



PEOPLE WITH DISABILITY
AUSTRALIA

**A voice
of our
own**

Submission to the NSW Parliamentary Inquiry into the Human Rights Bill 2025

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About PWDA

People with Disability Australia (PWDA) is a national peak, non-profit, non-government disability rights and advocacy organisation made up of, and led by, people with disability. Established in 1981, during the International Year of Disabled Persons, PWDA represents the interests of people with all kinds of disability.

We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability is not only recognised and respected but also celebrated.

Our work is grounded in a human rights framework that recognises the United Nations [Convention on the Rights of Persons with Disabilities](#) (CRPD) and related mechanisms as fundamental tools for advancing the rights of people with disability. PWDA embraces the 'Nothing About Us, Without Us' motto of the international disability community and [Disabled Peoples' International](#).

PWDA receives funding under the Department of Health, Disability and Ageing Disability Representative Organisation (DRO) program to communicate the views of its members to the Australian Government.¹ We receive further funding through the NSW Department of Community and Justice for individual and systemic advocacy work in NSW.² We also represent people with disability at the United Nations, particularly in relation to the CRPD.

PWDA is also a Disabled Persons Organisation (DPO), 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.

¹ Australian Government, Department of Health, 'Disability and Ageing, Disability Representative Organisations Program' <https://www.health.gov.au/our-work/disability-representative-organisations-program?language=en>.

² NSW Government, Department of Communities and Justice, 'Disability Advocacy Futures Program' <https://dcj.nsw.gov.au/community-inclusion/disability-and-inclusion/disability-advocacy-futures-program.html>.

Endorsement

This submission is endorsed by the following organisations:

- Action for People with Disability Inc
- BEING – Mental Health Consumers
- Council for Intellectual Disability
- Children and Young People with Disability Australia
- Down Syndrome NSW
- Family Advocacy
- First Peoples Disability Network
- Multicultural Disability Advocacy Australia
- Muscular Dystrophy NSW
- Stroke NSW
- Vision Australia
- Western Sydney Community Forum

Recommendations

Recommendation 1

1. The New South Wales (NSW) government must introduce a Human Rights Act based on a dialogue model that,
 - a) is accessible and inclusive (see our Recommendation 2), and
 - b) proactively promotes and protects all human rights for all people in the state, with a positive duty on NSW public authorities and the executive to:
 - i. consider human rights in decision-making, and
 - ii. consult with people with disability and other people most impacted by overlapping systems of discrimination and inequality on laws and policy that may impact them, and
 - c) includes a standalone cause of action for a breach of human rights by a public authority, and an accessible complaint pathway, including to Courts and Tribunals to provide for an adequate effective remedy, and
 - d) includes a limitation clause that specifies that the human rights protected under the Act be subject only to reasonable limitations that are demonstrably justifiable in a free and democratic society, based on human dignity, equality and freedom.

Recommendation 2

1. All rights subject to **immediate realisation** under the United Nations *Convention on the Rights of Persons with Disabilities (CRPD)* must be expressly incorporated into the NSW Human Rights Act by individually listing each *CRPD* right, or, through express recognition, incorporation of the whole of the *CRPD* into the substantive legislation.
 - a. In the case of all **immediately realisable** rights, the NSW Human Rights Act must identify that people with disability have a right to receive supports to assist in the realisation of those rights.

Recommendation 3

1. In the case of rights subject to **progressive realisation**, the NSW government must consult with people with disability through their Representative Organisations to identify which elements of rights subject to progressive realisation have elements that are subject to immediate realisation, and include those immediately realisable elements in the NSW Human Rights Act.

Explanatory statement: Why immediately realisable *CRPD* rights should be expressly incorporated into NSW human rights legislation³

The *CRPD* is a specialist treaty that articulates how existing international human rights laws apply to people with disability. For example, the Universal Declaration of Human Rights and the *International Covenant on Civil and Political Rights (ICCPR)* provide the right to equality before the law.

Article 12 of the *CRPD* reaffirms this right and further provides that people with disability have full legal capacity and must be provided with support, where required, to exercise that capacity. The doctrine of *lex specialis* means that laws covering specific subject matters override laws governing general matters.

As such, the *CRPD*'s normative standards override other treaties and jurisprudence relating to people with disability. This means that the *CRPD*, as opposed to the *ICCPR* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* is the most authoritative depiction of the human rights of people with disability.

³ On progressive and immediately realisable rights see e.g., Committee on the Rights of Persons with Disabilities, *General Comment No. 5 (2017) on living independently and being included in the community*, 18th sess, UN Doc CRPD/C/GC/5 (27 October 2017), [39], [42], [46].

To ensure the full rights of people with disability are captured in NSW human rights legislation, the NSW Government must expressly incorporate our *CRPD* rights rather than relying on the *ICCPR* and *ICESCR* as some governments have done in other jurisdictions.

Expressly incorporating the *CRPD* in the NSW human rights legislation will help the Parliament, Courts, Tribunals, public servants and the public understand our specific rights, and ensure that old paternalistic, ableist and welfare focused views of disability are not applied. It will provide people with disability a clear expression of identity as rights holders and confirm they are recognised as full legal members of the NSW community.

A note on language - intersectionality

Throughout this submission, PWDA uses the term **‘people most impacted by overlapping systems of discrimination and inequality.’** The use of this term is replacing use of the term ‘intersectionality’ within disability and rights discourse where possible. It directs attention to the individualised and human element of harm and impact, and how it is *systems* which can cause and exacerbate inequalities.

It confirms that instances of discrimination and inequality are not the fault of the person experiencing them. Such meaningful elements can be hidden behind a blanket and default use of the term ‘intersectionality’ particularly where it is simply used to ‘tick a box’ without any meaningful change to the operation of those systems.

We use the term ‘intersectionality’ wherever the original text to which we refer uses that term for ease of referencing. We also note that definitions of what intersectionality is, such as by the Committee on the Rights of Persons with Disabilities, remain relevant to understanding what we mean by ‘people most impacted by overlapping systems of discrimination and inequality.’

Part 1: Introduction

People with Disability Australia welcomes the opportunity to comment on the NSW Human Rights Bill 2025 and the need for comprehensive human rights legislation to protect and promote the rights of people with disability in New South Wales (NSW).⁴

Despite rights enshrined in international human rights treaties, seven of which Australia is party to including the United Nations *Convention on the Rights of Persons with Disabilities (CRPD)*,⁵ people with disability in NSW continue to face discrimination and poorer life outcomes across all life domains, when compared to those without disability.⁶

Of particular concern, people with disability continue to experience significantly more violence and abuse than people without disability.⁷ This can be more pronounced for people with disability who are impacted by overlapping systems of discrimination and inequality, such as First Nations people with disability, women with disability, LGBTQIA+ people with disability, and culturally and linguistically diverse people with disability.⁸

⁴ We note that PWDA is a member of the Human Rights Act for New South Wales Alliance <https://humanrightsfornewsw.org/>.

⁵ In brief: *International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities.*

⁶ Rosemary Kayess and Therese Sands, *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation* (Research Report, UNSW Social Policy Research Centre, 2020); Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (reference period 2022 – released 4 July 2024)

<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release#disability>. See also Australian Bureau of Statistics, *General Social Survey Results, Australia* (reference period 2025 – released 6 May 2026) <https://www.abs.gov.au/statistics/people/people-and-communities/general-social-survey-summary-results-australia/latest-release>.

⁷ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

⁸ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

Quite simply, current human rights protections in NSW (limited as they are) have not prevented discrimination, violence, abuse, neglect and exploitation of people with disability.⁹

The key issue is that unless incorporated into NSW state legislation through an Act, the human rights of people with disability in NSW as laid out in the *CRPD* and other international instruments, are not part of NSW law. This means governments can ignore rights when making decisions without accountability, and, except in very limited cases, NSW citizens have no opportunity to have breaches of their human rights addressed and remedied through NSW legal processes. This is why people with disability in NSW need a Human Rights Act.

