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## **FIRST PEOPLES DISABILITY NETWORK (AUSTRALIA)**

**Briefing Paper to the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability**

**The experiences of First Nations people with disability and their  
families in contact with child protection systems**

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**NOVEMBER 2020**

## About First Peoples Disability Network (Australia)

First Peoples Disability Network (Australia) is a national representative body for First Nations people, family and communities with lived experience of disability.

The Australian Bureau of Statistics estimates that 50 percent of First Nations people have some form of disability or long-term health condition. Despite its high prevalence, disability remains an untold story not solely in justice, but in all other areas that determine social outcomes for First Nations people such as education, employment and housing.

First Nations people with disability and their families are amongst the most seriously disadvantaged and disempowered members of the Australian community. They are nonetheless the experts in the often hidden impact of social policy upon the lives of peoples with disability. As the only national organisation in Australia that is governed by and for First Nations people with disability, we give voice to their needs and concerns from lived experience.

## Introduction

First Peoples Disability Network (FPDN) provide this written briefing to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) in advance of the hearing into *the experiences of First Nations people with disability and their families in contact with child protection systems*. In addition to this written briefing, we provide a short video testimony. This testimony reflects the value we place in visual narrative and storying telling.

If the voices of First Nations people with disability are going to be heard through the Royal Commission, there must be room for individual and community stories to be provided in ways that are safe, and sensitive to our cultural values and norms. The way we are able to tell our stories, and how the Royal Commission and the broader community is prepared to listen, is critical to those coming forward feeling that what they have to say, and how they want to say it, matters<sup>1</sup>.

The Royal Commission has acknowledged not only the considerably higher rate of disability amongst Australia's First Nations people, but also the impact of intergenerational trauma, and intersectional discrimination on our community<sup>2</sup>. Scott Avery in his book 'Culture is Inclusion' identifies the catastrophic shock that European colonisation has had on Australia's First Nations communities, which includes the 'construct of a social order completely at odds with Aboriginal cultural values of diversity and inclusion'<sup>3</sup>.

'Colonisation had a particular impact upon Aboriginal and Torres Strait Islander people with disability, centring them at the convergence of armed aggression dispossessing them from their land as Aboriginal people, alongside their social 'othering' as people with disability'<sup>4</sup>.

Colonialism brought with it both the institutionalisation, social isolation and 'othering' of people with disability, and assimilation policies that led to the removal of First Nations children from their families. Paternalistic policy approaches grounded in racism and ableism, the legacies of which remain today.

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<sup>1</sup> Avery, S. (2020) *Something Stronger: Truth-telling on hurt and loss, strength and healing, from First Nations people with disability research* Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

<sup>2</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) *Interim report*

<sup>3</sup> Avery, S. (2018) *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia p.9

<sup>4</sup> Avery, S. (2018) *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia p.8

The Stolen Generations, and the removal of children by the state is one of the unresolved traumas for First Nations people which continues to ‘loom large in their lives’. The legacy of colonialisation, and the ever-present threat of child removal ‘provides a nexus between the intergenerational traumas of the past and the traumatic events of the present’<sup>5</sup>.

### The right for children to live with family

The right of children to live with family is articulated in international law. Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD), protects the rights of all people with disability to live in the community, and CRPD Article 23 protects against the separation of a child from his or her parents against their will except where ‘competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents’<sup>6</sup>.

In addition, CRPD Article 23 specifically states that where the immediate family is unable to care for a child with disability, state parties shall ‘undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting’. This article does not explicitly prohibit placement in an institution, but it also does not allow for any option outside a ‘family setting’<sup>7</sup>. Out of home residential care settings, and disability group homes where children are provided support by workers and separated from their families, culture and community, can never be considered a family setting.

Whilst the right to family is articulated in the Convention on the Rights of the Child (CRC) concerns have been raised by international disability rights organisations about the strength of protections the CRC provides against institutionalisation<sup>8</sup>. Whilst the CRC promotes the right to family, Article 20 leaves the door open to placement in ‘suitable institutions’<sup>9</sup>. General Comment 9 from the Committee on the Rights of the Child, describes the application of the CRC to children with disability, and limits any placement in an institution to the ‘last resort’<sup>10</sup>.

