

Women With Disabilities Australia (WWDA)
Submission to the National
Human Rights Consultation



May 2009

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Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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“Human Rights are universal principles, but, inspiring as those principles are, none implement themselves. Good governance, effective institutions, adequate material resources and international support are usually what make the difference between noble aspirations and effective realization.”

UN Secretary-General, Kofi Annan, 2003



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1. Background

On 10 December 2008, the 60th anniversary of the adoption by the United Nations of the *Universal Declaration of Human Rights* (UDHR), the Australian Government launched a national public consultation about the legal recognition and protection of human rights and responsibilities in Australia. An independent Committee¹ was established by the Government to undertake the nationwide consultation. The Committee is to report to the Australian Government by 31 August 2009 on the issues raised and the options identified for the Government to consider in order to enhance the protection and promotion of human rights. The Terms of Reference for the consultation (see Appendix 1) included three questions for the Australian community to consider:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

The Terms of Reference also specified that the options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights.

This Submission is WWDA's response to the National Human Rights Consultation.

¹ The National Human Rights Consultation Committee consists of Father Frank Brennan (Chairperson), Philip Flood, Mary Kostakidis, Mick Palmer and Tammy Williams.

2. About Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally in that it operates as a national disability organisation; a national women's organisation; and a national human rights organisation. WWDA represents more than 2 million disabled women in Australia. WWDA is inclusive and does not discriminate against any disability. The aim of WWDA is to be a national voice for the needs and rights of women with disabilities and a national force to improve the lives and life chances of women with disabilities. WWDA addresses disability within a social model, which identifies the barriers and restrictions facing women with disabilities as the focus for reform. More information about WWDA can be found at the organisation's extensive website at: www.wwda.org.au

3. Disability & Human Rights

The social exclusion and discrimination faced by people with disabilities has increasingly been recognised as a human rights issue. A paradigm shift, from a medical and charity based welfare model of disability, to today's rights based model, acknowledges the movement to link disability issues to a full range of civil, political, economic, social and cultural rights (ILO 2007). The human rights framework recognises people with disabilities as having the same rights as people without disabilities. A rights based approach also recognises that equal treatment, equal opportunity, and non-discrimination provide for inclusive opportunities for women and men with disabilities in mainstream society (WWDA 2008). This rights based approach is most clearly articulated in the *UN Convention on the Rights of Persons with Disabilities* (CRPD) – which aims to ensure that persons with disabilities enjoy human rights on an equal basis with others. The CRPD was adopted by the United Nations General Assembly in December 2006 and opened for signature in March 2007. It was ratified by the Australian Government on July 2008, and entered into force in Australia on August 2008.

The CRPD is a complement to existing international human rights treaties. It does not recognise any new human rights of people with disabilities, but rather clarifies the obligations and legal duties of States to respect and ensure the equal enjoyment of all human rights by all people with disabilities. The Convention identifies areas where adaptations have to be made so that people with disabilities can exercise their rights and areas where the protection of their rights must be reinforced because those rights have been routinely violated. It also establishes universal minimum standards that should apply to everyone and that provide the basis for a coherent framework for action (UN 2007, ARHC 2007).

4. A Snapshot of the Status of Women With Disabilities In Australia

There are now more than 2 million women with disabilities living in Australia, making up 20.1% of the population of Australian women. Women with disabilities continue to be one of the most excluded, neglected and isolated groups in Australian society, experiencing widespread and serious violations of their human rights, as well as failures to promote and fulfil their rights. As a group, women with disabilities in Australia experience many of the now recognised markers of social exclusion² - socioeconomic disadvantage, social isolation, multiple forms of discrimination, poor access to services, poor housing, inadequate health care, and denial of opportunities to contribute to and participate actively in society.

Women with disabilities remain largely invisible and voiceless, ignored by national policies and laws, even though they face multiple forms of discrimination, structural poverty and social exclusion. Their issues and needs are often overlooked within services and programs. They remain marginal to social movements designed to advance the position of women, and the position of people with disabilities. Negative stereotypes from both a gender and disability perspective compound the exclusion of women with disabilities from support services, social and economic opportunities and participation in community life. This deep-rooted exclusion experienced by women with disabilities is further neglected because little information is available on its extent or impact.

Although there has been limited research in Australia on the issues facing women with disabilities, we know that women with disabilities experience multiple discriminations as a result of the intersection of gender and disability, giving them little chance of recognising fully their human rights and fundamental freedoms.

Women with disabilities are less likely to be in paid work than other women, men with disabilities or the population as a whole. They are less likely than their male counterparts to receive adequate vocational rehabilitation or gain entry to labour market programs. Women with disabilities earn less than disabled men, are in the lowest income earning bracket, yet pay the highest level of their gross income on housing, and spend a greater proportion of their income on medical care and health related expenses.

² Social exclusion is a process that deprives individuals and families, groups and neighbourhoods of the resources required for participation in the social, economic and political activity of society as a whole. This process is primarily a consequence of poverty and low income, but other factors such as discrimination, low educational attainment and depleted living environments also underpin it. Through this process people are cut off for a significant period in their lives from institutions and services, social networks and developmental opportunities that the great majority of a society enjoys (Vinson 2009)

Women with disabilities are substantially over represented in public housing, are more likely to be institutionalised than their male counterparts and are often forced to live in situations in which they experience, or are at risk of experiencing, violence, abuse and neglect. Girls and women with disabilities are more likely to be unlawfully sterilised than their male counterparts.

Women with disabilities are assaulted, raped and abused at a rate of at least two times greater than non-disabled women, and are at greater risk of severe forms of intimate partner violence. Compared to their non-disabled counterparts, women with disabilities are less likely to receive appropriate health services and are significantly more likely to face medical interventions to control their fertility. They are also less likely to have children, more likely to experience marriage breakdown and divorce, and more likely to be single parents.

Despite the fact that the *Universal Declaration of Human Rights* affirms that '*all human beings are born free and equal in dignity and rights*', there is no doubt that there are widespread and serious violations of the human rights of women with disabilities in Australia, as well as failures to promote and fulfil their rights (Byrnes 2003).

(Sources: UNFPA 2005, UN 2003, Frohmader 2002, Barrett et al 2009, Barranti & Yuen 2008, Meekosha 2000, 2004, Beleza 2003, Malacredia 2009)

5. Which human rights should be protected and promoted in Australia?

WWDA is of the view that the rights set out in the nine core international human rights treaties, should serve as a basis for, and be reflected in any formalised process for human rights protection in Australia, including for example, the development of a Human Rights Act. The nine core treaties are:

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- The Convention on the Rights of the Child (CRC)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- The Convention on the Rights of Persons with Disabilities (CRPD)

In recognition of the extreme social and economic disadvantage faced by Indigenous Australians, the importance of Aboriginal reconciliation and building on the National Apology to Australia's Indigenous Peoples (Rudd 2008), WWDA recommends that the rights set out in the *Declaration on the Rights of Indigenous Peoples* (endorsed by Australia in April 2009) also be reflected in any formalised process for human rights protection in Australia. Although not a legally binding instrument, the Declaration provides a platform for addressing the continuing abuses of human rights against Indigenous Peoples and for shaping a future where it can be realised that all peoples are truly equal (Malezer 2007).

WWDA is of the view that any formalised process for human rights protection in Australia, such as a Human Rights Act, must include economic, social and cultural rights as well as civil and political rights. Economic, social and cultural rights are those rights that are necessary to meet basic human needs such as the right to food, water and shelter, the right to health, to education, to employment and to social insurance (WHV 2009). They are a powerful way of redressing inequality and disadvantage and in many cases, without these rights, civil and political rights cannot be fully realised.

WWDA is of the view that any formalised process for human rights protection in Australia must ensure that the respect and protection of human rights is afforded to all peoples within Australia's territory – including non-citizens. A person does not relinquish his or her rights by entering a country of which they are not a citizen (HRLRC 2009).

6. Are these human rights currently sufficiently protected and promoted?

At the 1993 World Conference on Human Rights, the international community reaffirmed its commitment to the *Universal Declaration on Human Rights* through the adoption of the *Vienna Declaration and Programme of Action*³. Australia was a signatory to this Declaration. In adopting the Declaration, Australia affirmed that the human rights of women and girls are an inalienable, integral and indivisible part of universal human rights, and that the full and equal participation of women in political, civil, economic, social and cultural life, along with the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. In adopting the Declaration, Australia committed to intensify efforts for the protection and promotion of human rights of women and girls (Article I:18).

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), was ratified by Australia in 1983. General Recommendation 18 of CEDAW makes explicit the need for States Parties to take special measures to address the needs of women with disabilities.

The *Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008, acknowledges the impact of multiple discriminations caused by the intersection of gender and disability, prioritises women with disabilities as a group warranting specific attention, and calls on States Parties to take positive action and measures to ensure that women and girls with disabilities enjoy all human rights and fundamental freedoms (Article 6).

Women with disabilities are identified as a priority group within the *Biwako Millennium Framework for Action* (2002) which calls on governments to implement specific measures to promote the full participation of women with disabilities in mainstream development. The *Biwako Plus Five*, adopted in 2007 to supplement the *Biwako Millennium Framework for Action* provides additional actions required to address discrimination against women with disabilities in all matters (Article B: 14-17). The need for Governments to develop National Disability Action Plans which direct special attention to women and girls with disabilities is clearly articulated in the *Bangkok Declaration on National Action Planning and Disability-Inclusive Development* (UN 2005).

³ Representatives of 171 States adopted by consensus the *Vienna Declaration and Programme of Action* of the World Conference on Human Rights, presenting to the international community a common plan for the strengthening of human rights work around the world. The Conference took historic new steps to promote and protect the rights of women, including the creation of a new mechanism, a Special Rapporteur on Violence against Women. See: www.unhchr.ch/html/menu5/wchr.htm

The need for the universal application to women (including women with disabilities) of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings, are enshrined in a number of other international human rights instruments⁴ to which Australia is a party.