PWDA has previously called for a National Human Rights Act.¹⁰ A NSW Act is complementary to a National Act. It is important as it covers the specific provision of services and infrastructure for example which NSW and not Federal agencies have responsibility for. Our goal is for a National and NSW Human Rights Act that explicitly recognise people with disability, and for the rights included in the *CRPD* to be embedded in those Acts.

We note that immediately realisable rights from other key instruments such as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, and the *International Covenant on Civil and Political Rights (ICCPR)* will provide a framework for a Human Rights Act in NSW, and those rights have been held to also apply to people with disability, despite those instruments not referencing people with disability.¹¹ However, the *CRPD* contains further immediately realisable rights and

⁹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

¹⁰ See e.g., People with Disability Australia, Submission to Joint Parliamentary Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (June 2023) <https://pwd.org.au/submission-a-human-rights-act-for-all/>. National inquiry page: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework. We note that PWDA is a member of the Human Rights Act for New South Wales Alliance <https://humanrightsfornewsw.org/>.

¹¹ See e.g., Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, 11th sess, UN Doc E/1995/22, (9 December 1994) [5].

obligations specifically aimed at recognising the unique diversity of people with disability and supporting the enabling of their rights.¹²

For people with disability, it is critical that the NSW Human Rights Act, in addition to explicitly recognising people with disability as rights holders, also includes clear rights to consultation and participation in decision-making on policies and legislation that impact them. This right of people with disability to be consulted with and actively involved through their representative organisations in decisions that affect them is provided for by article 4(3) of the *CRPD*.¹³ This right is pleasingly reflected in clause 49(4)(c)(iii) of the current Human Rights Bill 2025.

Broadly, a Human Rights Act based on the current NSW Human Rights Bill 2025 (which builds on learnings from successful human rights legislation in other Australian jurisdictions) will benefit people with disability in NSW by:

- **improving** decision-making transparency and accountability, by ensuring the NSW Parliament actively considers the human rights of persons with disability when passing and amending legislation, including those laws which are made to regulate the lives of persons with disabilities (giving effect to the rights of people with disability outlined in articles 4(1)(c) and 4(3) *CRPD*),
- **enabling** NSW Courts and Tribunals to interpret legislation consistently with human rights and empower them to tell the NSW Government and Parliament if they find that a law breaches human rights, and by
- **promoting** access to justice by providing an accessible and inclusive pathway that persons with disabilities can use to make a complaint and seek a remedy if their human rights in the Human Rights Act are breached. Being able to have rights enforced is an important safeguard.

¹² See e.g., Committee on the Rights of Persons with Disabilities, *General Comment No. 5 (2017) on living independently and being included in the community*, 18th sess, UN Doc CRPD/C/GC/5 (27 October 2017) [39], [42], [46].

¹³ See also Committee on the Rights of Persons with Disabilities, *General Comment No. 7 (2018) on Article 4.3. and 33.3 – the participation of persons with disabilities in the implementation and monitoring of the Convention*, 20th sess, UN Doc CRPD/C/GC/7 (9 November 2018).

In support of the three recommendations of this submission for a Human Rights Act for NSW this submission will:

1. In **Part 2**, outline some further **foundational concepts**, providing broad rationales and contexts for a NSW Human Rights Act for people with disability.
2. In **Part 3**, outline **two key related themes** for why people with disability in NSW need a Human Rights Act, and unpack these to provide clarity on why they are important. These themes are:
 - i. There is a lack of robust human rights protections, including effective complaints processes and remedies, for people with disability in NSW. We critically examine some existing processes.
 - ii. Effective protections for the human rights of people with disability need to be developed with a specific disability lens and consider people most impacted by overlapping systems of discrimination and inequality.
3. In **Part 4**, identify **two key areas** of the current NSW Human Rights Bill 2025 which support the realisation of human rights for people with disability in NSW and must be part of any future NSW Human Rights Act. These are broadly,
 - i. Positive duties and consultation and participation rights, and
 - ii. Improved pathways to receive a remedy for a breach of rights.

Part 2: Foundational concepts

Underpinning the obligations of States Parties to human rights treaties like the *CRPD* is the principle that they **must**

- respect,
- protect, and
- fulfil human rights.

Protecting and promoting human rights is a ‘whole of government’ responsibility – NSW must act

The *CRPD* was ratified by the Australian Government on the 17 July 2008. Implementation of the *CRPD* is a ‘whole of government responsibility.’ Australia’s obligations under the *CRPD* require implementation measures by all levels of government including the NSW Government.

Article 4(1)(a) of the *CRPD* identifies that States Parties have an obligation ‘[t]o adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.’¹⁴

Article 4(1)(c) *CRPD* says that States Parties must ‘**take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.**’

Article 4(3) *CRPD* states that

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes

¹⁴ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

concerning issues relating to persons with disabilities, **States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.**¹⁵

Similar to the federal jurisdiction, the human rights of people with disability in NSW are currently ‘protected’ by what is often described as a fragmented ‘patchwork’ of laws.¹⁶ It is a framework that lacks accessible complaint pathways, is uneven in coverage of rights, and lacks effective enforcement and remedies. It is inadequate at protecting and promoting substantive equality and meeting *CRPD* obligations to ‘ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.’¹⁷

The dialogue model protects parliamentary sovereignty

Arguments raised in support of a National Human Rights Act at the 2023/24 Federal Parliamentary Inquiry into Australia’s Human Rights Framework,¹⁸ and findings and recommendations made by the Federal Parliamentary Joint Committee on Human Rights in their final report, are relevant to the current Inquiry into the NSW Human Rights Bill 2025. In particular, Recommendations 1 and 2 of the Federal Parliamentary Joint Committee report both called for the establishment of a Federal Human Rights Act. They recommended the Act should ‘broadly reflect the model

¹⁵ For further see Committee on the Rights of Persons with Disabilities, *General comment No.7 (2018) on Article 4.3 and 33.3 - the participation of persons with disabilities in the implementation and monitoring of the Convention*, 20th sess, UN Doc CRPD/C/GC/7 (9 November 2018).

¹⁶ Australian Human Rights Commission, *Free & Equal Position Paper: A Human Rights Act for Australia* (2022) https://humanrights.gov.au/data/assets/file/0029/46856/Free_equal_hra_2022_-_main_report_rgb.pdf; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023)) vol 4; Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Final Report, May 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework.

¹⁷ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 4(1).

¹⁸ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (2023) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework.

proposed by the Australian Human Rights Commission' in its *Free & Equal* Reports and in the draft of a Bill provided by the Australian Human Rights Commission (AHRC) to the Joint Committee.¹⁹ This model is referred to as the 'dialogue model of human rights.' It respects and does not supplant parliamentary sovereignty. The current NSW Human Rights Bill 2025 is based upon this dialogue model the same as successful human rights legislation in Victoria, the Australian Capital Territory and Queensland.

Other states and territories are doing a better job at protecting and promoting the human rights of their residents than NSW

NSW is lagging other states and territories in effective human rights protections for its residents. As noted, Victoria, the Australian Capital Territory, and Queensland all have human rights legislation based on the dialogue model.²⁰ A recent Inquiry for a Human Rights Act for South Australia resulted in the South Australian Parliament's Social Development Committee recommending in its final report the enactment of a Human Rights Act for South Australia. In line with other Australian legislation and Reports, it recommended a 'dialogue model' which preserves parliamentary sovereignty.²¹

It is telling that former NSW Premier Bob Carr, once opposed to a Human Rights Act for NSW now states that they are open to a Human Rights Act.²² This change in view has been promoted at least in part by concerns with a 'pile up of national security

¹⁹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Final Report, May 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework.

²⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic) <https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015>; *Human Rights Act 2004* (ACT) <https://www.legislation.act.gov.au/a/2004-5>; *Human Rights Act 2019* (Qld) <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005>.

²¹ Social Development Committee, Parliament of South Australia, *Inquiry into the potential for a Human Rights Act for South Australia* (49th Report, 29 April 2025) <https://www.parliament.sa.gov.au/committees/SDC>.

