



The Secretary
 Legal and Social Issues Committee
 Parliament House, Spring Street
 East Melbourne, VIC 3002
youthjusticevic@parliament.vic.gov.au

People with Disability Australia Incorporated

Postal Address: PO Box 666
 Strawberry Hills NSW 2012

Street Address: Tower 1, Level 10
 1 Lawson Square
 Redfern NSW 2016

Phone: 02 9370 3100

Toll Free: 1800 422 015

Fax: 02 9318 1372

TTY: 02 9318 2138

Toll Free TTY: 1800 422 016

Email: pwd@pwd.org.au

TIS: 13 14 50 **NRS:** 1800 555 677

NGO in Special Consultative Status with the
 Economic and Social Council of the United Nations

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Dear Legal and Social Issues Committee,

Re: Inquiry into Youth Justice Centres in Victoria¹

People with Disability Australia (PWDA) welcomes the opportunity to provide our views to the Legal and Social Issues Committee Inquiry into Youth Justice Centres in Victoria.

[PWDA](#) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation. Our primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is also a founding member of Disabled People's Organisations Australia ([DPO Australia](#)) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. DPO's are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities. DPO Australia has been funded by the Australian Government to be the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

PWDA is concerned by the overrepresentation of people with disability, including young people with disability, in criminal justice facilities across Australia. Evidence from the Royal Commission into the Protection and Detention of Children in the Northern Territory, for instance, has illustrated

¹ Parts of this letter have been drawn from a recent Disabled People's Organisations Australia (DPO Australia) letter to the OHCHR study under resolution 30/7 on human rights in the administration of justice, including juvenile justice.

that young people with disability are overrepresented in the criminal justice system.² The reasons why these individuals are at higher risk of being in contact with the criminal justice system must be urgently addressed, particularly in relation to the barriers to justice experienced by people with disability. In addition, the treatment of young people in these facilities, and the conditions to which they are subject, is another area of concern. In particular, the implications of the failures and gaps in the criminal justice system must be explored in relation to children and young people with disability.

As recently seen in the Parkville and Malmsbury Youth Justice Centres, many youth justice centres across Australia can be unsafe for the young people being detained in these facilities. The unsafe conditions and treatment of detainees in these settings must be addressed as a matter of priority. Improvements to oversight, monitoring and protections available for those being detained will be brought about by the implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). As such, PWDA recommends that OPCAT be executed in a disability neutral, yet disability responsive manner. PWDA will discuss how disability aware mechanisms can increase the safety of people with disability in all places of detention.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

In addition to considering the overrepresentation and experiences of children and young people with disability in youth justice facilities, the Committee must position this inquiry in the context of other national and international developments and obligations. For instance, the inquiry must make recommendations that contribute to the Commonwealth Government's impending ratification³ and implementation of OPCAT.

In addition, the Committee's recommendations must be informed by the findings from the Victorian Ombudsman's imminent investigation into the number and various types of places of detention in Victoria, how these are monitored and the changes required to implement OPCAT.⁴ This upcoming investigation positions Victoria as an OPCAT trailblazer, leading the way and setting an example for other States and Territories.

Ratifying OPCAT will strengthen oversight and monitoring of places of detention by designating or creating a National Preventive Mechanism (NPM). The oversight and protections offered by NPMs will provide a valuable form of independent monitoring of the treatment of children and young people in youth justice centres, and other forms of detention, across Australia. The investigations performed by NPMs will offer additional transparency and will ensure young people within youth justice centres have improved access to complaints mechanisms and the protections to which they are entitled. Considering these vast benefits, and the role an NPM could have played in preventing the events that led to this inquiry, Victoria must be proactive in ensuring its NPM is as responsive and inclusive as possible.

PWDA recommends that a disability inclusive NPM model be developed in Victoria, in consultation with people with disability and their representative organisations. PWDA is well placed to provide further assistance to the Committee in considering what a disability aware NPM model may look like, and how this agency can be as inclusive as possible of people with disability of all ages.

² Royal Commission into the Protection and Detention of Children in Northern Territory, Public Hearing Exhibits, 13 October 2016. Available at <https://childdetentionnt.royalcommission.gov.au/public-hearings/Pages/hearings/2016/13-October-2016-Public-hearing.aspx>

³ Beech, A. 2017. 'OPCAT: Australia makes long-awaited pledge to ratify international torture treaty', ABC News, 9 February 2017, available: <http://www.abc.net.au/news/2017-02-09/australia-pledges-to-ratify-opcat-torture-treaty/8255782>

⁴ Cahill, Rory. 2017. 'Victoria can protect human rights by acting on OPCAT: Ombudsman', Monday 3 April, available: <https://www.ombudsman.vic.gov.au/News/Media-Releases/Media-Alerts/Victoria-can-protect-human-rights-by-acting-on-OPC>

Children, young people and adults with disability are vastly overrepresented in justice settings, other traditional places of detention, and disability-specific places of detention.⁵ It is therefore vital that the voices, expertise and experiences of people with disability are incorporated in the NPM, its standards, mechanisms, teams and monitoring efforts.

