96(1) of the Aged Care Act 1997, No. 30 (1 April 2025) <<https://www.legislation.gov.au/F2014L00831/latest/text>>.

⁵⁷ Government of Western Australia, WA Country Health Service, < <https://www.wacountry.health.wa.gov.au/>>.

⁵⁸ Ibid.

The Aged Care Quality and Safety Commission has a role to play in overseeing and enforcing these regulations, primarily to ensure that aged care providers comply with the necessary standards and reporting requirement. Experts argue that more specialised training for aged care staff and police officers could help improve the management of these situations, also resulting in preventing the unnecessary use of force.⁵⁹ Although police require training in handling incidents that involve residents with dementia with more sensitivity and care, the action of calling police into such settings is inappropriate in any case. Greater oversight of such practices would be enhanced with formal, external monitoring through the OPCAT. The use of police force to restrain, potentially harm and cause greater distress to people with dementia, is a clear violation of the human rights of people with dementia.

⁵⁹ Steve Macfarlane, 'When Someone Living with Dementia is Distressed or Violent, de-escalation is vital' The Conversation (Webpage, 19 May 2023). < <https://theconversation.com/when-someone-living-with-dementia-is-distressed-or-violent-de-escalation-is-vital-205988>>.

Disability segregated employment

Disability segregated employment is an employment option for people with disability (particularly people with intellectual disability). While historically referred to as 'sheltered workshops' (a term which now has a pejorative meaning and is used as an insult), disability segregated employment in Australia is referred to as 'supported employment' or Australian Disability Enterprises ('ADEs').

Disability segregated employment involves workplaces that congregate and segregate people with disability (primarily people with intellectual disability). People without disability are absent from these workplaces other than in higher roles as managers, supervisors and support workers. Disability segregated employees are paid differently to people without disability in the labour market. They receive individual productivity-based wages below award and minimum wages. At the same time, the organisations that operate disability segregated employment receive financial benefits through lower labour costs, receiving government disability support funding, and having a competitive advantage in government procurement.

Disability segregated employment workplaces are distinct from 'open employment' workplaces, where people with and without disability work alongside each other. Disability segregated employment might provide specialised disability support and training, but in the context of repetitive and/or manual tasks, subminimum wages and little options for career progression either within the one workplace or into open employment.⁶⁰

A variety of Australian laws across diverse domains, including disability services law, industrial relations law and guardianship law, provide legal basis for disability segregated employment as necessary and beneficial to people with disability. Organisations that operate disability segregated employment receive financial benefit from the unequal treatment of disability segregated employees. The legality of disability segregated

⁶⁰ Steele L, 'Law and Disability 'Supported' Employment in Australia: The Case for Ending Segregation, Discrimination, Exploitation and Violence of People with Disability at Work' (2023) 49(2) *Monash University Law Review* 1-45; Steele L, 'Ending Disability Segregated Employment: 'Modern Slavery' Law and Disabled People's Human Right to Work' (2023) 19(2) *International Journal of Law in Context* 217-235.

employment and its exemption from equality and labour law protections means that other domestic legal options, such as discrimination law and industrial law, are ineffective in realising rights to freedom from violence and labour exploitation and access to justice. Legal institutions with authority to help dismantle disability segregated employment — the Commonwealth legislature, the Fair Work Commission ('FWC') and Federal Court — have further entrenched disability segregated employment in law by dismissing claims that they are harmful to people with disability.⁶¹

Coercion, violence and restriction in disability segregated employment

Disability segregated employment involves coercion, violence and restriction of employees with disability. Disability segregated employees have limited choice in their entry into disability segregated employment. Many people with disability (particularly those with intellectual or cognitive disability) still live lives that are largely separate from people without disability, thus undermining realisation of a more inclusive society for people with disability. For some, this segregation might involve being in 'special' disability schools or disability classes in mainstream schools, then as adults moving into group homes and being transported by disability service minibuses to spend their days in disability segregated employment settings or in recreational day programs exclusively for people with disability.⁶² Within the context of these life transitions, Inclusion Australia refers to the ease with which people with disability can move into, and remain in, disability segregated employment as a 'polished pathway'.⁶³

Disability segregated employees experience compounding layers of segregation and are segregated across other systems, including education, transport, housing and justice. On a daily basis, additional to the segregation disability segregated employees experience in the workplace, they might also live in segregated residential settings, such as group homes, and spend some of their non-work days at day programs for people with disability or be transported to and from the disability segregated workplace by a minibus operated

⁶¹ Ibid.

⁶² Steele L, 'Law and Disability 'Supported' Employment in Australia: The Case for Ending Segregation, Discrimination, Exploitation and Violence of People with Disability at Work' (2023) 49(2) *Monash University Law Review* 1-45.