²² Alexandra Smith and Frances Howe, 'For decades former premier Bob Carr opposed these laws. Now he has changed his mind', *Sydney Morning Herald* (March 19 2025) <https://www.smh.com.au/politics/nsw/for-decades-former-premier-bob-carr-opposed-these-laws-now-he-has-changed-his-mind-20250319-p5lkrz.html>.

legislation’ which could give ‘police and security agencies a range of powers that could allow for abuse.’²³

Arguments in opposition to Human Rights Acts claiming they are unnecessary as there are already protections built into current legislative frameworks, and that there is a risk a Human Rights Act will introduce new ‘arduous bureaucratic processes’²⁴ do not stand up to scrutiny. They are not reflected in the experience of the operation of human rights legislation in other Australian and international jurisdictions.²⁵ As noted, what protections there may be in NSW are inadequate to drive systemic change and substantive equality.

There is clear evidence of the benefits of a Human Rights Act

We know that Human Rights Acts make real improvements to the day to day lives of all people through better decision making and more accountability of agencies.²⁶ Importantly, a Human Rights Act has a powerful normative effect for people with disability through challenging ableism, and promoting values that support community

²³ Alexandra Smith and Frances Howe, ‘For decades former premier Bob Carr opposed these laws. Now he has changed his mind’, *Sydney Morning Herald* (March 19 2025) <https://www.smh.com.au/politics/nsw/for-decades-former-premier-bob-carr-opposed-these-laws-now-he-has-changed-his-mind-20250319-p5lkrz.html>.

²⁴ Alexandra Smith and Frances Howe, ‘For decades former premier Bob Carr opposed these laws. Now he has changed his mind’, *Sydney Morning Herald* (March 19 2025) <https://www.smh.com.au/politics/nsw/for-decades-former-premier-bob-carr-opposed-these-laws-now-he-has-changed-his-mind-20250319-p5lkrz.html>.

²⁵ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Final Report, May 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework.

²⁶ Human Rights Law Centre, *Charters of Human Rights make our lives Better: 101 Cases showing how* (2022) <https://www.hrlc.org.au/reports-news-commentary/2022/6/2/charters-of-human-rights-make-our-lives-better>. See also relevantly, ACT Human Rights Commission, *20th Anniversary of the Human Rights Bill. A Collection of 20 Human Rights Case Studies* (2023) https://www.hrc.act.gov.au/_data/assets/pdf_file/0010/2329147/20th-ANNIVERSARY-OF-THE-HUMAN-RIGHT-BILL-A-COLLECTION-OF-20-HUMAN-RIGHTS-CASE-STUDIES_2023.pdf. For further reflections on evidence of the tangible and positive benefits of Human Rights Acts in Australia see Helen Watchirs, ‘Reflections on the ACT’s Human Rights Bill 20 years on – lessons for the National Inquiry’ (36th Annual Sir Richard Blackburn Lecture, 9 May 2023) <https://www.actlawsociety.asn.au/article/reflections-on-the-act-s-human-rights-bill-20-years-on---lessons-for-the-national-inquiry>; ACT Human Rights Commission, Submission to Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (1 July 2023); Victorian Equal Opportunity and Human Rights Commission, Submission to Australian Human Rights Commission, *Free and Equal: An Australian conversation on human rights* (November 2019).

inclusion and cohesion, including within agencies. Strong human rights protections improve communities for everyone.

In 2022 the Human Rights Law Centre (HRLC) published a report highlighting 101 cases where people have had success in having their human rights affirmed and protected under the Australian Capital Territory's *Human Rights Act 2004*, Victoria's *Charter of Human Rights and Responsibilities Act 2006* and Queensland's *Human Rights Act 2019*.²⁷ All people are beneficiaries of the rights protections. They are particularly critical for:

• Children and young people	• First Nations peoples
• LGBTQIA+ persons	• Older persons
• People of colour	• People seeking asylum
• People with a disability	• Women

Rights protected and reflected in the case studies include:

• Right to life	• Right to education
• Right to health	• Right to equality
• Non cruel treatment	• Freedom of movement
• Freedom of religion	• Freedom of expression
• Freedom of association	• Protection of families
• Right to join public life	• Cultural rights
• Property rights	• Right to liberty
• Treatment in detention	• Right to a fair hearing

The case studies highlight numerous incidents of how human rights legislation has supported **people with disability**. The legislation has, for example:

- prevented **people with disability** from being made homeless or being evicted without basis;

²⁷ Human Rights Law Centre, *Charters of Human Rights make our lives Better: 101 Cases showing how* (2022) <https://www.hrlc.org.au/reports-news-commentary/2022/6/2/charters-of-human-rights-make-our-lives-better>.

- supported **children with disability** to receive education and supports, and not be continuously expelled;
- supported **parents with disability** to keep their families together;
- increased accessibility in train stations and other spaces;
- provided access to social housing support after extensive delays;
- prevented people with **intellectual disability** from being imprisoned for minor matters;
- supported people with **mental health illness** to continue to live in their homes, and manage their money;
- helped people with disability to feel safer and protected from exploitative service providers;
- upheld rights to a fair hearing for people with disability;
- improved safeguards around capacity to consent to medical treatment; and
- **reduced restraint and seclusion** in mental health services.

Part 3: The need for a Human Rights Act in NSW for people with disability – two key themes

There are two key related themes for why people with disability in NSW need a Human Rights Act. These are that,

1. there is a lack of effective human rights protections, including effective complaints processes and remedies for people with disability, and
2. effective protections for the human rights of people with disability need to be developed with a specific disability lens and consider all people most impacted by overlapping systems of discrimination and inequality.

Lack of current protections for people with disability

There are a very limited number of ‘rights’ that are recognised by the Australian Constitution and the Australian common law. Common law rights are particularly vulnerable because Australian, state and territory parliaments can enact legislation which overrides common law rights. The best protection for rights comes through the enacting of legislation which sets out those rights, and imposes obligations on agencies and decision makers to give effect to them in practice. While there are examples of laws and policies in place that *may* align with some aspects of the *CRPD* (such as anti-discrimination laws), there is a lack of consistency in application and coverage of rights with current legislative frameworks, meaning that in actual practice they fall short of *CRPD* compliance.²⁸ This is problematic for the safety and well-being of people with disability.

²⁸ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 90.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) noted that the establishment of the Royal Commission was ‘a response to significant concerns about violence against, and abuse, neglect and exploitation of, people with disability and failures to protect their human rights.’²⁹ They stated that

While many factors contribute to the extent of violence against, and abuse, neglect and exploitation of, people with disability in Australia, **the absence of comprehensive legislation protecting the human rights of people with disability is a significant element.**³⁰

At its simplest, as identified by the Disability Royal Commission, **current human rights protections throughout Australia (including NSW) have not prevented violence, abuse, neglect and exploitation of people with disability.**

Limitations of existing laws and process to protect the human rights of people with disability in NSW – a selection

Scrutiny of bills and regulations by the NSW Parliament Legislation Review Committee.³¹

Building on previous review committees, the current NSW Parliament Legislation Review Committee (LRC) was established in 2003. It reviews Bills and regulations in accordance with sections 8A and 9 of the Legislation Review Act 1987 (NSW).

The LRC has been described as reflecting a view that a ‘robust’ Westminster system provides sufficient protections for human rights.³² This is a view that permeated recommendations made by the NSW Legislative Council Standing Committee on

²⁹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

³⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 90. *Emphasis added.*

³¹ <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=245>.

³² Joseph Cho, ‘NSW parliament’s oversight of human rights in the first year of the COVID-19 pandemic’ (2022) 47(1) *Alternative Law Journal* 67, 67-68.

Law and Justice in its 2001 Final Report on the 1999 Inquiry into a NSW Bill of Rights.³³ It did not recommend a Bill of Rights for NSW. Instead, that Committee recommended NSW Parliament establish a Scrutiny of Legislation Committee which became the LRC.³⁴ Parliamentary supremacy and, since the 1980's in NSW the increased use of committees as a mechanism for review of parliamentary activity, are seen in this robust 'Westminster' view as key restraints on government and executive overreach.³⁵

In 2016 the Hon T F Bathurst, then Chief Justice of New South Wales expressed some skepticism 'as to whether the power scrutiny committees wield in theory translates into practical boundaries being placed on legislative encroachment of rights.'³⁶ Indeed, repeated examples (e.g., NSW Bikie laws,³⁷ government operations during COVID-19,³⁸ and recently in regards to NSW protest laws³⁹) have demonstrated that in practice, this approach appears to provide little restraint to executive government power when it comes to enacting laws that impact on the human rights of NSW residents.

