# ***Disabled People’s Organisations Australia (DPO Australia)***

Disabled People’s Organisations Australia (DPO Australia) is an alliance of four national Disabled Peoples Organisations (DPOs) in Australia.  DPOs are organisations that are governed, led and made up of people with disability.

The members of DPO Australia are:

* [People with Disability Australia](https://pwd.org.au/) (PWDA)
* [Women With Disabilities Australia](http://wwda.org.au/) (WWDA)
* [First Peoples Disability Network Australia](https://fpdn.org.au/) (FPDN)
* [National Ethnic Disability Alliance](http://www.neda.org.au/) (NEDA)

The work of DPO Australia is grounded in a human rights framework that recognises the United Nations human rights conventions and related mechanisms as fundamental tools for advancing the rights of people with disability.

Representatives of DPO Australia will be at the UN in Geneva for the review of Australia by the Committee on the Rights of the Child (CRC Committee) and the Committee on the Rights of Persons with Disabilities (CRPD Committee). These representatives will be part of the NGO delegations for both the CRC and CRPD reviews, and are available to provide further information regarding issues for children with disability. The representatives are:

* Matthew Bowden, People with Disability Australia – [matthewb@pwd.org.au](mailto:matthewb@pwd.org.au)
* Kate Finch, People with Disability Australia – [katef@pwd.org.au](mailto:katef@pwd.org.au)
* Damian Griffis, First Peoples Disability Network Australia – [damiang@fpdn.org.au](mailto:damiang@fpdn.org.au)

# ***Additional Submission***

PWDA is a member of the Australian Child Rights Taskforce that prepared the Australian NGO coalition report to the CRC Committee for its review of Australia. [*The Children’s Report*](https://www.unicef.org.au/Upload/UNICEF/Media/Documents/Child-Rights-Taskforce-NGO-Coalition-Report-For-UNCRC-LR.pdf) includes contributions of over 500 children and young people across Australia, and is based on content provided by over 90 NGOs and child rights experts. PWDA was a key contributor to *The Children’s Report* ensuring that key issues and concerns for children and young people with disability are included for consideration by the CRC.

PWDA, on behalf of DPO Australia is also coordinating the Australian Civil Society CRPD Shadow Report Working Group that has prepared an alternative report for the CRPD Committee for its review of Australia. [*Disability Rights Now 2019*](https://dpoa.org.au/rights-of-people-with-disability-routinely-ignored-new-report/) was informed by a national consultation process, including a national survey completed by nearly 900 people with disability across Australia. Over 80 civil society organisations endorsed the report.

The CRC Committee is reviewing Australia on 9th and 10th of September 2019 at its 82nd session, and the CRPD Committee is reviewing Australia on 12th and 13th September at its 22nd session. Both of these UN reviews are critical to progressing the rights of children with disability in Australia.

This additional submission builds on the information contained in *The Children’s Report* by providing extracts from *Disability Rights Now 2019* and associated *Factsheets* in order to elaborate on key human rights issues for children with disability in Australia.

# ***Human Rights Issues***

This section builds on the information and recommendations provided in *The Children’s Report* prepared by the Australian Child Rights Taskforce and submitted to the CRC Committee for its review of Australia*.*

***3.1 General Overview***

Extract from *Disability Rights Now 2019*, page 18 in relation to CRPD article 7, Children with disabilities and CRC articles 3, 4, 9, 19, 20, 39 as discussed in *The Children’s Report*, Chapters 2, 5 and 6, and section 3.2; and the supplementary information in section (2) provided to the CRC Committee in December 2018 by the Australian Child Rights Taskforce.

There are no policies or programs that focus on progressing and promoting the rights of children with disability, including with regard to expressing their views on all matters concerning them. Where disability receives cursory attention, it is often framed through a lens of risk, and focused on reducing incidence of disability. There is no nationally agreed definition or conceptual framework regarding the principle of ‘best interests of the child’, resulting in inconsistent application across Australian jurisdictions.

The *National Framework for Protecting Australia’s Children 2009-2020[[1]](#endnote-1)* is the national policy framework for ensuring the safety and wellbeing of Australia’s children. However, children with disability are afforded minimal focus in the Framework, are segregated from broader concerns about child welfare, and actions regarding disability are not child-centred.[[2]](#endnote-2) The Framework expires in 2020, and there is no indication of a new national Framework.

