



# **Gendering the National Disability Care and Support Scheme**



**WWDA Submission to Stage One of the  
Productivity Commission National Disability  
Care and Support Inquiry**

**August 2010**

# WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry

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## 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. It represents more than 2 million disabled women in Australia and operates as a national disability organisation; a national women's organisation; and a national human rights organisation. 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 is committed to promoting and advancing the human rights and fundamental freedoms of women with disabilities.

Our work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. This rights based approach recognises that equal treatment, equal opportunity, and non-discrimination provide for inclusive opportunities for women and girls with disabilities in society. It also seeks to create greater awareness among governments and other relevant institutions of their obligations to fulfil, respect, protect and promote human rights and to support and empower women with disabilities, both individually and collectively, to claim their rights.



*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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**‘Australia has signed up to the seven core United Nations treaties that protect human rights. The Government believes that Australia can and should live up to its obligations under those treaties.’**

Hon Robert McClelland MP, Attorney-General, 2010 <sup>1</sup>

**“If those who sign agreements such as the Convention on the Elimination of Discrimination against Women, or who endorse the Beijing Platform for Action, do not translate commitments into actions, and are not held to account for these actions, these texts lose credibility. Accountability is essential if the world is to realise women’s rights and gender equality.”**

Ban Ki-Moon, Secretary-General of the United Nations, 2008 <sup>2</sup>

**‘While Australia has a strong record of ratification of human rights treaties, including CEDAW, there remains an ‘implementation gap’ at the domestic level.’**

Australian Human Rights Commission, 2010 <sup>3</sup>

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<sup>1</sup> Commonwealth of Australia (2010) *Australia’s Human Rights Framework*. Attorney-General’s Department, Canberra.

<sup>2</sup> Cited in: UN Development Fund for Women (UNIFEM), (2008) *Progress of the World’s Women 2008/2009: Who Answers to Women? Gender & Accountability*, Accessed 2 August 2009 at: <http://www.unhcr.org/refworld/docid/4a09773a2.html>

<sup>3</sup> Australian Human Rights Commission (2010) *Australia’s Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Independent Report to the Committee on the Elimination of Discrimination against Women. Accessed online July 2010 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>



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# Background

In December 2009, as part of the National Disability Strategy (NDS),<sup>4</sup> the Australian Government announced a Productivity Commission<sup>5</sup> National Inquiry into a Long-term Care and Support Scheme<sup>6</sup> for people with severe and profound disability in Australia, including the establishment of a National Disability Insurance Scheme (NDIS).<sup>7</sup> The need for this National Inquiry was the principal recommendation of the Disability Investment Group (DIG), a group established by the [then] Rudd Labor Government to *'explore innovative funding ideas from the private sector that will help people with disability and their families access greater support and plan for the future'*.<sup>8</sup> The DIG's final report,<sup>9</sup> released in December 2009, proposed a new disability policy framework for Australia, with the central platform being the introduction of an NDIS.

The Productivity Commission's Inquiry into a long-term disability care and support scheme began in April 2010 and will report to Government by July 2011. Amongst other things, the Inquiry has been asked to examine:

- how a scheme should be designed and funded to better meet the long-term needs of people with disability, their families and carers;
- how to determine the people most in need of support, the services that should be available to them, and service delivery arrangements;
- the costs, benefits, feasibility and funding options of alternative schemes;
- how the scheme will interact with the health, aged care, informal care, income support and injury insurance systems;
- its impacts on the workforce;
- how any scheme should be introduced and governed;
- what protections and safeguards should be part of the scheme.

To inform the Inquiry, the Productivity Commission released an Issues Paper in late May 2010, and conducted an initial series of Public forums. Submissions were invited in response to the Issues Paper and Terms of Reference. The Commission is due to release a draft report in February 2011 setting out its draft recommendations to the Australian Government. A further consultative process is scheduled following the release of the Draft Report. The full Terms of Reference for the Inquiry are included in Appendix 1.

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<sup>4</sup> The Draft NDS was released in late July 2010, and is intended to guide government activity and future policy initiatives in creating a more socially inclusive Australia for people with disabilities. More information about the NDS is available online at:

<http://www.fahcsia.gov.au/sa/disability/progserv/govtint/Pages/nds.aspx>

<sup>5</sup> The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.

<sup>6</sup> The Inquiry is being undertaken by the Productivity Commission. More information is available online at:

<http://www.pc.gov.au/projects/inquiry/disability-support>

<sup>7</sup> More information about the NDIS, including background, is available online at: <http://www.ndis.org.au/>

<sup>8</sup> Commonwealth of Australia (2009) *The Way Forward: A New Disability Policy Framework for Australia*. Report of the Disability Investment Group. Accessed online March 2010 at: <http://www.fahcsia.gov.au/sa/disability/progserv/people/Pages/DisabilityInvestmentGroup.aspx>

<sup>9</sup> Commonwealth of Australia (2009) Ibid.

# The Scope of WWDA's Submission

The Productivity Commission Inquiry into Disability Care and Support, in its Terms of Reference (which set the scope of the Inquiry), and its Issues Paper,<sup>10</sup> fails to acknowledge or give any consideration to the issue of gender. This is despite the fact that successive Australian Governments have committed, internationally and domestically, to enshrine gender equality into legislative and policy frameworks, and implement parallel strategies in order to promote gender equality and denounce discrimination against women.

For the purposes of this initial Submission to Stage One of the Productivity Commission Inquiry, WWDA has therefore elected to focus on the critical requirement to ensure that any Disability Care & Support Scheme (DCSS) is *gendered* – consistent with Australia's international obligations to eliminate all forms of discrimination against women with disabilities; to ensure equality between men with disabilities and women with disabilities, and to respect, protect and fulfill the human rights of women with disabilities.

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<sup>10</sup> See: Productivity Commission (2010) *Disability Care and Support: Productivity Commission Issues Paper*. Melbourne, Victoria. Available online at: <http://www.pc.gov.au/projects/inquiry/disability-support>

# Executive Summary

The importance in any new Disability Care & Support Scheme (DCSS) of adhering to the principles and obligations in key human rights conventions to which Australia is a party, has been clearly expressed by the Australian Government.

As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to *gender equality*, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women. In recognition of the fact that women with disabilities face multiple discriminations and human rights violations and are often profoundly more disadvantaged than disabled men, Australia has also agreed to take all appropriate measures, including *focused, gender-specific* measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights.

This Submission details Australia's international and domestic obligations to ensure equality between men and women, and to respect, protect and fulfil the human rights of women with disabilities. In this context, it looks at the key international human rights treaties and instruments to which Australia is a party, and also examines the domestic legislative and policy contexts for the promotion of gender equality. WWDA's Submission argues that these obligations provide the rationale, need, context and framework for a gendered DCSS and reflect Australia's commitment to the promotion of an active and visible policy of mainstreaming a gender perspective into all legislative and policy frameworks, along with the implementation of parallel strategies in order to promote gender equality and denounce discrimination against women.