However, in reality, where child protection concerns result in a child with disability being removed from their family, children are routinely being placed in ‘family-like’ residences or group homes, depriving that child of the right to live in a family. Even though the CRPD provides greater protection for children with disability to live in family settings, in reality, the opposite continues to occur.

General Comment 5 from the Committee on the Rights of Persons with Disabilities (CRPD Committee), on living independently and being included in community<sup>11</sup>, identifies the inherent risk of institutionalisation; ‘large or small group homes are especially dangerous for children, for whom

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<sup>55</sup> Avery, S. (2018) *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia p.169

<sup>6</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 19 Living independently and being included in the community, and Article 23 Respect for home and family <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>7</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 23 Respect for home and family <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-23-respect-for-home-and-the-family.html>

<sup>8</sup> *Position paper: The Right to live and grow up in a family for all children*, published in 2018 on behalf Disability Rights International, European Network for Independent Living, Validity TASH <https://enil.eu/wp-content/uploads/2018/12/DRI-Right-to-Family-December-2018.pdf>

<sup>9</sup> United Nations Convention on the Rights of the Child, Article 20 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>10</sup> Committee on the Rights of the Child, General Comment No. 9 (2006) The Rights of Children with Disabilities p.14 [https://www2.ohchr.org/english/bodies/crc/docs/GC9\\_en.doc](https://www2.ohchr.org/english/bodies/crc/docs/GC9_en.doc)

<sup>11</sup> Committee on the Rights of Persons with Disabilities, General Comment No.5 (2017) The right to live independently and being included in the community Definitions A(c) Independent living arrangements [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en)

there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family’.

The UN Declarations on the Rights of Indigenous Peoples also explicitly recognises the removal of children as an act of violence; ‘Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group’<sup>12</sup>.

### Context to this briefing paper

General Comment 5 from the CRPD Committee notes that policies towards deinstitutionalisation ‘require implementation of structural reforms which go beyond the closure of institutional settings’<sup>13</sup>. Sir Robert Martin, a member of the CRPD Committee who spent much of his early life in institutions summed it up in a speech at the University of Galway, where he said;

“Institutions are, after all, not just about the bricks and mortar. They are also about the thoughts, feelings and actions of others”<sup>14</sup>.

Paternalism and discrimination remain institutionalised throughout the Australian Government service system, including child protection. Through this hearing, the Commission will hear about the failures of past and present policies from those who live with the consequences of, or face these failures in their everyday lives.

As well as the stories of those directly affected, we strongly urge the Royal Commission to take an investigative approach to this hearing, calling to appear those who have responsibility for Government and bureaucratic structures through which these failures continue to occur. It is not enough to tinker around the edges, the Royal Commission needs to interrogate and challenge the structural violence that underlies the current policy and service system.

First Nations children are vastly over-represented in the child protection and out of home care system<sup>15</sup>. This issue has been investigated through numerous inquiries<sup>16</sup>, and is recognised in the new Closing the Gap target to reduce by 45% the number of Indigenous children in out of home care by 2031<sup>17</sup>.

There are Aboriginal community-led organisations dedicated to working in the area of child protection and out of home care who will offer more expertise in this space than FPDN. What we have outlined below are some of the key areas from our perspective that warrants specific attention from the Royal Commission.

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<sup>12</sup> United Nations Declaration on the Rights of Indigenous Peoples (2007), Article 7  
[https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>13</sup> Committee on the Rights of Persons with Disabilities, General Comment No.5 (2017) The right to live independently and being included in the community Definitions A(c) Independent living arrangements  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en)

<sup>14</sup> Sir Robert Martin spoke at the 11<sup>th</sup> NUI Galway International Disability Law Summer School at the, Persons with Disabilities and the Right to Family held between 17-21 June 2019

<sup>15</sup> Australian Institute of Health and Welfare Child Protection snapshot, released 18 March 2020  
<https://www.aihw.gov.au/reports/australias-welfare/child-protection>

<sup>16</sup> For example: Australian Human Rights Commission *Bringing them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997); Community Affairs References Committee inquiry into Out of Home Care (2015)