A National Children’s Commissioner was appointed in 2013, yet no substantive work has been completed to date that describes, investigates, promotes or protects the rights of children with disability.

Australia lacks a comprehensive data collection mechanism for children and young people with disability. Data collection on out of home care is not disaggregated by disability. National child protection reporting does not include disability status.

In 2019, the *National Principles for Child Safe Organisations[[3]](#endnote-3)* was endorsed by the Council of Australian Governments. The Principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. However, they are not mandatory.

More than a third of children in out-of-home care placements are Indigenous. Compared with non-Indigenous children, Indigenous children are 10 times more likely to be in out-of-home care and 9 times more likely to be on care and protection orders.[[4]](#endnote-4) There remains inadequate culturally appropriate support available to Indigenous children with disability and their families.[[5]](#endnote-5)

**Recommendations**

That Australia:

* Incorporate CRPD rights, including the principle of the best interest of the child into legislation, policies and programs that apply to children and young people.
* Develop comprehensive strategies and mechanisms to ensure that children and young people with disability can participate in consultations, decision-making processes and policy development that affect their lives.
* Address the over-representation of Indigenous children in out-of-home care placements and on care and protection orders.
* Adequately resource culturally appropriate, community owned and local responses and support for Indigenous children with disability.

***3.2 Specific Issues***

***3.2.2 Forced sterilisation and medical interventions of children with disability and children with intersex variations***

*Disability Rights Now 2019 Factsheet* in relation to CRPD article 17, Integrity of the person / and CRC articles 28 and 37 as discussed in *The Children’s Report*, sections 5.2.2 and 5.2.3, page 27.

Forced sterilisation[[6]](#endnote-6) of people with disability, particularly women and girls with disability, is an ongoing practice that remains legal and sanctioned by Australian Governments.[[7]](#endnote-7) Forced sterilisation is recognised as a particularly egregious form of gender-based violence that has no place in a civilized world.[[8]](#endnote-8) Since 2005, UN treaty bodies, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia enact national legislation prohibiting forced sterilisation.[[9]](#endnote-9) The Human Rights Council made clear recommendations in this regard as an outcome of the Universal Periodic Review (UPR) of Australia in 2015.[[10]](#endnote-10) Forced sterilisation has been identified as an act of violence, a form of social control and a form of torture by the UN Special Rapporteur on Torture,[[11]](#endnote-11) and as a form of violence by the UN Committee on the Rights of the Child (CRC).[[12]](#endnote-12)

Australian State and Territory guardianship legislation and some other child protection acts[[13]](#endnote-13) regulate and provide a degree of protection from forced sterilisation for all children and young people and adults with disability or intersex variations. However there is no law in Australia that explicitly prohibits forced sterilisation of children; or that prohibits forced sterilisation of adults without their full, prior and informed consent.[[14]](#endnote-14) Treatment decisions about intersex people encapsulate other issues, such as a desire to conduct ‘normalising’ surgery, and the neutrality of decision-making may be undermined.[[15]](#endnote-15)

In September 2012, the Senate Community Affairs References Committee (the Committee) commenced a national Inquiry into the involuntary or coerced sterilisation of people with disability and intersex people in Australia, and released two Inquiry Reports in 2013.[[16]](#endnote-16) In relation to people with disability, the Committee only recommended the prohibition of forced sterilisation if an adult with disability has the ‘capacity’ to provide consent. Despite UN recommendations and CRPD obligations, and based on Australia’s Interpretative Declaration in respect of Article 12 of the CRPD,[[17]](#endnote-17) the report also recommends that where a person with disability does not have ‘capacity’ for consent, substitute decision-making laws and procedures may permit the sterilisation of persons with disability.[[18]](#endnote-18) The Interpretative Declaration to CRPD article 12 means that it is legal to forcibly sterilise children and adults with disability, provided that they ‘lack capacity’ and that the procedure is in their ‘best interest’ as determined by a third party.

In relation to intersex people, the Senate Committee acknowledged that ’sex normalising’ practices impacted upon the prohibition against torture and other cruel, inhuman and degrading treatment (including the prohibition against non-consensual scientific or medical experimentation), and the right to privacy. It made numerous recommendations to defer non-necessary medical treatment, change clinical practices,[[19]](#endnote-19) and provide effective oversight of medical interventions.