Despite the fact that Australia has embraced and ratified a number of international human rights treaties and instruments affirming its commitment to protect and promote the human rights of women and girls (including women and girls with disabilities), it would appear that in practice, they have had little bearing on improving the human rights of women and girls with disabilities in Australia – who continue to experience serious violations of their human rights, as well as failures to promote and fulfil their rights.

There is no doubt that there are many human rights which need to be considered in the context of the national human rights consultation, and these are all important, however, for the purposes of this Submission, WWDA has elected to focus on several key human rights where there are continuing abuses against women with disabilities in Australia. These rights include:

- The right to bodily integrity
- The right to freedom from exploitation, violence and abuse
- The right to an adequate standard of living, including adequate housing
- The right to found a family and to reproductive freedom
- The right to freedom from torture or cruel, inhuman or degrading treatment or punishment
- The right to the enjoyment of the highest attainable standard of physical and mental health
- The right to work

The following section gives an overview of each of these rights in order to demonstrate that the human rights of women with disabilities in Australia are not currently sufficiently protected and promoted.

⁴ See for example: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Declaration on the Elimination of Violence Against Women (1993).

6.1. The right to bodily integrity

International treaties in the human rights field give people the right to bodily integrity without discrimination – and this clearly includes disability. However, despite this, girls and women with disabilities in Australia are denied their right to bodily integrity through the ongoing practice of involuntary or forced sterilisation.

Forced sterilisation refers to the performance of a procedure which results in sterilisation in the absence of the consent of the individual who undergoes the procedure. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to health or life. This approach to naming sterilisation is underpinned by a human rights perspective which holds that all individuals have the right to bodily integrity (Dowse & Frohmader 2001).

In Australia, the debates about sterilisation have focused on the legal issue of who can authorise a sterilisation. There has been little national debate about the human rights of the women and girls affected. Sterilisation is a procedure that is notorious for having been performed on young women with disabilities for various purposes ranging from eugenics, through menstrual management and personal care, to the prevention of pregnancy, including pregnancy as a result of sexual abuse. Indeed, the overwhelming majority of sterilisations and certainly all the cases heard by relevant Australian courts and tribunals, involve girls with intellectual disabilities (Brady, Briton, & Grover, 2001).

For the past decade, women with disabilities and their supporters have been speaking out, demanding action to address this human rights violation and calling for support services and compensation (Dowse & Frohmader 2001). For more than a decade, WWDA has worked assiduously at a national and international level to raise awareness of the ongoing practice in Australia of involuntary sterilisation of girls and women with disabilities, and has been one of the key proponents calling for reform. WWDA has consistently articulated its position and recommendations to the Australian Government that:

- forced sterilisation is an act of unnecessary and dehumanising violence which denies a woman's basic human right to bodily integrity and to bear children and which results in adverse life-long physical and mental health effects;
- sterilisation of women and girls with disabilities is a form of social control in which a woman's right to bodily integrity is denied often at the behest of parents and medical or other professionals, who deem this bodily violation 'in her best interests';
- sterilisation, an irreversible medical procedure with lifelong physical, psychological and social consequences, if performed without consent, is a gross violation of human rights;
- sterilisation is a question for adulthood not childhood;

- all Australian Governments must work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life.

WWDA's position has been endorsed by the UN High Commissioner for Human Rights; UNICEF; and the Child Rights Information Network (CRIN)⁵. In 2008, WWDA's position was endorsed by more than 100 Australian non-government organisations in Australia's *NGO Submission to the UN Committee on Economic, Social and Cultural Rights*⁶.

Despite the efforts of organisations such as WWDA, the Australian Human Rights Commission (AHRC) and other non-government organisations in calling for reform, the Australian Government has to date, taken little action in the area.

On March 15, 2000, a resolution was passed in the Senate, calling for the Australian Government to:

*conduct a review of the legal, ethical and human rights mechanisms in place, or needed, to protect the rights and interests of the reproductive health of women with intellectual and other disabilities, and, commission research on the practice, effects and implications of the sterilisation of women with intellectual and other disabilities*⁷.

This Senate Resolution was endorsed by the Liberal Party, the Australian Labor Party and the Australian Democrats, thus signalling that there should be a consensus approach to this issue.

The then Commonwealth Department of Family and Community Services co-ordinated a cross-departmental response to the Senate motion, involving Health and Aged Care, Attorney General's Department and the Office of the Status of Women which culminated in a brief report entitled *Sterilisation of Women and Young Girls with an Intellectual Disability*, tabled by the Minister on 6 December 2000⁸. Contrary to WWDA's and the Senate motion's specific requests, the report addressed the issues relating to women and girls with intellectual disabilities only and did not consider any issues that may more broadly affect women with other disabilities. The report undertook a review of available national data to ascertain the incidence of sterilisation of women and young girls with intellectual disabilities, and concluded that:

⁵ See for example: www.wwda.org.au/steriladv07.htm#resp

⁶ Balgi, T., Pettitt, A., Schokman, B., & Lynch, P. (2008) *'Freedom, Respect, Equality, Dignity: Action'*. NGO Submission to the UN Committee on Economic, Social and Cultural Rights: Australia. Prepared on behalf of the Kingsford Legal Centre; the National Association of Community Legal Centres, and the Human Rights Law Resource Centre. (See page 89)

⁷ Senate Journal No.104, 24. Human Rights – Women with Intellectual Disabilities – Sterilisation. March 15, 2000.

⁸ 'Sterilisation of Women and Young Girls with an Intellectual Disability - Report to the Senate', Tabled by the Minister for Family and Community Services (December 2000). Available online at: www.wwda.org.au/sterilise1995.htm

.....it is not possible to ascertain the precise number of unauthorised sterilisation procedures that may be being performed on women with intellectual disabilities.....It is possible that there are unrecorded and unauthorised non-therapeutic sterilisations of young women with intellectual disability being undertaken in Australia.

In its review of the legal, ethical and human rights mechanisms, the report outlined the very limited efforts that have been made in Australia to prevent unauthorised sterilisations of young women with intellectual disabilities since the 1997 study commissioned by the Australian Human Rights Commission⁹. These efforts included for example, letters from the Attorney General to Australian medical colleges and associations reminding them of the law, and gathering of information from Family Planning Organisations on the types of resources available for professionals and parents about the sexuality of young people with disabilities. In reviewing research on the practice, effects and implications of the sterilisation of women with intellectual and other disabilities, the report highlighted the *WWDA Sterilisation and Reproductive Health of Women and Girls with Disabilities Project*¹⁰ as the only notable development. Yet, the Australian Government has to date failed to substantially address and respond to any of the recommendations stemming from WWDA's national project, which was completed in 2001.

In August 2003, the Australian Standing Committee of Attorneys-General (SCAG) agreed that a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors was appropriate, and began the process of developing draft legislation in this area. In November 2006, the SCAG released for consultation with a small number of 'selected stakeholders', its draft Bill (*Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*) which set out the procedures that jurisdictions could adopt in authorising the sterilisation of children who have an intellectual disability¹¹. WWDA did not support the development of a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of children with an intellectual disability, and continued its decade long advocacy campaign urging all Australian Governments to

⁹ See Brady, S. & Grover, S. (1997) *The Sterilisation of Girls and Young Women in Australia - A Legal, Medical and Social Context*. Prepared for the Australian Human Rights and Equal Opportunity Commission (HREOC). Available online at: www.wwda.org.au/sterilise1995.htm

¹⁰ In 2001, Women With Disabilities Australia (WWDA) completed a national research study into sterilisation and reproductive health of women and girls with disabilities. The resulting report *Moving Forward* recommended the banning of all sterilisations of girls under the age of 18 years and the prohibition of sterilisation of adults in the absence of informed consent, except in circumstances where there is a serious threat to health or life. The report also outlined a program of reconciliation; co-ordinated legislative and policy development; information, support and service models; consent considerations; approaches to reproductive health care and education; and data collection. See: Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra.

¹¹ See: Standing Committee of Attorneys-General (SCAG) Working Group (2006) *Draft 17: Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*. Available at: www.wwda.org.au/sterbill06.pdf

work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life¹².

In March 2008, the SCAG decided that *'there would be limited benefit in developing model legislation'* and the issue of sterilisation of intellectually disabled minors was removed from the SCAG Agenda. Ministers also agreed to *'review current arrangements to ensure that all tribunals or bodies with the power to make orders concerning the sterilisation of minors with an intellectual disability are required to be satisfied that all appropriate alternatives to sterilisation have been fully explored and/or tried before such an order is made'*¹³. There is no evidence to date that these 'reviews' have been carried out.

WWDA has strongly recommended to the Australian Government/s that the issue of sterilisation of intellectually disabled minors remain as a standing item on the SCAG agenda until such time that universal legislation has been developed which prohibits sterilisation of any child unless there is a serious threat to health or life. WWDA's recommendation has, to date, been rejected.

It is clear that the Australian Government remains of the view that sterilisation is acceptable for children [girls] with disabilities. This is clearly reflected in its *Draft Fourth Report to the UN under the Convention on the Rights of the Child* (July 2008), in relation to *Sterilisation of Children with Disabilities* (133, p26):

A blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals, particularly children with disabilities. Applications for sterilisation are made in a variety of circumstances, not just to address the need for contraception. Sometimes sterilisation is necessary to prevent serious damage to a child's health, for example, in a case of severe menstrual bleeding where hormonal or other treatments are contraindicated. The child may not be sexually active and contraception may not be an issue, but the concern is the impact on the child's quality of life if they are prevented from participating to an ordinary extent in school and social life.

The statement above not only frames sterilisation as a disability issue (as opposed to a human rights issue) but also infers that sterilisation is acceptable for children with disabilities, and that prohibiting sterilisation of minors (except in those circumstances where there is a serious threat to health or life), will somehow adversely impact on children with disabilities.