In practice, the functions of the LRC are extremely limited. It is solely advisory in function. There is no requirement its advice must be considered, let alone followed.

³³ Legislative Council Standing Committee on Law and Justice, Parliament of NSW, [Inquiry into a NSW Bill of Rights](#) (Final Report, October 2001); Andrew Byrnes, 'The protection of human rights in NSW through the Parliamentary process – a review of the recent performance on the NSW Parliament's Legislation Review Committee' [2009] *UNSWLRS* 43, 4.

³⁴ Legislation Review Committee, Parliament of NSW, 'Public Interest and the Rule of Law: Discussion Paper' (Discussion Paper No 1, 10 May 2010) 1.

³⁵ Gareth Griffith, 'The New South Wales Legislative Council: an analysis of its contemporary performance as a house of review' (2002) 17(1) *Australasian Parliamentary Review* 49-66, 51; Joseph Cho, 'NSW parliament's oversight of human rights in the first year of the COVID-19 pandemic' (2022) 47(1) *Alternative Law Journal* 67, 68.

³⁶ The Hon TF Bathurst, 'The nature of the profession; the state of the law' (Opening of Law Term Address, 4 February 2016) [22].

https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2016-Speeches/Bathurst-CJ/Bathurst_20160204_speech.pdf.

³⁷ Laura Grenfell and Sarah Moulds, 'The Role of Committees on Rights Protection in Federal and State Parliaments in Australia' (2018) 41(1) *UNSW Law Journal* 41, 57-60.

³⁸ Joseph Cho, 'NSW parliament's oversight of human rights in the first year of the COVID-19 pandemic' (2022) 47(1) *Alternative Law Journal* 67.

³⁹ See e.g., *Jarrett v State of New South Wales* [2026] NSWCA 62; Human Rights Law Centre, 'Minns Government's protest restrictions ruled unconstitutional' (Media Release, 16 April 2026) <https://www.hrlc.org.au/news/minns-protest-unconstitutional/>; Alexandra Bell, Hashwita Maynoor & Lachlan Wilkinson, 'Explainer: What is happening with protest laws in NSW?' (UNSW Australian Human Rights Institute Blog, 2026) <https://www.humanrights.unsw.edu.au/students/blogs/what-is-happening-nsw-protest-laws>.

Bills can be considered in parliament regardless of whether the LRC has undertaken a review and provided advice. The LRC has been described as lacking any real ‘weight and legitimacy’,⁴⁰ with its views holding ‘little sway’ in debate, and an ‘entrenched culture’ of ‘ignoring and deflecting the Committee’s advice.’⁴¹ Andrew Byrnes argues that the LRC can do ‘ok’ identifying ‘classic civil liberties concerns’, though it **does not apply a rigorous human rights analysis**. He noted it does much less well in identifying and analysing other economic, social and cultural rights. He argues that,

[E]ven with enhanced Parliamentary scrutiny, **the adoption of a bill of rights would make a difference**, as it would provide a clear and comprehensive set of standards and a framework for full human rights analysis, while the prospect of even limited judicial review would focus the minds of policymakers and legislators on human rights issues in the legislative process.⁴²

While it does have an important role to play, by itself and in the absence of human rights legislation, the LRC cannot be considered an effective safeguard of the human rights of NSW residents.⁴³

The Disability Inclusion Act 2014 (NSW)⁴⁴

The *Disability Inclusion Act 2014 (DIA)* refers to the rights of people with disability directly and indirectly in its Objects (section 3) and General principles (section 4). Section 3(e) states an object of the Act is to ‘support, to the extent reasonably practicable, the purposes and principles of the United Nations Convention on the

⁴⁰ Laura Grenfell and Sarah Moulds, ‘The Role of Committees on Rights Protection in Federal and State Parliaments in Australia’ (2018) 41(1) *UNSW Law Journal* 40, 41, 57–60.

⁴¹ Luke McNamara and Julia Quilter, ‘Institutional Influences on the Parameters of Criminalisation: Parliamentary Scrutiny of Criminal Law Bills in New South Wales’ (2015) 27(1) *Current Issues in Criminal Justice* 21, 35; Andrew Byrnes, ‘The protection of human rights in NSW through the Parliamentary process – a review of the recent performance on the NSW Parliament’s Legislation Review Committee’ [2009] *UNSWLRS* 43, 9.

⁴² Andrew Byrnes, ‘The protection of human rights in NSW through the Parliamentary process – a review of the recent performance on the NSW Parliament’s Legislation Review Committee’ [2009] *UNSWLRS* 43, Abstract, and see 9.

⁴³ Andrew Byrnes, ‘The protection of human rights in NSW through the Parliamentary process – a review of the recent performance on the NSW Parliament’s Legislation Review Committee’ [2009] *UNSWLRS* 43, 9.

⁴⁴ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2014-041>.

Rights of Persons with Disabilities.’ All *CRPD* rights are not included in the Act, and there is a ‘reasonably practical’ qualifier. The broad purpose of the *DIA* is to promote inclusion and independence for people with disability in the community and is particularly relevant for service providers, including government agencies providing services.

However, the *DIA* is not comprehensive in rights identified, provides little in the way of enforceable obligations on a person exercising a function under the Act, or providing supports or services to people with disability in connection with the provision of financial assistance under Part 4 of the Act, to actually follow the Disability Principles. It provides **no legal mechanism** for a person with disability to enforce *CRPD* or other rights when they are breached.

Disability Discrimination Act 1992 (Cth) and Anti-Discrimination Act 1977 (NSW) – limitations

A primary way the Australian Government has sought to meet its obligations under the *CRPD* is through disability specific anti-discrimination laws.⁴⁵ NSW similarly has an *Anti-Discrimination Act* covering people with disability.⁴⁶ People with disability do have options to bring complaints about discrimination under the Commonwealth or NSW Act depending on matter.

While acting on discrimination is critical, it is only one aspect of the bundle of human rights people with disability hold. As Theresia Degener notes

[A]nti-discrimination law can only be seen as a partial solution to the problem. **Even in a society without barriers and other forms of discrimination, people need social, economic and cultural rights.** People need shelter, education, employment or cultural participation. **This is true for all human beings, and thus for disabled persons.**⁴⁷

⁴⁵ *Disability Discrimination Act 1992* (Cth) <https://www.legislation.gov.au/C2004A04426/latest/text>.

⁴⁶ *Anti-Discrimination Act 1977* (NSW), Part 4A Discrimination on the ground of disability <https://legislation.nsw.gov.au/view/html/inforce/current/act-1977-048>.

⁴⁷ Theresia Degener, ‘Disability in a Human Rights Context’ (2016) 5(3) *Laws* 35.

Degener argues further that while people with disability need civil and political rights (and not just anti-discrimination laws) we also need *more* (as identified by the *CRPD*):

[B]ecause impairment often leads to needs for assistance, **it is especially true that disabled persons need more than civil and political rights.**

While welfare policies and laws in the past have failed to acknowledge and empower disabled persons as citizens, laws on personal assistance services or personal budgets proofed that even classical social laws can give choice and control to disabled persons. *It is thus illustrative that the global independent living movement has always phrased their demands in terms of broader human rights, rather than in terms of pure anti-discrimination rights.*

The human rights model of disability includes both sets of human rights: political, and civil and economic, and cultural rights.⁴⁸

A further issue is that current anti-discrimination legislative frameworks both at the national level and in NSW have significant flaws. Both the *Disability Discrimination Act 1992* (Cth) (DDA) and *Anti-Discrimination Act 1977* (NSW) (ADA) are undergoing review.