Australia’s response to the Senate Inquiry Reports[[20]](#endnote-20) passes responsibility for action on forced sterilisation and ‘sex normalising’ practices to State and Territory jurisdictions; and retains the focus on regulation and non-binding guidelines rather than prohibition of such practices. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and ‘sex normalising’ medical interventions within Australia.

The UN treaty monitoring bodies have expressed concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.[[21]](#endnote-21)

UN Treaty body Committees are increasingly recognising that intersex people who have had unnecessary surgery or treatment are ‘victims of abuses and mistreatment’.[[22]](#endnote-22) Further, unnecessary surgery or treatment on intersex people has been described by a number of UN Treaty Bodies as a ‘harmful practice’[[23]](#endnote-23) and causing ‘physical and psychological suffering’.[[24]](#endnote-24) Australia has not legislated against enforced medical correction of intersex variations. Evidence, including from a 2016 Family Court case,[[25]](#endnote-25) shows that such medical practices persist in Australia, on the basis of inadequate medical evidence and without independent oversight.

Australia has not implemented the 2018 recommendations from the CEDAW Committee that Australia:

“Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent, implement the recommendations made by the Senate in 2013 on the basis of its inquiry into the involuntary or coerced sterilisation of intersex persons, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures.”[[26]](#endnote-26)

Forced contraception of women and girls with disability through the use of menstrual suppressant drugs is a widespread, current practice in Australia and is rarely, if ever, subject to independent monitoring or review.[[27]](#endnote-27) Forced contraception is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse. It is a practice widely used in group homes and other forms of institutional settings and is often justified as a way of reducing the ‘burden’ on staff/carers who have to ‘deal with’ managing menstruation of disabled women and girls. In the case of persons with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.

Forced anti-androgenic treatment to control sex drive and functioning of men and boys with disability is unregulated and commonly practiced by the medical profession.

**Recommendations**

That Australia:

* Develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.
* Develop and enact national, uniform and legally enforceable legislation prohibiting unnecessary medical interventions, including surgical and hormonal interventions on intersex children and adults without their prior, fully informed and free personal consent.
* Abolish the practice of non-consensual administration of menstrual suppressant drugs and anti-androgenic treatments.

***3.2.3 Inclusive Education***

*Disability Rights Now 2019 Factsheet* in relation to CRPD article 24, Education / and CRC articles 28 and 29 as discussed in *The Children’s Report*, section 8.3, page 55; and in the supplementary information in section (5) b provided to the CRC Committee in December 2018 by the Australian Child Rights Taskforce.

The current education system in Australia is failing to adequately meet the needs of students with disability, and it is rare for students with disability to be provided with a genuine inclusive educational experience.[[28]](#endnote-28) Students with disability are being shut out and denied a future by school systems that assume they have nothing to contribute.[[29]](#endnote-29)

Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.[[30]](#endnote-30) 28% of school aged people with disability do not attend school.[[31]](#endnote-31) Students with disability report that their disability is the main reason they cannot attend school.[[32]](#endnote-32) Further, there is no data on part time attendance of students with disability despite the frequently reported direct experience of many children not being “allowed” to attend school on a full time basis.

Many mainstream schools are inaccessible. Principals and/or personnel of mainstream schools use exclusion practices referred to as “gatekeeping”, whereby school personnel suggest to parents that another school could better support their child. [[33]](#endnote-33) This means that many students with disability are re-directed to ‘special’ schools instead. ‘Special schools’ in Australia are those that “only enrol students with special needs.”[[34]](#endnote-34)

Segregation of students with disability has increased significantly over the past decade, with a shift towards students with disability attending special schools and away from attending mainstream schools. The number of students with disability attending a special school increased by 35% between 2003 and 2015. This increase is supported by a funding incentive, whereby a child with disability receives higher funding if they attend a special school rather than a mainstream school.[[35]](#endnote-35)

The *Committee on Economic, Social and Cultural Rights* expressed concern about the increase in segregated education during the constructive dialogue with Australia in May 2017 and recommended that Australia implement measures to ensure children with disability have access to inclusive education.[[36]](#endnote-36)

Students with disability routinely experience discrimination, lack of supports, inadequately trained teachers, a lack of expertise and an entrenched systemic culture of low expectations.[[37]](#endnote-37) Around 3 in 4 students with disability experience difficulties at school, predominately due to fitting in socially, communication difficulties, and learning difficulties.[[38]](#endnote-38) 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination.[[39]](#endnote-39)