In relation to *Sterilisation of Children with Disabilities*, the report also states (134, p26):

The Australian Government recognises that the obligations under the Convention and potentially under the Disabilities Convention require a consistent approach that ensures that children with disabilities enjoy their rights on an equal basis with other children. This needs to take into

¹² See: Women With Disabilities Australia (WWDA) (2007) *The Development of Legislation to Authorise Procedures for the Sterilisation of Children with Intellectual Disabilities: Policy and Position Paper*. WWDA, Hobart, Tasmania. Available at: www.wwda.org.au/polpapster07.htm

¹³ Standing Committee of Attorneys-General (SCAG) *Communique* 28 March 2008.

account the views of the child where these can be ascertained and the best interests of the child consistent with the Convention.

WWDA has long expressed to the Australian Government its concern at the use of the term 'best interests of the child'. This statement is often used as a criterion to be satisfied when considering authorisation of a sterilisation. However, the term 'best interests' often has little to do with the disabled girls rights and more to do with social factors and the 'burden of caring'. As Dowse & Frohmader (2001) point out:

'In making judgments about best interests it is crucial that we are clear about whose best interests are really at stake. We need to be clear about whether 'best interest' is judged according to human rights principles or whether the judgment is about the 'best compromise between the competing interests' of parents, carers, service providers and policy makers. To really determine 'best interest' for women and girls with disabilities it is crucial to focus on the fact that a person will be subjected to an irreversible medical procedure with life long consequences without informed consent.'

The sterilisation of children with disabilities is in contravention of the *Convention on the Rights of the Child* (CRC), the *Convention on the Rights of Persons with Disabilities* (CRPD), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) – three of the core international human rights treaties which have been ratified by Australia. .

The *Convention on the Rights of the Child* (CRC) explicitly recognises that children with disabilities should enjoy all the rights set forth in the CRC, on an equal basis with others. The *Convention on the Rights of Persons with Disabilities* (CRPD) contains a number of articles which make explicit the need for States Parties to take all necessary measures to ensure the full enjoyment by women and children with disabilities of all human rights and fundamental freedoms on an equal basis with others.

In its 2006 General Comment No. 9 on the Rights of Children with Disabilities the Committee on the Rights of the Child expressed its deep concern about *'the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities.'* The Committee emphasised that forced sterilisation *'seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects'*¹⁴. The Committee urged States parties to *'prohibit by law the sterilisation of children on grounds of disability.'* In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: *'prohibit the sterilisation of children, with or without disabilities...'*¹⁵.

¹⁴ Committee on the Rights of the Child, General Comment No 9 (2006): *The Rights of Children with Disabilities*, UN Doc CRC/C/GC/9 (2007). See: <http://www.ohchr.org/english/bodies/crc/comments.htm>

¹⁵ Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005) [46(e)].

The Committee on Economic, Social and Cultural Rights in its 1994 General Comment No.5 on Persons with Disabilities referred to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly on 20 December 1993, stating that *'persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood'*. The Committee emphasised that *'both the sterilisation of, and the performance of an abortion on, a woman with disabilities without her prior consent are serious violations of article 10 (2) [of the International Covenant on Economic, Social and Cultural Rights]'*¹⁶.

There have been no instances in Australia where authorisations to sterilise have been sought for minors without disabilities in the absence of a threat to life or health. The sterilisation of a child in circumstances other than where there is a serious threat to the health or life of that child effectively denies the child present and future enjoyment of her or his human rights. Children with disabilities have the same right as children without disabilities not to be sterilised.

Despite the many international human rights treaties and instruments ratified by Australia, and despite an Australian Government which claims to be committed to *'work to promote human rights and the fundamental equality of all people'* (McClelland 2008), Australian legislation still fails to prohibit non-therapeutic sterilisation of minors. The Australian Governments have essentially dismissed the issue, deciding there is little worth in protecting the fundamental right of women and girls with disabilities to bodily integrity.

It is shameful that, more than a decade on, the words of the late Elizabeth Hastings, former Disability Discrimination Commissioner of the Human Rights and Equal Opportunity Commission (HREOC) still hold true:

*'A world in which government cannot be bothered to investigate potential illegal medical assault on nearly 200 of its citizens, in which those with no authority feel free to make decisions which are blatantly against the law and to carry out serious and irreversible procedures on those with little or no capacity to give or withhold consent, is a world in which people with disabilities can have no certainty or confidence about their human being or their future.....'*¹⁷

¹⁶ Committee on Economic, Social and Cultural Rights (1994) Persons with Disabilities: CESCR General Comment 5 (31). Eleventh session, 1994. See: <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>

¹⁷ Hastings, E. (1998) *The right to right treatment*. The keynote speech for the launch of "A Question of Right Treatment". University of Melbourne, March 28 1998, p4.

6.2. The right to freedom from exploitation, violence and abuse

It is now widely accepted that violence against women is a form of discrimination and a violation of women's human rights. It prevents women from enjoying their human rights and fundamental freedoms, such as the rights to life and security of the person, to freedom from exploitation, violence and abuse, to the highest attainable standard of physical and mental health, to education, work and housing and to participation in public life (UN 2006, UNFPA 2005, UN 2008, WWDA 2008).

There are a number of international human rights treaties and instruments that delineate the clear and specific responsibilities of governments to address violence against women, most notably the *Convention on the Elimination of All forms of Discrimination Against Women* (General Recommendation 19)¹⁸ and the *Declaration on the Elimination of Violence against Women*¹⁹. The need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings, are enshrined in the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). A number of other international human rights standards contain provisions applicable to addressing discrimination against women, including violence²⁰. Responsibilities of governments to address violence against women and girls with disabilities are also clearly delineated in the *Convention on the Rights of Persons with Disabilities* (CRPD) and the *Convention on the Rights of the Child* (CRC).

Violence against women with disabilities is a human rights violation with legal, social, cultural, economic and psychological dimensions. Despite increasing recognition of, and attention to, gender based violence as the '*most widespread human rights abuse in the world*' (Krug et al 2002, UNFPA 2005, Amnesty International 2006), violence against women and girls with disabilities in Australia continues in a culture of silence, denial and apathy (Raye 1999). Compared to non-disabled women, women with disabilities:

- experience violence at higher rates and more frequently;

¹⁸ See: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

¹⁹ General Assembly resolution 48/104 of 20 December 1993 Available at: www.wwda.org.au/hrins1.htm

²⁰ See: Convention on the Political Rights of Women; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Declaration on the Protection of Women and Children in Emergency and Armed Conflict; Trafficking in persons, especially women and children Protocol to The Convention against Transnational Organized Crime; E/2002/68/Add.1 Recommended Principles and Guidelines on Human Rights and Human Trafficking; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Geneva Convention relative to the Protection of Civilian Persons in Time of War; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). All available at: <http://www.unhchr.ch/html/menu2/7/b/women/intstandards.htm>

- are at a significantly higher risk of violence;
- have considerably fewer pathways to safety;
- are at particular risk of severe forms of violence;
- tend to be subjected to violence for significantly longer periods of time;
- experience violence that is more diverse in nature; and,
- experience violence at the hands of a greater number of perpetrators;
- are not believed when they report experiences of violence;
- are less likely to report experiences of violence.

(WWDA 2007, Smith 2008, Barranti & Yuen 2008, Barrett et al 2009)

The alarmingly high rates of violence against disabled women and girls are not by-products of disability as vulnerability, but rather consequences of the entrenched social exclusion they experience - multiple forms of discrimination, poverty, exclusion from the labour market, social isolation, lack of services and support, lack of autonomy, inaccessible housing and public environments (WWDA 2009, Waxman & Wolfe 1999).

Society attempts to respond to violence through the legal and judicial systems on the one hand and through service systems which provide protection, support, treatment and education on the other hand. Women with disabilities are not only marginalised and ignored in many of these responses, but paradoxically, can experience violence within and by the very systems and settings which should be affording them care, sanctuary and protection (WWDA 2007).

Current areas of Australian legislation, policy and services which focus on the broader issue of violence against women, indicate a prevailing lack of awareness about the complexity of issues facing women with disabilities in relation to violence – a situation which perpetuates and legitimises not only the multiple forms of violence perpetrated against them, but also the failure of governments to recognise and take action on the issue (WWDA 2007).

The lack of inclusive services and programs for women with disabilities experiencing or at risk of experiencing violence, is well documented (Gilson et al 2001, Frantz et al 2006, Jennings 2004, Beck-Massey 1999, Calderbank 2000). This is widely recognised as a barrier to women with disabilities escaping the violence, resulting in limited support options when leaving a violent situation, recovering from the trauma of victimisation, and rebuilding their lives as independent, active, valued members of society (Frantz et al 2006). Of the services that do exist (such as refuges, shelters, crisis services, emergency housing, legal services, health and medical services, and other violence prevention

services) a number of specific issues have been identified which make access for women with disabilities particularly problematic. These include:

- *Knowledge & understanding of the issue by women themselves* - whilst domestic violence is a significant presence in the lives of large numbers women with disabilities in Australia, many do not recognise it as a crime; are unaware of the services and options available to them or lack the confidence to seek help and support.
- *Information & communication* - experience in Australian Supported Accommodation Assistance Program (SAAP)²¹ services suggests that accessible information and communication is very limited in terms of both content that reflects the experiences of disabled women and format of information available, such as Braille, audio, Easy English and the use of telephone access relay services and sign interpreters.
- *Getting to and using a service* - for many women with disabilities, the physical means of fleeing a violent situation, (such as accessible transportation), are often unavailable. Crisis services do not necessarily have accessible transport nor are they able to assist a woman to physically leave the violent situation. Women with disabilities are unlikely to be referred to SAAP agencies because it is assumed that SAAP agencies do not or are not able to cater for their needs.
- *Service structure & physical environment* - refuges and other crisis services in Australia are, in most cases, not physically accessible to many women with disabilities. Service procedures (such as orientation programs, emergency procedures etc) are not structured in flexible ways that meet the needs of women with disabilities. Policies and 'rules' within services often work against women with disabilities.
- *Attitudes & skills of workers* - service providers within refuges and other community support services often share some of the stereotypes and myths held by society at large regarding women with disabilities. Limitations in workers awareness of the broader issues of accessibility and disabilities, negative or ambivalent attitudes about providing access, lack of knowledge of the complex nature and multiple forms of violence against women with

²¹ The Supported Accommodation Assistance Program (SAAP) is a jointly funded Commonwealth/State program that was established in 1985. The Supported Accommodation Assistance Act 1994 (the Commonwealth legislation governing SAAP), cites the aim of the program as being to:provide transitional supported accommodation and related support services, in order to help people who are homeless to achieve the maximum possible degree of self-reliance and independence. As well as providing an administrative framework for the program, the Supported Accommodation Assistance Act 1994 provides definitions and objects of the program, the scope of SAAP and the responsibilities of service providers. The Preamble of the Act places the context of the program in terms of human rights, dignity, equity and collaboration.

disabilities, limited recognition of the sexuality of women with disabilities, and a tendency to focus on the disability rather than the violence may all stem from this. Resources, attitudes and narrow prescriptions of responsibility are often the reasons for maintaining exclusionary practices.

