

People with Disability



Australian
Human Rights
Commission

Australia's third UPR | 2021

Background

Since Australia's last cycle review, the Australian Government has committed to developing a new National Disability Strategy (NDS); the [National Disability Insurance Scheme](#) (NDIS) has been rolled out in all States and Territories except Western Australia; and the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (Royal Commission) has commenced.

Key Issue - National Disability Strategy

While [the Australian Government has committed to establishing a new NDS for 2020 and beyond](#), the current [2010-2020 NDS](#) remains underfunded with key outcomes not achieved.

The current NDS foreshadowed the introduction of the NDIS. While the

implementation of the NDIS is now well progressed the Commission is concerned that barriers remain for some people seeking to access the scheme. The Commission welcomes [various initiatives from the National Disability Insurance Agency](#) (NDIA) to address these inequalities, further action should be taken to ensure that Aboriginal and Torres Strait Islanders, members of rural and remote communities, members of culturally and linguistically diverse communities and women and children have equal access to, and outcomes from, the NDIS.

Recommendation

Government address the UNCRPD Committee's recommendations in the new National Disability Strategy



Key Issue - Non-consensual sterilisation of people with disability

The [Commission remains deeply concerned](#) that the non-therapeutic sterilisation of people with disability, particularly women and girls, continues to take place in Australia without their free, prior and informed consent. The [Commission is also concerned](#) by the forced administration of contraceptives and abortion procedures. The Commission encourages the Australian Government to work with State and Territory governments to adopt uniform legislation prohibiting forced sterilisation and abortions in the absence of the free, prior and informed consent of the person concerned.

Recommendation

Government adopt uniform legislation prohibiting sterilisation of people with disability without their consent



Recommendation

Government implement a nationally consistent supported decision-making framework

Key Issue – Supported decision-making framework

There has been limited progress in implementing a nationally consistent supported decision-making framework. This framework was recommended in the [Equality, Capacity and Disability in Commonwealth Laws](#) report by the ALRC, to protect the equal right of people with disability to make decisions for themselves.

Key Issue – People with disability and employment

The Commission is concerned by the lack of progress in improving the rates of labour force participation of people with disability. The [Australian Bureau of Statistics reports](#) that since 2015, the labour force participation rate for people with disability between 15 and 64 years has remained at 53.4%, compared to an increase in the participation rate for people without disability (84.1%).

In 2016 the Commission published [Willing to Work—National Inquiry into Employment Discrimination against Older Australians and Australians with Disability](#) (*Willing to Work* report). *Willing to Work* outlines recommendations which focus on priority government commitments, improving existing systems, and the role that employers and businesses can play in improving employment outcomes for people with disability and older Australians.

In 2015, the Commission welcomed the establishment of a process to

develop a [National Disability Employment Framework](#) (the Framework) to address some of the recommendations of the Commission's report. However, the status of the Framework is unclear. The Commission is concerned that the development of the Framework has halted and that the recommendations made in the *Willing to Work* report remain largely unimplemented.

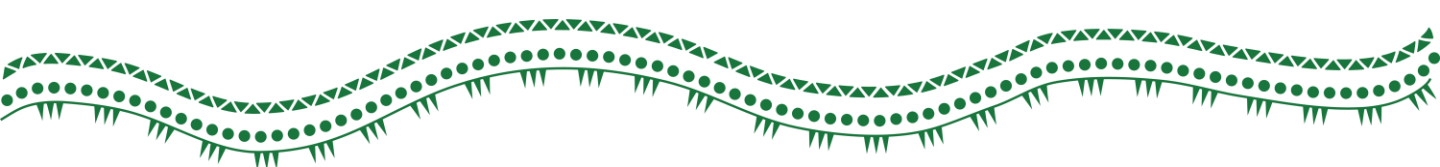
Recommendation

Government implement the *Willing to Work* report recommendations and provide services to transition people with disability into open forms of employment

Key Issue – Violence against people with disability and the use of restrictive practices

There remain high rates of violence against people with disability. The intersection of disability with other forms of inequality results in groups such as women and children with disability experiencing higher rates of

violence, and additional barriers to seeking help and support.¹ Initiatives aimed at addressing violence against women and children often fail to adequately address the extra challenges faced by people with disability.



Recommendations

Government ensure that national policies to reduce violence against women and children prioritise disability

Government implement the findings of the interim and final reports of the Royal Commission

Governments develop a national framework with a view to eliminating the use of restrictive practices

In 2018, the Commission published [A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings](#) (A Future Without Violence report). The recommendations from the A Future Without Violence report included improved quality, safeguarding and oversight mechanisms in the disability and mainstream sectors. Currently few of these recommendations have been fully implemented.

The Commission welcomes and supports the establishment of the Royal Commission to inquire into and make recommendations to prevent violence, abuse, neglect and exploitation of people with disability. To date the Commission has contributed to the work of the Royal Commission by making submissions on [the criminal justice system](#) and [inclusive education](#).

The Commission is also concerned about the lack of a nationally consistent approach to eliminating the use of restrictive practices, an [issue currently being examined by the Royal Commission](#).



Recommendations

Key Issue – indefinite detention of people with cognitive and psychiatric impairment

The Commission continues to be concerned by the Government's lack of action in repealing legislation and withdrawing policies and practices that can lead to the indefinite detention of unconvicted people with disability.² Little progress has been made in addressing the indefinite detention of people with disability who are assessed as unfit to stand trial or not guilty by reason of mental impairment.

Although the Commission welcomes the recent endorsement of the *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment* (National Principles) by Australian States and Territories in August 2019, with the exception of South Australia the National Principles are not implemented in State and Territory legislation, policy and procedures.

Government implement the recommendations of the *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia*

Governments adopt a human rights-based approach to mental health laws and ensure that mental health services do not violate the human rights of people with disability

Endnotes

¹ Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, *Framework foundations 2: Think pieces, stakeholder consultations, issues, implications and approach Companion document to Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* (2015) 14; and Australian Human Rights Commission, *A Conversation in Gender Equality* (8 March 2017).

² Voluntary commitment made by Australia: Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/31/14 (13 January 2016) 141. At <https://undocs.org/A/HRC/31/14>; and Human Rights Council, *Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, UN Doc A/HRC/31/14/Add.1 (29 February 2016) 37. At <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUIndex.aspx>.