<sup>17</sup> National Agreement on Closing the Gap, July 2020. Outcome 12, Aboriginal and Torres Strait Islander Children are not overrepresented in the child protection system <https://coalitionofpeaks.org.au/wp-content/uploads/2020/07/FINAL-National-Agreement-on-Closing-the-Gap-1.pdf>

### A broad interpretation of child protection

We urge the Royal Commission to take a broad interpretation of child protection to include all services and systems within which First Nations children, including those with disability, find themselves when separated from family, home, culture, language and community. This includes residential out-of-home settings, short and long term foster care and adoption, boarding schools, disability institutions (such as group homes, medical and psychiatric facilities), and 'respite' care.

In addition, there are a disproportionate number of First Nations young people with disability in crisis and detention settings, such as youth justice facilities, and emergency homelessness refuges.<sup>18</sup> The circumstances that lead young people to these out of home settings should also be considered.

### Lack of nationally consistent, disaggregated data

There is no nationally consistent data that can provide the full picture of the number of children with disability, including those who are First Nations people, who are in contact with child protection and out of home services. There are significant variations in data collection and key definitions across jurisdictions, including the categorisation of child protection and out of home settings<sup>19</sup>. These inconsistencies in data disaggregation result in a lack of transparency and undermines systemic responses.

### The complexities of the system is failing First Nations people with disability and their families

The increasing rates of First Nations children entering the child protection and out of home care system, and the violence, abuse, neglect and exploitation of children once they are in the system, demonstrates the failure of service responses across the board.

For many First Nations families, disability is first recognised in their lives when children come into contact with the child protection system. Up to that point, that family has likely had a pathway of unrecognised and unsupported disability. This may be disability from birth, or acquired disability through the course of their life. Disability, coupled with intersectional discrimination, poverty<sup>20</sup> and trauma interacts with system failures, including a lack of appropriate health care, a lack of inclusive and culturally appropriate education, insecure and inaccessible housing in community, and punitive welfare policies.

The many and various interactions with service systems that these families have provides numerous entry points for disability to be recognised and referrals for support. In our experience with community, this rarely occurs due to disjointed and siloed services, and many of these families do not have the knowledge of their rights, or the capacity or confidence to proactively reach out for such support. The system failures creates a trajectory of institutionalisation through child protection and criminal justice systems that in many cases could have been avoided.

### Navigating a hostile and complicated child protection system

First Nations parents, including those with recognised, and unrecognised disability, and/or parents of children with disability, are expected to be able to navigate a hostile and complicated social services and child protection system.

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<sup>18</sup> See First People Disability Network submission to the NSW New South Wales Legislative Council Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, August 2020, Submission no 101

<sup>19</sup> For example, see the notes and variants in the Australian Institute of Health and Welfare Child Protection snapshot, released 18 March 2020 <https://www.aihw.gov.au/reports/australias-welfare/child-protection>

<sup>20</sup> Research has also shown the increased financial stress on carers within First Nations families <https://bmcfampract.biomedcentral.com/articles/10.1186/s12875-017-0668-3>

Child removal is an ever present threat, and reality in our communities. It has become part of the community vernacular, and families live with the legacies of trauma from the removal of their parents and grandparents. Parents living with this fear, distrust and resentment either do not seek disability assessment and support for themselves or their child due to a fear of stigmatisation and negative consequences. There is significant research that points to the reasons why child abuse and neglect is under or over reported in First Nations communities, including a well-founded fear that the child will be removed, lack of culturally appropriate services, language and communication barriers and lack of knowledge about legal rights and services<sup>21</sup>.

A lack of understanding, and respect for, cultural differences in child-rearing practices and family structures is a contributing factor in the removal of children from First Nation families<sup>22</sup>. First Nations parents with disability also face intersectional discrimination based on assumptions of capability to parent.

International law articulates the rights of parents 'with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities'<sup>23</sup>. The removal of a child due to abuse or neglect is justified, but removal due to cultural differences and disability is not.