In the context of these commitments and obligations, there are, therefore, a number of substantive elements which should apply to the design of the DCSS, and which are critical for women and girls with disabilities:

- ❖ Gender must be mainstreamed into all aspects of the DCSS, in recognition that women and girls with disabilities have fewer opportunities, lower status and less power and influence than men and boys with disabilities. Women with disabilities:
  - are poorer and have to work harder than disabled men to secure their livelihoods;
  - have less control over income and assets;
  - bear the responsibility for unpaid work in the private and social spheres;
  - have a smaller share of opportunities for human development;
  - are subject to violence, abuse and intimidation;
  - have a subordinate social position; and,

- are poorly represented in policy and decision-making.<sup>11</sup>

These factors underscore the need for greater understanding about the rationale and policy and program implications for a gendered approach to the design of the DCSS.

- ❖ Gender analysis must be employed in the design of the DCSS in order to demonstrate and acknowledge the different life experiences of disabled women and men that relate to their specific needs, access to and control over resources. Gender analysis of the linkages of these and other factors in the larger social, economic, political and environmental context, must be undertaken.
- ❖ The design of the DCSS should be based on sex-disaggregated data and gender-sensitive information about disabled women and girls. Gender studies should be commissioned to examine particular issues and address information gaps. This information is necessary to identify gender difference and inequality; to design a scheme that meets disabled women's real needs; and to monitor the differential impact of the scheme on disabled women and men.
- ❖ DCSS design interventions must ensure gender equity; that is, fairness of treatment (which is equivalent in terms of rights, benefits, obligations and opportunities) for disabled women according to their needs. Such interventions must take into account the *actual* needs of women with disabilities, including for example, their roles as carers, and as the providers of unpaid labour in the private and social spheres.
- ❖ The DCSS should take a life-cycle approach, and ensure that women and girls with disabilities can access appropriate levels of support that address their long-term needs. The Scheme design must ensure that women with disabilities who are ageing, or who acquire disability in later age, can access the same quality and extent of care and support.
- ❖ The DCSS should include provision for the development of specific programs and targeted interventions for the benefit of disabled women and girls that promote equality and address discrimination.
- ❖ Any means testing for Scheme eligibility must recognise that in many cases, women with disabilities do not have equal access to household income and resources. In determining Scheme eligibility,

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<sup>11</sup> Department for International Development (2002) *Gender Manual: A Practical Guide for Development Policy Makers and Practitioners*. Social Development Division; DFID, London, UK.



including those most in need of support, the DCSS should ensure appropriate coverage for disabled women and girls who:

- are socially excluded;
  - are subject to, and at risk of, violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;
  - experience pervasive poverty;
  - are denied access to education and employment;
  - are subject to violations of their fundamental human rights;
  - are segregated and incarcerated in institutions and other forms of congregate care arrangements.
- 
- ❖ The DCSS must be designed in a way that promotes and maximises flexibility and choice. It needs to be recognised that self-managed funding, for example, may suit some women with disabilities but not others. For some women with disabilities, self-directed funding may lead to increased vulnerability and potential for exploitation and abuse.
  - ❖ The DCSS should operate as a stand-alone Scheme. For example, part of the condition of receiving care and support should not be an insistence on participation in the labour market.
  - ❖ Gender disaggregated indicators must be built into the DCSS design, and monitoring and evaluation mechanisms should include both quantitative and qualitative approaches and measures.
  - ❖ The DCSS should promote the inclusion of women and girls with disabilities in future decision-making, including in governance arrangements. This must include significant resourcing of capacity building initiatives to ensure that disabled women and girls are able to be involved in debates, discussions and consultative processes about DCSS.
  - ❖ The DCSS must adhere to, reflect and implement, Australia's international obligations to ensure gender equality and denounce discrimination against women.

Recognition of the personhood and human rights of women and girls with disabilities is long overdue. Lack of recognition of their needs and experience constitutes a serious form of disrespect which compounds lack of self-esteem and self-worth. Inattention to the rights of women with disabilities in the Disability Care & Support Scheme, only seeks to contribute to the ongoing neglect and pervasive denial of their rights and fundamental freedoms.

# Gender & Disability

Gender affects the equal right of men and women to the enjoyment of their human rights. Gender refers to the social differences and relations between men and women which are learned, vary widely among societies and cultures, and change over time. The term gender does not replace the term sex, which refers exclusively to biological differences between men and women. The term gender is used to analyse the roles, responsibilities, constraints, opportunities and needs of women and men in all areas and in any given social context. Gender roles are learned behaviours in a given society, community or other social group. They condition which activities, tasks and responsibilities are perceived as male or female. Gender roles are affected by age, disability, class, race, ethnicity and religion, and by the geographical, economic and political environment.<sup>12</sup> Gender-based assumptions and expectations generally place women with disabilities at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.

Gender is one of the most important categories of social organisation,<sup>13</sup> yet people with disabilities are often treated as asexual, genderless human beings. This view is borne out in Australian disability policies, which have consistently failed to apply a gender lens. Most have proceeded as though there are a common set of issues - and that men and women experience disability in the same way.<sup>14</sup>

However women with disabilities and men with disabilities have different life experiences due to biological, psychological, economic, social, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with the differences in the social position of women and men. These gendered differences are reflected in the life experiences of women with disabilities and men with disabilities. Women with disabilities face multiple discriminations and are often more disadvantaged than men with disabilities in similar circumstances. Women with disabilities are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination.<sup>15</sup> Women with disabilities face *particular* disadvantages in the areas of education, work and employment, family and reproductive rights, health, violence and abuse. For example:

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<sup>12</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) (2000) *Gender Equality and Equity*. A summary review of UNESCO's accomplishments since the Fourth World Conference on Women (Beijing 1995). UNESCO, Paris, France.

<sup>13</sup> Arnade, S. & Haefner, S. (2006) *Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*. Legal background paper. Published by Disabled Peoples' International (DPI), Berlin.

<sup>14</sup> Gray, G. (2010 draft) *By Women for Women, the Australian women's health movement and public policy*. (forthcoming).

<sup>15</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 27 June 2010]

- women with disabilities experience violence, particularly family violence and violence in institutions, more often than disabled men;<sup>16 17</sup>
- gender-based violence, including domestic/family violence, sexual assault/rape is a cause of disability in women.<sup>18 19</sup> Domestic violence is the leading contributor to death, disability and illness of women in Victoria under the age of 45;<sup>20</sup>
- women and girls with disabilities are often at greater risk than disabled men, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation;<sup>21</sup>
- more women than men are classified as disabled, particularly as ageing populations mean that larger proportions of the elderly are women with disabilities.<sup>22</sup> Women make up 73% of Single Age Pension recipients in Australia.<sup>23</sup> Of all household types in Australia, elderly single women are at the greatest risk of persistent poverty, with more than half of elderly single women living in poverty;<sup>24</sup>
- women with disabilities are less likely to receive service support than disabled men;<sup>25 26</sup>
- while disabled people are much more likely to live in poverty, women with disabilities are likely to be poorer than men with disabilities;<sup>27 28</sup>
- women with disabilities and men with disabilities have different economic opportunities, with disabled women less likely to be in the paid workforce than disabled men. They also have lower incomes from employment than men with disabilities.<sup>29 30 31</sup> In Australia, the gender gap in pay has widened over the last four years.<sup>32</sup> Superannuation savings are directly linked to paid work, and current average superannuation payouts for women are less than half that received by men;<sup>33</sup>

<sup>16</sup> Women With Disabilities Australia (WWDA) (2007b) *'Forgotten Sisters - A global review of violence against women with disabilities'*. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia.

<sup>17</sup> Meekosha, H. (2004) *Gender and Disability*. Entry for the Sage Encyclopaedia of Disability. Available on line at: <http://wwda.org.au/gendis2001.htm>

<sup>18</sup> WWDA (2007b) Op Cit.