The systematic exclusion of women with disabilities from SAAP funded services (such as refuges, shelters, crisis services) throughout Australia has been documented for more than two decades (DPIA 1992; McFerran 1996, Currie 1996). In 2004, the New South Wales Ombudsman undertook an inquiry into New South Wales SAAP agencies to determine the extent of, and reasons for, exclusion from SAAP. Overall, the inquiry found that *'the level and nature of exclusions in SAAP are extensive. In some cases, exclusions appear to be unreasonable and possibly in contravention of SAAP and anti-discrimination legislation, and SAAP standards and guidelines'* (NSW Ombudsman 2004). People with disabilities - including people with physical disabilities, intellectual disabilities, acquired brain injury, along with people with mental illness - were one of the most significant groups affected by exclusion from SAAP. The Inquiry found that a significant proportion of exclusions were based on 'global' policies of turning away all individuals belonging to a particular population group or sharing similar characteristics with a group. In relation to people with disabilities, the Inquiry found:

- 54% of agencies (125) surveyed had eligibility policies that allowed for exclusion on the basis of mental illness;
- In a six month period, there were 290 instances where people with a mental illness were denied access to 50 agencies;
- 30 of 68 agency policies reviewed allowed for exclusion of people with a mental illness;
- Eligibility policies of 42% of agencies (95) surveyed allowed for exclusion on the basis of physical disability;
- Eligibility policies of 33% of agencies (75) surveyed allowed for exclusion on the basis of intellectual disability;
- Eligibility policies of 20% of agencies (45) surveyed allowed for exclusion on the basis of acquired brain injury;
- 81 agencies surveyed stated acquired brain injury was a characteristic not applicable to their agency, 38 agencies stated that intellectual disability was a characteristic not applicable to their agency, and 39 stated that physical disability was a characteristic not applicable to their agency;
- In a six month period, there were 30 instances where people with disabilities were denied access because of their disability;
- 11 of 68 agency policies reviewed allowed for exclusion of people with a physical disability;
- Nine of 68 agency policies reviewed allowed for exclusion of people with an intellectual disability.

The nature of violence against women and girls with disabilities in Australia encompasses a wide range of injustices and maltreatment. They are greatly at risk of violence and abuse due to structural, cultural and contextual issues, including the entrenched social exclusion they experience. Issues of abuse, neglect, discrimination and omission often provide the conditions and contexts that deny women with disabilities their human rights and also lead to violence. Although the forms of violence for disabled women are similar to those for non-disabled women, women with disabilities often experience different dimensions to physical, psychological, and sexual violence – such as those which are derived from their sexuality, including for example, control of reproduction and menstruation.

Women with disabilities who rely on personal care assistance (both in institutions and in private residential settings) are likely to be subject to frequent violence and abuse (Saxton et al 2001, Powers et al 2002, Strand et al 2004). Where such abuse does occur, women with disabilities have reported the range of specific forms perpetrated by personal assistance providers. Most common are neglect and poor care, verbal abuse and threatened and actual physical abuse (Oktay & Tompkins 2004). In addition rough treatment, inappropriate sexual touching, financial abuse, alteration of medications, theft and denying choices have also been reported (Powers et al 2002).

Despite all these facts, in Australia, legislation, policy and services for women with disabilities experiencing, or at risk of experiencing violence, are limited at best and non-existent at worst (WWDA 2007). The duty of Governments to respect, protect, fulfil and promote human rights with regard to violence against women includes the responsibility to prevent, investigate and prosecute all forms of, and protect all women from such violence and to hold perpetrators accountable (UN 2006, emphasis added). Yet, successive Australian Governments have shown little interest in, and taken minimal action to address, any aspect of the ‘epidemic’ that is violence against women with disabilities. For example, the lack of Australian research and data collection on violence against women with disabilities is an issue that has been consistently articulated to Government for over a decade²², and highlighted by the United Nations *Committee on the Elimination of All forms of Discrimination Against Women (CEDAW)*²³. Yet in 2009, the situation remains largely unchanged. The Australian Government’s 2008 establishment of a *National Council to Reduce Violence Against Women and their Children* without

²² The Australian Government has to date, rejected calls for its national Safety Survey/s (conducted to gather information about women’s and men’s experiences of violence) to include an indicator for disability, in order to enable data collection on violence against women with disabilities. Reasons given by the Government for excluding disability include sample size (12,000 in 2005) and survey methodology: ‘as women are most at risk of experiencing violence from someone known to them, we are aware of the sensitivities involved in surveying women with disabilities about their experience(s) of violence in the presence of a carer, who in some circumstances may be the perpetrator of violence’ (Flanagan 2004).

²³ See: United Nations Committee on the Elimination of All forms of Discrimination Against Women (CEDAW), Concluding comments regarding the Australian Government’s Report ‘Women in Australia’ (the combined Fourth and Fifth Reports on Implementing the United Nations Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), February 2006. CEDAW/C/AUL/CO/5.

representation of women with disabilities, is another clear example of the continued exclusion of disabled women from the national violence prevention agenda.

The right of women with disabilities to freedom from exploitation, violence and abuse, is not currently sufficiently protected in Australia.

6.3. The right to an adequate standard of living, including adequate housing

Adequate housing is universally viewed as one of the most basic human needs. Like all members of the community, women with disabilities have a fundamental right to a range of housing options. This is enshrined in the *International Declaration on the Rights of Disabled Persons* (1975) and the *Universal Declaration on Human Rights*. Furthermore, the *International Covenant on Economic, Social and Cultural Rights* makes explicit recognition of the right to an adequate standard of housing (Article 11, 1). The Committee on Economic, Social and Cultural Rights has defined the term "adequate housing" to comprise security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy (General Comment 4).

Several other international Conventions to which Australia is a signatory, refer to the right to adequate housing. The *Convention on the Elimination of Discrimination Against Women* (CEDAW)(Article 14.2h), the *Convention on the Rights of the Child* (CRC)(Article 27.3) and the *Convention on the Elimination of Racial Discrimination* (ICERD)(Article 5eiii) refer to the right to adequate housing in relation to particular groups. The right to an adequate standard of housing is also clearly articulated in the *Convention on the Rights of Persons with Disabilities* (CRPD) (Articles 19, 28) which entered into force in Australia in August 2008.

The indivisibility and interdependence of all human rights find clear expression through the right to housing. The full enjoyment of such rights as the right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community-based groups), the right to security of person (in the case of forced or arbitrary evictions or other forms of harassment) and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence is indispensable for the right to adequate housing to be realised, possessed and maintained by all groups in society, including women with disabilities (OHCHR 2008).

Having access to adequate, safe and secure housing substantially strengthens the likelihood of women with disabilities being able to enjoy certain additional rights. Housing is a foundation from which other legal entitlements can be achieved. For example: the adequacy of one's housing and living conditions is closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. The World Health Organization has asserted that housing is the single most important environmental factor associated with disease conditions and higher mortality and morbidity rates (OHCHR 2008).

Women with disabilities in Australia continue to experience serious violations of their human right to an adequate standard of living, including adequate housing, as well as failures to promote and fulfil this most basic human right.

The lack of affordable, safe, and secure housing is recognised as a 'substantial factor' in homelessness (Commonwealth of Australia 2008). There are a number of factors common to disabled women that impact on their capacity to access safe and affordable housing. A major one of these is the cycle of invisibility in which they live, that all too often makes policy development to meet their needs an 'exercise in inspired guesswork' (Skeat 1999). Housing and homelessness policy and programs are no exception, with a most recent example being the Australian Government's new national approach to reducing homelessness – a long term homelessness reduction strategy which excludes women with disabilities - the most vulnerable group to homelessness or risk of homelessness in our society.

Home ownership is generally accepted as the most secure form of housing. However, for many women with disabilities, their limited incomes prevent them from readily accessing home ownership through traditional means of borrowing. Across the country, there is a lack of low cost housing. Traditionally, Governments have built very little new public housing stock and within the limited public housing stock that has been available, there has been a severe lack of appropriately modified housing. Even with the injection of funding into public housing announced as part of the Rudd Labor Government's social inclusion agenda, it is likely that the severe lack of appropriately modified housing will continue, and there is no evidence of pro-active programming to ensure that women with disabilities will have appropriate access to this housing. The escalation in the cost of private rental, particularly in urban areas has resulted in people on low incomes having to live further and further away from many of the services they need. Private rental is often not an option for women with disabilities due to the critical shortage of private rental housing, lack of modifications, prohibitive cost, and discrimination (WWDA 2006).

Discrimination is a major factor that significantly impacts on the capacity of women with disabilities to access safe and affordable housing (Currie 1996, WWDA 2004; 2006; Bannister et al 2005, Hoffman &

Coffey 2008) in both the public and private rental markets in Australia. Anecdotal evidence collected by WWDA indicates women with disabilities experience substantial levels of discrimination against them by landlords, who hold assumptions about their inability to afford rent or their unreliability. Discrimination is not always overt, but many women with disabilities who have been rejected as tenants feel that they are perceived to be incapable of caring for a rental property, and that landlords are unwilling to 'risk' their property (Anderson 1996; Currie 1996; WWDA 2006).