⁶³ Inclusion Australia, Submission to Department of Social Services (Cth), *Disability Employment System Reform* (February 2022) 46.

by the disability segregated employment employee or their group home service provider. Across their lives, disability segregated employees with disability might experience segregation through 'pipelines' into ADEs, from segregated education into segregated employment and segregated residential settings.

People with disability might also experience segregation due to the lack of pathways out of ADEs into open employment. ADEs are promoted by services as providing training and support as a transition into open employment. Some people with disability might work for years and even decades in ADEs with no prospects of moving into open employment and receiving equal wages to people without disability.

Segregated disability employees can have their choice restricted by guardianship laws which can take the decision to work in ADEs out of the hands of people with disability. In some Australian states and territories, laws enable guardians to make decisions about employment. People with disability might also have separately appointed a financial manager to administer their finances, including any wages received from an ADE. Guardians might also have the power to make decisions about use of restrictive practices, including in the disability segregated workplace. However, there is little publicly available information about restrictive practices in disability segregated workplace including the nature, intensity and extent of use of restrictive practices in these settings.

Disability segregated employment can in some cases constitute forced labour and servitude. 'Forced labour' is legally defined in Australia as 'the condition of a person (the *victim*) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free' either 'to cease providing the labour or services' or 'to leave the place or area where the victim provides the labour or services'.⁶⁴ 'Servitude' is legally defined as the condition of forced labour as defined above with additional circumstances of coercion: 'the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services'.⁶⁵ The level of control over individuals on a day-to-day basis and in terms of their employment situation could lead to forced

⁶⁴ *Criminal Code Act 1995* (Cth) Schedule s 270.6.

⁶⁵ *Criminal Code Act 1995* (Cth) Schedule s 270.4.

labour which is legally authorised. Where an individual is additionally under coercion and control in other aspects of their life (eg, housing), this could also constitute servitude.⁶⁶ Concerns about disability supported employment as forms of modern slavery have been raised by disability rights and human rights advocates.⁶⁷ For example, People with Disability Australia states:

*We believe that ADEs also pose a heightened risk of modern slavery. People with disability who are subject to a guardianship order may not actively choose to work in an ADE, with the decision being made by their guardian. Other people with disability who do not have a guardian may agree to work in an ADE because they believe they have no other choice.*⁶⁸

Special attention must be given to ADEs. We believe these settings pose a risk of modern slavery because:

- They are ‘segregated settings’, that are largely hidden from the wider community, meaning coercion and human rights violations are more easily concealed
- In some Australian states and territories, the decision to work in a sheltered workshop can be made by a guardian, rather than the employee, leading to the possibility of coercion
- Employees can be subject to restrictive practices that limit employees’ freedom of movement in the workplace.⁶⁹

⁶⁶ Steele L, ‘Ending Disability Segregated Employment: Modern Slavery’ Law and Disabled People’s Human Right to Work’ (2023) 19(2) *International Journal of Law in Context* 217-235.

⁶⁷ People with Disability Australia, Submission to the Special Rapporteur on Contemporary Forms of Slavery (15 July 2024); People with Disability Australia, Modern slavery is a disability Issue, Submission to the NSW Anti-Slavery Commissioner’s discussion paper #002: Developing a strategic plan to combat modern slavery (14 December 2022). See also Australian Lawyers for Human Rights, Submission No 67 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia* (27 April 2017) 8; ‘Ethical Supply Chains, Disability, Sheltered Workshops, Segregation and Exploitation’, *Starting with Julius* (Blog Post, 19 April 2019) <<http://www.startingwithjulius.org.au/ethical-supply-chains-disability-sheltered-workshops-segregation-and-exploitation/>> ; Catia Malaquias and Jackie Softly, ‘Time to Stop Defending the Low Ground: Moving from Segregated to Open Employment’, *Starting with Julius* (Blog Post) <<http://www.startingwithjulius.org.au/time-to-stop-defending-the-low-ground-moving-from-segregated-to-open-employment/>>.

⁶⁸ People with Disability Australia, Submission to the Special Rapporteur on Contemporary Forms of Slavery (15 July 2024).

⁶⁹ People with Disability Australia, Modern slavery is a disability Issue, Submission to the NSW Anti-Slavery Commissioner’s discussion paper #002: Developing a strategic plan to combat modern slavery (14 December 2022).

In the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's (Disability Royal Commission) public hearing on human rights of people with disability, modern slavery academic Justine Nolan acknowledged the potential for modern slavery to occur in disability segregated employment.⁷⁰

Human rights violations

Segregated disability employment in the Australian context violates international human rights norms, notably the right to work which includes freedom from forced labour. Australia has an obligation to transition away from segregated employment into open, inclusive and accessible employment with equal wages.

Article 27 of the CRPD establishes the human right for persons with disability to work, on an equal basis with others. Article 27(1) explains that the right to work includes 'the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities'.