<sup>19</sup> Commonwealth of Australia (2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

<sup>20</sup> Cited in: Australian Human Rights Commission (2010) *Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Independent Report to the Committee on the Elimination of Discrimination against Women. Accessed online July 2010 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>21</sup> See Preamble [q] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106.

<sup>22</sup> Meekosha, H. (2004) Op Cit.

<sup>23</sup> Cited in: Australian Human Rights Commission (2010) Op Cit.

<sup>24</sup> Cited in: Australian Human Rights Commission (2010) Op Cit.

<sup>25</sup> See: Australian Institute of Health & Welfare (AIHW) (2009) *Disability support services 2007 – 08*. National data on services provided under the Commonwealth State/Territory Disability Agreement. Disability series. Cat. no. DIS 56.Canberra: AIHW.

<sup>26</sup> Arnade, S. & Haefner, S. (2006) Op Cit.

<sup>27</sup> WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>28</sup> Meekosha, H. (2004) Op Cit.

<sup>29</sup> WWDA (2008) *Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>30</sup> O'Reilly, A. (2007) *The right to decent work of persons with disabilities*. International Labour Office (ILO), Geneva.

<sup>31</sup> Arnade, S. & Haefner, S. (2006) Op Cit.

<sup>32</sup> Cited in: Australian Human Rights Commission (2010), Op Cit.

<sup>33</sup> Cited in: Australian Human Rights Commission (2010), Op Cit.

- gender biases in labour markets have meant that disabled women's productive potential is less effectively tapped than disabled men's and that disabled women have been more concentrated than disabled men in informal, subsistence and vulnerable employment;<sup>34</sup>
- women with disabilities are more likely to be sole parents, to be living on their own, or in their parental family than disabled men;<sup>35</sup>
- women who become disabled after marriage are at higher risk of divorce than disabled men and often experience difficulty maintaining custody of their children;<sup>36</sup>
- women with disabilities are more likely than disabled men, to face medical interventions to control their fertility;<sup>37 38 39</sup>
- women with disabilities experience more extreme social categorisation than disabled men, being more likely to be seen either as hypersexual and uncontrollable, or de-sexualised and inert;<sup>40</sup>
- women with disabilities like other women, share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, caring for children and relatives. Women in Australia spend almost three times as many hours per week looking after children as men; and do two thirds of the unpaid caring and domestic work in Australian households;<sup>41</sup>
- women with disabilities are more exposed to practices which qualify as torture or inhuman or degrading treatment<sup>42</sup> (such as sterilization, forced abortion, violence, forced medication, chemical restraint).

Two million women with disabilities live 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 a group, they experience many of the recognised markers of social exclusion - 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.<sup>43</sup>

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<sup>34</sup> UN Development Fund for Women (UNIFEM) (2008) *Progress of the World's Women 2008/2009: Who Answers to Women? Gender & Accountability*. Available at: <http://www.unhcr.org/refworld/docid/4a09773a2.html> [accessed 2 August 2009]

<sup>35</sup> Meekosha, H. (2004) Op Cit.

<sup>36</sup> Arnade, S. & Haefner, S. (2006) Op Cit.

<sup>37</sup> Brady, S., Briton, J. & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress*. A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available online at <http://www.wwda.org.au/brady2.htm>

<sup>38</sup> WWDA (2009) *Parenting Issues for Women with Disabilities in Australia: A Policy Paper*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>39</sup> Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; *Australian Journal of Family Law*, Vol.22, No.1.

<sup>40</sup> Meekosha, H. (2004) Op Cit.

<sup>41</sup> Cited in: Australian Human Rights Commission (2010), Op Cit.

<sup>42</sup> Committee of Ministers of the Council of Europe (2009) *Declaration: Making gender equality a reality*. 119<sup>th</sup> Session of the Committee of Ministers, Madrid, 12 May 2009.

<sup>43</sup> WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

In Australia, women with disabilities bear a disproportionate burden of poverty, are less likely to be in paid work than other women, disabled men or the population as a whole. There has been no improvement in the unemployment rate of women with disabilities for more than a decade, and where they are employed, women with disabilities experience significant and systemic discrimination.<sup>44</sup> Women with disabilities are less likely than their male counterparts to receive adequate vocational rehabilitation or gain entry to labour market programs. They 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. When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making.<sup>45</sup>

Women with disabilities have difficulty finding accessible 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 (including the use of chemical and physical restraints) and neglect.<sup>46</sup> The rising cost of housing means that women with disabilities, with less financial resources at their disposal than disabled men, are particularly vulnerable to living in insecure or inadequate housing.<sup>47</sup> Women with disabilities and their children are particularly affected by the lack of affordable housing, due to the major gap in overall economic security across the life-cycle, and to their experience of gender-based violence which leads to housing vulnerability, including homelessness.<sup>48</sup>

Women with disabilities are denied their right to freedom from exploitation, violence and abuse – they experience alarmingly high rates of all forms of violence and abuse from a range of perpetrators yet remain excluded from violence prevention legislation, policies, services and supports. They continue to be assaulted, raped and abused at a rate of at least two times greater than other women, and are at greater risk of severe forms of intimate partner violence. Women with disabilities are denied their right to bodily integrity, to control their own bodies and to be free from interventions – evidenced by the practices of forced sterilisation, menstrual suppression, forced contraception and coerced abortion. Compared to other women, disabled women are less likely to receive appropriate health services and are significantly more likely to face medical interventions to control their fertility. Women and girls with disabilities are more likely to be

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<sup>44</sup> WWDA (2010) 'Women With Disabilities & The Human Right to Health: A Policy Paper'. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>45</sup> O'Reilly, A. (2003) 'Employment Barriers for Women with Disabilities' in *The Right to Decent Work of Persons with Disabilities*; IFP/Skills Working Paper No. 14, International Labour Organization (ILO).

<sup>46</sup> WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>47</sup> Cited in: Australian Human Rights Commission (2010), Op Cit.

<sup>48</sup> Australian Human Rights Commission (2010), Op Cit.

unlawfully sterilised than their male counterparts. They are less likely to have children, more likely to experience marriage breakdown and divorce, and more likely to be single parents.<sup>49</sup>

Many women with disabilities are excluded from participating in decisions that affect their lives on a daily basis, particularly for example, as active partners in their own health care. They are often stereotyped as passive, asexual, dependent,<sup>50</sup> compliant,<sup>51</sup> sick, child-like, incompetent and helpless,<sup>52</sup> powerless<sup>53</sup> or insecure.<sup>54</sup> Alternatively, women with developmental disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies, often a justification for their sterilisation.<sup>55</sup> These perceptions, although very different, often result in women with disabilities being denied the right to participate in decision-making processes that affect their lives.

Women with disabilities are denied the right to experience their sexuality, to have sexual relationships and to found and maintain a family. They experience discriminatory attitudes and widely held prejudicial assumptions which question their ability and indeed, their right to experience parenthood. They have their babies and children removed by child welfare authorities without evidence of abuse, neglect and/or parental incapacity, and lose their children in custody disputes simply because they are women with disabilities.<sup>56</sup>

Despite the work of WWDA, women with disabilities in Australia still remain largely invisible and voiceless, often ignored by national policies and laws. Their issues and needs are often overlooked within broader government services and programs. The exclusion of women with disabilities from support services, social and economic opportunities and participation in community life, has been well documented.<sup>57</sup> Women with disabilities have a significantly high level of unmet need for services and support to enable them to live independently and with dignity in the community.<sup>58</sup> They have less access to community health programs, such as breast and cervical screening services than any other group of women, and as a group, are excluded from national women's health policies and programs.