There are five key related flaws in the current anti-discrimination schemes ability to protect rights of people with disability and influence systemic change (apart from the fact that they only operate in regards to discrimination).

First, they operate within an ‘individual complaints-based model.’ It places the burden of seeking a remedy for unlawful discrimination upon the victim. Furthermore, entering into the Federal Court system (or any current Court system) is expensive and time consuming. In NSW, appeals through NCAT can be arduous.

⁴⁸ Theresia Degener, ‘Disability in a Human Rights Context’ (2016) 5(3) *Laws* 35. *Emphasis added.*

Second and relatedly, a significant amount of discrimination complaints are resolved through confidential conciliation, limiting public awareness and knowledge of the issue.

Third, neither Act contains a **positive duty** on relevant authorities to prevent discrimination from occurring.

Fourth, remedies are often not satisfactory. Indeed, on the question of remedies under anti-discrimination legislation, Jacob Campbell argues that, in the context of the *Disability Discrimination Act 1992* (Cth),

[R]emedies that support the operation of the Act tend to **reinforce the idea that disability is a problem of the individual rather than a broader problem requiring cultural change**.⁴⁹

Fifth and finally, it is important to note that both *Acts* do a poor job of protecting people with disability impacted by *overlapping* systems of discrimination and inequality.

What this means is that current anti-discrimination legislation for people with disability in NSW is not sufficient, by itself, to protect and promote *all* the human rights of people with disability. It is also the case that it could be doing a far better job at its primary role of protecting against discrimination. A Human Rights Act is complementary to anti-discrimination legislation and will strengthen the operation of anti-discrimination laws and policies.

Human Rights complaint to the Australian Human Rights Commission – limitations

A person can make a complaint about a human rights breach (including *CRPD* rights) to the Australian Human Rights Commission (AHRC). However, there are

⁴⁹ Jacob Campbell, 'Using Anti-discrimination Law as a Tool of Exclusion: A Critical Analysis of the *Disability Discrimination Act 1992* and *Purvis v NSW* (2005) 5 *Macquarie Law Journal* 201, 208.

significant acknowledged limitations on the ability of the AHRC to meaningfully address human rights complaints – key is that the AHRC cannot provide any remedy.⁵⁰ Unlike a claim of unlawful discrimination under the *Disability Discrimination Act 1992* (Cth), if the AHRC cannot conciliate a human rights complaint, the complainant has **no ability** to bring a court proceeding to obtain a remedy. As we note, protections for human rights are about more than just anti-discrimination.

This limitation of existing AHRC processes has been identified by the United Nations Committee on the Rights of Person with Disabilities (CRPD Committee). In reference to complaint handling procedures under the then Queensland Anti-Discrimination Commission (now the Queensland Human Rights Commission)⁵¹ and the Australian Human Rights Commission, the CRPD Committee stated that as those procedures ‘do not give rise to any enforceable remedy for violations of human rights [they] can therefore not be considered as effective remedies.’⁵²

The AHRC has recommended that where a human rights complaint cannot be conciliated, the complainant **should** at least be able to seek a remedy through a court.⁵³

⁵⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 100.

⁵¹ <https://www.qhrc.qld.gov.au/>

⁵² Committee on the Rights of Persons with Disabilities, *Decision adopted by the Committee under article 2 of the Optional Protocol, concerning communication No. 14/2013*, CRPD/C/17/D/14/2013 (19 May 2017), [6.3] https://www.bayefsky.com/pdf/australia_t5_cat_14_2013.pdf.

⁵³ Australian Human Rights Commission, *Free & Equal Position Paper: A Human Rights Act for Australia* (2022) 29 https://humanrights.gov.au/data/assets/file/0029/46856/Free_equal_hra_2022_-_main_report_rgb.pdf.

A need for a disability lens in developing human rights protections for people with disability and those impacted by overlapping systems of discrimination and inequality

A Disability Lens

Of relevance for this current Inquiry and the NSW Government, the Disability Royal Commission made a number of observations as to how laws to protect and promote the rights of people with disability, such as through specific human rights legislation, should be developed.

As noted previously, the Disability Royal Commission found that existing human rights protections *have not* protected people with disability from violence, abuse, neglect and exploitation. In examining current Australian state and territory human rights laws they noted, critically, that,

[N]one of them are expressly aimed at recognising or protecting the rights of people with disability. **Consequently, these laws do not incorporate a disability perspective in their protection of human rights, nor address disability-specific inequalities or barriers.**⁵⁴

In short, multiple systems on which people with disability rely on (including systems to protect human rights) have not been designed by and with people with disability and are thus unable to respond to the diversity of the disability community.

These systems of services, supports and protection lack reference in design and operation to the actual lived experience of people with disability. In fact, such existing systems can potentially make things worse, forcing people with disability into

⁵⁴ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 105.

segregated settings against their will for example.⁵⁵ As the Disability Royal Commission put it,

Although significant advances have been made, rights protections in existing laws have not produced equality of outcomes for people with disability. Many existing laws and complaint systems are generally built by and for people *without* disability and fail to address the discrimination, marginalisation and exclusion experienced by people with disability. **There are also particular features that may heighten the risk of rights violations for people with disability, present barriers to disclosure or reporting, and make monitoring breaches of human rights more challenging.**⁵⁶

They continued stating that,

We consider stronger, more comprehensive and specifically tailored measures are required to effectively protect the human rights of people with disability in Australia. **The nature and extent of violence, abuse, neglect and exploitation of people with disability calls for a human rights framework that explicitly addresses the needs of people with disability, actively safeguards rights and seeks to bring about equality of outcomes.**

This is a view that PWDA shares. The NSW Human Rights Act must have a disability lens – **it must be developed with people with disability, not for people with disability.** It must reflect the real lived experience of people with disability as to how they encounter violations of rights, and actively dismantle barriers that restrict the ability for people with disability to receive justice for those violations.

⁵⁵ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 107.

⁵⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 107. *Emphasis added.*

We note that in the current example of the NSW Human Rights Bill 2025, there has been demonstrable effort to work *with* people with disability to include their lived experience in the Bill.

A disability lens also means embedding *CRPD* rights into legislation and making disability visible

We note that our Recommendations 2 and 3 in this submission calls for the explicit embedding of immediately realisable rights from the *CRPD* into a NSW Human Rights Act. We provided a short explanatory statement for that recommendation.

However, it is worth revisiting the rationale for those recommendations from a complimentary approach in the context of a ‘disability lens’ to highlight further why people with disability want their rights explicitly embedded. To summarise, this is because of ongoing concerns, historically founded, about continuing to be ‘**invisible**’ where disability rights are *not* expressly noted.

It’s poignant to reflect now that **discrimination** in all its guises is a very modern concept. There is no basis for it in the common law. Relatedly, it is only since the 1970’s that **disability** has been seen as a social policy matter, and not just a health policy matter. More specifically people with disability were seen as subjects of welfare in need of protection, and not seen as ‘rights bearers.’⁵⁷

People with disability were largely **invisible** in social, economic, cultural and political discourse, *including* in Human Rights treaties (there is no reference to disability in the *ICCPR* and *ICESCR*). In their important 2002 United Nations Report on disability and human rights instruments, Gerard Quinn and Theresia Degener identified this ongoing ‘invisibility’ under then international legal frameworks as a core barrier to

⁵⁷ Lee Ann Bassar and Melinda Jones, ‘The *Disability Discrimination Act 1992* (Cth): A Three-Dimensional Approach to Operationalising Human Rights’ (2002) 26 *Melbourne University Law Review* 254, 265-267.

inclusion for people with disability (and was a further significant driver at that time for the adoption of a specific disability focused convention).⁵⁸

The ‘invisibility’ issue had been identified earlier. And the United Nations was grappling with it. For example, in 1994 the United Nations Committee on Economic, Social and Cultural Rights said that *despite people with disability not being explicitly referred to in the ICESCR*, the Universal Declaration did apply to people with disability, and thus by default *ICESCR* did also apply to people with disability. This was not satisfying to the disability community who, despite such statements, continued to see their rights violated, and remained locked out of participatory processes.