The child protection system constructs a hostile environment for First Nations families that perceives a risk to children built on assumptions about parental capacity and appropriate support structures. From FPDN's experience in community, we know that these paternalistic assumptions can lead to parents with disability, and/or parents of children with disability doubting their right and ability to parent and being encouraged to surrender their children, rather than support being put in place to ensure families can stay together, in their communities, where possible. The National Disability Insurance Scheme (NDIS) has expectations about parental responsibility and the balance with funded support<sup>24</sup>. Some families, struggling with poverty, insecure and inaccessible housing and the care of other siblings, are left feeling they have no choice but to relinquish care.

For families who may require communication, or decision making support, or who face barriers of literacy and language, understanding and navigating the system is impossible. Disability advocates can assist families by working with them to understand the processes involved, seeking disability support and assistance, and linking them with other social services and legal assistance. This legal assistance can be essential to negotiate court proceedings. The absence of this support may result in negative guardianship judgements that sever families for ever and leave parents with no ongoing say in their children's lives. A critical shortage of First Nations disability advocates in local communities means that families are often left with no help.

The NDIS is not working for our communities. First Nations people with disability remain largely absent from the scheme, and from our perspective, there is no evidence that the NDIS is positively

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<sup>21</sup> For example, see Australian Institute of Family Studies Resource Sheet *Child protection and Aboriginal and Torres Strait Islander children*, released January 2020, <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children#footnote-005-backlink>

<sup>22</sup> Secretariat of National Aboriginal and Islander Child Care (SNAICC) *Growing up our way Aboriginal and Torres Strait Islander child rearing* (2011)

<sup>23</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 23 Respect for home and family <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-23-respect-for-home-and-the-family.html>

<sup>24</sup> Children and Young People with Disability Australia October 2019 *Improving the NDIS for children and young people with disability* Submission to the consultation on Establishing a Participant Service Guarantee and removing legislative red tape review <https://engage.dss.gov.au/wp-content/uploads/2019/11/Children-and-Young-People-with-Disability-Australia.pdf>

working with other social services to support families to avoid child protection issues arising, or putting in place supports which prioritise children remaining in their family where child protection concerns occur. Proposed functions, such as the Independent Functional Assessments<sup>25</sup> present a significant risk of increasing family separation and child removals.

There is a lack of funding for specific therapeutic support programs for children in care. Successful programs, such as the Circle Program in Victoria has been found to deliver positive outcomes for children and carers, but places are limited, and the program evaluation found that a lack of Cultural Support Plans for First Nations children with disability undermined the benefit of the program for those participants<sup>26</sup>.

Where guardianship arrangements are made which exclude parents and carers from decisions relating to their child with disability, including through NDIS nominee provision<sup>27</sup>, children are not receiving culturally appropriate and responsive support, including considerations of communication support in their first language<sup>28</sup>.

### Awareness of disability rights amongst child protection workers and out of home carers

The Royal Commission into Institutional Responses to Child Sexual Abuse recognised the need for prospective carers to not only have adequate child safety checks, but also to understand the impacts of trauma and abuse, and the principles of trauma-informed care<sup>29</sup>. For workers in statutory care facilities, there is specific training they are required to undertake. However, the intersection of Aboriginality and disability is not well understood across the child protection workforce, neither are the compounding impacts of racism and ableism over the course of the life of a person with disability. This is the same across the broader service system including the NDIS. First Nations people with disability therefore interact with workers across the complex service system that have little consideration or understanding of the issues they face. Workforce and carer training and awareness raising around the disability from a First Nations perspective must be prioritised.

There are various initiatives across jurisdictions to transfer case management from state child protection authorities to Aboriginal Community Controlled Organisations<sup>30</sup>. This is a crucial step to support connections with culture and community. It is unclear however, how these initiatives are reflected within disability specific settings where First Nations children with disability and in out of home care.