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<sup>49</sup> WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>50</sup> See for eg: Curry, M. et al (2001) Abuse of women with disabilities: An ecological model and review. *Violence Against Women*, Vol. 7, No. 1.

<sup>51</sup> See for eg: Carlson, B. (1997) Mental retardation and domestic violence: An ecological approach to intervention. *Social Work*, Vol.42, No.1.

<sup>52</sup> See for eg: Crawford, D. & Ostrove, J. (2003) Representations of Disability and the Interpersonal Relationships of Women with Disabilities. *Women & Therapy*, Vol. 26, No.3/4.

<sup>53</sup> See for eg: Chang, J. et al (2003) Helping Women with Disabilities and Domestic Violence: Strategies, Limitations and Challenges of Domestic Violence Programs and Services. *Journal of Women's Health*, Vol.12, No.7.

<sup>54</sup> See for eg: Calderbank, R. (2000) Abuse and Disabled People: vulnerability or social indifference? *Disability & Society*, Vol.15, No.3.

<sup>55</sup> WWDA (2007b) Op Cit.

<sup>56</sup> WWDA (2009) *Parenting Issues for Women with Disabilities in Australia: A Policy Paper*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>57</sup> WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

<sup>58</sup> Ibid.

# Key Concepts in Gendering a Disability Care & Support Scheme

**Gender Equality**, equality between men and women, entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female.<sup>59</sup>

The principle of **non-discrimination** is the corollary of the principle of equality. Discrimination against women is *'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'*<sup>60</sup> Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women, which cannot be justified objectively. Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.<sup>61 62</sup>

The concept of **Gender Mainstreaming** was clearly established in 1995, at the Fourth World Conference on Women held in Beijing, as the main global strategy for promoting gender equality. Gender mainstreaming is a strategy which aims to bring about gender equality and advance women's rights by infusing gender analysis, gender-sensitive research, women's perspectives and gender equality goals into mainstream policies, projects and institutions. In addition to targeted interventions to promote women's empowerment,

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<sup>59</sup> International Labour Office (ILO) (2000) *ABC of women workers' rights and gender equality*. ILO, Geneva.

<sup>60</sup> As defined in Article 1 of CEDAW. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 34/180, United Nations, Available at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html>

<sup>61</sup> See para 7 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*.

<sup>62</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 2 June 2010]

it brings the focus on women's issues and gender equality into all policy development, research, advocacy, legislation, resource allocation, planning, implementation and monitoring of programs and projects.<sup>63</sup>

**Gender Analysis** is a gender mainstreaming tool to ascertain the differences between women and men regarding their specific activities, conditions, needs, access to and control over resources, and access to development benefits and decision-making. It studies the linkages of these and other factors in the larger social, economic, political and environmental context. Gender analysis entails, first and foremost, collecting sex-disaggregated data and gender-sensitive information about the population concerned. Gender analysis is the first step in gender-sensitive planning for promoting gender equality.<sup>64</sup> It should be conducted at every step of an intervention, policy or program, including design, implementation and evaluation.<sup>65</sup>

Targeted interventions for gender equality are seen as essential for mainstreaming, and necessary for gender equity. **Gender Equity** means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.<sup>66</sup> The development of specific programs and interventions for the benefit of women that promote equality and address discrimination, are a critical complement to the gender mainstreaming process.<sup>67</sup>

Gender mainstreaming is not a goal in itself, but a means to achieve gender equality. It is a call to Governments and other actors to promote an active and visible policy of mainstreaming a gender perspective in all policies and programs, so that *before decisions are taken*, an analysis is made of the effects on women and men, respectively.<sup>68</sup>

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<sup>63</sup> Association for Women's Rights in Development (2004) Gender Mainstreaming: Can it work for women's rights? *Spotlight*, Number 3, Nov. 2004.

<sup>64</sup> International Labour Office (ILO) (2000) *ABC of women workers' rights and gender equality*. ILO, Geneva.

<sup>65</sup> Son, J. (Ed) (2010) *Gender & Development Glossary, 3<sup>rd</sup> Edition*. Inter Press Service (IPS), Thailand.

<sup>66</sup> Son, J. (Ed) (2010) Op Cit.

<sup>67</sup> Hannan, C. (2003) *Overview on Gender Mainstreaming*. In: United Nations (2003) Economic and Social Commission for Asia and the Pacific (ESCAP) Putting Gender Mainstreaming into Practice. United Nations, ST/ESCAP/2254.

<sup>68</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) (2000) *Gender Equality and Equity*. A summary review of UNESCO's accomplishments since the Fourth World Conference on Women (Beijing 1995). UNESCO, Paris, France.



# The Context & Framework for a Gendered Disability Care & Support Scheme

*‘Gender inequality continues to be a significant problem in Australia.’*

Australian Human Rights Commission, 2010<sup>69</sup>

The equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognised under international law and enshrined in the main international human rights instruments, many to which Australia is a party.<sup>70</sup> As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to gender equality, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women. The reaffirmation of equality of men and women is not sufficient to meet the obligation to eliminate all forms of discrimination against women with disabilities. International human rights law requires States to take all appropriate measures (including positive steps) to ensure that women with disabilities can enjoy equal rights in practice.<sup>71</sup> The equal right of men and women to the enjoyment of economic, social and cultural rights, for example, is a mandatory and immediate obligation of States parties.<sup>72</sup>

## Gender Equality - International Commitments

In 1983, the Australian Government ratified the United Nations **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, one of the nine core international human rights treaties.<sup>73</sup> CEDAW sets out a range of civil, cultural, economic, political, and social rights for women and covers a variety of situations in which women face discrimination, including in politics, the economy, the family, labour, education and health. CEDAW also establishes an agenda of action for putting an end to sex-based discrimination. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women

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<sup>69</sup> Australian Human Rights Commission (2010) *Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Independent Report to the Committee on the Elimination of Discrimination against Women*. Accessed online July 2010 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>70</sup> See for eg: the UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III); UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 2200A (XXI); UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 2200A (XXI); UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 34/180; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 44/25; UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

<sup>71</sup> See CEDAW, Article 2.

<sup>72</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <http://www.unhcr.org/refworld/docid/4538838e10.html> [accessed 22 June 2010]

<sup>73</sup> The nine core human rights treaties are: *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD); *International Covenant on Civil and Political Rights* (ICCPR); *International Covenant on Economic, Social and Cultural Rights* (ICESCR); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); *Convention on the Rights of the Child* (CRC); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW); *International Convention for the Protection of All Persons from Enforced Disappearance* (not yet in force); *Convention on the Rights of Persons with Disabilities* (CRPD). Australia is a party to seven of these treaties (the exceptions being ICRMW and International Convention for the Protection of All Persons from Enforced Disappearance).

in order to improve their position to one of de jure as well as de facto equality with men.<sup>74</sup> De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.<sup>75</sup>

In pursuit of equality, CEDAW permits and provides for special (or differential) treatment of women:

*.....the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.*<sup>76</sup>

The CEDAW Committee<sup>77</sup> has regularly referred to double or multiple discrimination, in which one's experience of gender may be influenced by other factors, such as disability, race, religion, nationality, poverty, or age.<sup>78</sup> In particular the Committee has expressly stated that:

*Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.*<sup>79</sup>

And further stated:

*States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women....Where necessary, such measures should be directed at women subjected to multiple discrimination.....*<sup>80</sup>

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<sup>74</sup> See para 4 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*.