Students with disability are experiencing disturbing rates of bullying and situations of restraint and seclusion.[[40]](#endnote-40) There are an increasing number of incidents being reported of children with disability being placed in ‘withdrawal spaces’, which effectively amount to restraint and seclusion in fenced off spaces, cages and cupboards.[[41]](#endnote-41)

There is no government data on these experiences. However, a national survey of education experiences of students with disability undertaken in 2017 by the national representative organisation, Children and Young People with Disability Australia (CYDA)[[42]](#endnote-42) found that in the preceding 12 months, 19% of students with disability experienced restraint at school and 21% reported experiences of seclusion. The survey also found that in the same period, 56% of students with disability had experienced bullying, which is more than twice the rate of bullying estimated to occur in the general population of school aged children.

The national survey found that bullying incidents reported included students with disability being attacked, punched, kicked, head butted, having food or rocks thrown at them, being teased, mimicked and spat on, cyberbullied and even being told to commit suicide. One student reportedly had a skipping rope wrapped around her neck and an attempt was made to strangle her.[[43]](#endnote-43)

The rate of disability for Indigenous people, including children[[44]](#endnote-44) is twice as high as that among the general population.[[45]](#endnote-45) The retention rate to Year 12 for Indigenous students is significantly lower than that for non-Indigenous students. Although the retention rate to Year 12 for Indigenous students has increased steadily, from 47% in 2010 to 60% in 2016, it is still significantly lower than the non-Indigenous rate (79% in 2010 and 86% in 2016).[[46]](#endnote-46)

Australia is seeking to reject its human rights obligations by seeking a clarification from the CRPD Committee “that States Parties may offer education through specialist classes or schools consistently with article 24”.[[47]](#endnote-47) This is in violation of CRPD Article 24 and CRPD General Comment 4.[[48]](#endnote-48) CRPD General Comment 4 clarifies that: ‘States parties must ensure the realization of the right of persons with disabilities to education through an inclusive education system at all levels[[49]](#endnote-49), and for all students, including persons with disabilities, without discrimination and on an equal basis with others.’ It further stipulates that: ‘Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.’ In addition, it clarifies that: ‘For article 24 (2) (a) to be implemented, the exclusion of persons with disabilities from the general education system should be prohibited.’

**Recommendations**

That Australia:

* Develop a national Action Plan for Inclusive Education that includes a legislative and policy framework that fully complies with Article 24 and CRPD General Comment 4.
* Address the increasing rate of segregation of students with disability and redirect adequate resources to full inclusion into mainstream schools.
* In consultation with Indigenous people and their representative organisations, establish culturally owned and operated programs and initiatives to increase the education retention rate of Indigenous students.

***3.2.4 Youth Justice***

Extract from *Disability Rights Now 2019*, page 24 and extract from *Disability Rights Now 2019 Factsheet* in relation to CRPD article 13, Access to Justice and CRC articles 37 and 40 as discussed in *The Children’s Report*, section 9.2; and the supplementary information in section (5) c provided to the CRC Committee in December 2018 by the Australian Child Rights Taskforce.

There is no nationally consistent disaggregated data on the number of persons with disability in the criminal justice system, although available data shows significant over-representation, particularly for people with cognitive and psychosocial disability.[[50]](#endnote-50)

Indigenous young people, particularly those with disability are overrepresented in the youth justice system, including in detention-based supervision (24 times higher than the rate for non-Indigenous young people), and in community based supervision (17 times higher than the rate for non-Indigenous young people).[[51]](#endnote-51)

Children with disability are being held and restrained in adult detention centres and are experiencing gross violations of their human rights. In June 2019, an Indigenous boy with an intellectual impairment was kept "completely naked" for days inside an adult, maximum-security police watch house after being deemed a suicide risk. After being stripped he was left naked in a cell with only a blanket to cover himself with. An investigation by a current affairs program found that some children, including those with disability, were being held in adult watch houses for weeks on end, with one placed in isolation for 23 days.[[52]](#endnote-52)

The report from the 2017 *National Inquiry into the Incarceration Rate of Indigenous Peoples*[[53]](#endnote-53) recommended, that Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body; the establishment of specialist Indigenous peoples sentencing courts; and the commissioning of a national inquiry into child protection laws and processes affecting Indigenous children. The Australian Government is yet to respond to the report.

