

17 October 2023

Committee Secretariat
Parliamentary Joint Committee on Human Rights
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Delivered by email to human.rights@aph.gov.au

Dear Committee Members

Response to questions on notice

Thank you for the opportunity to appear at the Parliamentary Joint Committee on Human Rights' (the PJCHR) public hearing on 27 September 2023 in relation to its *Inquiry into Australia's Human Rights Framework* (the Human Rights Inquiry).

We are writing to respond to the PJCHR's questions on notice, which were made during the public hearing and in a subsequent email dated 5 October 2023.

Question 1(a): Has the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (the DRC) commented on Australia's interpretative declarations to the *Convention on the Rights of Persons with Disabilities* (CRPD)?

As discussed, Australia has made three interpretative declarations to the CRPD. However, the DRC only substantively discussed the interpretative declaration to Article 12 (equality before the law).¹ Four of the six Commissioners supported a recommendation to withdraw

¹ Australia's interpretative declaration to Article 12 states that: Australia recognises that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards.

the Article 12 interpretative declaration (**recommendation 6.20**). These four Commissioners agreed that:

...withdrawal of the interpretative declaration will have a strong symbolic impact and centre a human rights focus in the shift towards supported decision-making in Australia. They consider it will promote legal, policy and practice reform by focussing attention on a principled approach to supported decision-making and the need to centre the human rights of people with disability. It will also act as further incentive to implement our recommendations and move away from current systems which deny the autonomy of people with disability.²

PWDA supports this recommendation and rationale. We also recommend that Australia removes its interpretative declarations to Article 17 (protecting the integrity of the person) and Article 18 (liberty of movement and nationality). The interpretative declaration to Article 17 purports that Article 17 allows for the compulsory assistance or treatment of people with disability. The interpretative declaration to Article 18 purports that Article 18 does not impact on Australia's migration health requirements, which currently discriminate against people with disability.

We note that our position to remove all three interpretative declarations accords with the Committee on the Rights of Persons with Disabilities' recommendations in its 2019 *Concluding observations on the combined second and third reports of Australia*.³

Question 1(b): Are there any findings or advice from the DRC that may be relevant to the PJCHR?

The DRC recommended that the Australian Government should enact a Disability Rights Act to give effect to Australia's CRPD obligations (**Recommendations 4.1 - 4.2**). The DRC acknowledged the Human Rights Inquiry and the Australian Human Rights Commission's (AHRC) human rights law reform proposal.⁴ However, it concluded that a stronger, more

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) (2023) *Final Report*, vol 6, 224.

³ Committee on the Rights of Persons with Disabilities (2019) *Concluding observations on the combined second and third periodic reports of Australia*, United Nations.

⁴ DRC (n 2), vol 4, 107.

comprehensive framework that explicitly addresses the needs of people with disability is required.⁵

PWDA's position

We agree that the AHRC's human rights law reform proposal is insufficient for people with disability, because it does not expressly incorporate the CRPD. Instead, it relies on the CRPD as a mere interpretative tool. As outlined in our submission to the Inquiry, we believe a national human rights act should be enacted and that it must expressly incorporate the CRPD. However, until this occurs, PWDA supports the urgent enactment of a Disability Rights Act, with a view to it being 'folded into' a national human rights act if, and when, it comes to fruition.

Question 2: Do you have a view on the appropriate body to conduct adjudication and dispute resolution functions within a human rights framework? (additional question from Senator Thorpe sent via email on 5 October 2023)

At this stage, PWDA does not have a particular position on this issue. However, as raised in our submission and oral evidence, we emphasise that the relevant body must be accessible for people with disability. We recommend that the relevant body:

- is co-designed with people with disability through consultation with our representative organisations
- ensures that all staff, particularly dispute resolution practitioners and decision-makers, are trained in disability rights and disability awareness
- regulates the conduct of parties to ensure efficient dispute resolution and prevent delay tactics
- waives application fees for people with disability

People with disability must also have access to sufficiently funded individual advocacy services and legal representation when pursuing complaints at the relevant body.

⁵ Ibid.

As mentioned in our submission and oral evidence, the relevant body must include a function for identifying systemic issues arising from its cases. Civil society organisations should be consulted on these issues so we can advocate for systemic change that addresses the root cause of complaints to the relevant body.

We thank you again for the opportunity to provide input to the Human Rights Inquiry.

Yours sincerely

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