The key reason for this is that those instruments were not set up to actually consider disability, and monitor and respond to the disability experience, despite late attempts at saying they applied to people with disability. The intention may have been expressed (late), but it failed people with disability in operation – such statements did not change the actual monitoring and reporting mechanisms of those instruments. That is because the way people with disability experienced rights was not considered from the start and was consequently not considered or captured in any monitoring mechanisms. **There was no disability lens.**

Indeed, in his 2000-2002 Report, Bengt Lindqvist, then Special Rapporteur of the Commission for Social Development on Monitoring the Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, stated that

[Up] to now, disability has been included in the way intended only to a very limited extent in reporting and monitoring procedures.⁵⁹

⁵⁸ Gerard Quinn and Theresia Degener, *Human Rights and Disability. The current and future potential of United Nations human rights instruments in the context of disability* (United Nations, New York and Geneva, 2002) 23, 294-5

<https://www.ohchr.org/sites/default/files/Documents/Publications/HRDisabilityen.pdf>.

⁵⁹ Bengt Lindqvist, *Report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities on his third mandate, 2000-2002*, UN Doc E/CN.5/2002/4 (9 January 2002) [62] <https://www.un.org/esa/socdev/enable/disecn520024e.pdf>.

In 2002 nearing the end of his term as Special Rapporteur, Lindqvist was even blunter on the failings of the international legal system for people with disability, stating that the existing six core human rights treaties at that time were **‘drafted without regard to disability’** (this was also in the context of a push for a third attempt at a disability rights convention which we finally got – the *CRPD*).⁶⁰ He stated that **‘the problem so far has been that disability-related obstacles to full enjoyment of human rights have been neglected.’**⁶¹ Only a special convention would provide an effective mechanism to monitor the implementation of disability rights.⁶²

People with disability fought long and hard for that special convention and we got that with the *Convention on the Rights of Persons with Disabilities*. There were immediate practical benefits. However, and this is critical to understanding the contemporary disability experience, in elevating visibility, the *CRPD* was also profoundly emotional and symbolic. As Quinn and Degener powerfully said in their groundbreaking 2002 Report,

The visibility argument is also symbolic. To consign six hundred million people to the episodic consideration of six different treaty monitoring mechanisms does not do full justice to them. **A specific convention would at least signal to the world that this section of the population exists and has equal rights, hopes, dreams and aspirations.**⁶³

⁶⁰ Bengt Lindqvist, ‘Towards the establishment of a UN convention to promote and protect the rights of persons with disabilities’ (Statement at the Osaka Forum, Osaka, Japan, October 2002); Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (UNSW Press, 2005) 41.

⁶¹ Bengt Lindqvist, ‘All means all!’ (Key-note speech at the Osaka Forum, Osaka, Japan, October 2002).

⁶² Bengt Lindqvist, ‘All means all!’ (Key-note speech at the Osaka Forum, Osaka, Japan, October 2002); Makau w. Mutua, ‘Standard Setting in Human Rights: Critique and Prognosis’ (2007) 29 *Human Rights Quarterly* 547, 625.

⁶³ Gerard Quinn and Theresia Degener, *Human Rights and Disability. The current and future potential of United Nations human rights instruments in the context of disability* (United Nations, New York and Geneva, 2002) 23, 295.

<https://www.ohchr.org/sites/default/files/Documents/Publications/HRDisabilityen.pdf>

For these reasons, people with disability are wary about suggestions that decisions about them may be made by reference to treaties for example which *do not* reference them directly. For example, the current Human Rights Bill 2025 notes at clause 45(3) that *inter alia* international human rights law must be considered in interpreting a statutory provision. We do acknowledge that very helpfully, ‘international human rights law’ is defined in Schedule 3 of the Bill, and a non-exhaustive list of the sources of international human rights law is provided at Schedule 1 of the Bill.

However, the question for people with disability is whether that is satisfactory to ensure **full visibility** of people with disability, and that they are rights bearers, with immediately realisable rights under the *CRPD*. People with disability are concerned about having to continue to wait for change, and concerned about continuing to be hidden, particularly in light of the decades long struggle we have faced thus far. If systems are not designed by and with people with disability they will not work for people with disability.

It is worth noting again that some immediately realisable rights under the *CRPD* may be dependent or hidden behind rights subject to progressive realisation, and some rights subject to progressive realisation do also contain elements that are subject to immediate realisation at first instance.⁶⁴ We do note positively the inclusion of clause 99(3)(b)(iii) of the Human Rights Bill 2025 that calls for a **review of the Act after two years**, and specifically directs review to considering whether additional human rights from the *CRPD* should be included in the Act. Similar to clause 45(3) we note the inclusion of clause 99(3)(b)(iii) *is* helpful. Both clauses are an effort to better reflect a disability lens. We also note other clauses which specifically mention disability and specific rights we have, such as a clause 14(6) noting a right to support for decision making.

⁶⁴ See e.g., Committee on the Rights of Persons with Disabilities, *General Comment No. 5 (2017) on living independently and being included in the community*, 18th sess, UN Doc CRPD/C/GC/5 (27 October 2017) [39], [42].

Further direct consultation with people with disability and their representative organisations around the interplay between immediate and progressive realisation of certain rights would be beneficial.

Those impacted by overlapping systems of discrimination and inequality

The Disability Royal Commission noted that in addition to a disability lens, Human Rights Acts need an ‘intersectional lens,’ as this is how people often experience abuse and other rights violations⁶⁵ - people experience overlapping systems of discrimination and inequality.⁶⁶ Specific recognition of this is also largely absent at this time in NSW’s ‘patchwork’ of human rights protections.

There is an obligation on States Parties to address multiple and intersectional discrimination against person with disabilities.⁶⁷ The CRPD Committee has previously recommended that the Australian Government strengthen the *Disability Discrimination 1992* (Cth) by adding prohibitions on systemic, intersectional and multiple forms of discrimination.⁶⁸ The CRPD Committee states that:

“Intersectional discrimination” occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment. For example, while the denial of access to general health-related information due to inaccessible format affects all persons on the basis of disability, the denial

⁶⁵ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 110.

⁶⁶ Human Rights Law Centre, *Submission to Social Development Committee, Parliament of South Australia, Inquiry into the potential for a Human Rights Act for South Australia* (2024) 10.

⁶⁷ Committee on the Rights of Persons with Disabilities, *General Comment No.6: on equality and non-discrimination* (2018, CRPD/C/GC/6) [19].

⁶⁸ Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) [10].

to a blind woman of access to family planning services restricts her rights based on the intersection of her gender and disability. **In many cases, it is difficult to separate these grounds. States parties must address multiple and intersectional discrimination against persons with disabilities.**⁶⁹

PWDA agrees with the Disability Royal Commission that this an issue of vital importance. As noted previously, people with disability *already* experience considerably more violence and abuse than people without disability in large part because of entrenched systemic discrimination within systems.⁷⁰ However, this risk of violence and abuse can be exacerbated for people with disability with multiple marginalised social identities, such as women, children and young people, First Nations people, LGBTQIA+ people, and those who are Culturally and Linguistically Diverse.⁷¹

⁶⁹ Committee on the Rights of Persons with Disabilities, *General Comment No.6: on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6, (26 April 2018) [19].

⁷⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

⁷¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 91.

Part 4: Two key ways the Human Rights Bill 2025 supports people with disability

Notwithstanding our Recommendation 2 in this submission that the NSW Human Rights Act must explicitly embed all immediately realisable *CRPD* rights for people with disability, the NSW Human Rights Bill 2025 will promote community protection and inclusion. We have noted previously some of the ways it will do this.