<sup>75</sup> See para 7 of CESCR General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights).

<sup>76</sup> See para 8 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*.

<sup>77</sup> The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) is an expert body established in 1982 and is composed of 23 experts on women's issues from around the world. Its role is to monitor performance of States parties in aligning national laws and practices with CEDAW provisions.

<sup>78</sup> UN High Commissioner for Refugees (2009) *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, August 2009, PPLAS/2009/02, available at: <http://www.unhcr.org/refworld/docid/4a8aa8bd2.html> [accessed 18 June 2010].

<sup>79</sup> See para 12 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*.

<sup>80</sup> See para 38 of CEDAW General Recommendation 25: *Article 4, paragraph 1, of the Convention (Temporary Special Measures)*.

CEDAW General Recommendation 18 '*Disabled Women*',<sup>81</sup> passed in 1991, makes it clear that the Convention covers the human rights of women with disabilities, and makes explicit the need for Governments to take *special measures* to address the needs of women with disabilities.

To meet its obligations under CEDAW, the Australian Government is therefore, required to:

- ensure that there is no direct or indirect discrimination against women in Australian laws and that women are protected against discrimination. This includes the need to enshrine gender equality into domestic legislation;
- improve the de-facto position of women through concrete and effective policies and programmes;
- address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through acts by individuals but also in law, and legal and societal structures and institutions.<sup>82</sup>

The **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, is the most recent international human rights treaty ratified by the Australian Government, entering into force in Australia in 2008. The Convention promotes and protects the human rights of persons with disabilities in economic, social, political, legal and cultural life.

As with other international human rights treaties, the CRPD imposes three distinct obligations on States Parties: the obligation to respect (meaning States parties must refrain from interfering with the enjoyment of the rights of persons with disabilities); the obligation to protect (States parties must prevent violations of these rights by third parties) and, the obligation to fulfil (States parties must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realisation of these rights).

In acknowledging the impact of multiple discriminations caused by the intersection of gender and disability, and in recognition of the fact that women with disabilities are often profoundly more disadvantaged than men with disabilities in similar situations,<sup>83</sup> leading to the denial of rights, opportunities and resources, the CRPD contains a stand alone Article on 'Women with Disabilities'. This Article prioritises women with disabilities as a group warranting *specific* attention, and calls on Governments to take positive actions and

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<sup>81</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 16, 17 and 18*, adopted at the Tenth Session, 1991 (contained in Document A/46/38), 1991, A/46/38, available at: <http://www.unhcr.org/refworld/docid/453882a322.html> [accessed 2 May 2008]

<sup>82</sup> UN High Commissioner for Refugees (2009) *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, August 2009, PPLAS/2009/02, available at: <http://www.unhcr.org/refworld/docid/4a8aa8bd2.html> [accessed 18 June 2010].

<sup>83</sup> Stubbs, D. & Tawake, S. (2009) *Pacific sisters with disabilities: At the intersection of discrimination*, Suva: UNDP Pacific Centre.

measures to ensure that women and girls with disabilities enjoy *all* human rights and fundamental freedoms.<sup>84 85</sup>

The CRPD expressly articulates equality between men and women as one of the key principles underpinning the Convention. This principle requires States to promote equality between men and women and to combat inequality when implementing the provisions of the Convention. In addition to Article 6 (Women With Disabilities), issues of particular relevance to women with disabilities are addressed throughout the various articles of the CRPD, including for example Freedom from exploitation, violence and abuse (Article 16); Health (Article 25) and Adequate Standard of Living (Article 28).

In meeting its obligations under the CRPD, the Australian Government has a commitment to ensure that Article 6 (Women with Disabilities) is implemented at the domestic level. This includes ensuring that national policies, frameworks and strategies make *explicit* recognition of the impact of multiple discriminations caused by the intersection of gender and disability, and include *focused, gender-specific* measures to ensure that women with disabilities experience full and effective enjoyment of their human rights. The need to incorporate a gender perspective in *all* efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities, is expressly stated in the CRPD.<sup>86</sup>

The **International Covenant on Economic, Social and Cultural Rights (CESCR)** was ratified by Australia in 1975. The CESCR commits States Parties to work toward the granting of economic, social, and cultural rights to individuals, including labour rights and rights to health, education, and an adequate standard of living. The CESCR protects human rights that are fundamental to the dignity of every person. In particular, Article 3 of this Covenant provides for the equal right of men and women to the enjoyment of rights it articulates. The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.<sup>87</sup> CESCR imposes three levels of obligations on States parties - the obligation to respect, to protect and to fulfil. The obligation to *respect* includes the requirement of States parties to take into account the effect of apparently gender-neutral laws, policies and programmes and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality.<sup>88</sup> The obligation to *protect* requires States parties to take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of

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<sup>84</sup> See Article 6 [Women With Disabilities] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <http://www.wvda.org.au/hrcore1.htm>

<sup>85</sup> United Nations Office of the High Commissioner for Human Rights (2007) *From Exclusion to Equality: Realizing the rights of persons with disabilities*. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. United Nations, Geneva.

<sup>86</sup> See Preamble [q] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106.

<sup>87</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <http://www.unhcr.org/refworld/docid/4538838e10.html> [accessed 22 June 2010]

<sup>88</sup> See para 18 of CESCR General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights).

inferiority or superiority of either of the sexes, and stereotyped roles for men and women.<sup>89</sup> Amongst other things, the obligation to *fulfill* requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights on a basis of equality. Such steps include, for example, the design and implementation of policies and programmes to give long-term effect to the economic, social and cultural rights of both men and women on the basis of equality. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources.<sup>90</sup>

The **International Covenant on Civil and Political Rights (ICCPR)** ratified by Australia in 1980, commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, family rights, electoral rights and rights to due process and a fair trial. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. Consequently, States should ensure that men and women share equally in the enjoyment of all rights provided for in the Covenant. The obligation to ensure to all individuals the rights recognised in the Covenant, requires that States parties take all necessary steps to enable every person to enjoy those rights. These steps include the *removal* of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights, and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection, but also *positive* measures in *all areas* so as to achieve the effective and equal empowerment of women.<sup>91</sup>

Australia ratified the **Convention on the Rights of the Child (CRC)** in 1990. The CRC is one of the nine core international human rights treaties. It sets out the civil, political, economic, social, and cultural rights of children. The Convention generally defines a child as any human being under the age of eighteen, unless an earlier age of majority is recognised by a country's law. Article 2 of the CRC requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States parties to take appropriate measures to prevent all forms of discrimination, including on the ground of disability. This explicit mention of disability as a prohibited ground for discrimination recognizes that children with disabilities belong to one of the most

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<sup>89</sup> See para 19 of CESCR General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights).

<sup>90</sup> See para 21 of CESCR General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 of the International Covenant on Economic, Social and Cultural Rights)..