**Recommendations**

That Australia:

* In consultation with people with disability through their representative organisations, coordinate the development of nationally consistent Disability Justice Strategies across governments to ensure that people with disability are supported to access the same legal protections and redress as the rest of the community.
* Ensure that legislative, administrative and policy frameworks that deprive people with disability of their liberty and impact on their security are fully consistent with the CRPD and CRC.
* Address the over-representation of Indigenous young people in the youth justice system.
* Implement the recommendations from the *National Inquiry into the Incarceration Rate of Indigenous Peoples*.

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**ENDNOTES**

1. Department of Social Services 2014, [National Framework for Protecting Australia’s Children, 2009-2020](http://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business), Commonwealth of Australia, Canberra, viewed 29 July 2014. [↑](#endnote-ref-1)
2. Robinson 2012, [Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability](https://www.cyda.org.au/enabling-and-protecting), p. 12; Children and Young People with Disability Australia, Melbourne. [↑](#endnote-ref-2)
3. As of February 2019, the [National Principles for Child Safe Organisations](https://childsafe.humanrights.gov.au/national-principles/download-national-principles) have been endorsed by members of the Council of Australian Governments, including the Prime Minister and state and territory First Ministers. The principles aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing. [↑](#endnote-ref-3)
4. Australian Institute of Health and Welfare 2017. [Australia’s welfare 2017](https://www.aihw.gov.au/getmedia/088848dc-906d-4a8b-aa09-79df0f943984/aihw-aus-214-aw17.pdf.aspx?inline=true). Australia’s welfare series no. 13. AUS 214. Canberra: AIHW [↑](#endnote-ref-4)
5. Even where services are available, parents may have to deal with as many as six or seven different government departments during the early years of the life of the child. Many parents are reluctant to seek assistance from the service sector because of lack of trust and the trauma resulting from the well-documented removal of children from Aboriginal families. See for eg: Disability Rights Now (2012) CRPD Civil Society Report on Australia. Available at: https://pwd.org.au/our-work/human-rights-campaigns/united-nations-convention-on-the-rights-of-persons-with-disabilities/crpd-civil-society-shadow-report [↑](#endnote-ref-5)
6. ‘Forced sterilization’ refers to the performance of a procedure which results in sterilization in the absence of the prior, free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual’s consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilization of a child, unless performed as a life-saving measure, is considered a forced sterilization. See for example: Center for Reproductive Rights (2010). Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis; Center for Reproductive Rights, New York. See also: Juan E. Mendez, Special Rapporteur, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd session, UN Doc A/HRC/22/53; See also: Manjoo, R. (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations General Assembly, UN Doc No. A/67/227; See also: Nair, P. (2011) Litigating Against Forced Sterilization if HIV-Positive Women: Recent Developments in Chile and Namibia. Harvard Human Rights Journal, Vol.23, pp.223-231. See also: Frohmader, C. (2013) ‘Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia’. WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia. Prepared for Women with Disabilities Australia (WWDA), Tasmania. ISBN: 978-0-9876035-0-0. [↑](#endnote-ref-6)
7. People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, The Involuntary or Coerced Sterilisation of People with Disabilities in Australia, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, The Involuntary or Coerced Sterilisation of People with Disabilities in Australia, March 2013. Submissions available at: <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions> [↑](#endnote-ref-7)
8. Women With Disabilities Australia (WWDA) [‘WWDA Position Statement 4: Sexual and Reproductive Rights’.](http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_4_-_Sexual_and_Reproductive_Rights_FINAL_WEB.pdf) WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8. [↑](#endnote-ref-8)
9. See: CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), [Female Contraceptive Sterilization](http://wwda.org.au/wp-content/uploads/2013/12/FIGOGuidelines2011.pdf). See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) [Global Bodies call for end to Forced Sterilization: Press Release](http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/), 5 September 2011. [↑](#endnote-ref-9)
10. Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22. [↑](#endnote-ref-10)
11. Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. The UN Special Rapporteur on Torture also clarified that: *“Forced interventions often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.”* See: Juan E. Mendez, Opcit., para 64. In addition, the UN Special Rapporteur on Torture also stated that *“hormone therapy and genital-normalizing surgeries under the guise of so called ‘reparative therapies’… are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.”* See: Juan E. Mendez, Op. Cit., para 76. [↑](#endnote-ref-11)