The right to work and employment has been explained by the CRPD Committee through their General Comment No. 8 (GC8). GC8 provides at paragraph 2 that the right to work 'is a fundamental right, essential for realizing other human rights, and forms an inseparable and inherent part of human dignity', and 'also contributes to the survival of individuals and to that of their family, and, insofar as work is freely chosen or accepted, to their development and recognition within the community'.

The CRPD Committee has observed at paragraph 3 of GC8 that 'ableism adversely affects the opportunities for many persons with disabilities to have meaningful work and employment', including through underpinning legislation, policies and practices related to segregated employment such as 'sheltered workshops'. The CRPD Committee at paragraph 13 of GC8 identifies that 'lack of access to the open labour market and segregation continue to be the greatest challenges for persons with disabilities'. Discrimination (e.g., denial of reasonable accommodation) presents further obstacles to

⁷⁰ Transcript of Proceedings, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Public Hearing 22, Chair Sackville, Commissioner Galbally and Commissioner Mason, 12 April 2022) 129.

open employment which 'lead[s] to a false choice of employment in a closed workplace on the basis of disability'.

The CRPD Committee at paragraph 12 of GC8 states that the wording of Article 27(1) 'clearly indicate that 'segregated employment settings are inconsistent with the right'. At paragraph 14 of GC8, the CRPD Committee identifies elements that characterise segregated employment:

- (a) They segregate persons with disabilities from open, inclusive and accessible employment;
- (b) They are organized around certain specific activities that persons with disabilities are deemed to be able to carry out;
- (c) They focus on and emphasize medical and rehabilitation approaches to disability;
- (d) They do not effectively promote transition to the open labour market;
- (e) Persons with disabilities do not receive equal remuneration for work of equal value;
- (f) Persons with disabilities are not remunerated for their work on an equal basis with others;
- (g) Persons with disabilities do not usually have regular employment contracts and are therefore not covered by social security schemes.

Article 27(1) provides the corresponding obligation on State parties (including Australia) to realise that right for people with disability. Article 27(1) identifies specific steps that States Parties can take, including: prohibiting disability discrimination in relation to all forms of employment, protection of employment rights including equal opportunities and equal remuneration for work of equal value, and promote employment opportunities and career advancement for persons with disability in the labour market, and ensuring that reasonable accommodation is provided to persons with disability in the workplace.

The position of the CRPD Committee on segregated employment outlined in GC8 was previously affirmed at paragraph 67 of its General Comment No. 6 on Article 5 (Equality

and Non-discrimination) (GC6). In its Concluding Observations on the report of Australia in 2019, the CRPD Committee made specific recommendations that Australia address segregated employment. At paragraph 49(b) the CRPD Committee expressed concern about 'ongoing segregation of persons with disabilities employed through ADEs and the fact that such persons receive a sub-minimum wage'. It recommended at paragraph 50 that Australia 'provide services to enable persons with disabilities to transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value'.

At paragraph 15 of GC8 the CRPD Committee makes clear that disability segregated employment 'is not to be considered as a measure of progressive realization of the right to work, which is evidenced only by freely chosen or accepted employment in an open and inclusive labour market'. Article 27(2) places on States Parties the obligation to 'ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour'.

At paragraph 50 of GC8, the CRPD Committee explicitly identifies segregated employment as exposing people with disability to increased risk of slavery and servitude:

The prohibition of slavery, servitude and forced or compulsory labour is at the core of international human rights law. Persons with disabilities, including children are at an increased risk of experiencing situations of slavery or servitude, such as segregated employment, abduction and forced labour. These situations extend to debt bondage, trafficking, begging, work in sweatshops or on farms and segregated employment for little or no pay.

The CRPD Committee at paragraph 72 of its GC8 observes the connection between a lack of choice, consent and freedom from coercion in employment and Article 16 of the CRPD on freedom from violence and exploitation:

Persons with disabilities have the right to choice, consent and freedom from coercion. The risk of coercion stems from the fact that persons with disabilities experience wider social and environmental barriers resulting in

increased vulnerability, lack of meaningful alternatives and relations of dependency or care that can become exploitative (art. 16). Understanding whether consent has been given is crucial. Even when it has been given, consideration of the wider context of coercion, exploitation and meaningful alternatives is necessary. Consent is not sufficient to indicate that a person with disabilities is not in a situation of servitude or slavery. ... Young people with disabilities are also at risk of inappropriate use of unpaid internships, training programs and volunteering.

In order to fulfil their obligations under Article 27(2), the CRPD Committee emphasises at paragraph 52 in GC8 the importance of States Parties paying attention to ‘the right of persons with disabilities to choice, consent and freedom from coercion’. The CRPD Committee has also explained in paragraph 52 of GC8 that consent is not itself a sufficient indication that labour is free from exploitation because of the ‘wider context of exploitation or coercion’ experienced by people with disability, including by reason of their ‘wider social vulnerability, lack of meaningful alternatives and relations of dependency of care that become exploitative’.