In addition, as an organisation led by, and on behalf of First Peoples with disability, we are conscious that Aboriginal community controlled organisations may not always have sufficient knowledge, skills and experience of the social model, human rights approach to disability. Whilst these organisations (many of them health based) may be best placed to coordinate care with cultural sensitivity and

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<sup>25</sup> See First Peoples Disability Network submission to the Joint Standing Committee on the National Disability Insurance Scheme – General Issues around the implementation and performance of the NDIS, awaiting publication

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/General\\_NDIS](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/General_NDIS)

<sup>26</sup> Frederico, M., Long M., McNamara, P., McPherson, L., Rose, R., and Gilbert, K. (2012 ) The Circle Program: an Evaluation of a therapeutic approach to Foster Care. Centre for Excellence in Child and Family Welfare, Melbourne, Australia Recommendation 8 p.12

<http://128.199.174.185/wp-content/uploads/2012/10/The%20Circle%20Program%20-%20An%20evaluation%20of%20a%20therapeutic%20approach%20to%20foster%20care.pdf>

<sup>27</sup> See the National Disability Insurance Scheme Child Representative Operational Guideline – Determining who has parental responsibility for a child <https://www.ndis.gov.au/about-us/operational-guidelines/child-representatives-operational-guideline/child-representatives-operational-guideline-determining-who-has-parental-responsibility-child>

<sup>28</sup> This is despite the acknowledgement of the importance of language in the NDIS Aboriginal and Torres Strait Islander Strategy, p.14, 4.5 <https://www.ndis.gov.au/about-us/strategies/aboriginal-and-torres-strait-islander-strategy>

<sup>29</sup> Commonwealth of Australia Royal Commission into Institutional Responses to Child Sexual Abuse Final Report Contemporary out-of-home care Volume 12, 2017 [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_12\\_contemporary\\_out-of-home\\_care.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf)

<sup>30</sup> For example, see the Victorian State Government Health and Human Services *Transitioning Aboriginal Children to Aboriginal Community-Controlled Organisations* (2018)



have strong links with local communities, lived experience and knowledge of disability in a First Nations context must be acknowledged as expertise in and of itself. This expertise should be sought out, and resourced to work in partnership and build intersectional capacity and capability amongst the Aboriginal Community Controlled workforce.

### Inclusive representation

There are various jurisdictional initiatives for First Nations communities to provide input into child protection and out of home care policies and practices<sup>31</sup>. Whilst these different initiatives invite community representatives, including young people with direct experience of care services, it is not clear to the extent that these processes support the inclusion of young people, and parents with disability (including those young people who are placed in disability specific out of home care settings), or to the extent these initiatives provide a meaningful avenue for input to policy and programs.

### Leaving the child protection system

Research into children with disability leaving care has identified the difficulties young adults face in trying to establish independent lives in the community. Key systemic issues include; inadequate care planning that involves young people with disability themselves, a lack of awareness amongst young people of their rights and options, a lack of appropriate and accessible housing<sup>32</sup>, and poor interagency collaboration. There is a dearth of community led research and data<sup>33</sup> into the specific experiences of First Nations young people with disability who leave the child protection system, including those who may be in disability specific residential services when reaching adulthood.

### Oversight and response to violence, abuse, neglect and exploitation of children with disability in child protection

First Nations children with disability in the child protection system and out of home care (including in disability specific settings) are vulnerable to violence, abuse, neglect, and exploitation. However, pervasive intersectional discrimination means that they are less likely to be believed when reporting such incidents, more likely to face blame and shame, and justice responses are often not pursued or successful<sup>34</sup>. Fear of, or experience of being disbelieved, deters young people from speaking up.

The Victorian Ombudsman has recently drawn attention to violence and abuse of children in child protection settings and the ongoing failures of the system, including placements being made on the 'least-worst' option or even where placement may be 'risky or unsafe'.

She notes that the system is not designed or resourced to deal with 'complex needs or behaviours of concern' and that psychotropic drugs were used to 'manage their behaviour'. The Ombudsman

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<sup>31</sup> For example; Local Advisory Groups in NSW established by Department of Communities and Justice and the Ministerial Youth advisory Committee in Victoria

<sup>32</sup> See Snow, P.C., Mendes, P. & O'Donohue, D. (2014) Young People with a Disability Leaving State Care – Phase Two Report. Melbourne: Monash University. This report from Victoria, found that half of the young people with disability interviewed stated that 'their immediate post care housing arrangements fell apart within the first year and over half found themselves homeless once their first postcare accommodation arrangements broke down and they then had to resort to living in boarding houses, refuges and SRS [supported residential services] facilities'