A disability inclusive NPM would approach its mandate with a disability lens, across the entirety of its work. It would work from a broad and disability inclusive definition of places of detention, one which includes traditional places of detention, such as prisons, police stations, juvenile detention centres and immigration detention centres, as well as disability specific institutions, such as locked psychiatric wards or hospitals, forensic mental health services, compulsory care facilities, closed community-based residences for people with disability, rehabilitation facilities, child welfare institutions and aged care facilities. A disability inclusive NPM would also prioritise the monitoring of treatments that people with disability frequently experience in detention, including restraints and solitary confinement.

NPM monitoring of places of detention through a disability lens would assist in identifying individual and systemic issues, and would also provide a framework to address them in an appropriate and disability responsive way. By leading the pack and developing a disability inclusive NPM, Victoria would be assisting Australia to fulfil its obligations under both the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities.

Over-representation in justice settings

In 2013, the Committee on the Rights of Persons with Disabilities (the CRPD Committee) expressed its concern to Australia regarding the overrepresentation of people with disability, particularly women, children, and Aboriginal and Torres Strait Islander people with disability, in the prison and juvenile justice systems.⁶ These concerns echoed those of the Committee on the Rights of the Child, which in 2012, questioned the overrepresentation of Aboriginal and Torres Strait Islander children in the criminal justice system and in out of home care,⁷ and raised concerns regarding the lack of appropriate measures to ensure that children with intellectual disability and/or psychosocial disability in conflict with the law were diverted from the juvenile justice system.⁸

A study into youth offending, based on young offenders in Victoria, illustrated that this cohort experiences a much higher prevalence of mental health issues and intellectual disability than young people in the general population.⁹ Similarly, data from New South Wales shows that 50% of all young people in juvenile detention centres have an intellectual disability,¹⁰ and that of these, 39% are young Aboriginal and Torres Strait Islander people.¹¹ Further data shows that 85% of the young people in juvenile detention centres in New South Wales have a 'psychological condition', with around two thirds (73%) reporting two or more 'psychological conditions'.¹² Young women and young people identifying as Aboriginal and Torres Strait Islander are overrepresented in these figures.¹³

⁵ Baldry, E. 2014. *Disability at the Margins: Limits of the Law*. Griffith Law Review, Vol. 23, No. 3, 370-388; PWDA, 2014.

⁶ 'Consideration of the 4th and 5th Reports of Australia by the Committee to the Convention Against Torture', *People with Disability Australia*.

⁷ Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Australia, Adopted by the Committee at its Tenth Session (2-13 September 2013)', UN Doc CRPD/C/AUS/CO/1 (4 October 2013), [31]

⁸ Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (19 June 2012) para 29(a)

⁹ *Ibid*, para 82(b)

¹⁰ Fougere, A., Thomas, S. and Daffern, M. 2013. 'A Study of the Multiple and Complex Needs of Australian Young Adult Offenders', *Australian Psychologist*, 48(3):188-195

¹¹ Horin, A. 'Report Finds Disability and Disadvantage Common in Young Offenders', *Sydney Morning Herald* (Sydney) 27 February 2010. www.smh.com.au/nsw/report-finds-disability-and-disadvantage-common-in-young-offenders-20100226-p95r.html

¹² Devon Indig et al. '2009 NSW Young People in Custody Health Survey: Full Report' (Report, Justice Health, NSW Health and Human Services Juvenile Justice, NSW Government, 2011) 15.

¹³ *Ibid*. p15

¹⁴ *Ibid*. p15

This overrepresentation of young people with disability and young Aboriginal and Torres Strait Islanders with disability in the justice system is a national issue that must be urgently addressed. Early intervention programs must be inclusive of children and young people with disability, particularly targeting those who are identified as being in danger of coming into contact with the justice system. Increasing the availability and scope of appropriate and accessible resources and supports for children and young people with disability (including those with psychosocial disability arising from mental health issues) may help address the overrepresentation of this cohort in justice settings.

In addition, while not addressing the overrepresentation of these individuals, a disability inclusive NPM would be beneficial for all children and young people in justice settings, including those who may not have a formal diagnosis of disability, mental illness, trauma or other impairments. A disability aware NPM would be attuned to the types of treatment these individuals may be subject to as a response to 'challenging' or 'problematic' behaviours which may emerge as a response to trauma, miscommunication or detention itself.

Barriers to accessing justice

There are many reasons why children and young people with disability (as well as adults with disability) are overrepresented in the justice system. This overrepresentation is in part due to barriers to accessing justice, including: the denial of legal capacity¹⁴ which prevents or limits participation in legal proceedings; the lack of specialist support, accommodation and therapeutic programs to prevent indefinite detention in prisons; negative assumptions about the reliability or credibility of people with disability to give evidence as defendants or witnesses; the lack of accessible legal processes and skilled legal officers; and a lack of support and assistance, including communication assistance for defendants throughout criminal proceedings.¹⁵

In addition, children and young people with disability may be at higher risk of entering the juvenile justice system due to a lack of formal diagnosis or misunderstandings about disability, which can contribute to a failure to recognise or address the support needs of these individuals. As eluded to previously, limited access to appropriate health, disability or other therapeutic services or supports and failures and gaps in service provision also contributes the overrepresentation of children and young people with disability in justice facilities.

Inappropriate detention environments

This overrepresentation of children and young people with disability in the juvenile justice system is further complicated by overcrowding and the tendency of these facilities to emphasise punishment and rehabilitation, rather than appropriate assessments, interventions and supports. Indeed, it has been claimed that young Aboriginal and Torres Strait Islanders with disability who have been in contact with the juvenile justice system 'will also be significantly more likely to have experienced a lifetime of disadvantage and trauma, which compounds the impact of their disability.'¹⁶

¹⁴ For more information, see: People with Disability Australia (PWDA), the Australian Centre for Disability Law (ACDL) and the Australian Human Rights Centre (AHRCentre), 2014. *Australian Law Reform Commission (ALRC): Equality, Capacity and Disability in Commonwealth Laws Discussion Paper*, p6. Available: <http://www.pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>

¹⁵ For more information, see: Australian Human Rights Commission, "Access to justice in the criminal justice system for people with disability", Issues Paper, April 2013. Available: <http://www.humanrights.gov.au/sites/default/files/document/publication/Access%20to%20Justice%20in%20the%20Criminal%20Justice%20System%20for%20People%20With%20Disability%20-%20Issues%20Paper%20April%202013.pdf>

¹⁶ Avery, S. C. 2016. *Statement to the Royal Commission into the Protection and Detention of Children in the Northern Territory*, 12 October 2016. available: <https://childdetentionnt.royalcommission.gov.au/public-hearings/Documents/evidence-2016/evidence13october/Exh-029-001.pdf> p7

The focus on punishment rather than appropriate therapeutic and disability supports means that the human rights of people with disability cannot be protected in the criminal justice system.¹⁷ For instance, people with cognitive impairments often face a lack of protective supports to address their greater risk in relation to sexual assault and victimisation, as well as being coerced into breaking prison rules.¹⁸

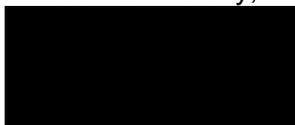
A recent report by the Commission for Children and Young People in Victoria¹⁹ has stated that ‘vulnerable’ children and young people, namely those with mental health issues or disability, are inadequately protected in the Victorian youth justice system.²⁰ Separation plans are being used to ‘protect’ these individuals, yet these separation plans and practices typically involve extended periods of isolation, and are often used more broadly as a form of behaviour management. As outlined by the Special Rapporteur on Torture, the imposition of solitary confinement to people with ‘mental disability’ constitutes cruel, inhuman or degrading treatment.²¹ It is therefore troubling that these punitive responses are being imposed on children and young people with mental health issues or disability, rather than implementing appropriate protection strategies that uphold the human rights of these individuals.

Children and young people with disability in justice settings may also experience a lack of adequate services and supports, a lack of physical access to various prison facilities and services, a lack of access to relevant communication devices, sign language and community language interpreters or other aids, or a lack of access to appropriate mental health and medical services or supports.²² Appropriate supports must be provided to children and young people with disability in all justice settings, as well as to those leaving these settings. For instance, services that provide support to young people with disability leading up to their release must be accessible and appropriate, and must be thoroughly connected to broader support services to facilitate a successful return to the community.

In closing, the Committee must consider the implications of the upcoming ratification of OPCAT, and must prioritise the development of a disability inclusive NPM. Such a disability inclusive model would increase the safety of all young people in youth justice centres, as well as those detained in broader places of detention. Further efforts must be made to increase the accessibility and availability of early intervention programs, to divert young people with disability away from contact with the justice system. Finally, services that support young people with disability to safely reengage with their communities post release are also fundamental.

PWDA thanks the Legal and Social Issues Committee for the opportunity to contribute to this Inquiry, and we would welcome further consultation on any of the matters we have raised.

Yours sincerely,



NGILA BEVAN
Co-Chief Executive Officer

¹⁷ People with Disability Australia (PWDA), 2014, *Consideration of the 4th and 5th Reports of Australia by the Committee to the Convention Against Torture*, available: <http://www.pwd.org.au/documents/pubs/SB14-UNCAT.doc>

¹⁸ Ibid.

¹⁹ Commission for Children and Young People, 2017. *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (Melbourne: Commission for Children and Young People, 2017). Available: <http://www.ccpv.vic.gov.au/downloads/the-same-four-walls.pdf>

²⁰ Ibid, p76.

²¹ <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf%20para.78>

²² PWDA, 2014 op cit.