Australian law reform context and our recommendations

The Disability Royal Commission released its final report in September 2023. The report contains 222 recommendations to Government about how to improve laws, policies and practices to uphold people with disability's right to live free from violence, abuse, neglect and exploitation. This includes recommendations relating to places where people with disability are subject to arbitrary detention.

In July 2024, the Australian Government released its [response to the Disability Royal Commission's final report](#), indicating which recommendations it accepts, does not accept, and will consider further.⁷¹

In December 2024, the Australian Government provided an [interim update](#) to its response to the Disability Royal Commission.⁷²

We encourage the UNWGAD to recommend that the Australian Government and state and territory governments fully commit to the following Disability Royal Commission recommendations and take immediate and transparent action for their implementation:

- **Recommendation 6.41:** All jurisdictions must amend or enact legislation to prohibit non-therapeutic permanent sterilisation procedures for people with disability by the end of 2024 (**Government response:** 2 states and territories accepted the recommendation in principle, the Commonwealth and 6 states and territories responded with 'subject to further consideration').⁷³

⁷¹ Department of Social Services, 'Australian Government Response to the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability' (30 July 2024) < <https://www.dss.gov.au/responding-disability-royal-commission/resource/australian-government-response-disability-royal-commission> >.

⁷² Department of Social Services, National Interim Update 2024: Government Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (23 December 2024) < <https://www.dss.gov.au/responding-disability-royal-commission/national-interim-update-2024-government-response-royal-commission-violence-abuse-neglect-and-exploitation-people-disability> >.

⁷³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations* (Report, 29 September 2023).

- **Recommendation 6.6:** States and territories should review and reform their guardianship and administration legislation to include the Disability Royal Commission's supported decision-making principles and Australian Government and state and territory governments to review and reform other laws concerning individual decision-making to give legislative effect to the supported decision-making principles (**Government response:** The Commonwealth and 6 states and territories accepted the recommendation in principle, 2 states responded with 'subject to further consideration'. No concrete action has been taken to implement this recommendation).⁷⁴
- **Recommendation 7.32** (adopted by 4 Commissioners): Develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises and eliminate subminimum wages by 2034 (**Government response:** subject to further consideration).⁷⁵
- **Recommendation 7.43** (adopted by 4 Commissioners): Develop and implement a roadmap to phase out group homes within 15 years (**Government response:** subject to further consideration).⁷⁶
- **Recommendation 11.1:** States and territories should introduce legislation to establish nationally consistent adult safeguarding functions and ensure safeguarding functions are operated by adequately resourced independent statutory bodies (**Government response:** subject to further consideration).⁷⁷
- **Recommendation 11.7:** The Australian Government and state/territory governments should agree to provide adequate resources to the National Preventative Mechanism and enact legislation incorporating a broader definition of 'places of detention' that includes all places where people with disability may be deprived of their liberty (**Government response:** accepted in principle by the

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

Commonwealth Government and 3 states and territories, subject to further consideration by 5 states and territories).⁷⁸

- **Recommendation 11.12:** States and territories to urgently implement community visitor schemes for people with disability if they have not done so already and agree to make community visitor schemes nationally consistent (**Government response:** accepted in principle by the Commonwealth, state and territory governments).⁷⁹

In addition, last year the Parliamentary Joint Committee on Human Rights completed [its Inquiry into Australia's Human Rights Framework](#), and recommended that Australia establish a national Human Rights Act .⁸⁰ The Government is yet to respond to this recommendation.

Australia visit meeting and inspection recommendations

We encourage the UNWGAD to meet with the Commonwealth Attorney-General, The Hon Michelle Rowland MP, to encourage Australia to adopt national human rights legislation and relevant Disability Royal Commission recommendations.

In addition, we recommend that the UNWGAD meets with:

- Disability representative organisations
- National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission
- Aged Care Quality and Safeguards Commission

We recommend that the UNWGAD visits disability-specific places of detention during its visit, including disability group homes, aged care homes, segregated schools and segregated workplaces. While we are not in a position to provide details of specific place

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report>.

of detention, we encourage the UNWGAD to refer to the following reports which may assist in identifying appropriate facilities to inspect:

- The NDIS Quality and Safeguards Commission's [Own Motion Inquiry into Aspects of Supported Accommodation](#)
- The Disability Royal Commission's [reports on Public Hearings 13, 20 and 23](#)
- The Disability Royal Commission's Public Hearing 32: [Service Providers Revisited](#)
- Aged Care Quality Standards [Non-Compliance Decision Log](#)



**PEOPLE WITH DISABILITY
AUSTRALIA**

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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