12. Human Rights Committee, General Comment No 13: The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (18 April 2011) [16], [21]. [↑](#endnote-ref-12)
13. For example, the Children and Young Persons (Care and Protection) Act 1998 (NSW). [↑](#endnote-ref-13)
14. People with Disability Australia, ‘Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture’, (Submission, People with Disability Australia, October 2014), p. 32. [↑](#endnote-ref-14)
15. Senate Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of intersex people in Australia](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index) (2013) Commonwealth of Australia. [↑](#endnote-ref-15)
16. Senate Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of intersex people in Australia](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index) (2013) Commonwealth of Australia. See also: Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of people with disabilities in Australia](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/First_Report)(2013) Commonwealth of Australia. [↑](#endnote-ref-16)
17. See NGO Coalition Factsheet, Equality before the law and supported decision-making, prepared for Australia’s UPR 2015 and recommending Australia withdraw its Interpretative Declaration to Article 12 of the CRPD. [↑](#endnote-ref-17)
18. Disability Rights Now (2012) [CRPD Civil Society Report on Australia](https://pwd.org.au/wp-content/uploads/2019/06/CRPD_Civil_Society_Report_Word.pdf). [↑](#endnote-ref-18)
19. People with Disability Australia, ‘Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture’, (Submission, People with Disability Australia, October 2014) p. 34. See also: Organisation Intersex International Australia, [‘Statement on the Senate Report “Involuntary or Coerced Sterilisation of Intersex People in Australia”’](https://ihra.org.au/24058/statement-senate-report-involuntary-or-coerced-sterilisation-intersex-people/) (29 October 2013). [↑](#endnote-ref-19)
20. Australian Government, [Australian Government response to the Senate Community Affairs References Committee reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Government_Response) (May 2015). [↑](#endnote-ref-20)
21. See for eg: Committee on the Elimination of Discrimination against Women (1991) General recommendation No. 18: Disabled women. UN Doc. No. A/46/38. [↑](#endnote-ref-21)
22. Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]. [↑](#endnote-ref-22)
23. Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/C/DEU/CO/7-8), 3 March 2017, at [23] and [24]; Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/DEU/CO/6), 10 February 2009, at [61] and [62]; Committee on the Elimination of Discrimination against Women, Concluding observations on Ireland (CEDAW/C/IRL/CO/6-7), 3 March 2017, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on France (CEDAW/C/FRA/CO/7-8), 22 July 2016, at [17], [18]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on the Netherlands (CEDAW/C/NLD/CO/6), 18 November 2016, at [21] and [22]; Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]; Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/4-5), 30 October 2015, at [48]; Committee on the Rights of the Child, Concluding observations on Ireland (CRC/C/IRL/CO/3-4), 1 March 2016, at [39], [40]; Committee on the Rights of the Child, Concluding observations on France (CRC/C/FRA/CO/5), 29 January 2016, at [47] and [48]; Committee on the Rights of the Child, Concluding observations on Great Britain and Northern Ireland (CRC/C/GBR/CO/5), 3 June 2016, at [45], [46]; Committee on the Rights of the Child, Concluding observations on New Zealand (CRC/C/NZL/CO/5), 30 September 2016, at [24], [25]; Committee on the Rights of the Child, Concluding observations on South Africa (CRC/C/ZAF/CO/2), 30 September 2016, at [37], [38]. [↑](#endnote-ref-23)
24. Committee against Torture, Concluding observations on France (CAT/C/FRA /CO/7), 10 June 2016, at [34], [35]; Committee against Torture, Concluding observations on Denmark (CAT/C/DNK/CO/6-7), 4 February 2016, at [42]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]. [↑](#endnote-ref-24)
25. Re Carla (Medical procedure) [2016] FamCA 7. See also: Morgan Carpenter, [The Family Court case Re: Carla](https://ihra.org.au/31036/re-carla-family-court/) (Medical procedure) [2016] FamCA 7, OII Australia, 2016. [↑](#endnote-ref-25)
26. Committee on the Elimination of Discrimination against Women (2018) Concluding Observations on the Eighth Periodic Report of Australia, UN Doc, CEDAW/C/AUS/CO/8, para 26. [↑](#endnote-ref-26)
27. Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW): [Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities.](http://wwda.org.au/crpd-cedaw-joint-statement-reprorights/) 29 August 2018. [↑](#endnote-ref-27)
28. See e.g., People with Disability Australia, ‘Submission to the Senate Inquiry into the current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of supports’, 28 August 2015; People with Disability Australia, ‘Submission to the NSW Parliament General Purpose Standing Committee 3, Inquiry into Students with a disability or special needs in New South Wales schools’, March 2017; Children with Disability Australia, ‘Hear Our Voices: Submission to the Senate Inquiry into current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of supports’, August 2015.