A strength of the Bill is that it focuses on a broad range of rights. This better reflects how rights and community participation and inclusion are experienced, including how *breaches* of rights, including discrimination, are experienced. A comprehensive approach to the protection of rights is vital as all human rights are ‘indivisible and interdependent and interrelated.’⁷²

Two key practical ways the Human Rights Bill 2025 will better protect the rights of people with disability and those at risk from the impact from overlapping systems of discrimination and inequality in NSW are:

1. The placing of **positive duties** on relevant public authorities and decision-makers to properly consider the human rights of persons with disabilities when making laws and policies, and to consult with people with disability on proposed laws and policies that affect them, and
2. The provision of accessible complaint’s mechanisms, that, in conjunction with a standalone cause of action for a breach of human rights under the Act, will provide opportunity for a range of enforceable **effective legal remedies** for a person who has had their rights violated.

⁷² *Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights*, UN Doc A/CONF.157/23 (12 July 1993) [5].

A positive duty to consider rights and a participation duty for public authorities

Positive duty

By a positive duty, we mean that public authorities and the executive *must* give proper consideration to human rights when making decisions, including the development and implementation of legislation and policy.⁷³ This is reflected in *CRPD* article 4(1)(c) for example which says that States Parties must **‘take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.’**⁷⁴ A failure to give proper consideration exposes the public authority to legal action.

The key benefit of positive duties is that they *prevent* harm from occurring – in this case that includes breaches of human rights and additional harm flowing from that. Across several National and NSW inquiries, there have been strong calls from a range of stakeholders for the introduction of a positive duty into national and NSW disability discrimination legislation to promote substantive equality and eliminate discrimination.⁷⁵

⁷³ See e.g., Australian Human Rights Commission, *Free & Equal Position Paper: A Human Rights Act for Australia* (2022) 29

https://humanrights.gov.au/data/assets/file/0026/46853/Free_equal_hra_2022_-_main_report_rgb_0.pdf; Victorian Equal Opportunity & Human Rights Commission, ‘Positive duty’ <https://www.humanrights.vic.gov.au/for-organisations/positive-duty/>. On the recently introduced positive duty in the *Sex Discrimination Act 1984* (Cth) see the overview, Australian Human Rights Commission, ‘What is the Positive Duty? Factsheet Series: Positive Duty under the *Sex Discrimination Act 1984* (Cth)’ (September 2023) https://humanrights.gov.au/data/assets/file/0021/47064/What_is_the_positive_duty.pdf.

⁷⁴ Noting that technically NSW is not a ‘State Party’ to international treaties such as the *CRPD*. The Australian Government is the only ‘State Party.’ However, all Australian governments have a role in implementing obligations under the *CRPD*.

⁷⁵ See particularly discussion around positive duties in disability discrimination laws in *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 310-315. Disability Royal Commission Recommendation 4.27 states ‘[t]he *Disability Discrimination Act 1992* (Cth) should be amended to introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation, based on the December 2022 amendments to the *Sex Discrimination Act 1984* (Cth).’ PWDA has consistently advocated for a positive duty to be included in Anti-discrimination legislation, for example recently, in our submissions to the 2025 Review of the *Disability Discrimination Act 1992* (Cth) <https://pwd.org.au/pwda-submission-to-the-review-of-the-disability-discrimination-act-1992/>, and the

Importantly, positive duties have a significant normative element, helping to drive cultural change within relevant agencies and also in the wider community. They indicate quite clearly what we value. We need to build rights awareness everywhere and the importance of this cannot be understated. As the Disability Royal Commission noted,

A common theme during our inquiry was the link between lack of awareness and understanding of rights, coupled with ableist attitudes, and violence against, and abuse, neglect and exploitation of, people with disability.⁷⁶

PWDA supports the inclusion in the Human Rights Bill 2025 of the strong positive duty at clause 49 (1)(a)-(b) stating it is unlawful for a public authority to make decisions that are not compatible with human rights, and unlawful not to give proper consideration to human rights relevant to a decision being made.⁷⁷

Participation duty

Clause 49(4)(c)(iii) in the Human Rights Bill 2025 outlines a ‘participation duty’ for people with disability. The participation duty can actually be seen as a limb of the broader positive duty in clause 49(1). Not only does a decision-maker have to consider human rights (cls 49(1)), they must also consult with the people affected by a decision prior to making a decision. Only when both of those elements have been met can it be said they have met their obligations under clause 49(1)(a)-(b) of the Bill. PWDA is supportive of participation duties such as drafted in the Human Rights Bill 2025.

2025 *Review of the Anti-Discrimination Act 1977* (NSW) <https://pwd.org.au/review-of-the-anti-discrimination-act-1977-nsw/>.

⁷⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 121.

⁷⁷ This positive duty clause is also contained in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 38(1), the *Human Rights Act 2019* (Qld), s 58(1)(a)-(b), and the *Human Rights Act 2004* (ACT), s 40B(1)(a)-(b).

People with disability have a right to be consulted with on decisions that affect them. As noted previously, *CRPD* article 4(3) states that

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties **shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.**

More broadly, *CRPD* article 29 guarantees that people with disability have a right to full participation in political and public life on an equal basis with others.⁷⁸

However, as the CRPD Committee has noted, people with disability still encounter ‘significant attitudinal, physical, legal, economic, social and communication barriers to participate in public life.’⁷⁹ Lack of participation can lead to multiple violations of rights. The Australian Human Rights Commission has stated that

Through its work, the Commission has identified that a common factor with laws and policies that breach human rights is that they were developed without the participation of groups most impacted by those policies.⁸⁰

Participation rights are chief enablers of other substantive rights for people with disability.⁸¹ Participation duties ensure that the lived experience of people with

⁷⁸ This right to participation in public life comes from article 21 of the Universal Declaration of Human Rights and is reaffirmed in article 25 of the *International Covenant on Civil and Political Rights*. Article 29 *CRPD* directs this to people with disability explicitly.

⁷⁹ Committee on the Rights of Persons with Disabilities, *General comment No.7 (2018) on Article 4.3 and 33.3 - the participation of persons with disabilities in the implementation and monitoring of the Convention*, 20th sess, UN Doc CRPD/C/GC/7 (9 November 2018) [5].

⁸⁰ Australian Human Rights Commission, *Free & Equal Position Paper: A Human Rights Act for Australia* (2022) 162

https://humanrights.gov.au/data/assets/file/0026/46853/Free_equal_hra_2022_-_main_report_rgb_0.pdf

⁸¹ Australian Human Rights Commission, *Free & Equal Position Paper: A Human Rights Act for Australia* (2022) 167

https://humanrights.gov.au/data/assets/file/0026/46853/Free_equal_hra_2022_-_main_report_rgb_0.pdf

disability is reflected in decision making, and that laws and policies actually *work for them*. The CRPD Committee notes that

The active and informed participation of everyone in decisions that affect their lives and rights is consistent with the human rights-based approach in public decision-making processes, **and ensures good governance and social accountability**.⁸²

Participation rights are important for all people in NSW, especially those that are vulnerable and marginalised. This is why embedding positive and participation duties in legislation is so important. PWDA notes approvingly that the Human Rights Bill 2025 extends the positive duty and participation duty to First Nations people, children, women and girls, older people, LGBTQIA+ people, and victim survivors.

Improved pathways to enforce rights and receive remedies

The NSW Human Rights Bill 2025 provides three broad proposals that PWDA believes will improve protection of rights and improve the capacity of people with disability to have breaches of their human rights as outlined in the Bill adequately remedied. These three areas are related and overlap. Together they significantly enhance access to justice and safety for people with disability.

These three areas are:

1. A proposed standalone, direct cause of action for a breach of human rights (essentially a breach of duty under Bill cls 49) allowing a victim of a rights breach to seek relief in a range of settings including Courts and Tribunals.
2. A proposed NSW Human Rights Commission with a NSW Human Rights Commissioner.

⁸² Committee on the Rights of Persons with Disabilities, *General comment No.7 (2018) on Article 4.3 and 33.3 - the participation of persons with disabilities in the implementation and monitoring of the Convention*, 20th sess, UN Doc CRPD/C/GC/7 (9 November 2018) [2].

3. A range of remedies able to be tailored to the individual complainant (separate to processes of internal review).

A standalone, direct cause of action for a breach of human rights

Clause 50 of the Human Rights Bill 2025 provides a range of options for an individual victim or victims to bring a claim that ‘a public authority has acted, or proposes to act, in a way that contravenes section 49’. Section (clause) 49 refers to the previously discussed positive duty to not act or make a decision in a way that is not compatible with human rights, and to consult with the specific persons listed in clause 49(4)(c) that we noted previously.