Safety is a factor which impacts on the capacity of women with disabilities to access safe and affordable housing. Many dwellings have inadequate safeguards, such as security screens and doors, appropriate locks, smoke detectors, appropriate external lighting, and alarm systems. Access streets to homes are often poorly lit. Women with disabilities often need access to support services in order to maintain independent living. The location of their accommodation needs to be close to transport and all other amenities. Access to such purpose-built dwellings is extremely limited and often makes security of tenure a crucial issue for many women with disabilities. Without access to safe, accessible and secure housing the risk associated with potential homelessness is made greater (Currie 1996, WWDA 2004; 2006).

In Australia, deinstitutionalisation has been heralded as a breakthrough for women with disabilities to provide them with the opportunity to become part of the wider community, especially to those who are able, and who wish to, live by themselves or as autonomously as possible. However, the reality is that while institutions have been closing, the essential support services for women attempting to integrate into the community have not kept pace with their needs. Consequently, many women with disabilities are forced to live in inappropriate accommodation, where they are vulnerable to abuse. Alternatively, women live without adequate support in the community. Women with disabilities experience considerable difficulties in obtaining relevant information about leaving an institution and finding accommodation elsewhere. The lack of supports available in the community is a major disincentive to women with disabilities to leave institutions (WWDA 2006, 2007).

Women with disabilities carry the additional costs of their disability, which compound their lack of options in the housing market, and disadvantage them even further from participating in their communities. These costs, which place an enormous drain on the resources of many women with disabilities, can include for example: modification of dwellings internally and externally to provide access; personal care and accommodation support services; medical and health care costs; transport; aids, appliances and other equipment. These additional costs; which women with disabilities require to do the ordinary activities which human beings do, reduce the real value of incomes (Cooper 1993, Saunders 2006) and can severely limit their capacity to access safe and secure housing.

It is well documented that domestic and family violence is one of the major factors in homelessness (Commonwealth of Australia 2008, Chung et al 2001). And it is clear that women with disabilities are over-represented in the factors that contribute to homelessness. Despite this, women with disabilities remain excluded from all levels of the SAAP – the primary policy and program response designed to address homelessness in Australia. Women with disabilities are not considered within the National SAAPV Accountability Framework, despite the fact that the framework includes 'Equity' as a perspective through which SAAPV program performance is viewed (Multilateral Agreement 2005-2010). 'Equity' is measured in SAAP via data collection on numbers of Indigenous clients and number of culturally and linguistically diverse (CALD) clients.

Women with disabilities acute lack of access to women's refuges and other crisis and post-crisis accommodation services has been well documented in Australia for more than a decade, yet the situation for women with disabilities experiencing, or at risk of experiencing violence, remains unchanged. In many cases, this critical lack of accommodation options for women with disabilities leaves them in situations whereby they have little alternative but to continue to live with, or be exposed to the perpetrator/s of the violence inflicted on them.

In January 2008 the Australian Government announced the development of a comprehensive long-term plan to tackle homelessness as a matter of national priority. A Green Paper entitled *Which Way Home?* was released for consultation as a first step in developing a new approach to homelessness²⁴. The Green Paper did not include 'people with disabilities' as a distinct population group affected by homelessness, despite the fact that people with disabilities are one of the most vulnerable groups experiencing, and at risk of experiencing, homelessness in Australia.

Almost 600 submissions were received in response to the Green Paper, and more than 300 people experiencing homelessness gave their views. Women With Disabilities Australia (WWDA) provided a detailed Submission outlining the inability of women with disabilities in Australia to realise their right to adequate housing.

The Australian Government's resulting White Paper *The Road Home*²⁵, makes no mention of women with disabilities as a group at particular risk of homelessness, nor considers any strategies for addressing their exclusion from SAAP funded services, such as women's refuges.

²⁴ Commonwealth of Australia (2008) *Which Way Home? A new approach to homelessness*. A Green Paper on Homelessness prepared by the Commonwealth as a consultation paper. ISBN 9781 921380 976

²⁵ On 21 December 2008, the Australian Government released its White Paper entitled *The Road Home: A national approach to reducing homelessness*. ISBN: 978 1 921380 22 8

It is unlikely that women with disabilities in Australia will be able to realise an adequate standard of living, including adequate housing while they remain invisible and ignored in such significant national policy initiatives.

Despite the fact that Australia has affirmed its commitment to the right to adequate housing through ratification of these various international human rights conventions, there remains a vast disparity between the standards set in these Conventions and the situation of women with disabilities with regard to their access to safe, available, affordable, habitable, accessible and inclusive housing. Clearly, the right of women with disabilities to an adequate standard of living, including adequate housing, is not currently sufficiently protected in Australia.

6.4. The right to found a family and to reproductive freedom

The *Universal Declaration of Human Rights* (UDHR) recognises the ‘family’ as the ‘natural and fundamental group unit of society’ (Article 16). The right to ‘found a family’ and to ‘reproductive freedom’ is clearly articulated in a number of international human rights instruments to which Australia is a signatory²⁶. However, for many women with disabilities in Australia, such fundamental human rights are not realisable. Instead, women with disabilities have traditionally been discouraged or denied the opportunity, to bear and raise children (Prilleltensky 2003). They have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and generally incapable of looking after children (Collins 1999, Farber 2000, Prilleltensky 2003, McKeever et al 2003, Smeltzer 2007, McKay-Moffat 2007, Radcliffe 2008).

Women with disabilities have the same human rights as women without disabilities. They have the right to bodily integrity, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a normal way, the right to sex education, to informed consent regarding birth control, to terminate a pregnancy, to choose to be a parent, and to access reproductive information, resources, medical care, services, and support (WWDA 2009).

In Australia, the denial of the right to reproductive freedom takes many forms for women with disabilities – coerced abortions, pressure to undergo tubal ligations and hysterectomies, unlawful sterilisation, systematic denial of appropriate reproductive health care and sexual health screening, limited contraceptive choices, a focus on menstrual control, denial of access to assisted reproductive technologies, poorly managed pregnancy and birth, and the denial of rights to be a parent based solely

²⁶ See for example: International Covenant on Economic, Social and Cultural Rights (Article 10); International Covenant on Civil and Political Rights (Article 23); Convention on the Elimination of All Forms of Discrimination against Women (Article 16); Convention on the Rights of Persons with Disabilities (Article 23).

on the fact of disability (Dowse & Frohmader 2001, Kallianes & Rubinfeld 1997, Prilleltensky 2003, Gill 1996, WWDA 2009).

A central tenet to the concept of reproductive freedom is the right of individual choice – the right of women to make informed choices about their bodies without bias and coercion. However, for women with disabilities in Australia these choices are often influenced and restricted by their social realities which can include: poverty, lack of education, lack of information and research, lack of services and supports, discrimination, and lack of public awareness and understanding regarding disability issues (Collins 1999).

Women with disabilities in Australia who are parents, or seeking to become parents, face economic, social and environmental barriers to their parenting role in both the public and private spheres. Barriers such as poverty, un/underemployment, inaccessible housing and public environments, social isolation, multiple forms of discrimination, poor access to services, heightened vulnerability to violence and abuse, policies that fail to serve families adequately, along with the widely held belief that women with disabilities are ‘naturally’ unsuited to motherhood/parenthood, all comprise a disablist culture for women with disabilities who are parents, or seeking to become parents (Malacredia 2009).

Although there has been virtually no research in Australia on parenting and women with disabilities, anecdotal evidence from women with disabilities in Australia who are parents or seeking to become parents, suggests they experience discriminatory attitudes and widely held prejudicial assumptions which question their ability and indeed, their right to experience parenthood (WWDA 2009). They experience significant difficulty in accessing appropriate parenting information, services and support in a host of areas – including preconception, pregnancy, birth, postpartum, and the varying stages of child rearing (eg: infancy; early childhood; adolescence), as well as in areas such as adoption, assisted reproduction, and broader sexuality and reproductive health issues and care. The lack of financial support, coupled with the higher cost of parenting with a disability is a substantial barrier to women with disabilities who are parents, or seeking to become parents. Income support systems (such as disability support pensions and family assistance benefits) do not recognise the extra costs incurred by disabled parents, which are different from – and often greater than – those incurred by disabled people who do not have children, and by non-disabled parents. The lack of appropriate, adapted equipment to help disabled women in their parenting, especially of babies and young children is a significant obstacle for Australian women with disabilities who are parents, or seeking to become parents. For many women with disabilities, parenthood is not a viable option when social and financial supports are not available. Women with disabilities in Australia have reported undergoing termination of much wanted pregnancies solely on the grounds of lack of such supports (WWDA 2007).

Women with disabilities are stereotyped as people in need of personal assistance, and rarely as parents who provide it (McKeever et al 2003, Radcliffe 2008). This dichotomy between the 'carer' and the 'cared for' is reflected in community care legislation, policies and programs which provide services to individuals on the basis that they are either a 'disabled person' or a 'carer' (Williams & Robinson 2001). Women with disabilities in Australia battle against political agendas and social commentaries which cast their children as 'young carers' at risk of parentification and themselves as burdens of care. These agendas conveniently divert attention from the substantial ways in which the physical and social environments, together with a lack of services, amenities and resources impede women with disabilities who are parents (McKeever et al 2003, Olkin 2000).

Women with disabilities in Australia remain invisible and ignored in maternity, obstetric and related health care policies, programs and services. Just some of the barriers they experience include: medical/health care providers' lack of knowledge and experience on how to manage the pregnancy; medical/health care providers' lack of knowledge and experience on how to manage the women's disabilities; lack of coordination among these providers; inaccessibility of maternity and obstetric services and equipment; negative attitudes from medical/health care providers; and lack of referral to appropriate agencies (Gavin et al 2006, WWDA 2009).