<sup>91</sup> International Covenant on Civil and Political Rights (CCPR) *General Comment 28, Equality of rights between men and women (article 3)*; CCPR/C/21/Rev.1/Add.10, General Comment No. 28, 2000.

vulnerable groups of children, and that factors such as gender can increase this vulnerability.<sup>92</sup> CRC General Comment 9 (The rights of children with disabilities)<sup>93</sup> expressly states that:

*Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.*<sup>94</sup>

The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** is another of the international human rights treaties to which Australia is a party, having ratified CAT in 1989. CAT General Comment 2 emphasises that gender is a key factor in implementation of the Convention. Being female intersects with other identifying characteristics (such as disability) to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include for example, deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. States Parties to CAT are therefore required to ensure the protection of women especially at risk of torture or ill-treatment, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.<sup>95</sup>

In adopting the **Beijing Declaration and Platform for Action (BPFA)**<sup>96</sup> the Australian Government committed to the promotion of an active and visible policy of mainstreaming a gender perspective into all policies and programs, including with regard to human rights of women. The Platform also emphasised that the goal of full realisation of human rights for all required explicit attention to the systematic and systemic nature of discrimination against women.<sup>97</sup> The commitment to the BPFA was further reaffirmed by member states in the outcome document of the **Twenty-third Special Session of the UN General Assembly** in 2000. This meant that the Australian Government committed to *further* actions and initiatives to accelerate the implementation of the BPFA and to ensure that commitments for gender equality are fully realized. This included the need to ensure that, as a *priority*, women's needs, interests, concerns, experiences and priorities are an integral dimension of the design, implementation, national monitoring, and follow-up and

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<sup>92</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9, available at: <http://www.unhcr.org/refworld/docid/461b93f72.html> [accessed 3 March 2010]

<sup>93</sup> Each of the UN human rights treaty-monitoring bodies periodically publishes documents known as General Comments or General Recommendations, which provide guidelines for States Parties on the interpretation of specific aspects of the human rights treaty of concern to the particular committee. General Comments clarify the content of Covenant rights in more detail, may outline potential violations of those rights and offer advice to states parties on how best to comply with their obligations under the treaties.

<sup>94</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9, available at: <http://www.unhcr.org/refworld/docid/461b93f72.html> [accessed 3 March 2010].

<sup>95</sup> UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, available at: <http://www.unhcr.org/refworld/docid/47ac78ce2.html> [accessed 3 June 2010]

<sup>96</sup> The *Beijing Declaration and Platform for Action* was adopted by member States at the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995.

<sup>97</sup> United Nations (1998) *Integrating the gender perspective into the work of United Nations human rights treaty bodies*. Report by the Secretary-General. HRI/MC/1998/6, United Nations, Geneva.



evaluation, of all actions in all areas.<sup>98</sup> The need for all policy making and programming to include and address the needs of women with disabilities, including the need for special measures, is also clearly articulated.

The **United Nations Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights based Society in Asia and the Pacific (BMF)**, was adopted by the Australian Government in 2002, as the defining policy guideline to promote the full participation and equality of people with disabilities in the Asia Pacific region, during the decade 2002-2012.<sup>99</sup> In acknowledging that women with disabilities experience discrimination to a greater extent than disabled men, the BMF identifies 'women with disabilities' as one of seven priority areas for action. In 2007, in recognition that Governments needed to strengthen their efforts to implement the BMF, ministerial-level representatives of countries in the region developed **Biwako Plus Five**,<sup>100</sup> a supplement to the BMF designed to accelerate implementation of the BMF by 2012. Biwako Plus Five provides additional actions in the seven priority areas, along with additional key strategies. In relation to the priority area of 'women with disabilities' Biwako Plus Five *specifically* requires Governments to:

- Promote the inclusion of gender perspectives in disability-relevant policies, programmes, plans and legislation;
- Promote the inclusion of the perspectives of women with disabilities in the development of gender-relevant policies, programmes, plans and legislation;
- Promote the participation of women with disabilities and organizations of women with disabilities in the processes of developing both gender-relevant and disability-related policies, programmes, plans and legislation;
- Recognize that women and girls with disabilities are subject to multiple discrimination and, in this regard..... should support the economic, social, cultural and political empowerment of women with disabilities, in particular through leadership and management training on a sustained basis. Governments should take appropriate measures to address discrimination against women with disabilities in all matters, including those relating to marriage, family, parenthood and relationships, to ensure their full development, advancement and empowerment.

Australia is a party to fifty-five Conventions (forty seven in force) of the International Labour Organisation (ILO),<sup>101</sup> including three of the four key equality Conventions. These are: **Discrimination in respect of Employment and Occupation** (ILO Convention No 111); **Equal Remuneration for Men and Women Workers**

<sup>98</sup> See paras 52 & 53 - - United Nations General Assembly (2000) *Resolution adopted by the General Assembly: Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. Twenty-third special session, A/RES/S-23/3.

<sup>99</sup> United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (2002) *Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights based Society in Asia and the Pacific*. E/ESCAP/APDDP/4/Rev.1.

<sup>100</sup> United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (2007) *Biwako Plus Five: Further Efforts Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific*. As adopted by the High-level Intergovernmental Meeting on the Midpoint Review of the Asian and Pacific Decade of Disabled Persons, 2003-2012, on 21 September 2007. E/ESCAP/APDDP(2)/2.

<sup>101</sup> The International Labour Organization (ILO) is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues. For more information, go to: [http://www.ilo.org/global/About\\_the\\_ILO/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/lang--en/index.htm)

**for Work of Equal Value** (ILO Convention No 100); and **Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities** (ILO Convention No 156).

The ILO has however, found that states parties to these Conventions, often fail to ensure their implementation:

*women still face multiple forms of discrimination in the labour market..... there continues to be a gap between the rights set out in national and international standards and the real situation of workers. These rights must be made effective in practice.*<sup>102 103</sup>

The ILO strongly advocates for gender mainstreaming in the application of International Labour Standards, and maintains that such an approach:

- helps to ensure that women and men have equal access to benefits derived from the Conventions;
- recognises the needs, experiences and interests of both women and men;
- enables stakeholders to manage change;
- demonstrates a willingness to undertake differential measures to respond to the needs and interests of men and women; and
- advocates equality brought about by the implementation of Conventions.

The Australian Government is also committed to the implementation of the **Millennium Development Goals (MDGs)** - agreed targets set by the world's nations to reduce poverty by 2015. Gender equality is central to achieving these goals. Actively supporting women's full participation in economic, social and political life is a key factor in reducing poverty, enhancing economic growth and democratic governance, and increasing the well-being of women, girls and their families.<sup>104</sup>

## Gender Equality - The Domestic Context

Equality between men and women is a principle that lies at the heart of a fair and productive society. It is also the key goal of the **Sex Discrimination Act 1984 (SDA)**, which aims to eliminate discrimination and sexual harassment and promote greater equality in all aspects of the Australian community. The SDA makes unlawful discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy in many areas of public life including employment, education and the provision of goods, services or facilities. The SDA makes it unlawful to discriminate on the ground of family responsibilities *only* in the case of dismissal from employment. The Act also gives effect to certain provisions of CEDAW. Following a Senate Review in

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<sup>102</sup> International Labour Organization (ILO) (2006) *Gender Equality and Decent Work: Selected ILO Conventions and Recommendations Promoting Gender Equality*. Bureau for Gender Equality and International Labour Standards Department, ILO, Geneva.