    [↑](#endnote-ref-28)
29. See also: [Australian schools failing children with disabilities, Senate report finds](https://www.abc.net.au/7.30/australian-schools-failing-children-with/7092424); ABC TV (15/01/2016) [↑](#endnote-ref-29)
30. Sands, T. (2017), Disabled People’s Organisations Australia (DPO Australia) [Submission to the 2017/2018 Federal Budget](http://dpoa.org.au/2017-18-federal-budget-priorities/). [↑](#endnote-ref-30)
31. Students with disability report that their disability is the main reason they do not attend school. See: Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx). AIHW, Canberra. [↑](#endnote-ref-31)
32. See: Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx). AIHW, Canberra. [↑](#endnote-ref-32)
33. R. Dixon, L. Graham and H. Proctor (2016), “How schools avoid enrolling children with disabilities”, *The Conversation*, 28 January 1-3. [↑](#endnote-ref-33)
34. Schools that only enrol students with special needs. Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx). AIHW, Canberra. [↑](#endnote-ref-34)
35. Students with disability at a mainstream school attract a students with disability loading of 186 per cent of the base per student amount; those at a special school attract a students with disability loading of 223 per cent. See: Senate Standing Committees on Education and Employment (15 January 2016) [Chapter 5: How to better support students with disabilities in schools'](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report/c05) in ['Access to real learning: the impact of policy, funding and culture on students with disability'](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report). [↑](#endnote-ref-35)
36. Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth periodic report of Australia, UN Doc E/C.12/AUS/CO/5, paras 55-56. [↑](#endnote-ref-36)
37. See for eg: Children with Disability Australia (CDA) (2013) [Inclusion in education: Towards equality for students with disability](https://www.cyda.org.au/inclusion-in-education), Written by Dr Kathy Cologon for CDA. See also: [Australian schools failing children with disabilities, Senate report finds](https://www.abc.net.au/7.30/australian-schools-failing-children-with/7092424); ABC TV (15/01/2016) [↑](#endnote-ref-37)
38. Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx). AIHW, Canberra. [↑](#endnote-ref-38)
39. 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination. See: Australian Institute of Health and Welfare (2017) [Disability in Australia: changes over time in inclusion and participation in education](https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx). AIHW, Canberra. [↑](#endnote-ref-39)
40. The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) [Bullying and abuse of school students with disability at alarming levels; Media Release 9 August 2016](https://www.cyda.org.au/cyda-education-survey-2016). See: Australian Broadcasting Corporation (ABC) (16 August 2016) [School investigated after claims boy with autism locked in 'cage'](https://www.abc.net.au/7.30/school-investigated-after-claims-boy-with-autism/7749660). Australian Broadcasting Corporation (ABC) (31 August 2016) [School accused of leaving teen with autism outside on beanbag for whole term](https://www.abc.net.au/7.30/school-accused-of-leaving-teen-with-autism-outside/7803478). The Canberra Times (11 August 2016) [Autism cage details emerge as United Nations investigates abuse of children](https://www.canberratimes.com.au/story/6045738/autism-cage-details-emerge-as-united-nations-investigates-abuse-of-children/). See also: Senate Community Affairs References Committee (November 2015) [Final Report: ‘Violence, abuse and neglect against people with disability in institutional and residential settings](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report). See also: Senate Education and Employment References Committee (2016) [Final Report: Access to real learning: the impact of policy, funding and culture on students with disability](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report) [↑](#endnote-ref-40)
41. See e.g., See: Australian Broadcasting Corporation (ABC) (16 August 2016) [School investigated after claims boy with autism locked in ‘cage’](https://www.abc.net.au/7.30/school-investigated-after-claims-boy-with-autism/7749660). Australian Broadcasting Corporation (ABC) (31 August 2016) [School accused of leaving teen with autism outside on beanbag for whole term](https://www.abc.net.au/7.30/school-accused-of-leaving-teen-with-autism-outside/7803478). The Canberra Times (11 August 2016) [Autism cage details emerge as United Nations investigates abuse of children](https://www.canberratimes.com.au/story/6045738/autism-cage-details-emerge-as-united-nations-investigates-abuse-of-children/). [↑](#endnote-ref-41)
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