

30 September 2022

Members of the United Nations Committee against Torture
8-14 Avenue de la Paix,
1211 Geneve 10, Switzerland

Delivered by email to: ohchr-cat@un.org

Dear Committee members

Information for the examination of Australia's sixth periodic report

We are writing to provide information for the Committee against Torture's (the Committee) examination of Australia's sixth periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

People with Disability Australia (PWDA) is a leading disability rights advocacy and representative organisation and the only Australian national cross-disability organisation representing the interests of people with all kinds of disability. We have extensive experience in providing advocacy and outreach to people with disability living in closed or hard-to-reach settings.

Our submission responds to items in the Committee's List of Issues Prior to Reporting (LoIPR) that relate to people with disability.

Domestic and gender-based violence (LoIPR paragraph 1)

Violence against women with disability is endemic in Australia. Women with disability are almost twice as likely than women without disability to have experienced sexual violence and intimate partner violence.¹

Violence in the home

In December 2020, PWDA made a submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's *Violence and Abuse of People with Disability at Home* Issues Paper (our Submission).² We highlighted key concerns, including that:

- Women with disability are often not believed when they report sexual assault and other forms of violence;
- Violence against women with disability is often treated as an administrative matter, rather than a crime, particularly in group homes where violence is viewed as a 'service delivery' issue;
- Domestic and family violence services are often inaccessible to people with a disability; and
- Women with disability are significantly under-represented in population-based studies on the prevalence of domestic and family violence and sexual assault.

Recommendation 1: We encourage the Committee to consider the recommendations contained in our submission and to make similar recommendations to the Australian Government in its Concluding Observations.

¹ Australian Institute of Health and Welfare (2022) *People with Disability in Australia 2022*, Australian Institute of Health and Welfare, accessed 28 September 2022, p 188.

² People with Disability Australia (2020) *We Have a Right to Choose Homes without Violence*, People with Disability Australia, accessed 23 September 2022.

Mental health inpatient units

We also wish to draw the Committee's attention to [research](#)³ and [media reports](#)⁴ that have revealed alarming trends of sexual assault and other gender-based violence in mental health inpatient units.

We urge the Committee to:

Recommendation 2: Raise the issue of sexual assault and gender-based violence in mental health inpatient units at the review of Australia's sixth periodic report and makes specific recommendations on this matter.

Recommendation 3: Recommend that the Australian Government ensures that subsequent 'Safety, Rights and Justice' Targeted Action Plans under Australia's Disability Strategy 2021-2031 include a specific objective to improve access to justice in mental health facilities and disability group homes.

Psychosocial disability and the criminal justice system (LoIPR paragraph 20)

PWDA is concerned about the lack of disability accommodation available for people with psychosocial disability upon release from prison. In some cases, people with psychosocial disability are released from prison on the condition that they live in supervised accommodation. However, we understand from our advocates working in this space that appropriate supervised accommodation is not always available, and people have been sent back to live in prison indefinitely.

We urge the Committee to:

Recommendation 4: Recommend that the Australian Government ensures that subsequent 'Safety, Rights and Justice' Targeted Action Plans and the first 'Inclusive Homes and Communities' Targeted Action Plan under the Australia's Disability Strategy 2021-2031 address the lack of appropriate housing for people with cognitive and/or psychiatric disability once they have served their sentence.

³ Juliet Watson et al (2020) [Preventing Gender-based Violence in Mental Health Inpatient Units](#), Australia's National Research Organisation for Women's Safety, accessed 23 September 2022.

⁴ For example, see Farrah Tomazin (11 December 2017) '[Sexual Abuse in Victoria's Mental Health Wards is Bad and Getting Worse](#)', *The Age*, accessed 25 September 2022.

Forced sterilisation (LoIPR paragraph 26)

In its report, Australia notes that the Australian Government has jurisdiction in regard to the sterilisation of children pursuant to the *Family Law Act 1975* (Cth), but that '[t]he regulation of sterilisation of adults with disability is primarily a state and territory issue.'⁵ The report explains that state and territory courts and guardianship tribunals can provide authorisation for sterilisation where an adult with disability is deemed unable to provide consent.⁶

Australia's report states that the 'Australian Government supports increased consistency across jurisdictions regarding sterilisation'.⁷ The report then proceeds to specify work the Australian government has done in relation to intersex children. However, it does not address developments in regard to the forced sterilisation of people with disability.

We are concerned about Australia's lack of commitment to bringing an end to forced sterilisation of people with disability. Although it is a matter largely regulated by state and territory governments, the federal government could work towards prohibiting forced sterilisation through the creation of a national uniform law or through federal legislation that prohibits forced sterilisation.⁸

Recommendation 5:

We encourage the Committee to reiterate the following recommendation that the Committee on the Rights of Persons with Disabilities made to Australia in 2019:

Review and amend laws, including the section of the Family Law Rules 2004 relating to applications for medical procedures, in line with the Convention and adopt uniform legislation prohibiting, in the absence of free and informed consent, the sterilization of adults and children, the administration of contraception and the imposition of abortion procedures on women and girls with disabilities.⁹

⁵ Committee against Torture (2019) *Sixth Periodic Report Submitted by Australia under Article 19 of the Convention Pursuant to the Optional Reporting Procedure*, Committee against Torture, accessed 23 September 2022, [344].

⁶ Ibid [344].

⁷ Ibid [349].

⁸ Section 51 (xxix) of the Constitution grants the federal parliament power to legislate to implement a treaty in domestic law: *Australian Constitution* s 51(xxix); *Tasmanian Dams Case* (1983) 158 CLR 1.

⁹ Committee on the Rights of Persons with Disabilities (2019) *Concluding Observations on the Combined Second and Third Periodic Reports of Australia*, Committee on the Rights of Persons with Disabilities, accessed 23 September 2022, [34].

We also urge the Committee to recommend that:

Recommendation 6: Australia establishes a framework for transitional justice and redress for those who have been subjected to involuntary or coerced sterilisation. The framework should include gender and age-specific measures for reparation, rehabilitation and recovery, a formal apology and compensation.

Should you wish to discuss this letter further, please contact Giancarlo de Vera, Senior Manager of Policy on +61 413 135 731 or via email at giancarlo@pwd.org.au.

Yours sincerely



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Chief Executive Officer

People with Disability Australia