<sup>103</sup> International Labour Organization (ILO) (2009) *Remove the obstacles! On the right track to equality*. Background brochure of the ILO public awareness raising campaign on "Gender equality at the heart of decent work". Accessed online at: <http://www.ilo.org/public/english/gender/index.html>

<sup>104</sup> Commonwealth of Australia (2010) *Promoting Gender Equality through the Millennium Development Goals*. Australian Agency for International Development (AusAID), Canberra.



2008 of the effectiveness of the SDA in eliminating discrimination and promoting gender equality, the Australian Government introduced the **Sex Discrimination Amendment Bill 2010** into the Parliament in June 2010. The Bill amends the SDA to: extend protections from discrimination on the grounds of family responsibilities to both women and men in all areas of work; provide improved protection from sexual harassment for students and workers; ensure protections from sex discrimination apply equally to women and men; and establish breastfeeding as a separate ground of discrimination.<sup>105</sup>

The **Equal Opportunity for Women in the Workplace Act 1999 (EOWW Act)** creates positive obligations for employers to develop and implement workplace programs to ensure women have equality of opportunity. Employers are required to report annually on these programs. These obligations apply to employers of 100 people or more, and higher education institutions that are employers. The EOWW Act also establishes the Equal Opportunity for Women in the Workplace Agency (EOWA) which monitors compliance with these obligations.<sup>106</sup> A Review of the effectiveness and efficiency of the EOWW Act is currently being undertaken by the Australian Government. Preliminary findings have included the need for the Act to be improved to better capture issues for women with disabilities.<sup>107</sup>

In April 2010, the Australian Government released **Australia's Human Rights Framework**<sup>108</sup> which outlines a range of key measures to further protect and promote human rights in Australia. The Framework is based on five key principles and focuses on:

- reaffirming a commitment to Australia's human rights obligations;
- the importance of human rights education;
- enhancing Australia's domestic and international engagement on human rights issues;
- improving human rights protections including greater parliamentary scrutiny; and
- achieving greater respect for human rights principles within the community.

The Framework reaffirms Australia's commitment to the seven core human rights treaties to which it is a party, and acknowledges that these treaties reflect international agreement about the fundamental values that make up human rights protected under the treaties. Equality between men and women and the elimination of discrimination against women are recognized as fundamental human rights, and are enshrined in most of the core international human rights treaties. The Australian Government has expressly articulated the view that '*Australia can and should live up to its obligations under those treaties*'.<sup>109</sup>

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<sup>105</sup> McClelland, R. (2010) *Sex Discrimination Amendment Bill 2010: Second Reading*. House debates [House of Representatives] Thursday, 24 June 2010. Accessed on line July 2010 at: <http://www.openaustralia.org/debates/?id=2010-06-24.15.1>

<sup>106</sup> Cited in: Standing Committee on Legal and Constitutional Affairs (2009) *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, Commonwealth of Australia, Canberra.

<sup>107</sup> KPMG (2010) *Review of the Equal Opportunity for Women in the Workplace (EOWW) Act 1999 Consultation Report*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

<sup>108</sup> Commonwealth of Australia (2010) *Australia's Human Rights Framework*. Attorney-General's Department, Canberra.

<sup>109</sup> Ibid.

The Australian Government's **National Disability Strategy (NDS)** was released in late July 2010. It sets out a ten year national plan for improving life for Australians with disability, their families and carers. The purpose of the National Disability Strategy is to:

- establish a high level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy
- drive improved performance of mainstream services in delivering outcomes for people with disability
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability
- provide national leadership toward greater inclusion of people with disability.

The NDS covers six key policy areas<sup>110</sup> and recognizes that sex, race and age can significantly impact on the experience of disability. It specifically acknowledges that women and men with disability often face different challenges by reason of their sex, or experience the same issues in different ways, and therefore need different supports.<sup>111</sup>

The NDS aims to ensure that the principles underpinning the Convention on the Rights of Persons with Disabilities (CRPD) are incorporated into policies and programs affecting people with disability, their families and carers. As outlined earlier in this paper, 'Equality between men and women' (a fundamental human right in itself) is one of the key principles underpinning the CRPD.

In June 2010, Australia's Sex Discrimination Commissioner,<sup>112</sup> Elizabeth Broderick, released her **Gender Equality Blueprint 2010**. The Blueprint sets out key reforms and recommendations in five priority areas which significantly affect both the public and private lives of women and men in Australia. Its development stemmed from the Commissioner's *National Listening Tour*<sup>113</sup> in 2008, which involved extensive consultations with women and men across the country. The Commissioner's key finding of the consultations was that Australia's progress towards the goal of gender equality had stalled.<sup>114</sup> Consequently, one of the five priority areas of the Blueprint is to '*strengthen gender equality laws, agencies and monitoring*'. This includes key strategies to meet the following recommendations:

- to build effective gender equality machinery in Australia;
- to strengthen the Sex Discrimination Act to promote substantive gender equality;

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<sup>110</sup> The six key policy areas identified in the NDS are: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and wellbeing.

<sup>111</sup> Council of Australian Governments (2010) *2010–2020 National Disability Strategy*. Accessed online July 2010 at: [www.alp.org.au/agenda/more---policies/draft-national-disability-strategy/](http://www.alp.org.au/agenda/more---policies/draft-national-disability-strategy/)

<sup>112</sup> The Sex Discrimination Commissioner leads the work of the Australian Human Rights Commission to address gender-based discrimination, sexual harassment and other barriers to gender equality in Australia. See: [www.hreoc.gov.au/sex\\_discrimination/index.html](http://www.hreoc.gov.au/sex_discrimination/index.html)

<sup>113</sup> Broderick, E. (2008) *Gender equality: What matters to Australian women and men*. The Listening Tour Community Report Available online at: [http://www.hreoc.gov.au/sex\\_discrimination/listeningtour/index.html](http://www.hreoc.gov.au/sex_discrimination/listeningtour/index.html)

<sup>114</sup> Broderick, E. (2010) *Gender Equality Blueprint 2010*. Australian Human Rights Commission, Sydney.

- to ensure women experience equal outcomes in the workplace;
- to genuinely chart Australia's progress on gender equality; and
- to promote and protect all human rights, including the right to equality.

The Australian Government is currently in the process of developing a new **National Women's Health Policy (NWHP)**<sup>115</sup> in order to: *'improve the health and wellbeing of all women in Australia, especially those with the highest risk of poor health; encourage the health system to be more responsive to the needs of women; actively promote the participation of women in health decision making and management; and to promote health equity among women.'*<sup>116</sup> The NWHP Consultation Discussion Paper,<sup>117</sup> released by the Government to inform development of the NWHP, identifies women with disabilities as a group experiencing major inequalities in health status, and further identifies the critical importance of the participation of socially excluded groups of women in health as a *'key way of making the health system more responsive to their needs'*.<sup>118</sup>

The Council of Australian Governments (COAG)<sup>119</sup> is currently developing a **National Plan to Reduce Violence against Women and their Children**, including an initial three-year action plan, during 2010.<sup>120</sup> The COAG National Action Plan will be informed by *Time for Action*, the final report of the *National Council to Reduce Violence Against Women and their Children*. This report adopts an intersectional analysis to ensure that gender equality and factors such as disability, race, ethnicity, sexuality, and class, are taken into account. It acknowledges that compared to non-disabled women, women with disabilities experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators, yet programs and services for this group either do not exist or are extremely limited.<sup>121</sup>

The Australian Government has unequivocally stated it's committed to strengthening the provision of gender analysis, advice and mainstreaming across Government. The **Minister for the Status of Women** works with other Government Ministers to *'ensure that women's issues and gender equality are taken into consideration in policy and program development and implementation.'* The **Office for Women (OFW)** supports the Minister in this role, and is the central source of advice for Government agencies on the impact of

<sup>115</sup> The new National Women's Health Policy (NWHP) is due to be released in late 2010. More information on the NWHP is available online at: <http://www.health.gov.au/womenshealthpolicy>

<sup>116</sup> Roxon, N. (2009) cited in Commonwealth of Australia (2009) *Development of a new national women's health policy: Consultation discussion paper*. Australian Government Department of Health & Ageing. Canberra.