<sup>33</sup> A September 2020 article in The Conversation discussed the lack of support for Indigenous children leaving care, but did not consider disability support provision <https://theconversation.com/indigenous-children-are-leaving-out-of-home-care-to-uncertain-futures-this-is-the-support-they-need-143906>

<sup>34</sup> In relation to the broader experiences of people with disability reporting violence and abuse, see Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Beyond Doubt: the experiences of people with disabilities reporting crime, June 2014 <https://www.humanrights.vic.gov.au/resources/beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime-jul-2014/>; in relation to reasons that young people do not come forward see p.23 Bravehearts Child Sexual Assault Facts and Statistics October 2019 [https://bravehearts.org.au/wp-content/uploads/2019/10/WIP\\_Facts-and-stats\\_updated-Oct-2019.pdf](https://bravehearts.org.au/wp-content/uploads/2019/10/WIP_Facts-and-stats_updated-Oct-2019.pdf)



states that in the disability sector this is chemical restraint and is 'regulated and required to be carefully controlled'<sup>35</sup>.

There are significant human rights breaches through the use of regulated chemical restraint in the disability sector<sup>36</sup>. The Royal Commission must interrogate the extent to which such practice is also used within residential and out of home care settings, not subject to oversight and utilised in the absence of appropriate disability support provision.

### Uncovering historical abuse and the right to recourse and redress

Historically, First Nations children with disability were segregated in large residential settings, disability and psychiatric institutions. The extent of the abuse, violence and neglect remains unknown. These children were denied cultural connection and their Aboriginality was denigrated<sup>37</sup>. There was no support for communication and language. Hidden away, many of these children grew up and died in these institutions, their graves unknown. The Royal Commission must seek the truth of what occurred in these settings.

Under various international treaties<sup>38</sup>, Australia has obligations to provide remedies for rights violations. The CRPD Committee, recently called for Australia to establish a Redress Scheme for the Disability Royal Commission<sup>39</sup> and this must be subject to consideration by the Royal Commission over the coming years.

Redress functions, such as the Victorian Redress Scheme for Stolen Generation survivors<sup>40</sup>, and the NSW Stolen Generations Reparations Scheme and Funeral Assistance Fund<sup>41</sup> provide practical remedies for injustices of past child removal policies. In addition, the National Redress Scheme for survivors of institutional child abuse<sup>42</sup>, whilst flawed in its implementation, provides some recourse for First Peoples with disability who were abused in institutional settings. These avenues for redress must run concurrently, and eligibility for individuals and families across the schemes must be guaranteed.

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<sup>35</sup> Victorian Ombudsman *Investigation into complaints about assaults of five children living in Child Protection residential care units*, tabled in the Victorian Parliament October 2020 <https://www.ombudsman.vic.gov.au/our-impact/news/child-protection-residential-care/?fbclid=IwAR3gVm5ighC5mA3Xy-8ID6Qb091Q4IU0WCvwsAb1xUQcOmxGCm5tLmDSnOI>

<sup>36</sup> A high number of people with disability, including children are administered psychotropic medication, physical restraint, and seclusion under the guise of 'behaviour management', including in schools, disability and mental health facilities, hospitals and aged care settings. See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia.

<sup>37</sup> Australian Human Rights Commission *Bringing them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997)

<sup>38</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly December 2005 <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>, also see discussion in Kayess, R., & Sands, T. (2020). *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation*. Sydney: UNSW Social Policy Research Centre.

<sup>39</sup> See [Australia's 2019 Concluding Observations](#) from the Committee on the Rights of Persons with Disabilities

<sup>40</sup> Media reports on the Scheme from ABC <https://www.abc.net.au/news/2020-03-18/stolen-generations-redress-scheme-announced-in-victoria/12067572>

<sup>41</sup> NSW Department of Aboriginal Affairs Stolen Generations Reparations Scheme and Funeral Assistance Fund <https://www.aboriginalaffairs.nsw.gov.au/healing-and-reparations/stolen-generations/reparations-scheme/>

<sup>42</sup> National Redress Scheme for survivors of institutional child abuse <https://www.nationalredress.gov.au/>