In Australia, disabled women face discrimination and inequitable access to assisted reproductive technologies – a clear denial of their right to reproductive freedom. Assisted reproduction services are controlled by State and Territory governments, with some having enacted legislation to control the procedures involved, while others are guided by the National Health and Medical Research Council (NHMRC)²⁷ *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007)*. These guidelines, revised in 2007, effectively ignore access and eligibility issues by failing to address them at all. Instead, the guidelines recommend that each assisted reproduction clinic should develop a 'protocol' around access to, and eligibility for, treatment (NHMRC 2007, p. 21). Whilst some individual clinics specify that assisted reproductive treatment procedures are not denied to women on the basis of marital status or sexual orientation, none mention disability. The decision for eligibility for assisted reproductive services therefore rests with the individual clinics/fertility consultants (WWDA 2009).

In 2007, the Victorian Law Reform Commission (VLRC) released its final report on Assisted Reproductive Technology (ART) and adoption²⁸. The VLRC had been commissioned by the Victorian

²⁷ The National Health and Medical Research Council (NHMRC) is Australia's peak body for supporting health and medical research; for developing health advice for the Australian community, health professionals and governments; and for providing advice on ethical behaviour in health care and in the conduct of health and medical research. See: www.nhmrc.gov.au

²⁸ See: Victorian Law Reform Commission (VLRC) (2007) *Assisted Reproductive Technology & Adoption: Final Report*. Victorian Law Reform Commission, Melbourne, Victoria.

Government to enquire into and report on the desirability and feasibility of changes to the *Infertility Treatment Act 1995* [Vic] and the *Adoption Act 1984* [Vic] to expand eligibility criteria in respect of all or any forms of assisted reproduction and adoption (VLRC 2007). In relation to access to assisted reproductive technology, the VLRC decided “not to include impairment or disability as one of the grounds on which discrimination in relation to access to ART should be prohibited. This is because in some cases there is a nexus between disability and risk of harm to a child (for example, some forms of severe mental illness). Such a nexus does not exist in relation to marital status or sexual orientation. This does not mean that people with a disability or impairment should be refused treatment, but that in some cases a different approach is justified. Such an approach should involve making enquiries about any potential risk to the health and wellbeing of a prospective child” (VLRC p. 60). The resulting amended legislation, renamed the Assisted Reproductive Treatment Bill 2008, omits disability from its non-discrimination clause: ‘persons seeking to undergo treatment procedures must not be discriminated against on the basis of their sexual orientation, marital status, race or religion’ (Part 1, 5, p.8).

It is unclear how the new *Assisted Reproductive Treatment Bill 2008* [Vic], in omitting disability from its non-discrimination clause, is consistent with that same Government’s recently enacted *Charter of Human Rights and Responsibilities Act 2006*, which includes as its purpose, the protection and promotion of human rights by:

- (2b) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights; and;
- (2d) requiring statements of compatibility with human rights to be prepared in respect of all Bills introduced into Parliament and enabling the Scrutiny of Acts and Regulations Committee to report on such compatibility;

This example would appear to be a clear case of domestic human rights legislation failing to promote and protect the human rights of women with disabilities – particularly their right to found a family and to reproductive freedom.

In Australia, the denial of disabled women’s right to found (and maintain) a family, finds clear expression in the ongoing practice of the removal of babies/children from women with intellectual disabilities. More than six decades of research has demonstrated that intellectual disability per se is an unreliable predictor of parenting performance (Kroese et al 2002, Murphy & Feldman 2002, Aunos et al 2003, 2008, Booth & Booth 2003, 2005, Llewellyn et al 2008, Breeden et al 2008, IASSID 2008). Notwithstanding this, parents with intellectual disabilities (particularly mothers with intellectual disabilities) are more likely than any other group of parents to have their children permanently removed by child welfare authorities to placements at considerable distance from the parents’ home (Llewellyn et al 2003, Booth et al 2005, IASSID 2008). In many cases, child removal is ordered without

evidence of abuse, neglect and/or parental incapacity, and occurs at the time, or within days of a child's birth (McConnell & Llewellyn 1998). Anecdotal reports to WWDA from mothers with intellectual disabilities and/or their advocates suggest that this remains a current practice in Australia. These anecdotal reports are also supported by feedback to Disability Discrimination Legal Services in Australia, who have identified the issue of removal of babies/children from women with intellectual disabilities as one of the key legal issues facing such women in Australia today (WWDA 2009).

It is WWDA's experience that removal or threat of removal of babies/children is also an issue for women with other disabilities, most notably women with mental health illnesses and women with psychiatric disabilities. Another dimension to this issue is in Family Court decisions where women with mental health issues and women with psychiatric disabilities can be denied contact with the child/ren solely on the basis of their disability (WWDA 2009).

Forced contraception through the use of menstrual suppressant drugs (such as Depo-Provera) is a widespread, current practice in Australia, particularly in group homes and other forms of institutional care. It has been justified as a way of reducing the 'burden' on carers who have to 'deal with' managing menstruation of disabled women and girls. It is however, a means of denying basic reproductive rights and is a form of sexual violence.

In 1992, the Victorian Intellectual Disability Review Panel submitted a report to the Minister for Community Services on the use of menstrual suppressants in Victorian institutions. A major finding of the Panel was that there had been blanket administration of drugs causing menstrual suppression to women in institutions who did not require this medication for contraceptive purposes and for whom the medication was prescribed without their consent. The purpose of administering the medication was for the ease of management of the menstrual cycle of the women, that is, for the convenience of the staff caring for them. The Panel found that the drugs Depo-Provera and Norethisterone were being used in Victoria without routine gynaecological screening (Law Reform Commission of Western Australia 1994).

The denial of disabled women's right to reproductive freedom can also be seen in practices of forced contraception, coerced abortion, menstrual suppression, unlawful sterilisation, pressure to undergo prenatal testing and the systematic denial of appropriate reproductive health care and sexual health screening (WWDA 2009, Dowse & Frohmader 2001).

It is evident that the right of women with disabilities to 'found a family' and to 'reproductive freedom', is not currently sufficiently protected in Australia.

6.5. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) is of great importance to determine what constitutes cruel or unusual treatment. Article 1 defines this as, ".....any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." Clearly practices such as forced sterilisation of girls and women with disabilities (which has been discussed earlier in this paper) constitute a serious violation of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment. Institutional abuse is another clear example of an ongoing practice in Australia where women with disabilities are denied their right to freedom from cruel, inhuman or degrading treatment or punishment (UN 2003, WWDA 2009).

Institutional care for women and girls with disabilities can include an array of living arrangements and related programs, such as group homes, hospitals, foster care, residential schools, day support programs, respite care settings, prisons and a host of other environments. Extensive and documented research of more than 30 years points to the fact that institutions and institutionalised living are in themselves, causal factors in the presence and perpetration of frequent and sustained forms of violence against persons who are devalued and vulnerable, and create a climate in which violence goes unreported (WWDA 2007b). While much of the documented evidence available is not gender specific, women and girls with disabilities make up part of the population of virtually all institutional settings.

Many women with disabilities living in institutional or residential settings are removed from public scrutiny and have little or no access to police, support services, lawyers or advocates (Chenoweth 1997). It is widely acknowledged that women with disabilities living in institutions are at particular risk of violence (Abramson et al 2000, Crossmaker 1991, Sobsey 1994). Women with disabilities who live in institutions face increased vulnerability to violence because of the reinforced demand for compliant behaviours, the perceived lack of credibility of individuals with disabilities, the social isolation and lack of access to learning environments, the individual's economic, physical and psychological dependence upon others (Safe Place 2000), and the entrenched sub-culture of violence and abuse prevalent in institutions.

Institutions have a long history of violence and it is clear that this entrenched culture of violence continues to exist in both public and private institutions today. For example, in 2003, mentally and physically disabled children and adults in residential care in Queensland were locked in cages and physically and sexually abused (Bottom 2003). In Australia in 2004, two disabled residents were removed from a state run residential service after it was discovered that they had been abused and neglected by staff while in state care (Paine 2004).

A review by the New South Wales Government examined reported incidents involving abuse and lack of care in Government run group homes across the State between 2004-2006. The review examined all reported incidents that resulted in investigations and found that one in 50 disabled people in Government-run homes across New South Wales were suspected of having been abused while in care. The main causes of abuse were the use of casual staff, lack of supervisors, nepotism and factionalism among staff, and lack of training (Pearlman 2007, Horin 2007). These are not isolated incidents. Advocates of people with disabilities abused in institutions reported being told by Disability Services Queensland that a certain level of abuse in groups homes was commonplace and to be expected (Wenham 2006).

An Australian Senate Inquiry in 2003 into *'Children In Institutional Care'* highlighted the many hundreds of children in institutional care who acquired their disabilities as a result of the violence perpetrated against them while in 'care'. The Inquiry received evidence of *'general physical, psychological and dental health problems through to severe mental health issues of depression and post traumatic stress disorder'*, along with reports from many care leavers that they are suffering disabilities as a result of being assaulted in the institutions. According to the Inquiry's Report, *'the outcome of serious abuse, assaults and deprivation suffered by many care leavers has had a complex, serious and negative impact on their lives'* (Commonwealth of Australia 2004).

The lack of reporting and cover up of violence and abuse of people with disabilities in institutions is acknowledged as a widespread and common problem (Stewart 1998). However, even when violence is reported, there is no guarantee of action. For example, in 2005, an investigation was undertaken into an acute mental health facility in Tasmania after allegations of sexual misconduct against staff and concerns about the standard of care and treatment of mental health patients. The investigation by the Tasmanian Health Complaints Commissioner found that management had not adequately addressed the incidents and complaints, and staff who had raised concerns claimed they had been victimised by management as a consequence (Office of the Health Complaints Commissioner 2005).

Despite the fact that there have been many reports in Australia of neglect, mistreatment, discrimination and abuse of disabled children and adults in state-run institutions, there has been an alarming lack of action and resources to address the problem. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment, is not currently sufficiently protected in Australia.

