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# Submission to

# the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

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22nd December 2022

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## 1. Introduction

### 1.1 About Blind Citizens Australia (BCA)

Blind Citizens Australia (BCA) is the peak national representative organisation of and for the over 500,000 people in Australia who are blind or vision impaired. For nearly 50 years, BCA has built a strong reputation for empowering Australians who are blind or vision impaired to lead full and active lives and to make meaningful contributions to our communities. BCA provides peer support and individual advocacy to people who are blind or vision impaired across Australia. Through our campaign work, we address systemic barriers by promoting the full and equal participation in society of people who are blind or vision impaired. Through our policy work, we provide advice to community and governments on issues of importance to people who are blind or vision impaired. As a disability-led organisation, our work is directly informed by lived experience. All directors are full members of BCA and the majority of our volunteers and staff are blind or vision impaired. They are of diverse backgrounds and identities.

### 1.2 About people who are blind or vision impaired

There are currently more than 500,000 people who are blind or vision impaired in Australia with estimates that this will rise to 564,000 by 2030. According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age.[[1]](#endnote-1)

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities. The extent to which people can actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

## 2. Submission Context

BCA welcomes the opportunity to make a submission to the Disability Royal Commission. This submission is based on existing legislation and frameworks, noting gaps in the fulfilment of requirements laid out in existing documentation. The pertinent acts and legislation are:

* The Disability Discrimination Act 1992 (Cwth)
* United Nations Convention on the Rights of Persons with Disabilities (CRPD)
* The Australian Disability Strategy 2021 – 2031 (this strategy coordinates the implementation of the UNCRPD)

Our response is based on consultations with our members, previous and current submissions, and ongoing advocacy work in the sector.

## 3. Blind Citizens Australia’s Submission

### Background on Audio Description

Blind Citizens Australia (BCA) would like to bring to the attention of the Disability Royal Commission, the inequalities that people who are blind or vision impaired face, in accessing and watching TV.

BCA has been campaigning for audio description on Australian TV for 25 years, finally resulting in the Australian Government funding the national broadcasters ABC and SBS to provide a minimum of 14 hours a week of audio description on broadcast TV, from June 2020.

Audio Description is an additional feature that describes the visual elements happening on screen that sighted people take for granted, such as settings, backgrounds, costumes, actions and text. It is not available on all free-to-air TV networks here in Australia – only on ABC and SBS. Free-to-air TV broadcasters are required by law to provide captions for all programs between 6am to midnight, unless it’s music-only or not in English. It’s great that people who are deaf or hard of hearing get to watch the shows they love but why are people who are blind or vision impaired excluded? It’s not just people who are blind or vision impaired who can benefit from Audio Description. There are other benefits, such as how it can help people with autism, by explaining the emotions of characters they see on screen. Or assisting people with print or learning disabilities who are not able to read the subtitles. As with Closed Captions for people who are deaf or hard of hearing, audio description can be turned on or off as needed. It is also relatively inexpensive to deliver and, in fact, is already integrated into many of the programs that are imported from overseas.

The ABC and SBS have been responsive and collaborative in developing and expanding audio description on broadcast TV, with both networks exceeding the minimum hours, now providing around 25 hours of audio description per week. Both networks are working towards audio description being available on streaming on-demand services, but this is still six months away – which will be 3 years since audio description has been available on broadcast TV. Note that although the minimum requirements are currently being exceeded, this is across the ABC’s 4 broadcast channels, and SBS’s 6 broadcast channels, so there is still a significant amount of content that still cannot be accessed in an equitable way by people who are blind or vision impaired.

The commercial free-to-air networks have not meaningfully engaged with the sector in discussions on introducing audio description on either broadcast or catchup TV, citing cost, unjustifiable hardship and technical reasons for not providing audio description.

### Complaint to the UN Committee on the Rights of Persons with Disabilities

In 2018, after exhausting all local complaint mechanisms, disability advocate Lauren Henley made a complaint to the UN Committee on the Rights of Persons with Disabilities, based on the Australian government refusing to mandate any level of audio description on free-to-air TV.