Clause 50(2) provides three main avenues for progressing a complaint:

1. a written complaint to the (proposed) **NSW Human Rights Commissions**, or
2. bring proceedings against the relevant public authority under the Act in the **Tribunal**, or
3. bring proceedings against the relevant public authority under the Act in the **Court**.

This provides significant choice to a victim/complainant and the avenue taken will be in a large part determined by the remedy the victim/complainant is seeking, as well as timing and costs. A standalone cause of action able to be relied upon in legal settings is a significant safeguard. PWDA is supportive of this, and believes it will provide for an efficient and straight forward way to have breaches of rights addressed. We note that people with disability must be able to access any and all supports they may need to be able to fully participate in a process of complaint making, and that any costs barriers are removed. **Avenues for remedy must be accessible and inclusive.**

It is relevant to note that the Australian Capital Territory has a broadly similar provision, allowing a person to start proceedings in the Supreme Court against a

public authority which has breached its duty to act consistently with human rights.⁸³ Critics of that provision argued it would lead to a ‘flood of law suits’ and ‘a proliferation of litigation [that would] burden the State Government with costly proceedings and remedies.’ Evidence however suggests this has not occurred.⁸⁴

A new independent NSW Human Rights Commission

Part 6 of the Bill establishes a new NSW Human Rights Commission with a NSW Human Rights Commissioner. The Commissioner is to be provided stronger powers to better resolve human rights complaints brought under a Human Rights Act. Importantly, the option for conciliation remains in order to ‘promote the resolution of the complaint in a way that is informal, quick and efficient.’⁸⁵

Perhaps the most important aspect of the new Commissioner is that they are able to **resolve a matter ‘finally’** and provide a *meaningful* enforceable remedy, **efficiently and for a low cost**. It’s not just ‘conciliation’ without consequence. The importance of this function to the new role is reflected in clause 61(b) of the Objects of the proposed Act – the Commission has *inter alia* the object ‘to provide meaningful remedies for contraventions of this Act at the lowest practicable costs’ *and* in clause 62(b) of the Commission Functions in the proposed Act – the function *inter alia* of the Commission is ‘to provide meaningful remedies for contraventions of this Act at the lowest practicable cost.’ Importantly for people with disability, the Commission is to undertake its functions in an accessible and inclusive way. PWDA is supportive of opportunities for people with disability to have complaints dealt with independently, quickly, cheaply, effectively and in an accessible and inclusive manner.

⁸³ *Human Rights Act 2004* (ACT) s 40C(2).

⁸⁴ See e.g., Gabrielle McKinnon, *The ACT Human Rights Act 2004: Impact on Case Law, Legislation and Policy* (Australian National University, 12 July 2005) <https://mcp.apo.org.au/node/1167>; Gabrielle McKinnon, *Strengthening the ACT Human Rights Act 2004* (2005) Australian National University, 2 <http://acthra.anu.edu.au/publications/index.html>; Helen Watchirs and Gabrielle McKinnon, ‘Five years’ experience of the Human Rights Act 2004 (ACT)’ 2010, 33(1) *UNSW Law Journal* 136, 145; Tamara Walsh and Dominique Allen, ‘Twenty years of human rights protection in the Australian Capital Territory: What have we learned?’, (2024) 47(2) *UNSW Law Journal* 391.

⁸⁵ Human Rights Bill 2025 (NSW) cls 80.

A range of remedies

People have a right to an *effective* remedy for wrongs against them, including breaches of their human rights.⁸⁶ The right to an effective remedy for violation of rights is an essential component of core human rights treaties such as the *ICCPR*.⁸⁷ The right to an effective remedy for breaches of human rights is also implicitly recognised in articles 3 and 4 of the *CRPD* – Australia’s obligation to ‘respect, protect and fulfil human rights,’ includes the right to an effective remedy for breaches of those rights.⁸⁸ International best practice identifies that remedies for breaches of rights must be ‘accessible, affordable, timely and effective,’ and that any reparation is complied with by the relevant public authority.⁸⁹ PWDA believes that this is the approach taken with the Human Rights Bill 2025 and is supportive of this.

Importantly, as the Committee on Economic, Social and Cultural Rights observed, ‘[t]he right to an effective remedy need not be interpreted as always requiring a judicial remedy,’ and administrative remedies may often be adequate.⁹⁰ Different types of remedies may be appropriate in different circumstances. Accordingly, it is essential that there be a range of avenues for judicial and non-judicial remedies for breaches of a person’s rights in a NSW Human Rights Act,

⁸⁶ See e.g., Dinah Shelton, ‘Reparations in human rights law’ in Rachel Murray & Debra Long (eds), *Research handbook on implementation of human rights in practice* (Edward Elgar Publishing, 2022). Also, of interest for remedies in action see Melanie Fink (ed), *Redressing Fundamental Rights Violations by the EU. The Promise of the ‘Complete System of Remedies’* (Cambridge University Press, 2024).

⁸⁷ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(3). See also *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), art 14. The concept is also given expression in the *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), art 2; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), art 6. Note all ICCPR rights are to apply to people with disability.

⁸⁸ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 105.

⁸⁹ Scottish Human Rights Commission, *Adequate and Effective Remedies for Economic, Social and Cultural Rights* (Background briefing paper for the National Taskforce on Human Rights Leadership, December 2020) <https://www.scottishhumanrights.com/media/2163/remedies-for-economic-social-and-cultural-rights.pdf>; Committee on Economic, Social and Cultural Rights, *General comment No.9: The domestic application of the covenant*, 19th sess, UN Doc E/C.12/1998/24 (3 December 1998) [9].

⁹⁰ Committee on Economic, Social and Cultural Rights, *General comment No.9: The domestic application of the covenant*, 19th sess, UN Doc E/C.12/1998/24 (3 December 1998) [9].

including internal review where relevant. We noted approvingly the proposed new Human Rights Commissioner being able to provide a meaningful remedy, tailored to that circumstance. Similarly, a person can seek relief in a Tribunal or a Court. People will have some measure of choice and control over where they bring a complaint based on the remedy they are seeking as different forums will provide for some difference in remedies. Justice is able to be responsive and individualised to the individual complainant.

Access to adequate remedies is more than redress for a wrong – they are a powerful tool to uphold the rule of law and prevent further violations of rights by the same wrongdoer or others.

Part 5: Conclusion

The wealth of existing information and experience to draw upon means that NSW is in a unique position to implement a truly 'best practice' Human Rights Act benefiting all residents. NSW is not starting from scratch or operating in a vacuum. Criticisms previously directed at Human Rights Acts modelled on a dialogue model - that they will override parliamentary sovereignty, or diminish religious freedom, or drive a litigious culture and place unreasonable burdens on Courts and Tribunals for example, have been repeatedly shown to lack substance when the operation of the legislation is examined.

Indeed, some of the clearest effects identified by reviews of the operation of Human Rights Acts in other Australian jurisdictions is that they improve the quality of law making, encourage robust dialogue within and between legislatures and their committees, and shift cultures within public authorities to one where rights are respected and considered in all activities. We note relevantly, that an important function of the proposed NSW Human Rights Commission in the Bill is to provide education and information to the community and public authorities and agencies about human rights and to 'promote an understanding and acceptance, and the public discussion, of human rights and this Act in the State.'

In recognising the diversity of the NSW community and providing a considered framework of rights and access to meaningful remedies, the current NSW Human Rights Bill 2025 presents a strong vision of what best practice can look like. As demonstrated by the experience of residents in other Australian jurisdictions with a Human Rights Act, an Act in NSW will promote inclusion and will improve the lives of people with disability and people most impacted by overlapping systems of discrimination and inequality. The current Human Rights Bill 2025 must be considered by the NSW Government as a strong framework for the development and introduction of a NSW Human Rights Act.



**PEOPLE WITH DISABILITY
AUSTRALIA**

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