6.6. The right to the enjoyment of the highest attainable standard of physical and mental health

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the highest attainable standard of health is a human right recognised in international human rights law. The *International Covenant on Economic, Social and Cultural Rights*, widely considered as the central instrument of protection for the right to health, recognises ‘*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*’ The ICESCR gives equal consideration to both physical and mental health. Several other international human rights treaties and instruments recognise or refer to right to health or to elements of it, such as the right to medical care. (OHCHR 2008)

The right to health is dependent on, and contributes to, the realisation of many other human rights. These include for example: the rights to food, to water, to an adequate standard of living, to adequate housing, to education, to work, to privacy, to access to information, to participation, and to freedom from discrimination.

Women with disabilities in Australia not only represent one of the groups with the highest risk of poor health, but also experience socioeconomic disadvantage, social isolation, multiple forms of discrimination, poor access to services and inadequate health care (WWDA 2009, Iezzoni et al 2001, Veltman et al 2001). Although there has been limited research in Australia on the health concerns of women with disabilities, we know that women with disabilities experience major inequalities in health status, and that they experience significant disadvantage in the social determinants²⁹ of those inequalities. For example, the link between low socio-economic status and poor health has been well documented (WWDA 2005, CSDH 2008). Poor people are less healthy than those who are better off, whether the benchmark is mortality, the prevalence of acute or chronic diseases, or mental health. Women with disabilities throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society (WWDA 2006).

Women with disabilities spend more of their income on medical care and health related expenses than men with disabilities (Frohmader 2002, Salthouse and Howe 2004). Women with disabilities between the ages of 18 and 44 have almost 2.5 times the yearly health care expenditures of women who are not disabled. Women with disabilities between the ages of 45 and 64 have more than three times the average yearly expenditures of their non-disabled counterparts (Blanchard & Hosek 2003).

²⁹ The social determinants of health are the conditions in which people are born, grow, live, work and age, including the health system. These circumstances are shaped by the distribution of money, power and resources at global, national and local levels, which are themselves influenced by policy choices. The social determinants of health are mostly responsible for health inequities - the unfair and avoidable differences in health status seen within and between countries. See: www.who.int/social_determinants/en/

Despite the fact that breast cancer is one of the most common cancer for females in Australia, and one of the leading causes of death from cancer in females, women with disabilities have less access to breast (and cervical) screening programs and services than any other group of women. The vast majority cannot receive these services because of economic, social, psychological and cultural barriers that impede or preclude their access to breast health and cervical screening services. There is no data collected in Australia on uptake rates of breast and/or cervical screening for women with disabilities, despite the fact that women with disabilities are one of the most under-screened groups of women in Australia (Temby 1997, Frohmader 1998). The risk of developing and dying from breast cancer increases with age and this risk is highest for women aged over 70 years. Despite this fact, 41% of women with disabilities in Australia aged 70-75 with core activity restriction have never had a mammogram. Almost 30% of women with disabilities aged 70-75 with core activity restriction have never had a pap smear. Of those women with disabilities aged 70-75 with core activity restriction who have had a pap smear, 39% have not had regular pap smears (every 2 years) (Rutnam et al 1999).

In 1999, the then Federal Department of Family & Community Services (Office of Disability) commenced analysis of the 70-75 cohort of the Australian Longitudinal Study on Women's Health (ALSWH)³⁰ to determine whether it could provide reliable data on which to base future policies, plans or programs for older women with disabilities. However, this analysis was abandoned by the Australian Government in 2000, as it was not considered a 'priority' (Frohmader 2002). More than 10 years on, women with disabilities remain excluded from national breast and cervical cancer screening data collection and research.

In Australia, women with disabilities experience significant difficulty accessing health information, care and services in relation to a wide range of women's health issues, including: managing menstruation, contraception, exploitative relationships, violence, sexually transmitted diseases, sexual assault, menopause, late onset incontinence, osteoporosis, sexuality, reproductive health, self-management, fatigue, increased dependency, and parenting.

The denial and infringement of women with disabilities right to the enjoyment of the highest attainable standard of physical and mental health can be seen in an array of other human rights violations, as highlighted earlier in this paper. These include:

³⁰ The Australian Longitudinal Study on Women's Health (ALSWH) also known as Women's Health Australia is a longitudinal study that has been examining the health and wellbeing of Australian women since 1996. The Study conducts surveys with over 40,000 Australian women who were aged 18-23, 45-50, and 70-75 when the study began. ALSWH is funded by the Australian Government Department of Health and Ageing and is scheduled to continue until at least 2016. See: <http://www.alswh.org.au/>

- the alarmingly high rates of violence against disabled women and girls and the failure of governments to recognise and take action on the issue, constituting a denial of the right to freedom from exploitation, violence and abuse;
- serious violations of the human right to an adequate standard of living, including adequate housing; denying disabled women the right to affordable, safe, and secure housing, thereby increasing their risk of homelessness;
- the many forms of the denial of the right to reproductive freedom – coerced abortions, pressure to undergo tubal ligations and hysterectomies, unlawful sterilisation, systematic denial of appropriate reproductive health care and sexual health screening, limited contraceptive choices, a focus on menstrual control, denial of access to assisted reproductive technologies, poorly managed pregnancy and birth, and the denial of rights to be a parent based solely on the fact of disability;
- denial of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, particularly for women with disabilities in institutional care, who experience, and are at significant risk of experiencing violence, abuse, neglect and mistreatment.

The Australian health system has, and continues to ignore the needs of women with disabilities. Following the election of the Rudd Labor Government in November 2007, women's health re-emerged as a prominent public health priority, with the commencement of planning for a new National Women's Health Policy, as part of the Australian Government's social inclusion agenda. On 12 March 2009, the Australian Government convened a National Roundtable Consultation to launch the development of the new Women's Health Policy. The Roundtable was attended by 14 invited key stakeholder organisations and excluded women with disabilities, who were neither invited nor represented at this critical mechanism in the development of an Australian Women's Health Policy that is intended to be inclusive of all women.

The National Women's Health Policy Discussion Paper, which forms the basis of the nationwide consultation, was publicly released at the Roundtable meeting. Yet, this Discussion paper, which identifies women with disabilities as a group experiencing major inequalities in health status, and therefore requiring specific attention, was not made available in accessible formats. The need for the national Women's Health Policy consultation to be inclusive of women with disabilities has been clearly articulated to the Federal Minister for Health by WWDA and the Australian Human Rights Commission. Yet nearly three months on from the release of the Paper, an accessible version is yet to

be made available – meaning that many women with disabilities are effectively being denied their right to participate, on an equal basis with others, in political and public life (CRPD, Article 29).

For women with disabilities in Australia, the right to the enjoyment of the highest attainable standard of physical and mental health is not currently sufficiently protected.

6.7. The right to work

Like all members of the community, women with disabilities have a fundamental right to employment. This right is enshrined in a number of international human rights conventions to which Australia is a party³¹. The right to work involves many other related rights, such as: the right to opportunity to gain a living by work freely chosen or accepted; technical and vocational guidance and training programmes; just and favourable conditions of work; fair wages, equal pay for equal work without discrimination; remuneration that provides decent living; safe and healthy conditions of work; rest and leisure; periodic holidays with pay, join trade unions, and so on.

It is widely recognised that being in paid employment is a marker of social inclusion (Gillard & Wong 2007; UK Cabinet Office 2001, Gannon & Nolan 2005; 2006, Clarke 2006, Hayes & Gray 2008). Paid employment is a critical component in enabling women with disabilities to support themselves financially and to build self-esteem and achieve social recognition. Yet in Australia, women with disabilities are less likely to be in paid work (or looking for work) than other women, men with disabilities or the population as a whole.

In Australia, twenty-one per cent (21%) of men with disabilities are in full time employment compared to nine percent (9%) of women with disabilities. In 1998, the labour force participation rate of women with disabilities was 45.5%, compared to 60.3% for men with disabilities. In 2003, the rate increased marginally for women with disabilities to 46.9%, and decreased slightly for men with disabilities to 59.3%. However, a stark contrast can be seen in the unemployment rates for the same period. In 1998, 8.6% of women with disabilities were unemployed, compared to 13.5% of men with disabilities. In 2003, the unemployment rate for disabled men dropped significantly to 8.8%, whilst the unemployment rate for disabled women remained virtually the same at 8.3%. The picture becomes even clearer when we consider the unemployment rates for non-disabled men and women over the same period. In 1998, the unemployment rate of non-disabled women was 8.0% compared to 7.7% for

³¹ See: Universal Declaration of Human Rights (Article 23), The International Covenant on Economic, Social and Cultural Rights (Articles 6-8), The Convention on the Elimination of All Forms of Discrimination against Women (Article 11), The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), Convention on the Rights of the Child (Article 32), The Convention on the Rights of Persons with Disabilities (Article 27)

non-disabled men. In 2003, the rate dropped significantly for both non-disabled women (5.3%) and men (4.8%) (HREOC 2005; ABS 2004).

Data for Australian Government funded open employment services could indicate why the unemployment rate for disabled men has dropped, while the labour force participation rate and unemployment rate for disabled women has remained virtually unchanged. In 1997-98 Commonwealth Government funded open employment services assisted over 31,000 people with disabilities in their efforts to find and maintain jobs on the open labour market. 66.6% of those assisted were men with disabilities. Little appears to have changed. From 1 January to 30 June 2003, Commonwealth Government funded open employment services assisted over 35,000 people with disabilities in their efforts to find and maintain jobs on the open labour market. 65% of those assisted were men with disabilities (AIHW 1999; WWDA 2004).

Overall, 71% of women with disabilities in Australia are now completing Year 10 or higher in secondary education, compared to 68% of men with disabilities and 87% of able-bodied students. Similarly their completion rates of post secondary education are now comparable to those of men with disabilities (ABS 2004, DEST 2002). However, the success of women with disabilities in education is clearly not reflected in improved employment prospects, and their participation and remuneration rates are lower than for men with disabilities and for their able-bodied counterparts. Women with disabilities report that they often feel they have been 'parked' in yet another training course (WWDA 2003). There are fewer employment openings for disabled women and those who are employed often experience unequal recruitment and promotion criteria, unequal access to training and retraining, unequal access to credit and other production resources, unequal remuneration for equal work and segregation (O'Reilly 2003, David 2004). In any type of employment women with disabilities are more likely to be in low paid, part time, short term casual jobs (WWDA 2004).