<sup>117</sup> Commonwealth of Australia (2009) *Development of a new national women's health policy: Consultation discussion paper*. Australian Government Department of Health & Ageing. Canberra.

<sup>118</sup> Ibid.

<sup>119</sup> The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association (ALGA). The role of COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments.

<sup>120</sup> Council of Australian Governments (COAG) (2009) *COAG Communique*. Council of Australian Governments' Meeting, 7 December 2009. Accessed online March 2010 at: [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2009-12-07/index.cfm?CFID=575817&CFTOKEN=12861573](http://www.coag.gov.au/coag_meeting_outcomes/2009-12-07/index.cfm?CFID=575817&CFTOKEN=12861573)

<sup>121</sup> Commonwealth of Australia (2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

Government policies and programs for Australian women. The OFW asserts that it has strengthened its role in advising Government agencies on the gender dimensions of policy and program development and implementation. Its role includes the provision of advice on the gender dimensions of policy submissions to Cabinet Ministers, to ensure gender equality is considered in the early stages of policy development.<sup>122</sup>

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<sup>122</sup> See: Office for Women: *Whole of Government Influence*, at: <http://www.fahcsia.gov.au/sa/women/overview/ofw/Pages/WogInfluence.aspx>

## Conclusion

As a member State of the United Nations, and as a party to a number of human rights conventions and instruments which create obligations in relation to *gender equality*, Australia has committed to eliminate all forms of discrimination against women and to ensure equality between men and women. In recognition of the fact that women with disabilities face multiple discriminations and human rights violations and are often profoundly more disadvantaged than disabled men, Australia has also agreed to take all appropriate measures, including *focused, gender-specific* measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights.

This Submission has detailed Australia's international and domestic obligations to ensure equality between men and women, and to respect, protect and fulfil the human rights of women with disabilities. In this context, it has looked at the key international human rights treaties and instruments to which Australia is a party, and also examined the domestic legislative and policy contexts for the promotion of gender equality.

WWDA's Submission has argued that these obligations provide the rationale, need, context and framework for a gendered Disability Care & Support Scheme (DCSS) and reflect Australia's commitment to the promotion of an active and visible policy of mainstreaming a gender perspective into all legislative and policy frameworks, along with the implementation of parallel strategies in order to promote gender equality and denounce discrimination against women.

# Appendix 1: Terms of Reference

## Productivity Commission Inquiry into Disability Care and Support

I, Nick Sherry, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby refer a national disability long-term care and support scheme in Australia to the Productivity Commission for inquiry and report by 31 July 2011. The Commission will begin the inquiry in April 2010.

### Background

The Australian Government is committed to developing a National Disability Strategy to enhance the quality of life and increase economic and social participation for people with disability and their carers.

The Commonwealth, along with the States and Territories, has a major investment in disability specific support. However, there remains a significant level of unmet demand for disability services which impacts upon the lives of people with disability, their families and carers. Demographic change and the anticipated decline in the availability of informal care are expected to place further pressure on the existing system over the coming decades.

While Australia's social security and universal health care systems provide an entitlement to services based on need, there is currently no equivalent entitlement to disability care and support services.

The Government is committed to finding the best solutions to improve care and support services for people with disability. An exploration of alternative approaches to funding and delivering disability services with a focus on early intervention and long-term care will be an important contribution to the National Disability Strategy.

### Scope of the review

The Productivity Commission is requested to undertake an inquiry into a National Disability Long-term Care and Support Scheme. The inquiry should assess the costs, cost effectiveness, benefits, and feasibility of an approach which:

- provides long-term essential care and support for eligible people with severe or profound disability, on an entitlement basis and taking account the desired outcomes for each person over a lifetime
- is intended to cover people with disability not acquired as part of the natural process of ageing
- calculates and manages the costs of long-term care and support for people with severe and profound disability
- replaces the existing system funding for the eligible population
- ensures a range of support options is available, including individualised approaches
- includes a coordinated package of care services which could include accommodation support, aids and equipment, respite, transport and a range of community participation and day programs available for a person's lifetime
- assists the person with disability to make decisions about their support
- provides support for people to participate in employment where possible.

In undertaking the inquiry, the Commission is to:

1. Examine a range of options and approaches, including international examples, for the provision of long-term care and support for people with severe or profound disability.  
The Commission is to include an examination of a social insurance model on a no-fault basis, reflecting the shared risk of disability across the population. The Commission should also examine other options that provide incentives to focus investment on early intervention, as an adjunct to, or substitute for, an insurance model.
2. The Commission is to consider the following specific design issues of any proposed scheme:
  - eligibility criteria for the scheme, including appropriate age limits, assessment and review processes
  - coverage and entitlements (benefits)
  - the choice of care providers including from the public, private and not-for-profit sectors
  - contribution of, and impact on, informal care
  - the implications for the health and aged care systems
  - the interaction with, or inclusion of, employment services and income support
  - where appropriate, the interaction with:
    - national and state-based traumatic injury schemes, with particular consideration of the implications for existing compensation arrangements
    - medical indemnity insurance schemes.

3. Consider governance and administrative arrangements for any proposed scheme including:
  - the governance model for overseeing a scheme and prudential arrangements
  - administrative arrangements, including consideration of national, state and/or regional administrative models
  - implications for Commonwealth and State and Territory responsibilities
  - the legislative basis for a scheme including consideration of head of power
  - appeal and review processes for scheme claimants and participants.
4. Consider costs and financing of any proposed scheme, including:
  - the costs in the transition phase and when fully operational, considering the likely demand for, and utilisation under different demographic and economic assumptions
  - the likely offsets and/or cost pressures on government expenditure in other systems as a result of a scheme including income support, health, aged care, disability support system, judicial and crisis accommodation systems
  - models for financing including: general revenue; hypothecated levy on personal taxation, a future fund approach with investment guidelines to generate income
  - contributions of Commonwealth and State and Territory governments
  - options for private contributions including copayments, fees or contributions to enhance services.
5. Consider implementation issues of any proposed scheme, including:
  - changes that would be required to existing service systems
  - workforce capacity
  - lead times, implementation phasing and transition arrangements to introduce a scheme with consideration to service and workforce issues, fiscal outlook, and state and territory transitions.

The Government will establish an Independent Panel of persons with relevant expertise to act in an advisory capacity to the Productivity Commission and the Government, and report to Government throughout the inquiry.

The Commission is to seek public submissions and to consult as necessary with the Independent Panel, State and Territory governments, government agencies, the disability sector and other relevant experts and stakeholders.

Nick Sherry  
Assistant Treasurer  
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