In September 2022, the UN Committee found Australia has failed to comply with its obligations under the Convention on the Rights of Persons with Disabilities because it has not taken appropriate measures to identify and eliminate barriers to accessibility to ensure people who are blind or vision-impaired can enjoy equal access to television programs. The Australian Government’s failure to guarantee the provision of audio description on free-to-air television is ongoing.

The UN Committee has called on the Australian Government to take immediate action to remove barriers to accessibility and implement legislation and policies to ensure audio description is available on free-to-air television. Specifically, the UN Committee has made recommendations on the steps the Australian Government should take to achieve this:

(a) … the State party is under an obligation to afford her [Ms Henley] adequate compensation, including for any legal costs incurred in filing the present communication;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party to:

(i) Adopt action plans and strategies to identify existing barriers to accessibility – including the provision of audio description services to visually impaired persons-, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers, such action plans and strategies should be strictly implemented. The State party should also strengthen their monitoring mechanisms in order to ensure accessibility and it should continue providing sufficient funds to remove barriers to accessibility and train monitoring staff.

(ii) Take the necessary legislative and policy measures with a view to ensuring the provision of audio description services to visually impaired persons.

(iii) Educate persons with disabilities about their rights under the Convention, and in particular about accessibility as a crucial means to enable them to live independently and participate fully in all aspects of life.

(iv) Ensure that appropriate and regular training and awareness raising activities on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is provided to all service providers of free-to-air television and other relevant stakeholders, to ensure that these are fully accessible in compliance with the Convention. Awareness-raising should be carried out in cooperation with persons with disabilities, their representative organizations and technical experts.

### Next Steps

The Australian Government is required to submit a written response to the UN Committee on the actions taken to implement the above recommendations within six months (i.e. **by 23 March 2022**).

BCA has requested a meeting with the Australian Government, to discuss how they will respond to and work towards compliance with the UN Committee’s recommendations. This communication was sent to The Hon Michelle Rowland MP, the Minister for Communications, and copied to The Hon Mark Dreyfus KC MP, Attorney-General of Australia; The Hon Amanda Rishworth MP, Minister for Social Services; and The Hon Bill Shorten MP, Minister for the NDIS and Minister for Government Services.

BCA will promote the update of the Broadcasting Services Act (1992), to include the expectation that audio description be provided by commercial television and national broadcasters, to align with the existing requirements to provide a captioning service to provide access to people who are deaf or hard of hearing.

There is also opportunity to promote awareness of audio description and other accessibility features, through public promotion, and be promoted and reported on through Australia’s Disability Strategy policy priorities and outcome areas.

BCA asks that the Commission monitors and reports on the Australian government’s response to this UN CRPD finding, which is due by end March 2023.

### Policy and Compliance

We note the Disability Royal Commission’s Research Report “The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia’s Level of Compliance” by Emeritus Professor Ron McCallum AO. It is pleasing to see that the Commission is monitoring Australia’s responses and compliance with the UN CRPD.

Professor McCallum notes in the introduction:

“Australia has taken some important steps to meet its CRPD obligations. However, Australia is a wealthy nation, and should be held to a high standard. More than a decade after ratification, there are many rights in the CRPD that have not been incorporated into Australian law, and there are still too many Australians with disability who experience discrimination, disadvantage and human rights violations”

The recent UN Committee finding on Australia’s failure to provide audio description also shows the significant process that was gone through to reach this outcome. The initial complaint was made in 2018, with the finding handed down in September 2022. This process, although thorough in determining any action that the Australian government has taken, and identifying the systemic gaps in this space, took four years to reach this finding. This result also came after exhausting all other internal complaint mechanisms with the Australian Government.

In line with Australia’s commitments under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), Australia’s Disability Strategy plays an important role in protecting, promoting and realising the human rights of people with disability.

While the strategy outlines key priority areas, there is more that can be done to raise awareness of disability and accessibility in the community.

Alongside the disability-specific policy priority areas within Australia’s Disability Strategy, there is opportunity for access and inclusion to be included in community initiates and programs, businesses, and public policy. Accessibility outcomes should be reported on through Australia’s Disability Strategy monitoring and reporting measures, to demonstrate the importance and prioritisation of accessibility being imbedded in Australian society.

The Outcome and Policy Priority areas in Australia’s Disability Strategy that are relevant to the UN finding include:

Inclusive Homes and Communities Outcome: People with disability live in inclusive, accessible and well-designed homes and communities

Policy Priority 6: Information and communication systems are accessible, reliable and responsive Being able to access information and communicate is vitally important in all aspects of life. It is central to people’s safety and health, to involvement in their communities, employment and education, and to using transport, banking and shopping. Provision of communication in accessible formats (e.g. Braille, Auslan, Easy Read formats) can have a positive impact on the health of and opportunities for people with disability. With technology becoming a key means to participation across all elements of individual and community life, it is important that technology is inclusive of all Australians.

Safety, Rights and Justice Outcome: The rights of people with disability are promoted, upheld and protected, and people with disability feel safe and enjoy equality before the law

Policy Priority 4: The rights of people with disability are promoted, upheld and protected Promoting awareness and respect for the rights of people with disability, and building on Australia’s rights-focused legislative protections for people with disability, will help to systematically uphold and safeguard these rights. It will also help realise Australia’s commitments under the UN CRPD. The Australian Human Rights Commission, and state and territory human rights/anti-discrimination bodies play an important role in promoting and protecting these rights, including helping individuals and organisations understand and meet their legal responsibilities. Disability advocacy also supports people with disability to safeguard their rights, experience equality and overcome barriers that can affect their ability to participate in the community.

Community Attitudes Outcome: Community attitudes support equality, inclusion and participation in society for people with disability

Policy Priority 4: Improving community attitudes to positively impact on Policy Priorities under the Strategy Improved community awareness and understanding of disability will increase inclusion and accessibility for people with disability. Improving attitudes is as important as removing physical barriers to the built and natural environment. The Policy Priorities of this Strategy focus on improving in areas of everyday life so people with disability achieve the same outcomes as people without disability.

### Discrimination Complaints Processes

As is the requirement for consideration of complaints brought to the UN CRPD, domestic remedies must first be exhausted, before being brought to the UN Committee.

In this case, Ms Lauren Henley made a complaint through the Australian Human Rights Commission on the lack of provision of audio description on free-to-air television. This complaint was submitted in May 2015. This complaint was responded to by the Department of Communications, with an explanation that measures had been taken, by providing a trial of audio description on national broadcaster, the ABC.

Ms Henley disputed the sufficiency of these measures, as there was no policy or legislation underpinning this trial. Note that two trials were conducted in 2012 on one ABC broadcast TV channel, followed by a trial on ABC’s online catch up service in 2015.

In early 2016, the Commission decided to discontinue the investigation of the complaint. There is an allowance for the commission to cease an investigation if it considers that it is misconceived or lacking in substance.

In April 2016, Ms Henley applied to the Federal Circuit Court of Australia for administrative review of the Commission’s decision, under the Administrative Decisions (Judicial Review) Act 1977. The Court was restricted to considering whether the Commission made a legal error or did not exercise its powers correctly. The Court had no jurisdiction to conduct a review of the merits of the decision. On 10 April 2017, the Court dismissed the application for administrative review, and found that the Commission had not made any legal error in deciding to discontinue the author’s complaint.

This decision was not appealed before the Full Federal Court of Australia, because Ms Henley considered that such an appeal would have had limited prospects of success and was unlikely to provide her with an adequate remedy. Furthermore, she would have faced a prohibitive costs order had she lost the appeal.

Ms Henley maintains that the Commission was the only complaint mechanism available to her domestically, because “human rights are not typically justiciable in domestic courts in Australia.”

The complaint was then brought to the UN CRPD Committee in October 2018, where a further lengthy investigation and process was followed, resulting in the finding being handed down in September 2022.

The above process is an example of the difficulties and barriers to effective complaints resolution against discrimination in Australia. Ms Henley is an educated and highly experienced disability advocate. In this case, it took two years for the Human Rights complaint to come to a conclusion, in this case resulting in the investigation into the complaint being discontinued.

It then took a further four years for a finding to be reached on the complaint brought to the UN CRPD Committee.

From the initial Australian Human Rights complaint, to a decision from the UN CRPD being handed down, this complaints process has taken 7.5 years. The date by which the Australian Government must respond to the UN Committee’s finding (March 2023), it will be 2 months short of 8 years that this complaint was first made.

It is important that the Disability Royal Commission considers and analyses the domestic and international complaints processes that people with disability faced with discrimination are currently required to go through. In this case it has been over 8 years, with little systemic change in that space in that time.

Throughout this process, the complainant Lauren Henley had access to supports, experience, education, time and funds to get to this point. For those who do not have these significant resources available, they will be up against further barriers to make a complaint and achieve a resolution to a case of discrimination.

### International Comparison of Audio Description

Australia falls behind many comparable countries in the availability of audio description on TV. Audio Description was introduced on New Zealand television in 2011, the US introduced it in 2010, and the UK has the most developed and regulated laws, with AD featuring on both free to air and subscription channels since 2003. Germany, Austria, Ireland, France, Switzerland and other European countries have also had some audio described programming. Even Australian productions such as Neighbours and Home and Away are produced with AD for overseas release but the AD is not a feature available for Australian viewers on commercial TV networks.

Many of the subscription streaming platforms, such as Netflix, Disney+, AppleTV, Amazon Prime and Stan provide audio description for some, but not all, of their content.

Video streaming website Hulu (only available in the US) became somewhat notorious for being inaccessible and not providing audio description. In late 2017 a class action lawsuit was filed against Hulu claiming that the platform “discriminates against those who are blind and visually impaired by not providing audio description on any of their movies or TV shows.” In February 2019, Hulu began offering audio described content.

“A class action lawsuit filed in Massachusetts district court argues that video streaming giant Hulu LLC excludes the blind and visually impaired.

The complaint, filed late last month by the American Council of the Blind and Bay State Council of the Blind, accuses Hulu of violating the Americans with Disabilities Act by failing to provide audio description tracks for the content it provides. The suit alleges that Hulu’s lack of audio descriptions excludes members of the blind and visually impaired community from fully enjoying the company’s video streaming services.

Audio description is a separate audio track that provides a verbal description of visual elements on screen, especially in scenes with no dialogue.

Additionally, the suit alleges that Hulu’s website and mobile apps are not accessible to blind and visually impaired individuals who use screen readers — software programs that allow users to read the text displayed on a computer screen with a speech synthesizer or braille display — to navigate the internet.

“Despite readily available technology that would render its streaming services accessible to blind and visually impaired persons, Hulu chooses to exclude these potential users on the basis of disability by refusing to provide audio description tracks and maintaining a website and applications that are inaccessible to individuals using screen readers,” the complaint said. “By failing to make their online video-streaming services accessible to blind and visually impaired persons, Hulu violates basic equal access requirements under federal law.””[[2]](#endnote-2)

This class action demonstrates the need for accessibility features to be provided in all streaming and media services. It also shows the difficulties faced by those who are facing discrimination and the resources and energy required to achieve change. In this case, it took a ruling from class action, which is a costly and time intensive process, in order to get equal access to movies and TV shows – an important cultural aspect of a person’s social and community engagement.

## 4. Recommendations

BCA asks that the Commission monitors and reports on the Australian government’s response to this UN CRPD finding, which is due by end March 2023.

Explore complaints mechanisms through the Disability Discrimination Commission, and the UN CRPD Committee, to promote a more fair, accessible and equitable process by which Australians with disability can make complaints against disability discrimination.

Investigate how Australia’s Disability Strategy can monitor and report on accessibility improvements in the community, in the business sector and in government and public policy.

1. Vision2020. *Eye health in Australia*. Retrieved from <http://www.visioninitiative.org.au/common-eye-conditions/eye-health-in-australia> [↑](#endnote-ref-1)
2. <https://vitac.com/lack-audio-descriptions-hulu-answering-class-action-lawsuit/> [↑](#endnote-ref-2)