There are a number of barriers that stand in the way of women with disabilities in Australia taking up and maintaining paid employment³², and these include:

- Negative social attitudes & discrimination including employers' and co-workers' attitudes
- Lack of understanding of the complexity and nature of disability
- Poverty
- Lack of access to education and training
- Lack of self confidence, assertiveness, and low self-esteem
- Poor job design and inflexible work arrangements
- Lack of attendant care

³² For a detailed analysis of the barriers facing women with disabilities in employment, see: Women With Disabilities Australia(WWDA) Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce(August 2008). Available at: <http://www.wwda.org.au/subs2006.htm>

- Inadequate or expensive transport
- Lack of, inaccessible & inflexible childcare
- Responsibility for domestic and parenting duties
- Experience of abuse, violence and harassment
- Inaccessible and unresponsive employment services
- Restricted access to information & communication technologies
- Insecure housing & accommodation
- Lack of awareness about rights
- Cost of equipment & assistive devices
- Inaccessible built environment
- Cost of disability
- Lack of portability of state funded programs

For many women with disabilities in Australia simply 'wanting' a job does not equate to 'finding' one³³. In order for women with disabilities to seek and retain employment, they need the elimination of discrimination and negative stereotypes from both a gender and disability perspective which compound their exclusion from support services, social and economic opportunities and participation in community life.

It is evident that for women with disabilities, the right to work is not currently sufficiently protected in Australia.

³³ See Australian Labor Party (ALP) National Platform and Constitution 2007: *'Labor is committed to achieving full employment, meaning that anyone who wants a job can find one within a reasonable time.'* (p11)

7. How could Australia better protect and promote human rights?

7.1. Strengthening the role of the Australian Human Rights Commission (ARHC)

Human rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions (OHCHR Fact Sheet 19).

In Australia, the Australian Human Rights Commission (AHRC) is the independent body responsible for scrutinising and promoting human rights. It was established in 1986 by an act of the Federal Parliament, and its goal is to *'foster greater understanding and protection of human rights in Australia and to address the human rights concerns of a broad range of individuals and groups'* (AHRC 2009).

During the term of the Howard Government, there was a political agenda to undermine the Australian Human Rights Commission (then known as the Human Rights and Equal Opportunity Commission) – evident in the significant budget cuts to the Commission, along with successive attempts to introduce legislative amendments that would weaken its powers (Kirkwood 2003, Productivity Commission 2004, Atmore 2005). This was clearly in contravention of the UN Principles relating to the Status of National Institutions³⁴ (The Paris Principles), which were agreed to by Australia in 1993.

Clearly, protection and promotion of human rights in Australia requires a strong and independent national human rights institution which can, without being subject to the vagaries of political will, exercise its functions consistent with human rights principles and practices (PIAC 2003). WWDA believes it is therefore critical that the Australian Human Rights Commission (AHRC) has sufficient power, independence, resources and capacity to carry out its role and functions. For example, the five AHRC Commissioner positions³⁵ are currently held by three people. A genuine commitment to human rights protection (particularly for those who experience social and cultural disadvantage) warrants specialist Commissioners, who are given the necessary resources to carry out their role effectively.

³⁴ The 'Paris Principles' were negotiated at the Vienna World Conference on Human Rights in 1993, and were subsequently adopted by the UN General Assembly. The Paris Principles lay down a set of minimum standards for the establishment of a National Human Rights Institution.

³⁵ For the areas of Aboriginal and Torres Strait Islander peoples; Human Rights; Race Discrimination; Disability Discrimination; and Sex Discrimination. See: www.hreoc.gov.au

7.2. Support and strengthen the independent role of non-government organisations involved in the advancement and protection of human rights

The role of non-government organisations (NGO's) in the defence and advancement of human rights is vital. They are '*critical to the empowerment of the weak, the poor, the unpopular and the vulnerable*' (Kirby 2006), central in raising public awareness of human rights violations, and integral and indispensable to the implementation of human rights (Mane 2004). NGO's by their very nature, should have a freedom of expression, a flexibility of action and a liberty of movement which allow them to perform tasks which Governments are unable or unwilling to perform (OHCHR 2008).

However, for organisations like WWDA (funded by the Federal Government on an annual basis), working to address the human rights violations of women with disabilities is hampered by narrow and prescriptive government funding contracts which require tangible outcomes that are related to government objectives rather than priorities identified by WWDA constituents.

Traditionally, peak NGO bodies such as WWDA were funded by government to be independent of government control and to reflect constituency rather than government priorities. They were seen as an important part of democracy – independent representative bodies that provide advocacy, representation, coordination, information, research and policy development on behalf of a specific section of the population (Sawer 2002). However, for more than a decade WWDA has experienced increasing levels of government control which has constrained its ability to work on many serious human rights violations experienced by its constituents. Inadequate, non-recurrent, and non indexed operational funding from government, along with excessive and administratively burdensome requirements for accountability, also detract from WWDA's ability to focus its energy on addressing the human rights concerns of its constituents.

In order to better promote and protect the human rights of women with disabilities in Australia, NGO's such as WWDA, need to be adequately resourced and supported by government as vital, independent mechanisms in the defence and advancement of human rights.

7.3. Development of a meaningful National Human Rights Action Plan

The concept of national human rights action plans was developed as part of the World Conference on Human Rights held in Vienna in 1993, which culminated in the adoption of the *Vienna Declaration and Programme of Action*. The concept of national human rights action plans was based on the view that lasting improvements in human rights ultimately depend on the government and people of a particular

country deciding to take concrete action to bring about positive change. In relation to human rights action plans, the Vienna Declaration states:

The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights (Part 11, Para. 71).

This recommendation was again reaffirmed by representatives of Governments of the Asia and Pacific region (including Australia) attending the *Inter-sessional Workshop on the Development of National Plans of Action for the Promotion and Protection of Human Rights* held in Bangkok, Thailand, from 5-7 July 1999.

In 1999, the then Australian Government committed to re-write its National Action Plan on Human Rights, which was promoted as being '*forward looking and highlighting future action to be taken by the Australian Government in promoting human rights*' (Department of Foreign Affairs and Trade, June 2004). However, the final National Action Plan³⁶ concentrated more on documenting and reporting the then Government's current policy and program responses to promoting human rights in Australia. It was not 'action-oriented' and contained nothing to indicate where Australia needed to improve in its performance in human rights. There were no targets, no benchmarks, no timeframes, no implementation strategy, no measures of performance, and no mechanisms for monitoring and evaluation (WWDA 2004).

The fundamental purpose of a National Human Rights Action Plan should be to improve the promotion and protection of human rights in Australia. It can do this by placing human rights improvements in the context of public policy, so that governments and communities can endorse human rights improvements as practical goals, devise programmes to ensure the achievement of these goals, engage all relevant sectors of government and society, and allocate sufficient resources. (OHCHR 2002, WWDA 2004).

WWDA is of the view that, in order to be meaningful, a National Human Rights Action Plan for Australia must:

- be developed in accordance with the *Vienna Declaration and Programme of Action* (Part 11, Para. 71) utilising the framework set out in the *Handbook on National Human Rights Plans of Action* (OHCHR 2002) to include:
 - a clear assessment of the current human rights situation in Australia (including baseline and disaggregated data and an assessment of Australia's human rights performance by relevant United Nations Human Rights Treaty bodies);
 - identification of what problems need to be overcome;

³⁶ See: Australia's National Action Plan on Human Rights (2004). Available at: <http://www.wwda.org.au/hrpubs1.htm>

- identification of priority areas for action;
 - specification of what action will be taken (in terms that provide benchmarks for the evaluation of progress);
 - specification of who is to take the action;
 - establishment of time frames in which action will be taken; and
 - provision for effective monitoring and evaluation of what has been done.
-
- be developed from a range of inclusive consultative processes to enable meaningful participation by all stakeholders.

 - accord priority to the human rights violations of 'vulnerable' groups in society, including women with disabilities.

7.4. A Federal Human Rights Act

WWDA recognises that a Federal Human Rights Act for Australia is one option to better protect and promote human rights. However, it is widely recognised that the realisation of human rights cannot be achieved solely through legislation and administrative arrangements. Clearly, human rights and anti-discrimination legislation in Australia have made little difference to the lives of women with disabilities, who are still experience gross violations of their fundamental human rights and freedoms, as has been demonstrated in this paper.

WWDA is therefore of the view that any formalised process for human rights protection in Australia (such as a Federal Human Rights Act) would need to be just one element of a much broader commitment and campaign to improve the promotion and protection of human rights in Australia.

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9. Appendix 1

The National Human Rights Consultation Terms of Reference

The Australian Government is committed to the promotion of human rights - a commitment that is based on the belief in the fundamental equality of all persons.

The Government believes that the protection and promotion of human rights is a question of national importance for all Australians, and for this reason has appointed a Committee to undertake an Australia-wide community consultation for protecting and promoting human rights and corresponding responsibilities in Australia. The Government has given the Committee Terms of Reference to guide their work.

The Committee will ask the Australian community:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

In conducting the consultation the Committee will:

- consult broadly with the community, particularly those who live in rural and regional areas
- undertake a range of awareness raising activities to enhance participation in the consultation by a wide cross section of Australia's diverse community
- seek out the diverse range of views held by the community about the protection and promotion of human rights
- identify key issues raised by the community in relation to the protection and promotion of human rights

The Committee will report to the Australian Government by 31 August 2009 on the issues raised and the options identified for the Government to consider to enhance the protection and promotion of human rights. The Committee is to set out the advantages and disadvantages (including social and economic costs and benefits) and an assessment of the level of community support for each option it identifies.

The options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights.