



**Convention on the Rights  
of Persons with Disabilities**

Distr.: General  
7 June 2012

Original : English

---

**Committee on the Rights of Persons with Disabilities**

**Implementation of the Convention on the Rights  
of Persons with Disabilities**

**Initial reports submitted by States parties under article 35 of  
the Convention**

**Australia\*\* \*\*\***

[3 December 2010]

---

\* Reissued for technical reasons on 9 November 2012.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\*\* Annexes can be consulted in the files of the Secretariat.

## Contents

	Paragraphs	Page
Abbreviations .....		4
I. Introduction.....	1–11	5
A. Preparation and structure of the report.....	3–4	5
B. Consultation with State and Territory Governments .....	5	5
C. Consultation with non-governmental organizations .....	6–8	6
D. Australia’s declarations to the Convention .....	9–10	6
E. Status of the Optional Protocol.....	11	6
II. Article 1–4.....	12–191	7
A. Numbers of people in Australia with a disability .....	13	7
B. Legislative measures.....	14–19	7
C. Definition of disability in Australia .....	20	8
D. Statistical data on anti-discrimination measures .....	21–22	9
E. Consultation with persons with disabilities on ratification of the Convention .....	23	9
F. National policy frameworks for persons with disabilities.....	24–31	9
G. Disability action plans .....	32	10
III. Articles 5 and 8–30 .....	33–	11
A. Equality and non-discrimination (article 5) .....	33–36	11
B. Awareness-raising (article 8) .....	37–43	12
C. Accessibility (article 9).....	44–51	13
D. Right to life (article 10) .....	52	15
E. Situations of risk and humanitarian emergencies (article 11).....	53–54	15
F. Equal recognition before the law (article 12).....	55–63	15
G. Access to justice (article 13).....	64–71	17
H. Liberty and security of person (article 14).....	72–84	18
I. Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15).....	85–86	21
J. Freedom from exploitation, violence and abuse (article 16).....	87–94	21
K. Protecting the integrity of the person (article 17) .....	95–102	22
L. Liberty of movement and nationality (article 18) .....	103–109	24
M. Living independently and being included in the community (article 19) .....	110–126	25
N. Personal mobility (article 20) .....	127–128	28
O. Freedom of expression and opinion, and access to information (article 21)...	129–133	29
P. Respect for privacy (article 22).....	134–136	30
Q. Respect for home and the family (article 23).....	137–139	30

R.	Education (article 24) .....	140–149	31
S.	Health (article 25) .....	150–156	33
T.	Habilitation and rehabilitation (article 26).....	157–161	34
U.	Work and employment (article 27) .....	162–171	35
V.	Adequate standard of living and social protection (article 28) .....	172–177	37
W.	Participation in political and public life (article 29) .....	178–184	38
X.	Participation in cultural life, recreation, leisure and sport (article 30).....	185–191	39
IV.	Articles 6 and 7 .....	192–201	41
A.	Women with disabilities (article 6).....	192–196	41
B.	Children with disabilities .....	197–201	41
V.	Articles 31–33.....	202–216	43
A.	Statistics and data collection (article 31) .....	202–205	43
B.	International cooperation (article 32).....	206–211	43
C.	National implementation and monitoring (article 33).....	212–216	45

## Abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
AGD	Australian Government Attorney-General's Department
AHRC	Australian Human Rights Commission
ASC	Australian Sports Commission
AusAID	Australian Agency for International Development
Auslan	Australian Sign Language
CAT	<i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment</i>
CSTDA	Commonwealth State/Territory Disability Agreement
DDA	<i>Disability Discrimination Act 1992</i> (Cth)
DPRWG	Disability Policy and Research Working Group
FaHCSIA	Australian Government Department of Families, Housing, Community Services and Indigenous Affairs
HACC	Home and Community Care Program
MDGs	Millennium Development Goals
NDA	National Disability Agreement
NDAP	National Disability Advocacy Program
NDS	National Disability Strategy
NGOs	Non-government organisations
NSW	New South Wales
NT	Northern Territory
Qld	Queensland
SA	South Australia
SDAC	Survey of Disabilities and Carers
Tas	Tasmania
TTY	Telephone Typewriter
UNICEF	United Nations Children's Fund
Vic	Victoria
WA	Western Australia
WWDA	Women with Disabilities Australia

## I. Introduction

1. The Australian Government is pleased to present to the Committee on the Rights of Persons with Disabilities Australia's Initial Report under the *Convention on the Rights of Persons with Disabilities* (Convention). Australia ratified the Convention on 17 July 2008, and it entered into force for Australia on 16 August 2008.

2. When read together with Australia's Common Core Document, this report demonstrates Australia's commitment to respecting the rights of persons with disabilities.<sup>1</sup> The Government devotes significant effort to ensuring that persons with disabilities in Australia are able to enjoy fully, and on an equal basis with others, all human rights and fundamental freedoms in accordance with the Convention. The statistics in the annex to this report provide evidence of the outcome of these efforts and the effect of policies that implement the Convention. This report demonstrates that the Australian Government, and State and Territory Governments, have sought opportunities to ensure that the Convention is implemented effectively in Australia, and that the inherent dignity of persons with disabilities is respected and promoted.

### A. Preparation and structure of the report

3. This report has been prepared in accordance with the Committee's *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* and the Harmonized Guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty specific targeted documents.<sup>2</sup> Accordingly, this report is a supplement to Australia's Common Core Document and should be read in conjunction with that Core Document.

4. This supplementary report includes information about the implementation of the Convention in Australia, and explains Australia's policies, programs and laws related to the rights of persons with disabilities.

### B. Consultation with State and Territory Governments

5. Australia's Federal structure is outlined in paragraph 16 of the Core Document. As the State and Territory Governments are responsible for many of the government activities that implement the Convention, the Australian Government has consulted extensively with State and Territory Governments in preparing this report. The Convention extends to all Australian States and Territories without limitation or exception.

---

<sup>1</sup> The Common Core Document was submitted to the Office of the High Commissioner for Human Rights on 25 July 2007.

<sup>2</sup> *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* UN Doc CRPD/C/2/3 (2009); *Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents*, UN Doc HRI/MC/2006/3 (2006).

### **C. Consultation with non-government organizations**

6. Australia acknowledges the key role played by non-government organisations (NGOs) in the development and implementation of the Convention. The role played by NGOs in Australia is described in paragraph 81 of the Core Document. The Government sought the views of NGOs at several key stages of drafting the report.

7. During initial preparations for the report, NGOs, including organisations of persons with disabilities, were invited to submit to the Australian Government their initial views on information that they wanted to see included in the report, or issues they thought the Government should address. The Australian Government also made a draft of the report available on the Australian Attorney-General's Department website, and invited NGOs and members of the public to submit comments on the draft report. The report was made available in Word, PDF and HTML format, and all disability peak bodies and interested NGOs were notified of the public consultation. Over 20 submissions were received during the public consultation. Following the public consultation, further information was sought from all Australian jurisdictions and the report was revised to reflect some of the issues that had been raised.

8. The Government also consulted with the Australian Human Rights Commission (AHRC) on this report. The role of the Commission (formerly known as the Human Rights and Equal Opportunity Commission) is described in paragraphs 69 to 75 of the Core Document.

### **D. Australia's declarations to the Convention**

9. Australia has made three interpretive declarations to the Convention, which set out Australia's understanding of articles 12, 14 and 18 of the Convention.<sup>3</sup> The first two declarations relate to Australia's understanding of the articles dealing with legal capacity and integrity of the person, and the use of substituted decision making and compulsory treatment. In Australia, substituted decision-making and compulsory treatment will only be used as measures of last resort where such arrangements are considered necessary, and are subject to safeguards in accordance with articles 12(4) and 14(2) of the Convention. More information on Australia's policy in relation to substituted decision-making and compulsory treatment can be found below under articles 12 and 14.

10. Australia's declaration in relation to right to liberty of movement clarifies the Government's understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria. More information on Australia's migration health requirements can be found below under article 18.

### **E. Status of the Optional Protocol**

11. Australia acceded to the Optional Protocol to the Convention on 21 August 2009, and it entered into force for Australia on 20 September 2009. To date Australia has received no communications under the Optional Protocol.

---

<sup>3</sup> *Australia's declarations to the Convention are at Annex A.*

## II. Articles 1–4

12. Persons with disabilities are highly valued members of Australian families, communities and workplaces and make a positive contribution to the diversity of cultural and community life in Australia. While persons with disabilities form an important part of the Australian community, Australia recognises that they face a number of challenges in enjoying their rights on an equal basis with others. Australia is committed to removing barriers faced by persons with disabilities and accommodating the diverse needs of persons with disabilities to enable them to enjoy their rights on an equal basis with all Australians.

### A. Numbers of people in Australia with a disability

13. The 2003 Australian Bureau of Statistics (ABS) Survey of Disability, Ageing and Carers (SDAC) showed that one in five people in Australia (3,958,300 or 20.0%) had a reported disability.<sup>4</sup> The rate of disability was similar between males (19.8%) and females (20.1%).<sup>5</sup> Physical conditions were the most common form of disability (84%), while the remaining 16% had a mental or behavioural disorder as their main condition.<sup>6</sup>

### B. Legislative measures

14. Under the Human Rights (Parliamentary Scrutiny) Bill 2010, a Joint Parliamentary Committee on Human Rights will be established to examine and report to the Australian Parliament on the compatibility of legislation with Australia's international human rights obligations, including those in the Convention.<sup>7</sup> The Bill also introduces a requirement that each new Bill introduced into Parliament is accompanied by a Statement of Compatibility with Australia's international human rights obligations. These measures are a key part of Australia's Human Rights Framework and will enhance understanding of, and respect for, the human rights of persons with disabilities in Australia.

#### 1. Anti-discrimination legislation

15. The *Disability Discrimination Act 1992* (Cth) (DDA) renders direct and indirect discrimination on the basis of disability unlawful in work and employment, education, access to premises, the provision of goods, services and facilities, accommodation, disposal of an estate or interest in land, membership of clubs and incorporated associations, sport and the administration of Australian Federal laws and programs. The DDA applies to the Australian Government, States and Territories, and private sector bodies. The AHRC has the ability to investigate and conciliate complaints of disability discrimination under the DDA.

16. The Australian Government has enacted two sets of standards under the DDA in relation to access to public transport (*Disability Standards for Accessible Public Transport*

<sup>4</sup> For the purposes of the SDAC, disability was defined as any limitation, restriction or impairment that has lasted, or is likely to last, for at least six months and restricts everyday activities.

<sup>5</sup> The 2009 SDAC was conducted from April to December 2009, and the results are expected to be released in late 2010.

<sup>6</sup> For the purposes of the SDAC, disabilities were broadly grouped depending on whether they relate to anatomy or physiology (physical conditions), or to functioning of the mind or the senses (mental or behavioural conditions) despite the fact that these conditions are also 'physical conditions'.

<sup>7</sup> The Bill was introduced into Parliament on 30 September 2010.

(Transport Standards)) and education (*Disability Standards for Education* (Education Standards)), and has tabled in Parliament a third set of nationally applicable standards on access to premises (*Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards)).

17. There is also legislation in each State and Territory which prohibits discrimination on the basis of disability.<sup>8</sup> This legislation is administered by a number of bodies at the State and Territory level who exercise a range of functions in relation to the legislation, including investigating and conciliating complaints.<sup>9</sup> In addition, both Victoria and the Australian Capital Territory (ACT) have human rights legislation in place that require public authorities to give consideration to human rights when making decisions, act in accordance with human rights and promote the rights of persons with disabilities in these jurisdictions.<sup>10</sup>

18. All disability discrimination legislation in Australia also contains the concept of reasonable accommodation, although the terminology differs across jurisdictions. For example, in the DDA, the concept of ‘reasonable accommodation’ is encompassed by the term ‘reasonable adjustment’.

## **2. Disability services legislation**

19. Most Australian States and Territories have disability services legislation in place, which requires disability-specific services to be delivered in an inclusive way.<sup>11</sup> Disability services legislation in Victoria and Western Australia (WA) has been assessed as compliant with the Convention, and Tasmania’s disability services legislation is currently being reviewed for compliance with the Convention. Both South Australia (SA) and the Northern Territory (NT) plan to review their disability services legislation in 2011.

## **C. Definition of disability in Australia**

20. There are a number of different definitions of disability in Australia, for example in the DDA,<sup>12</sup> and State and Territory anti-discrimination legislation.<sup>13</sup> Different definitions also apply in relation to qualification for social security or provision of special assistance in education. The common feature of these definitions is that disability is defined broadly.

## **D. Statistical data on anti-discrimination measures**

21. From the commencement of the DDA in March 1993 up to 30 June 2009, there had been a total of 10,217 disability discrimination complaints made under that Act. These

---

<sup>8</sup> *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1995* (Vic); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (WA); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1998* (NT).

<sup>9</sup> Eg. the Victorian Equal Opportunity and Human Rights Commission (Vic); the Anti Discrimination Commission Queensland (Qld); the Equal Opportunity Commission (WA); the Office of the Anti-Discrimination Commissioner (Tas), the ACT Human Rights Commission (ACT), the Office of the Anti-Discrimination Commissioner (NT).

<sup>10</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2004* (ACT).

<sup>11</sup> *Disability Services Act 1993*(NSW); *Disability Act 2006* (Vic); *Disability Services Act 2006* (Qld); *Disability Services Act 1993* (WA); *Disability Services Act 1992* (Tas); *Disability Services Act 1991* (ACT); *Disability Services Act* (NT).

<sup>12</sup> Section 4, *Disability Discrimination Act 1992* (Cth).

<sup>13</sup> These definitions are contained in annex B.



complaints are in addition to complaints under similar anti-discrimination provisions under State and Territory laws and specific remedies available in relation to employment matters. For example, in 2008–09, 980 complaints under the DDA were accompanied by a further 1281 disability discrimination complaints under State and Territory discrimination laws, making a national total of 2261 disability discrimination complaints for that year. Employment has been the largest area of complaints under the DDA, with 40% of complaints in 2008–09 being employment related, 35% related to access to goods, services and facilities and 9% related to education. Over 46% of complaints under the DDA in 2008–09 were resolved by a conciliated agreement accepted by both sides.

22. The AHRC publishes summaries of outcomes achieved through the conciliation process on its website.<sup>14</sup> In some cases complaint resolution has involved purely individual and confidential settlements. In other cases complaint resolution has facilitated large-scale social changes.

## **E. Consultation with persons with disabilities on ratification of the Convention**

23. Prior to ratification of the Convention, the Government consulted the disability sector, industry, organisations of persons with disabilities, other non-government stakeholders and the public. Over 200 invitations to participate in that consultation were issued and a total of 65 submissions were received.

## **F. National policy frameworks for persons with disabilities**

### **1. National Disability Strategy**

24. The Australian and State and Territory and Local Governments have developed a draft *National Disability Strategy* (NDS). The Prime Minister released the draft NDS to the public on 29 July 2010 with the commitment to take it to the Council of Australian Governments at the earliest opportunity. The NDS will help Australia to fulfil its obligations under the Convention by establishing a framework to promote, protect and monitor the implementation of the Convention, as required under article 33(2).

25. The purposes of the NDS are to:

(a) Set out a high-level policy framework to give coherence and guidance to the activities of Australian governments across mainstream and disability-specific areas of public policy;

(b) Drive improved performance of mainstream services for persons with disabilities;

(c) Provide visibility for the needs of persons with disabilities and ensure they are included when developing policy or implementing initiatives that impact upon them.

26. The NDS aims to address the barriers that are faced by Australians with disabilities and promote social inclusion.<sup>15</sup> The NDS will ensure that the principles underpinning the

<sup>14</sup> <[http://www.hreoc.gov.au/disability\\_rights/decisions/decisions.html](http://www.hreoc.gov.au/disability_rights/decisions/decisions.html)>.

<sup>15</sup> The Australian Government's vision for social inclusion, as outlined in *The Australian Public Service Social Inclusion Policy Design and Delivery Toolkit*, is for a socially inclusive society in which all Australians feel valued and have the opportunity and capability to learn, work, engage and have a voice. The toolkit is available at <<http://www.socialinclusion.gov.au>>.

Convention are incorporated into policies and programs affecting persons with disabilities, their families and carers. It is intended to be a living document refreshed over its ten year life span against which Australians can assess progress for persons with disabilities, and will inform Australia's future reporting under the Convention.<sup>16</sup>

27. A 28-member National People with Disabilities and Carer Council has been established to provide expert advice to Government on the development and implementation of the NDS. The Council includes persons with disabilities and their families, carers, industry and union representatives and academics. The Council conducted a national public consultation process as part of the development of the NDS and released a report on the consultations entitled *Shut Out: the Experience of People with Disabilities and their Families in Australia*. The report identified a number of structural and systemic obstacles to full participation by persons with disabilities, which were taken into account in the development of the NDS.

28. As part of the NDS, the Australian Government has commissioned an inquiry into a national long-term care and support scheme for persons with disabilities in Australia, which is being conducted by the Productivity Commission. The Inquiry will consider a range of issues, including a social insurance model that reflects a shared risk of disability across the population. The Government has appointed eight people with relevant expertise and experience of disability, care, support and insurance to its independent panel which is advising the Government and the Productivity Commission during the Inquiry. The Commission has been asked to report by July 2011.

## 2. National Disability Agreement

29. The *National Disability Agreement* (NDA) is a commitment by all Australian governments to work in partnership to improve outcomes for persons with disabilities. The NDA reflects a strong commitment from Australia to provide more opportunities for persons with disabilities to participate in and enjoy Australia's economic and social life.

30. Through the NDA, the Australian and State and Territory Governments have committed to working towards ensuring all people have access to mainstream government services.<sup>17</sup> Under the NDA State and Territory Governments are responsible for the provision of specialist disability services, while the Australian Government is responsible for providing employment services and income support targeted to the needs of persons with disabilities. State and Territory Governments have also committed to increasing assistance to younger people in, or at risk of entering, residential aged care to provide more appropriate forms of accommodation, diversionary strategies and enhanced services. The NDA replaced the third Commonwealth State and Territory Disability Agreement (CTSDA).<sup>18</sup>

31. The National Standards for Disability Services aim to guide practices in service provision to ensure quality in the delivery of all disability services provided under the

---

<sup>16</sup> In 2010–11, funding of \$640,000 will be provided to involve persons with disabilities, their families and carers to make an active contribution to the National Disability Strategy and the National Carers Strategy, including the Productivity Commission inquiry into long-term care and support. The Australian Government will provide \$6.2 million over four years to establish a policy coordination and secretariat unit to develop and implement the NDS further.

<sup>17</sup> National Disability Agreement, p 4, para 13.

<sup>18</sup> Total government expenditure on the previous CSTDA funded services was \$4.7 billion in 2007–08. This expenditure does not include income support payments. Data on CSTDA funded services is provided in Annex E.

NDA. One of the key focus areas in the NDA is to provide a nationally consistent approach to quality assurance, and the continuous improvement of disability services.

## G. Disability action plans

32. All States and Territories have disability action plans, which are designed to ensure disability access and inclusion across the public sector and funded services.<sup>19</sup>

## III. Articles 5 and 8–30

### A. Equality and non-discrimination (article 5)

33. As discussed above, Australia has a strong regime of anti-discrimination legislation at a Commonwealth and State and Territory level that is aimed at eliminating discrimination on the basis of disability.

34. Australia's anti-discrimination laws are supported by a human rights or equal opportunity commission in each jurisdiction which has a range of functions in relation to the anti-discrimination legislation in that jurisdiction.<sup>20</sup> For example, the AHRC has a range of statutory functions under the DDA:

(a) *Complaints*: The AHRC can investigate a complaint under the DDA, and conciliate the complaint where appropriate. If a complaint is not able to be conciliated, is not appropriate for conciliation, or is terminated by the AHRC, then a complainant is entitled to commence proceedings in the Federal Court of Australia or Federal Magistrates Court of Australia. If the complaint is upheld, the Court may order the respondent to provide a number of remedies to the complainant, including, for example, paying compensation, providing a service to the complainant and requiring the cessation of the discriminatory conduct that gave rise to the complaint. For example, in the case of *Clarke v Catholic Education Office & Anor*,<sup>21</sup> the Federal Court found that the School had discriminated against a prospective student who was profoundly deaf on the ground of his disability by failing to provide Australian Sign Language (Auslan) interpreting assistance to support the student in the classroom. The Court awarded the student \$26,000 in compensation.

(b) *Temporary exemptions*: The Commission can grant temporary exemptions under the DDA. This is an important mechanism for managing transition to inclusive, accessible non-discriminatory systems and environments.

(c) *Promotion of awareness, understanding and compliance*: The AHRC has the function of promoting understanding and acceptance of, and compliance with, the DDA.

<sup>19</sup> For example, *Stronger Together – A new direction for disability services in NSW 2006–2016*, and *Better Together: A new direction to make NSW Government services work better for people with a disability and their families: 2007 – 2011*; *Victorian State Disability Plan 2002-2012*; *10 Year Plan for supporting Queenslanders with a disability*; *Promoting Independence Strategy: Disability Action Plans for SA*; *Disability Framework for Action 2005-2010 (Tas)* and *Future Directions: Towards Challenge 2014 (ACT)*.

<sup>20</sup> See footnote 5 above.

<sup>21</sup> [2003] FCA 1085.

For example, the resource ‘rightsED’, which is a human rights education resource for teachers, contains a unit specifically on disability rights.<sup>22</sup>

35. The AHRC can also review Commonwealth legislation, recommend actions to the Government, prepare guidelines for the avoidance of discrimination on the ground of disability and seek leave to intervene in court proceedings that involve issues of discrimination on the ground of disability. Many of these functions are also undertaken by State and Territory human rights or equal opportunity commissions.

### **Affirmative action**

36. Australia’s overall approach to policies, programs and services for persons with disabilities is aimed at achieving *de facto* equality while taking the diversity of persons with disabilities into account. While there is no positive duty under Australian anti-discrimination law to introduce measures intended to achieve equality for persons with disabilities, such measures operate as an exception or defence to discrimination under the law.<sup>23</sup>

## **B. Awareness-raising (article 8)**

37. In order to inform all Australians about the Convention, the Australian Government has published the Convention on the Australian Legal Information Institute Treaty Database, which is free to access.<sup>24</sup> In addition, this report will be published on the Australian Attorney-General’s Department website in a range of accessible formats.

38. In 2009, Australia conducted a National Human Rights Consultation, the purpose of which was to seek the views of the Australian community on how best to protect and promote human rights in Australia. The National Human Rights Consultation Committee reported that participants in community roundtables identified particular groups of persons whose human rights require greater protection, including persons with disabilities.<sup>25</sup> The Consultation Committee heard many stories from persons with disabilities and their advocates about the challenge of negotiating everyday needs and their right to participate in society as fully as possible,<sup>26</sup> and that groups such as Indigenous Australians with a disability<sup>27</sup> and persons with disabilities living in rural and remote Australia faced further challenges.<sup>28</sup>

---

<sup>22</sup> Available at <<http://www.humanrights.gov.au/education/index.html>>.

<sup>23</sup> For example, Victoria’s *Equal Opportunity Act 2010*, which will commence in August 2011, will make it clear that taking measures for the purposes of promoting or realising substantive equality for members of a group with a particular attribute is not discrimination. Measures that are intended to achieve equality for disabled persons operate as an exception under the *Equal Opportunity Act 1984* (WA). The *Anti-Discrimination Act 1998* (Tas) provides for circumstances in which it is lawful to discriminate in specific situations, including in relation to schemes to benefit disadvantaged groups or groups with special needs (section 25) and programmes, plans or arrangements designed to promote equal opportunity for disadvantaged groups or groups with special needs (section 26). Section 27 of the *Discrimination Act 1991* (ACT) does not make it unlawful to discriminate if the purpose of an act is to achieve equality for a certain class of people.

<sup>24</sup> <<http://www.austlii.edu.au>>.

<sup>25</sup> *National Human Rights Consultation Report*, available at <<http://www.humanrightsconsultation.gov.au/>>, 20.

<sup>26</sup> *Ibid*, 28.

<sup>27</sup> *Ibid*, 21.

<sup>28</sup> *Ibid*, 86.

39. On 21 April 2010, the Attorney-General announced Australia's new Human Rights Framework, which outlines key measures to further protect and promote human rights in Australia. The Framework acts on the key recommendations of the Consultation Committee. One of the key principles of the framework is the importance of human rights education. Under the Framework the Australian Government has committed to undertaking a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community, including a community education grants program.

40. The AHRC's education program aims to explain how human rights and responsibilities apply to our everyday lives, including the rights under the Convention. The Commission also has the function of promoting an understanding and acceptance of, and compliance with, the DDA. The disability rights section of the Commission's website is heavily used, with 1,355,896 page views recorded in 2008–09.

41. The Australian Government has a number of initiatives to foster respect for the rights of persons with disabilities, combat stereotypes and promote awareness of the capabilities and contributions of persons with disabilities. The National Disability Awards are held annually and celebrate and acknowledge the achievements and contributions that individuals with disability make to Australian communities. In addition, more than 700 events were held across Australia in 2009 to celebrate International Day of Persons with a Disability.<sup>29</sup>

42. States and Territories also have a number of awareness-raising measures. For example, in Victoria the Office for Disability is responsible for developing community projects to increase awareness about disability issues and to address negative attitudes and discriminatory practices concerning disability. The Victorian Office for Disability has developed a plain English guide to the Convention, as well as bookmarks that promote individual articles of the Convention.<sup>30</sup>

43. In addition, the human rights and equal opportunity commissions in Victoria, Queensland, WA, Tasmania and the NT all conduct education and training on anti-discrimination legislation.

### C. Accessibility (article 9)

44. Australia recognises the fundamental importance of enhancing accessibility for persons with disabilities to enable them to participate fully in all aspects of life.

45. Under the DDA, the AHRC has functions of advising on the development of standards and monitoring and reporting on their operation. The AHRC can grant temporary exemptions from the Transport Standards, as well as the parts of the Premises Standards covering public transport buildings. These exemptions are for a specified period not exceeding five years. The AHRC's decisions regarding exemptions are reviewable by the Administrative Appeals Tribunal.

---

<sup>29</sup> <<http://www.idpwd.com.au/>>.

<sup>30</sup> A United Step Forward – A Plain English guide to the United Nations Convention on the Rights of Persons with Disabilities, available at <[http://www.officefordisability.vic.gov.au/policies\\_and\\_legislation.htm](http://www.officefordisability.vic.gov.au/policies_and_legislation.htm)>.

## 1. Access to transport

46. The Transport Standards commenced on 23 October 2002, and establish minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises.

47. The Transport Standards set out mandatory requirements in relation to issues such as access paths, manoeuvring areas, ramps and boarding devices, allocated spaces, handrails, doorways, controls, symbols and signs, the payment of fares and the provision of information. New conveyances, premises and infrastructure brought into use for public transport after 23 October 2002 must comply with the Transport Standards. A compliance timetable, incorporating regular milestones, allows between five to 30 years for existing facilities to be made compliant to ensure that increased accessibility is provided in a way that does not create an undue burden for operators and providers. In general, the Transport Standards apply to the full range of public transport conveyances, premises and infrastructure in Australia.<sup>31</sup> A review of the first five years of the operation of the Transport Standards has been completed and will be released shortly.

## 2. Access to education

48. The Education Standards set out the right to comparable access, services and facilities, and the right to participate in education and training without discrimination for students with disabilities.<sup>32</sup> The Government will shortly announce a process for the review of the first five years of the operation of the Education Standards.

## 3. Access to premises

49. The Premises Standards were tabled in the Australian Parliament on 15 March 2010. The Premises Standards provide minimum national standards for accessibility requirements to ensure dignified access to, and use of, buildings for persons with a disabilities. The Premises Standards will commence on 1 May 2011. Development of the Premises Standards involved two major public consultation processes. Numerous disability groups and industry associations have been involved in these consultations.

## 4. Other Commonwealth accessibility programs

50. In early 2009, the Australian Government established the Aviation Access Working Group to consider practical measures that can be taken by both industry and government to improve access to air services for persons with a disability. The *National Aviation Policy White Paper*, released in December 2009, provides a framework for addressing the needs of travellers, airport users and communities affected by aviation activity. The Australian Government will also participate in the International Civil Aviation Working Group to develop guidelines on disability access and encourage airlines and airports to develop and publish Disability Access Facilitation Plans.

51. The Australian Government has been working with States and Territories to implement the Australian Disability Parking Scheme to improve access for people who have difficulty accessing buildings from car parks. The Australian Government has also established a National Companion Card Scheme to improve the social participation of persons with severe or profound life-long disability who require life-long attendant care.

---

<sup>31</sup> There are some exceptions to the application of the standards, e.g. Limousines, hire cars and charter boats, dedicated school bus services, and small aircraft with fewer than 30 seats and airports that do not accept regular public transport services.

<sup>32</sup> The Education Standards will be discussed further below under article 24.

## D. Right to life (article 10)

52. Persons with disabilities enjoy the right to life from birth on an equal basis with all other Australians. Persons with disabilities are not subject to arbitrary deprivation of life in Australia.

## E. Situations of risk and humanitarian emergencies (article 11)

53. The *National Principles for Disaster Recovery* developed by the Australian, State and Territory Governments in conjunction with the Australian Red Cross recognise that successful recovery should support those who may be more vulnerable, such as persons with disabilities. This principle has been put into place through various State and Territory policies and programs that are designed to ensure the accessibility of humanitarian relief in situations of humanitarian emergencies and natural disasters.

54. For example, the Victorian Government has developed a number of strategies and programs to ensure emergency management planning, response and recovery are inclusive of persons with disabilities. The Site Assessment Checklist of the *Local Government and Emergency Relief Centre Guidance Note* includes consideration of the special needs of persons with disabilities, including ease of access, toilet facilities and ramps. Emergency Management Queensland has joined with the Australian Red Cross to provide an *Emergency REDiPlan: Household preparedness for people with a disability, their families and carers* booklet, which is also available in MP3 audio.<sup>33</sup>

## F. Equal recognition before the law (article 12)

55. Australia strongly supports the right of persons with disabilities to legal capacity. In some cases, persons with cognitive or decision-making disabilities may require support in exercising that capacity. In Australia, substituted decision-making will only be used as a measure of last resort where such arrangements are considered necessary, and are subject to safeguards in accordance with article 12(4). For example, substituted decision-making may be necessary as a last resort to ensure that persons with disabilities are not denied access to proper medical treatment because of an inability to assess or communicate their needs and preferences. Australia's interpretive declaration in relation to article 12 of the Convention sets out the Government's understanding of our obligations under this article. Australia's guardianship laws and the safeguards contained in them aim to ensure abuse, exploitation and neglect does not occur, consistent with article 16 of the Convention.

### 1. Australia's supported and substituted decision-making frameworks

56. Each State and Territory has institutional and procedural arrangements in place to cover:

- (a) The rights of involuntary patients and the admission, review of detention, and appeals against detention of involuntary patients;
- (b) Consent for certain treatments;
- (c) The appointment of guardians and the provision of advocacy services;
- (d) Financial administration.

<sup>33</sup> <[http://www.emergency.qld.gov.au/emq/css/pdf/1805EMQ\\_Red\\_Cross\\_Emergency\\_Redi\\_Plan\\_WEB.pdf](http://www.emergency.qld.gov.au/emq/css/pdf/1805EMQ_Red_Cross_Emergency_Redi_Plan_WEB.pdf)>.

57. All States and Territories have in place guardianship and administration laws. Guardianship and administration powers are exercised by Guardianship Boards and Tribunals and administered by public guardians, public advocates, public trustees and protective commissioners in Australia. Guardianship orders can be made if the person is unable to make reasonable judgements in respect of all or any matters relating to his or her person or circumstances and that person is in need of a guardian. Another requirement is that there is currently a decision that needs to be made. There is also provision for making administration orders (financial management orders) if a person is unable to make reasonable judgements in relation to matters concerning all or part of their estate and they need an administrator to manage their estate on their behalf.<sup>34</sup>

58. However, there is general acceptance in Australia of the value of supported decision-making frameworks in relation to persons with a decision-making disabilities. For example, section 6 of the *Guardianship and Administration Act 2000* (Qld) seeks to strike an appropriate balance between the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision-making and his or her right to support for decision-making. Both Queensland and WA recognise informal substituted decision-makers (such as family members) and formal substituted decision-makers. NT will introduce similar provisions next year.

59. In New South Wales (NSW), the Department of Justice and Attorney General has published a Capacity Toolkit, which explains decision-making capacity, and how to assess a person's capacity to make legal, medical, financial and personal decisions. A key aim of the Toolkit is to ensure that substituted decision-making is utilised as a last resort. The Toolkit promotes assisted decision-making as paramount.

## 2. Safeguards

60. Australia's guardianship and administration laws contain a number of safeguards to prevent abuse and exploitation. For example all guardianship orders are time-limited, reviewable on request and all are reviewable at the end of the order. The maximum time for statutorily mandated reviews ranges between one and five years.

61. All Australian jurisdictions have provisions for review of guardianship orders on the initiative of the adult or concerned person, such as a family member. While there are eight jurisdictions in Australia dealing with adult guardianship and administration, all with different legislation, this legislation is all based on the same fundamental principles of the least intervention required to achieve the clearly demonstrated needs of the person with the decision-making disability.

62. Aside from these specific circumstances where a competent authority determined assistance to be required, persons with disabilities are entitled to own property and engage in transactions on an equal basis with others.

63. Some jurisdictions are currently reviewing guardianship laws to ensure that the rights and interests of adults with impaired capacity are protected. For example, the Queensland law reform commission is undertaking a review of the guardianship system, covering the principles under the *Guardianship and Administration Act 2000* (Qld), the powers and responsibilities of substitute decision-makers and guardianship agencies, and reviews of decisions. The Victorian Law Reform Commission is currently reviewing the *Guardianship and Administration Act 1986* (Vic) to ensure that Victorian laws advance,

---

<sup>34</sup> Information on the use of substituted decision-making in some Australian jurisdictions is available at Annex H.



promote and protect the rights of people with impaired decision-making capacity, including those in the Convention.

## **G. Access to justice (article 13)**

64. Australia recognises that ensuring effective access to justice for persons with disabilities is crucial in ensuring that the persons with disabilities can exercise their legal rights on an equal basis with others. This is particularly important in relation to persons with cognitive or decision-making disabilities and children with disabilities who come into contact with the criminal justice system and may face difficulties in enjoying full access to that system.

65. The Government has identified that persons with a chronic illness or disability have increased vulnerability to experiencing difficulties in accessing the justice system. In September 2009, the Australian Government agreed to adopt a Strategic Framework for Access to Justice to guide future reforms of the Federal civil justice system. The Framework is intended to improve access to justice across the justice system, including for persons with a disability.

66. Under the National Partnership on Legal Assistance Services, which is an agreement between the Australian and State and Territory Governments on the delivery of Australian Government-funded legal aid services, cases requiring a grant of aid involving special circumstances such as disability are treated as a priority for Commonwealth legal aid funding.<sup>35</sup>

67. There are a number of measures in place in Australia's Federal court system to accommodate the needs of persons with disabilities. All courts in this system are committed to ensuring that their facilities are accessible to all members of the community and that persons with a disability do not face problems in accessing court facilities, information and services. Building works on existing and proposed Commonwealth Court buildings continue to take into account the needs of persons with disabilities. Examples include ensuring integrated hearing assistance systems have been installed in all courtrooms for those with hearing difficulties, appropriate signage including Braille signage has been used, and that there are continuing improvements to access and facilities as buildings are refurbished and updated. Legal practitioners, parties and witnesses are asked to inform the courts of any disabilities that may impact on a person's ability to access the courts so that registry staff can make appropriate arrangements for litigants to participate fully in a hearing. Practical needs may include the use of a hearing loop or a requirement for regular breaks for medical reasons.

68. Some Federal Courts rules allow for vision impaired witnesses to read their affidavit using a computer with a screen reader, text-to-speech software or a Braille display. Commonwealth Courts also use the National Relay Service to enable litigants with a hearing or speech disability to contact the Courts via telephone. Signing interpreter services are also available and arrangements can be made for Auslan interpreters or Communication Access Real-time Translation service providers to accompany litigants at court events. Vision Australia and the Courts have also worked together to create assistive technology divorce forms which are now compatible with modern screen readers.

69. There are a number of strategies, plans and policies in place in State and Territory justice systems to ensure that persons with disabilities have effective access to justice on an

---

<sup>35</sup> *Schedule A to the National Partnership on Legal Assistance Services: Commonwealth Legal Aid Service Priorities.*

equal basis with others.<sup>36</sup> For example, the NSW Government provides a range of measures to make the justice system accessible for persons with disabilities, including providing documents in alternative formats and interpreters in court, and training judicial officers, Sheriff's Officers and legal practitioners to assist persons with a mental illness or cognitive disability who have come into contact with the criminal justice system. NSW also provides telephone conference and online court hearings for parties with limited mobility and makes provision for individuals with cognitive, psychiatric or other disabilities to bring a support person to court.

70. Queensland provides the publication *Equal Treatment Benchbook* to member of the Queensland Judiciary and Magistracy, which includes a comprehensive chapter on disability to provide members of the Queensland Judiciary and Magistracy with assistance in the conduct of cases involving persons with disabilities. Training is also delivered to assist Queensland police when dealing with persons with disabilities.

71. The ACT Department of Justice and Community Safety has recently undertaken and implemented a disability access audit of Courts to ensure Court services are accessible. Disability ACT provides training to the Australian Federal Police as part of the *Interviewing Vulnerable Witnesses Program*. This training focuses on improved interviewing of persons with cognitive impairment and helps ensure that such persons' interests are properly served. Similar training is provided to custodial officers in the ACT's adult and juvenile prisons as part of their induction. This training improves access to justice by better equipping officers to identify and communicate effectively with people with cognitive impairment.

## **H. Liberty and security of person (article 14)**

72. Australia is committed to ensuring that no one in Australia is deprived of their liberty on the basis of their disability. However, Australia recognises that there are particular challenges in relation to the treatment of persons with mental illness in both the health and criminal justice context.

### **1. Detention of people with cognitive and intellectual disabilities in the health context**

73. The Disability Policy and Research Working Group (DPRWG) – Reference Group on Restrictive Practices, which is made up of government representatives from all Australian jurisdictions, is reviewing current practice nationally to provide a best practice framework in relation to restrictive practices. The aims of the DPRWG include:

- (a) The development of consistent definitions on restraints and their application;
- (b) Sharing information on best practice;
- (c) Identifying barriers to reducing restrictive practices;
- (d) Identifying positive behaviour support strategies.

74. During the public consultation on this report, Australia was asked to provide information on the use of psychiatric medications as chemical restraints. Pharmacological treatments are not considered an acceptable form of restraint in Australia's health services.

---

<sup>36</sup> For example, the NSW Government's *Justice Sector: Disability Action Plan* and the NSW Department of Justice and the Attorney-General *Disability Action Plan*; the Victorian Department of Justice *Disability Action Plan*; the Queensland Department of Justice and Attorney-General's *Disability Service Plan*.

For example, in NSW, the use of psychiatric medications as chemical restraint is a prohibited practice.<sup>37</sup> In the NT the administration of psychiatric medication to a person must serve the best interests and health needs of the person and can only be administered for therapeutic or diagnostic purposes and not as punishment or for the convenience of others.

75. In addition, there are other measures to ensure that the use of restrictive practices and compulsory treatment accords with the rights of the individual. For example, the role of the Victorian Senior Practitioner (established by the *Disability Act 2006* (Vic)) is to protect the rights of persons with disabilities who are subject to restrictive interventions and compulsory treatment, and to ensure that appropriate standards, best practice and legislative requirements are met. The Senior Practitioner has a legislative role to monitor, audit and investigate restrictive interventions.<sup>38</sup>

## 2. Detention of persons with mental illnesses in health context

76. Australia is committed to ensuring that the right of all persons with mental health concerns to liberty and security of person is respected. Persons with mental illnesses will only be detained in a health context where there is a risk of harm to themselves and others.<sup>39</sup> These detention measures are subject to a number of safeguards. For example:

(a) Under the *Mental Health Act 2007* (NSW) a mentally ill or mentally disordered person can only be admitted involuntarily if it is determined that there is no other safe and effective care available of a less restrictive kind that is appropriate and reasonably available to the person;

(b) The WA Office of the Chief Psychiatrist has a statutory responsibility in monitoring the safety and quality of mental health care for persons detained under the *Mental Health Act 1996* (WA). The Act requires that the least restrictive option is the priority in considerations of detention of persons with mental illness. Persons with a mental illness who are deprived of their liberty under the Act may appeal to the State Administrative Tribunal;

(c) Under the *Mental Health (Treatment and Care) Act 1994* (ACT), persons have the right to appeal the making of orders for involuntary treatment and care, and the right to represent themselves, or be represented by legal aid, family and others in the appeal.

77. The *National Mental Health Seclusion and Restraint Project* is a collaborative initiative between the Australian Government and State and Territory Governments with the primary aim of reducing and, where possible, eliminating the use of seclusion and restraint in public mental health services. The Seclusion and Restraint Working Party intends to develop national principles and procedures for the use of seclusion within

<sup>37</sup> In NSW, special permission is required to administer psychotropic medications and can only occur when there is approval from the client, or the person responsible for the client, and proof that everything else has been tried to improve the person's behaviour. There must be evidence that a multi-element behaviour support plan has been developed that offers less restrictive ways to help the person communicate better, feel better and be safe. Consent to administer psychotropic medications must be sought from a Restricted Practice Authorisation Panel (RPAP) and the conditions of usage are extensively detailed in the NSW *Behaviour Support: Policy and Practice* (2009).

<sup>38</sup> Each episode of restrictive intervention must be reported to the Senior Practitioner on a monthly basis. The Senior Practitioner is required to report annually on his or her activities and restrictive interventions used.

<sup>39</sup> Information on numbers of people with mental illnesses being deprived of their liberty in some Australian jurisdictions is available at Annex I.

broader guidelines relating to the management of disturbed/violent behaviour in inpatient psychiatric settings. However, it is recognised that there is further work to do in this area of monitoring seclusion and restraint within the mental health system.

78. More information about involuntary treatment for persons with mental illnesses can be found below under article 17.

### **3. Deprivation of liberty in the criminal justice context**

79. Where persons with disabilities are deprived of their liberty in the criminal justice context, they benefit from the same procedural guarantees as all other persons deprived of their liberty. Prisons and other places of deprivation of liberty in the criminal justice system are administered by the States and Territories. There a number of policies and practices in place to accommodate the specific needs of persons with disabilities detained in the criminal justice system. These needs include physical access for persons with physical disabilities and access to information for persons with vision or hearing impairment, or cognitive disability.

80. For example, in NSW, services to meet the additional support needs of offenders with disabilities are provided by way of a specialist State-wide Disability Services unit and four Additional Support Units which accommodate offenders who, because of their disability, require placement outside the mainstream correctional centre environment.

81. Under the *Primary Health Care Standards 2009* (Vic), prisoners with a disability are identified upon reception and documentation, and health care staff are made aware of risk factors and specific needs of prisoners with a disability and provided with appropriate education and training to assist them to deliver health care to prisoners with disabilities. Corrections Victoria has established a specialist prison unit for prisoners with a cognitive impairment. Corrections Victoria also provides adapted programs to address offending for persons with disabilities, disability-specific training to over 450 frontline staff of prisons and community corrections, and has developed accessible information for prisoners about the complaints process in Victoria's prisons.

82. A pilot project is currently underway in Queensland for offenders with impaired cognitive functioning that includes specialist training for correctional officers, employment of Disability Support Workers in correctional centres and engagement of a specialist NGO to provide intensive transitional case management and community resettlement support. A dedicated Personal Support Unit it also being trialled to accommodate offenders with impaired cognitive functioning.

83. The WA Department of Corrective Services provides a number of specialist services to address the communication needs of persons with disabilities, including a complaints management program that provides services for persons with language or hearing difficulties, management plans for young persons with disabilities detained in WA's juvenile detention centres and an *Intellectual Disability Diversion Program* to divert offenders with intellectual disabilities who are charged with minor offences from court to community based interventions.

84. More information about involuntary treatment for persons with mental illnesses can be found below under article 17.

## **I. Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15)**

85. Australia's *Criminal Code Act 1995* (Cth) specifically prohibits torture consistent with the definition of torture in the *Convention Against Torture and Other Cruel, Inhuman*

or *Degrading Treatment* (CAT).<sup>40</sup> This legislation applies equally to all persons, including those with disabilities. Queensland<sup>41</sup> and the ACT<sup>42</sup> have torture offences under their criminal laws which are applicable to all persons, including persons with disabilities.<sup>43</sup> The ACT offence prohibits torture in similar terms to the CAT. However, the Queensland offence does not require the perpetrator to be a public official. Under the *Mental Health Act 1996* (WA) the ill-treatment or wilful neglect of a patient by a responsible person is an offence that attracts significant penalties.

86. No one in Australia is subjected to medical or scientific experimentation without their free and informed consent. Consent to medical treatment is regulated by policies and/or legislation in each jurisdiction. More information on consent to medical treatment is provided under articles 12 and 17.

## J. Freedom from exploitation, violence and abuse (article 16)

87. The Australian Government recognises that persons with disabilities, and in particular women and children with disabilities, are at risk of violence and abuse. This is true for women with a range of disabilities, including physical disabilities and cognitive disabilities. The Australian Government's measures to reduce violence against women and their children include the following disability specific components:

(a) A Respectful Relationships program that focuses on building protective behaviours and relationships skills for young persons with intellectual disabilities;

(b) Representation from a peak disability group, 'Women with Disabilities Australia' (WWDA) on the Violence Against Women Advisory Group.

88. The National Disability Abuse and Neglect Hotline is an Australia-wide telephone hotline for reporting abuse and neglect of persons with disabilities using government funded services, and helps to safeguard the rights of people using these services. In addition, the Australian Government funds the National Disability Advocacy Program (NDAP), which assists persons with disabilities to overcome barriers such as abuse or neglect. In 2009–10 up to \$15 million in program funding was offered to 63 NDAP organisations operating across Australia.

89. In Australia, the States and Territories are primarily responsible for the protection of persons with disabilities, both within and outside the home, from exploitation, violence and abuse. The States and Territories have in place a range of measures that provide protection to persons with disabilities, and recognise the particular vulnerability of women and children with disabilities to violence and abuse. These measures include government agencies that investigate allegations of abuse of children in the home by parents or guardians, ombudsmen and other administrative bodies that investigate allegations against government employees, legal proceedings initiated by State and Territory police forces, and action plans addressing domestic or family violence.

90. NSW has introduced an 'objective fault test' into the law in relation to sexual assault to expand the circumstances when consent is negated, including where the complainant is incapable of understanding or appreciating the nature of the act. A major aim of this provision is to provide greater protection for women with disabilities.

<sup>40</sup> Division 274, *Criminal Code Act 1995* (Cth).

<sup>41</sup> Section 320A, *Criminal Code Act 1899* (Qld).

<sup>42</sup> Section 36, *Crimes Act 1900* (ACT).

<sup>43</sup> The *Criminal Code Act 2007* of the self-governing territory Norfolk Island also contains a specific offence of torture, which is similar to the ACT offence.

91. The Victorian Government has implemented a number of policies to ensure that persons with disabilities are protected from all forms of exploitation, violence and abuse, including the establishment of a Disability Services Commissioner to consider and conciliate complaints in relation to disability services. The Office of the Public Advocate also exercises its powers to investigate situations where people with disabilities are ‘exploited or abused or in need of guardianship’.

92. In Queensland, the Adult Guardian has the power to investigate allegations that are made by any person or organisation of abuse, neglect or exploitation against an adult with impaired capacity. The Adult Guardian is also empowered to take protective action if the allegations are substantiated and the adult is at risk of further abuse.

93. In South Australia, the Health and Community Services Complaint Commissioner investigates complaints by persons using services provided or funded by Disability SA, and reviews systemic issues related to the provision of these services.

94. In Tasmania, the *Guardianship and Administration Act 1995* (Tas) provides powers to the Guardianship and Administration Board, Tasmania Police and the Public Guardian to intervene to provide immediate protection to persons with disabilities who are the subject of exploitation, violence and abuse.

## **K. Protecting the integrity of the person (article 17)**

95. Australia recognises that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others.

### **1. Consent to medical treatment**

96. Consent to medical treatment is regulated by policies and/or legislation in each jurisdiction.<sup>44</sup> Australia considers that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental illness, where such treatment is necessary as a last resort and subject to safeguards.<sup>45</sup>

97. There are a number of mechanisms in place to assist persons with disabilities in providing consent to medical treatment. For example, in Queensland, the Adult Guardian is appointed as substitute decision-maker for health care decisions, which are made only after receiving medical advice and seeking the views and wishes of clients where possible.

### **2. Medical treatment for children with disabilities**

98. In Australia, the process for seeking consent to medical treatment for children is the same, whether or not the child has a disability. For example, in the ACT, the consent of a parent, a carer or a legal guardian is required prior to medical treatment for all children (with or without disabilities), especially those who are under 16 years of age. This is also the case for children subject to involuntary treatment under mental health provisions. For example, under the *Mental Health Act 1996* (WA), involuntary treatment for children is not distinguished from involuntary treatment for adults.

99. During public consultation on the report, the Australian Government was asked whether psychiatric medications were being used for the purpose of controlling the

---

<sup>44</sup> For example, the *WA Acts Amendment (Consent To Medical Treatment) Act 2008*; Part 6 of the *Tas Guardianship and Administration Act 1995*.

<sup>45</sup> See article 12 for information on Australia’s supported and substituted decision-making frameworks for persons with a cognitive or intellectual disability.

behaviour of children with disabilities, as distinct from their use for the treatment of diagnosed medical conditions. Information on this issue was sought from each State and Territory during the process of finalising this report. The information received on this issue suggested that this practice is not condoned in any Australian jurisdiction. For example, WA, NT and the ACT all indicated that psychiatric medications are not prescribed to control the behaviour of children with disabilities and that these medications were only used to treat the symptoms of a diagnosed medical condition. The Office of the WA Chief Psychiatrist advised that children with disabilities who have been assessed as having a psychiatric condition where psychiatric medications are indicated as part of the management will receive the medications only after consideration of all other alternative management approaches.

### **3. Persons with mental illnesses**

100. Currently, there is a range of legislation across jurisdictions that regulates the involuntary treatment and care of persons with mental illnesses. This legislation contains a number of safeguards. For example:

(a) Under the NSW *Mental Health Act 2007* (NSW), patients must be asked if they are willing to consent to an operation. If there is an issue concerning whether the patient is capable of consent, (or in the case of involuntary patients, where they refuse to consent), the Director-General of Health can provide consent for surgical operations where the patient's primary carer has agreed in writing to the performance of the operation. The Mental Health Review Tribunal is the decision-making body for consent to surgical operations where the primary carer has not agreed in writing to the operation. The Tribunal is also the decision-making body for consent to special medical treatment. An authorised medical officer may only consent to surgery on a patient where it is necessary, as a matter of urgency, to perform an operation on the patient in order to save the patient's life or prevent serious damage to the patient's health or prevent suffering;

(b) Under the Queensland *Mental Health Act 2000* (Qld), there are specific exclusion criteria to ensure that a person cannot be deemed as mentally ill solely on issues such as race, religion or intellectual disability. The Act includes independent review mechanisms such as the Mental Health Review Tribunal, the Mental Health Court and safeguards around an Involuntary Treatment order. Where a health service or treatment is provided without a person's consent, the provider of the service may be liable to a criminal or civil prosecution. Where an adult has impaired capacity, a comprehensive substituted decision-making regime is established to provide the consent;

(c) In WA, any involuntary patient may seek a review of their status, make a complaint about their treatment or raise any issue of concern with the Mental Health Review Board, which is an independent body.

### **4. Sterilisation of children with disabilities**

101. The Australian Government recognises the right of persons with disabilities to retain their fertility on an equal basis with others. Given its invasive and irreversible nature, the Australian Government considers that sterilisation may only be authorised as a measure of last resort and after due consideration of the best interests of the children, and is not done solely on the basis of the child's disability. Parent or guardian consent to sterilisation will be sufficient only where sterilisation is a by-product of surgery appropriately carried out to treat some malfunction or disease. In addition, a medical practitioner can lawfully carry out a sterilisation procedure in emergency situations, that is, where the procedure is necessary to save a person's life or to prevent serious damage to that person's health. In all other circumstances, a request to sterilise a minor from a parent or guardian requires the authorisation of a court or tribunal. When considering a request the Court must ensure the

child's best interests are paramount in these decisions, in accordance with article 7 of the Convention.

102. Stringent guidelines apply to court or tribunal decisions relating to sterilisation. For example, guardianship laws in NSW ensure that if a person lacks capacity to consent to sterilisation or a termination of pregnancy, then only the Guardianship Tribunal can consent to these procedures. The Tribunal ensures that the person with a disability has a separate representative in these proceedings to ensure that the person's views and best interests are ascertained and provided to the Tribunal prior to a decision being made. Decisions of the Tribunal about sterilisation or termination can be appealed to the Supreme Court of NSW which has the power to review such decisions and to set them aside or to make orders in substitution if it thinks fit.

## **L. Liberty of movement and nationality (article 18)**

103. Australia recognises the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others.

### **1. Citizenship**

104. Australia does not discriminate against persons with disabilities in the grant and registration of citizenship. Persons with disabilities can apply for, and be granted, Australian citizenship on an equal basis with others, including at birth. The same is true for registration as a citizen by descent.

105. The *Australian Citizenship Act 2007* (Cth) provides significant assistance and accommodation for persons with disabilities in the various processes surrounding their citizenship applications. No one in Australia is deprived, on the basis of disability, of the ability to obtain, possess or utilise documentation of their Australian citizenship or other documentation of identification.

### **2. Right to enter/remain in Australia**

106. The Convention does not create a right for a person to enter or remain in a country of which he or she is not a national. There is no restriction on entering and leaving Australia for persons with disabilities who are Australian citizens. In relation to non-nationals, persons with disabilities are assessed on the same basis as all other persons seeking to enter Australia.

107. Almost all applicants for a visa to visit or migrate to Australia are required to meet the health requirements outlined in Australian migration law in order to be granted a visa.<sup>46</sup> Under Australia's health requirements, all visa applicants must undergo health assessments where requested and be assessed as having a standard of health appropriate to their proposed length of stay and activities in Australia. The health requirements are designed to ensure that risks to public health in the Australian community are minimised, that public expenditure on health and community services is contained and Australian residents, including Australians with disabilities, have access to health and other community services. Persons with disabilities are assessed on the same basis as all other persons seeking to enter

---

<sup>46</sup> All people in Australia found to be refugees in Australia or who engage Australia's *non-refoulement* obligations under human rights treaties are afforded Australia's protection regardless of whether they have a disability. A discretionary waiver of the health requirement is available for some visas, including humanitarian visas; if the costs are not considered "undue" – with compelling and compassionate circumstances taken into account.



Australia. Australia's interpretive declaration in relation to article 18 of the Convention sets out the Government's understanding of our obligations under this article. Australia considers that its health requirements for non-nationals seeking to enter or remain in Australia are based on legitimate, objective and reasonable criteria and are therefore consistent with the terms of article 18.

### 3. Access to immigration processes

108. Persons with disabilities are afforded the same *de jure* access to immigration proceedings as all other persons. They have the same rights to apply for visas and to apply for merits and judicial review of migration decisions as are provided to all persons, regardless of disability. Persons who have a hearing, speech or communication impairment can contact the Australian Department of Immigration and Citizenship through the National Relay Service, which provides electronic communication services for persons with hearing or speech impediments. In addition, the Translating and Interpreting Service may be used by visually impaired persons who are not sufficiently proficient in English. If clients have difficulty in accessing services by phone or through written communications, they are able to use third parties or agents to act on their behalf.

109. In relation to access to immigration proceedings, the Migration Review Tribunal and Refugee Review Tribunal have a disability action plan which commits the Tribunals to ensuring that persons with disabilities are not disadvantaged when accessing their services.

## M. Living independently and being included in the community (article 19)

110. The Australian Government has in place a number of measures to facilitate persons with disabilities to live in the community, which recognise the challenges persons with disabilities may face in living independently.

111. Between 1981 and 2003 there was a strong trend towards persons aged less than 65 years with severe or profound core activity limitations living in the community. One in 40 persons aged less than 65 years with severe or profound core activity limitations lived in cared accommodation in 2003, compared with almost one in 10 in 1981.<sup>47</sup> These statistics reflect the de-institutionalisation of health and welfare services in Australia.

112. In 2007–08 the vast majority of persons with disabilities were living in private residences in the community (184,144 (74.9%)). There were 13,191 (5.4%) who were living in domestic-scale supported living, such as group homes. A further 10,062, or 4.1%, were living in supported accommodation facilities, such as hostels and institutions. The remaining 10,455 (4.3%) were living in other non-private settings.<sup>48</sup>

### 1. Support for independent living

113. The *Home and Community Care (HACC) Program* is a joint Australian, State and Territory Government initiative. The HACC Program provides services such as domestic assistance, personal care and professional allied health care and nursing services, in order to support older Australians and younger persons with disabilities and their carers to be more

<sup>47</sup> Australian Institute of Health and Welfare, *Disability in Australia: trends in prevalence, education, employment and community living*, Bulletin 61, June 2008, available at: <<http://www.aihw.gov.au/publications/index.cfm/title/10495>>.

<sup>48</sup> Australian Institute of Health and Welfare, *Disability support services 2007–08: national data on services provided under the Commonwealth State/Territory Disability Agreement*.

independent at home and in the community and to reduce the potential or inappropriate need for admission to residential care.<sup>49</sup>

114. The *Younger Persons with Disabilities in Residential Aged Care Program* aims to reduce the numbers of younger persons with disabilities living in, or at risk of admission to residential aged care throughout Australia and to provide enhanced disability support services for those who choose to remain in residential aged care, or for whom residential aged care is the only available suitable accommodation option. A mid-term evaluation conducted in 2009 found the Program was having a positive impact and that it was on track to reduce the total numbers of young persons in nursing homes by up to 689 persons by 2011 (for the priority group of persons with disabilities under the age of 50). This Program is now part of the NDA and, as such, Australian Government funding for this initiative is ongoing.

## **2. Community living initiatives for persons with disabilities**

115. There are a number of initiatives to support community living by persons with disabilities.<sup>50</sup> For example, the *WA Community Living Initiative* ensures that the persons with disabilities and their family lead the decision-making for the planning and development of personalised supports that enable persons with disabilities to live in their own homes in the community. It provides a significant shift in control for persons with disabilities and an alternative to the traditional group homes approach to accommodation.

## **3. Accessible community housing for persons with disabilities**

116. The Australian Government provides funding to the States and Territories to manage and deliver public housing. As at 30 June 2009 the number of public housing dwellings was 336,464 and comprised 328,736 households. Community housing is operated by NGOs. As at 30 June 2009 there were 37,833 households occupying community housing with over 30% of these housings having a member with a disability.

117. In 2008 the Australian Government announced that it will establish new supported accommodation facilities for persons with disabilities.<sup>51</sup> The funding under this initiative has been distributed to State and Territory Governments and will allow for provision of an additional 313 supported accommodation places nationally by 2012. This funding will also help address the concerns of older carers about what will happen to their children when they are no longer able to care for them.

118. In 2009, the Australian Government announced that it will construct more than 19,300 new social housing dwellings in two stages. Through this initiative, the Australian Government is working closely with State and Territory governments to ensure that as many Stage 2 dwellings as possible (approximately 16,500) incorporate universal design elements that make the properties more accessible.<sup>52</sup>

119. In addition, there are a number of initiatives at the State and Territory level to ensure community housing is accessible to persons with physical disabilities. For example,

---

<sup>49</sup> Data on HACC funded services is provided in Annex F.

<sup>50</sup> A key goal of the Victorian *State Disability Plan 2002-2012* is to build inclusive communities. The ACT's *Future Directions: Towards Challenge 2014*, commits the ACT Government to continue to develop housing models that are more responsive to the needs of persons with disabilities, conduct research into private home ownership options and identify potential partnerships with the private and community sector to enhance access to finance for these projects.

<sup>51</sup> The Australian Government invested \$100 million in capital funds for supported accommodation.

<sup>52</sup> \$5.238 billion was committed to this initiative as part of the Nation Building – Economic Stimulus Plan.

Housing SA's newly constructed houses are designed to provide accessible and adaptable features. During 2010, the ACT Government will deliver over 300 new properties that will meet the principles of universal design. Universal design is also a priority for the NSW Government, which is encouraging the development of well-located, accessible and affordable rental housing throughout NSW, including the provision of group homes which may cater for persons with a disability.<sup>53</sup> The WA Disability Services Commission allocates funding for accommodation support to support persons with disabilities to live in the community in a home environment as close as possible to that enjoyed by other community members and to enable the person with a disability and their family to have a choice of support providers.

120. However, there are acknowledged shortfalls in the accommodation available for persons with disabilities. The WA Disability Services Commission has advised that there are two key issues with regard to those waiting for support. The first is the capacity of the disability system to fund the ongoing care, and the second is the infrastructure in which that care occurs.<sup>54</sup>

#### **4. Older people with a disability**

121. During the public consultation on this report, the Australian Government was asked what policies or programs are in place to support older persons with disabilities who wish to remain living in their home.

122. Under the National Disability Agreement, older carers are a priority group and carer age has been recognised as a risk factor in determining priority for services.

123. In NSW, persons with disabilities who have ageing-related support needs are supported in their homes where possible, and are only be referred to an aged care service if an Aged Care and Assessment Team indicated this need, and only then with client or guardian consent. In addition, the NSW Government is encouraging the provision of housing (including residential care facilities) that will increase the supply and diversity of residences that meet the needs of seniors or persons with a disability.<sup>55</sup> The NT has a number of initiatives available to assist older people living in their own homes to remain living in the Community and prevent admission to a nursing home. The NT Government provides Individual Support Packages for people with a disability to remain living in the community. Funded services include accommodation support and respite services. The WA Disability Services Commission works with both community sector and disability sector organisations to assist people to remain in their own homes as long as possible. The transition to residential aged care from Commission-provided accommodation is seen to be an action of last resort. All accommodation buildings and houses are now built with universal design, and specifically tailored to individuals. This not only makes it easier for persons with disabilities to remain in their own home, but also minimises the impact of housing as a determinant for entry to residential aged care.

#### **5. Programs for persons with mental illnesses**

124. *The Fourth National Mental Health Plan, an Agenda for a Collaborative Government Action* provides a framework for developing a mental health system for early intervention. To support recovery and to prevent poor outcomes for people with mental illness, a range of bed-based clinical services, accommodation and housing service options

<sup>53</sup> *Affordable Rental Housing – State Environmental Planning Policy 2009.*

<sup>54</sup> Data on the number of persons with disabilities waiting for supported accommodation in a number of jurisdictions is available at annex J.

<sup>55</sup> *Housing for Seniors or People with a Disability – State Environmental Planning Policy 2004.*

are required. This includes more short-term and long-term clinically supported mental health accommodation services in the community and stable housing tenancy support for people with a disability as a result of their mental illness.

125. There is an identified shortfall in the accommodation and housing needs of consumers of mental health accommodation. For example, the NT noted that there is a significant unmet need for housing for people with a mental illness in the NT requiring low to moderate support. To address this issue, the Australian Government has committed to creating an estimated 1,316 new sub-acute care beds in rehabilitation, palliative care, mental health and geriatric services from July 2010.<sup>56</sup> The provision of additional sub-acute services for people with mental illness will assist with easing transitions from hospital to the community and will reduce the need for hospitalisation.

126. For people with more severe mental illness, recovery is not necessarily synonymous with cure and symptoms may recur or be persistent. The Australian Government provides support to persons with mental illness and their carers to participate in community life through a number of programs. For example, the *Targeted Community Care (Mental Health) Program* provides community-based mental health services to support individuals on their recovery journey by improving life skills and quality of life, building resilience of families through increased skills and knowledge and supporting carers to maintain their caring role.

## **N. Personal mobility (article 20)**

127. The 2003 SDAC showed that 61% of the 3.8 million persons with disabilities living in households reported needing assistance to manage their health conditions or cope with the activities of everyday life. The Australian Government is working with States and Territories as part of broad-ranging reforms under the NDA to ensure more consistent access to aids and equipment for persons with disabilities across Australia by the end of 2012. Current State and Territory Aids and equipment programs include:

(a) The NSW Government's *Enable NSW* service, which provides appropriate assistive technology in the areas of core communication, mobility, respiratory function and self-care;

(b) The Victorian Government's *Aids and Equipment Program*, which provides persons with a permanent or long-term disability with subsidised aids and equipment to enhance independence in their home, facilitate community participation and support families and carers in their role;

(c) The Queensland Government's *Medical Aids Subsidy Scheme*, which provides access to subsidy funding for the provision of aids and equipment to Queensland residents with permanent and stabilised conditions or disabilities, to assist them to live at home and avoid premature or inappropriate residential care or hospitalisation;

(d) The *NT Independence and Mobility Scheme*, which provides equipment to people to assist with their independence, ranging from specialised electric wheelchairs to continence equipment.

128. A number of State and Territory aids and equipment programs include the provision of access to specialised software and hardware to allow persons with disabilities to access computers and internet, for example, through the SA Independent Living Centre.

---

<sup>56</sup> The Australian Government is investing a total of \$1.63 billion in this initiative.

## **O. Freedom of expression and opinion, and access to information (article 21)**

### **1. Access to the Internet for persons with disabilities**

129. Australia recognises that accessible websites can create a more socially inclusive environment for persons with disabilities to engage and participate in all aspects of life, and is committed to improving accessibility to online information. Australian Government departments and agencies are required to adopt common standards and minimum online requirements, including complying with the *World Wide Web Consortium Web Content Accessibility Guidelines 2.0* (WCAG 2.0).

130. Agencies also have obligations under section 24 of the DDA to ensure their websites are accessible to persons with disabilities. This requirement applies to any individual or organisation developing a World Wide Web page in Australia, or placing or maintaining a Web page on an Australian server.

### **2. National information and captioning services for person with hearing impairment**

131. The DDA's prohibition on disability discrimination in the provision of goods and services under section 24 also applies to the broadcast of free-to-air television. The Australian Government funds Media Access Australia to caption uncaptioned educational and community DVDs and downloadable versions for people who are deaf or hearing impaired and Nican Incorporated to provide an accessible website with information about travel, sport and recreational opportunities for persons with disabilities. All levels of Australian government have policies requiring departments and agencies to caption all television commercials and public information videos.

### **3. Print disability services for persons with visual impairment**

132. The Print Disability Services Program, funded by the Australian Government, funds the production of digital masters of print material in a file format that can readily be converted into a range of alternative formats for persons with a print disability. The Program aims to ensure that people with print disability have immediate access to information in the alternative format of their choice.

133. In addition, there are programs in each jurisdiction to provide print disability services to people with visual impairment. For example, the Queensland Vocational Education and Training Development Centre provides information and guidance to training organisations on making learning materials accessible. The ACT Government funds Radio One RPH (Print Handicapped Radio for the ACT) to provide alternative formats of communication including radio broadcasts and the Canberra Blind Society to provide information/referral and alternative formats of communication, including 11 audio newsletters a year.

## **P. Respect for privacy (article 22)**

134. All Australians are entitled to the protections provided under the *Privacy Act 1988* (Cth). The Privacy Act regulates information privacy in the Australian Government public sector and eligible entities in the private sector. Persons with disabilities are afforded protection of their personal, health and rehabilitation information under the Privacy Act on an equal basis with others.

135. The Australian Privacy Commissioner is the national privacy regulator, and performs key functions under the Act, such as providing information and advice about

privacy and the law, handling complaints and conducting audits. Services provided by the Office of the Privacy Commissioner are accessible via website, phone and TTY (telephone typewriter) for individuals with a hearing impairment or speech difficulties.

136. Most States and both Territories have privacy laws regulating their public sectors.<sup>57</sup> There are also legislative frameworks in place in each jurisdiction to regulate privacy issues in relation to health records.<sup>58</sup>

## **Q. Respect for home and the family (article 23)**

### **1. Right to marry based on full and free consent**

137. The *Marriage Act 1961* (Cth) governs all marriages in Australia. It is based on a right of all men and women of marriageable age (18 years of age) to enter into marriage should they wish to do so. In certain circumstances marriages will be void. One of these circumstances is where a person is mentally incapable of understanding the nature and effect of the marriage ceremony. This is to ensure that a party is able to enter into a marriage voluntarily.

### **2. Support for parents, families and carers of young persons with a disability**

138. Australia recognises that parents and carers of young children with disability are at significant risk of isolation and are often socially disconnected from family and friends due to the intensity of their caring role. The *Respite Support for Carers of Young People with Severe or Profound Disability Program* provides immediate and short-term respite to carers of young persons with severe or profound disability, by facilitating access to information, respite care and other assistance appropriate to the individual needs and circumstances of both carers and care recipients.<sup>59</sup> The *MyTime Peer Support Groups for Parents of Young Children with Disability Program* provides peer support groups for parents and carers of young children with disability or a chronic medical condition.<sup>60</sup>

139. Information on sterilisation of persons with disabilities can be found above under article 17.

## **R. Education (article 24)**

140. All Australian children, including children with disabilities, are entitled to attend primary and secondary education. School attendance among all 5–20 year olds with disability rose from 72% in 1981 to 80% in 2003. The proportion of 5–20 year olds with severe or profound limitations attending school rose from 81% in 1981 to 89% in 2003.<sup>61</sup>

---

<sup>57</sup> For example, *Privacy and Personal Information Protection Act 1998* (NSW); *Information Privacy Act 2000* (Vic); *Information Privacy Act 2009* (Qld); *Information Act* (NT).

<sup>58</sup> For example, *Health Records and Information Privacy Act 2002* (NSW); *Health Records (Privacy and Access) Act 1997* (ACT).

<sup>59</sup> Funding for this program in 2008–09 was \$8.621 million, with 5,392 carers assisted.

<sup>60</sup> Funding for this program in 2008–09 was \$2.869 million, with 2703 parents/carers assisted.

<sup>61</sup> Australian Institute of Health and Welfare, *Disability in Australia: trends in prevalence, education, employment and community living*, Bulletin 61, June 2008, available at: <<http://www.aihw.gov.au/publications/index.cfm/title/10495>>.

## 1. Disability standards for education

141. Discrimination against persons with disabilities in the provision of education is unlawful under the DDA. The Disability Standards for Education 2005 were formulated under the DDA, and set out the right to comparable access, services and facilities, and the right to participate in education and training without discrimination for students with disabilities.<sup>62</sup> Education providers have a positive obligation to make changes to reasonably accommodate the needs of a student with a disability and to put in place strategies and programs to prevent harassment and victimisation. Individuals can make a complaint to the AHRC if they consider the standards have been breached.<sup>63</sup>

## 2. Government schools

142. Australia is aware of the challenges faced by children with a range of disabilities in receiving a quality education on an equal basis with other children. All States and Territories offer special support for students with disabilities to enable them to achieve educational outcomes on the same basis as students without a disability and help them reach their full potential.

143. Students with a disability may be enrolled in either regular classes, support classes in regular schools or special schools. In 2003, 82,400 (45%) school students with intellectual disability were attending an ordinary class, while 70,200 (38%) were attending a special class and 31,500 (17%) were attending a special school.<sup>64</sup> 95% of students without an intellectual disability (but who have a psychiatric, acquired brain injury or physical /diverse disability), and 77% of those with sensory/ speech disability were attending an ordinary class.<sup>65</sup> Each State and Territory also provides reasonable accommodation to students with a disability to meet their learning and support needs. For example:

(a) In NSW, itinerant support teachers, with specialist expertise in areas such as hearing and/or vision impairment, early intervention, autism and behaviour disorders, can be provided to assist students with disabilities and their class teachers. Regional support personnel provide advice on programming and assessment of learning programs for students with disabilities and information on appropriate support to access the curriculum through reasonable adjustments;

(b) Victorian schools allow for specialist provision for vision impaired students through the use of additional visiting teachers with Braille knowledge and skills, the provision of material in alternative formats and assistive technologies, and ongoing training to school staff;

(c) In Queensland, the *Education Adjustment Program* provides targeted funding and support for students with disabilities and significant educational support needs. To assist students with a print disability, an Alternate Format Library and Braille Production service translates textbooks and other learning materials into alternative formats for loan by schools. Support for deaf and hearing impaired students who require signed communication is provided by teacher aides who work as interpreters and Auslan language models;

<sup>62</sup> The standards are available on-line at: <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_DisabilityStandardsforEducation](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_DisabilityStandardsforEducation)>.

<sup>63</sup> A review of the education standards will commence in the second half of 2010. The review will cover the effectiveness of the Standards in achieving their objectives, including whether any amendments are necessary.

<sup>64</sup> Australian Institute of Health and Welfare, *Disability in Australia: intellectual disability*, Bulletin 67 November 2008, available at <<http://www.aihw.gov.au/publications/index.cfm/title/10582>>.

<sup>65</sup> Australian Institute of Health and Welfare, *Disability in Australia: intellectual disability*, Bulletin 67 November 2008, available at <<http://www.aihw.gov.au/publications/index.cfm/title/10582>>.

(d) In WA, there is a focus on a flexible and responsive curriculum that encompasses a range of teaching and learning adaptations. Adjustments to delivery of curriculum include communication technologies and sign language;

(e) In SA, a range of services are provided to assist staff in ensuring that students with disabilities have access to the curriculum and are able to participate in the full range of educational activities. These service providers include Disability Co-ordinators, Psychologists-Educations Services (Early Childhood), Guidance Co-ordinators, Hearing Services Coordinators and Speech Pathologists.

### **3. Non-government schools**

144. Non-government schools are partly funded by the Australian and State Governments, and usually require payment of school fees to attend. Australian Government funding for students with disability in non-government schools is provided via the *Literacy, Numeracy and Special Learning Needs Program*.<sup>66</sup>

### **4. Higher education**

145. The *Higher Education Disability Support Program* promotes access to and participation in higher (tertiary) education by students with a disability. The program provides funding to eligible higher education providers to undertake activities that assist in removing barriers to access for domestic students with disabilities. This includes a reimbursement for a proportion of the costs of alternative format materials, sign interpreting services, note takers and the purchase of equipment.

### **5. Vocational education and training**

146. In 2009, the Ministerial Council for Tertiary Education and Employment, which comprises Ministers from all Australian jurisdictions, established an advisory council<sup>67</sup> to support its commitment to improve outcomes for disadvantaged learners in the Vocational Education and Training system. The advisory council is developing a policy to provide learners experiencing disadvantage, including those with a disability, with the opportunity to achieve their potential through skills development.

147. This policy is in addition to the measures in place in States and Territories to assist persons with disabilities participate in vocational education and training. For example, the WA Government provides resources to all Technical and Further Education colleges in WA to provide support for students with disability, including by providing Disability Services Officers whose role it is to ensure that all students with disability have access to the necessary resources, such as Auslan interpreters, customised equipment and any other reasonable adjustments.

### **6. Apprenticeships**

148. The Australian Government provides additional support to Australian apprentices with disability to help them reach their full potential as skilled workers. Support for Australian apprentices with a disability includes the Disabled Australian Apprentice Wage Support, which helps fund the cost of employing apprentices with disabilities.

---

<sup>66</sup> The Australian Government will provide approximately \$810 million for 2009–2012 to non-government schools to help students who are educationally disadvantaged, including students with disability.

<sup>67</sup> The National Vocational Education and Training Equity Advisory Council.



## 7. Assistance with transition from school to employment

149. Under the Disability Employment Services arrangements, eligible students with disabilities can receive assistance tailored to their specific needs, such as help to find part-time work after school, to undertake school-based apprenticeships or to move into post-school options. In NSW, a program called *Transition to Work* assists school leavers with a disability to develop skills that will help them move into employment, vocational education and training or higher education. More information on supporting persons with disabilities in employment can be found under article 27.<sup>68</sup>

## S. Health (article 25)

150. State and Territory Governments have a range of policies and programs in place to ensure the needs of persons with disabilities are met in relation to the provision of health care.<sup>69</sup>

### 1. Protection against discrimination in health services

151. The DDA aims to eliminate discrimination against persons on the ground of disability in the provision of goods and services, which includes the provision of health services.<sup>70</sup>

152. There are specific measures in a number of jurisdictions to ensure that persons with disabilities have access to health services in the area of sexual and reproductive health. In the ACT, persons with disabilities have equal access to reproductive and family planning education through Sexual Health and Family Planning ACT, which also conducts disability-specific courses on these topics. The Family Planning Association of Tasmania provides a program *So Safe* which teaches safe social and sexual behaviours to persons with intellectual disabilities. The WA Department of Health funds the Sexuality Education Counselling and Consulting Service, which develops and implements health promotion programs to enhance the health and wellbeing of persons with disabilities and educate the wider community in areas of sexuality and disability.

### 2. Accessibility of public health campaigns

153. There are national and State and Territory specific initiatives to ensure public health information is accessible to persons with a range of different disabilities. For example, a pictorial booklet *A Guide to Breast Health* has been developed by the WA Disability Services Commission and BreastScreen WA to convey the important message of breast health for women with intellectual disabilities.

154. In addition, the Australian Government funds the National Auslan Interpreter Booking and Payment Service, which provides a free Auslan interpreter for deaf Auslan users attending a consultation provided in a private medical practice.<sup>71</sup>

<sup>68</sup> Refer to the data in Annex E on the use of CSTDA services by age for information on the number of children with disability receiving services.

<sup>69</sup> For example, all hospitals and primary health services in Victoria have Disability Action Plans that promote both physical inclusion and non discriminatory practice in supporting people with a disability with their health needs. Queensland Health has a *Disability Service Plan 2007–2010* and the WA Department of Health *Disability Access and Inclusion Policy 2007–10*.

<sup>70</sup> Section 3(a)(ii), *Disability Discrimination Act 1992* (Cth).

<sup>71</sup> Interpreters have provided over 77,000 Auslan interpreting services for private medical appointments since 2005.

### **3. Mental health reform**

155. Under the *National Health and Hospital Network Agreement*, the Australian Government is responsible for primary mental health care, which is largely targeted to the needs of people with common mental disorders such as anxiety and depression, of mild to moderate severity. Services for these disorders are provided through Medicare and other targeted and complementary primary care programs that are designed to intervene early, promote recovery and prevent deterioration of people's conditions.

156. The Australian Government acknowledges that the system needs to be better for people with severe mental illness and there is much more work to be done. The Australian Government is working with the States and Territories on the scope for additional mental health service system reform. This will include examining the inconsistencies and gaps in services and current roles and responsibilities. The wider health and hospitals reform agenda in Australia is providing a foundation for taking mental health forward, including through funding to address immediate gaps including an expansion of youth-friendly mental health services for young people aged 12–25 years and individualised care packages for people with severe mental illness in primary care.<sup>72</sup>

## **T. Habilitation and rehabilitation (article 26)**

157. Australia's approach to addressing the needs of persons with disabilities in the provision of services aims to help persons with disabilities develop maximum independence in activities of daily living. Australia has specific programs focussed on habilitation of persons with disabilities in the areas of health, employment, education and social services and a number of rehabilitation programs designed to help persons with disabilities to attain maximum independence.

### **1. Rehabilitation in employment**

158. Disability Employment Services, which are a network of service provider organisations contracted by the Australian Government to provide specialist assistance to job seekers with disabilities, injuries or health conditions, provide vocational rehabilitation as required, to help persons with disabilities find and retain safe and sustainable employment in the open labour market. Disability Employment Services providers may assist job seekers to understand, compensate for, and manage their injury or disability by building work capacity and developing work strategies to avoid re-injury.

159. In addition, each Australian jurisdiction has its own workers' compensation scheme to compensate workers who suffer any injury and make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work.<sup>73</sup>

### **2. Rehabilitation in healthcare**

160. There are health services in each jurisdiction that focus on rehabilitation services for persons with disabilities. For example, WA's transitional rehabilitation services are provided to medically stable patients with acquired brain injury and enable younger disabled persons to undergo a period of rehabilitation to acquire relevant life skills, promote their independence and optimise their ability to return home with community support. In

---

<sup>72</sup> The May 2010 budget provided \$175.8 million over four years including \$123 million in new funding for some additional initiatives for mental health care.

<sup>73</sup> Further information on habilitation in employment can be found below under article 27.

NSW the *Brain Injury Rehabilitation Program* assist patients moving from hospital to the home environment, and support to people living in the community.<sup>74</sup>

### 3. Exchange of assistive technologies

161. Australia provided support to Australian NGOs working in international development for provision of assistive devices and infrastructure to assist persons with disabilities.<sup>75</sup> Australia's Aid program (AusAID) is developing staff guidelines for the provision of mobility aids and assistive devices through the aid program, including for wheelchair service provision consistent with the World Health Organisation's 'Guidelines on the provision of Manual Wheelchairs in less resourced settings'.<sup>76</sup>

## U. Work and employment (article 27)

162. Australia is aware of the challenges faced by persons with disabilities in entering and maintaining employment. In 2003, the labour force participation rate of persons with disabilities aged 15 to 64 years was 53.2 % compared to 80.6 % of persons without a disability. The unemployment rate of persons with disabilities was 8.6 % compared to 5.0 % of persons without a disability. The employment rate of persons with disabilities was 48.7 % compared to 76.5 % of persons without a disability.<sup>77</sup> In addition, 9% of persons with disabilities on income support have reported earnings compared with 23 % of persons without a disability.<sup>78</sup> Clearly there is still work to do in this area and the Australian Government is committed to ensuring persons with disabilities are able to enjoy the right to work and to gain a living by participation in a labour market and work environment that is open, inclusive and accessible.<sup>79</sup>

### 1. Discrimination in the workforce

163. In addition to the provisions of the DDA and State and Territory anti-discrimination legislation that prohibit discrimination in employment, Australia's workplace relations system under the *Fair Work Act 2009* (Cth) provides remedies for 'adverse action' taken against employees or prospective employees on discriminatory grounds, including physical or mental disability.<sup>80</sup>

### 2. Wages for persons with disabilities

164. Australia is committed to the principle that persons with disabilities get paid 'real wages for real work'.<sup>81</sup> For workers who are unable to work at full productive capacity due to their disability, there is a range of tools to assess pro-rata wages. The accepted mechanism for people in open employment is the Supported Wage System, which

<sup>74</sup> Further information on habilitation and rehabilitation in healthcare can be found above under article 25.

<sup>75</sup> Approximately \$1.2 million in funding was provided in 2009–10.

<sup>76</sup> Information on access to assistive technologies can be found above under article 20.

<sup>77</sup> Australian Bureau of Statistics, *Cat 4430.0 Survey of Disability and Carers 2003*, table 8.

<sup>78</sup> Centrelink administrative data.

<sup>79</sup> Further information on the labour force status for women and men with disabilities is provided in Annex G.

<sup>80</sup> 'Adverse action' includes a range of behaviours falling short of dismissal, including refusing to employ a person, prejudicially altering a person's employment or treating an employee differently than other employees.

<sup>81</sup> Disability Services Standard 9, *Disability Services Standards (FaHCSIA) 2007* and *Disability Services Standards (DEEWR) 2007*.

incorporates a process of productivity-based wage assessment. In addition, the Wage Subsidy Scheme provides a financial incentive for employers to employ workers with disability under normal labour market conditions.

### **3. Targeted employment programs for persons with disabilities**

165. The *National Mental Health and Disability Employment Strategy* aims to increase the employment of persons with disabilities, promote social inclusion and improve economic productivity. Highlights of the Strategy include a *Disability Support Pension Employment Incentive Pilot* and an *Innovation Fund* that will help more persons with disabilities get jobs by funding innovative projects that remove barriers to employment.

166. Specialised employment services for persons with disabilities fall into two main categories: Australian Disability Enterprises, and Disability Employment Network.

#### **(a) Australian Disability Enterprises**

167. Australian Disability Enterprises are commercial enterprises enabling persons with disabilities to engage in a wide variety of work tasks. There are over 325 Australian Disability Enterprise outlets across Australia, providing supported employment assistance to approximately 20,000 persons with moderate to severe disability who need substantial ongoing support to maintain their employment. Wherever possible, employees in supported employment will be provided with the additional skills and support needed to make the transition into open employment.

168. In June 2007, the Australian Government committed to providing 750 additional supported employment places in Australian Disability Enterprises. The growth in Australian Disability Enterprises is a response to unmet demand for employment opportunities among persons with disabilities who wish to work. It also addressed service gaps in some regions, particularly in rural areas and for younger persons with disabilities, persons with psychiatric disability and Indigenous persons with disabilities.<sup>82</sup>

#### **(b) Disability Employment Services**

169. Disability Employment Services are a network of service provider organisations contracted by the Australian Government to provide specialist assistance to job seekers with disabilities, injuries or health conditions to find and maintain employment in the open labour market. The services assist persons with disabilities with employment preparation, including training and work trials, job search and placement, and ongoing support in the workplace for as long as required. Support through *Jobs in Jeopardy* services provided by the Australian Government is available for people who are currently working, but whose job is at risk as a result of their disability, injury or health condition.

### **4. Reasonable accommodation in the workplace**

170. The Employment Assistance Fund helps persons with disabilities and mental health conditions by providing financial assistance to purchase a range of work-related modifications and services for people who are currently working, as well as those who require assistance to find and prepare for work.

---

<sup>82</sup> In 2007, \$33.71 million over five years was committed to this program.

## 5. Employment of persons with disabilities in the public sector

171. There are policies in place in each State and Territory to increase the employment of persons with disabilities in the public sector. For example, *Victoriaworks for Graduates* with a Disability program supports the transition of recent graduates with a disability into employment in the public and community sectors in Victoria. At least 200 graduates with a disability will be assisted over four years through the program (2007/08–2010/11). A similar program will commence in Tasmania in 2011.

## V. Adequate standard of living and social protection (article 28)

172. Australia recognises that persons with disabilities can face additional pressure and that access to employment can have a significant impact on the ability of persons with disabilities to improve their standard of living. Many persons with disabilities rely on government income support as a sole or main source of income. In 2006, government pensions and allowances were the principal income source for 57% of working-age persons with severe or profound core activity limitations, 42% of persons with specific limitations or restrictions of any severity, and 11% of persons without limitations or restrictions.<sup>83</sup> The Australian Government is committed to achieving an adequate standard of living for all Australians, including Australians with disabilities.

### 1. Disability Support Pension

173. To be eligible for a Disability Support Pension the person must be aged 16 or over and under the age pension age at the time of applying and:

- (a) Be permanently blind; or
- (b) Have a physical, intellectual, or psychiatric impairment, and have an inability to work for 15 hours or more per week at or above the relevant minimum wage, independent of a program of support, or be trained for such work for at least the next two years because of a disability, or be working under the Supported Wage System.<sup>84</sup>

174. On 20 September 2009, the Australian Government delivered a package of significant reforms to the Disability Support Pension and other pensions. The pension reform package improved indexation methodology to ensure increases to the pension reflect the costs of living changes experienced by pensioner household.<sup>85</sup>

175. Pensioners receive a Pension Supplement which incorporates the costs of pharmaceuticals, telephone and utilities. Pensioners also receive a Pensioner Concession Card which reduces the costs of medicines and doctors' appointments and also provides concessions from State and local governments.

### 2. Programmes that provide extra assistance to persons with disabilities and their carers

176. Persons with disabilities may also qualify for extra payments and benefits, including Mobility Allowance. Support for families and carers through the provision of Carer Payment and Carer Allowance assists persons with disabilities to be included in the

<sup>83</sup> Australian Institute of Health and Welfare, Australia's welfare 2009, available at <<http://www.aihw.gov.au/publications/index.cfm/title/10872>>.

<sup>84</sup> In 2009–10, the Australian Government provided \$11.9 billion for the Disability Support Pension and \$4.1 billion in payments to carers of older people, children and people with a disability. These amounts factor in the cost of reforms to the pension system introduced in September 2009.

<sup>85</sup> Rates for the Disability Support Pension at 20 September 2010 are at Annex C.

community. In addition, the Child Disability Assistance Payment is an annual payment made for a child with disability less than 16 years whose carer attracts a payment of Carer Allowance. The payment can be used to assist families purchase support, aids, therapies, or respite that they require for their child with disability. The Carer Supplement provides an annual payment to recipients of Carer Allowance for each person being cared for.

### **3. Special Disability Trusts**

177. Since 20 September 2006, families have been able to establish a Special Disability Trust. The purpose of the trust is to assist immediate family members and carers who have the financial means to do so, to make private financial provision for the current and future care and accommodation needs of a family member with severe disability and to receive means test concessions.

## **W. Participation in political and public life (article 29)**

### **1. Political rights of persons with disabilities and the right to vote**

178. Every eligible Australian citizen who has attained the age of 18 years is required to enrol and vote in Federal elections under the *Commonwealth Electoral Act 1918* (Cth). An elector may be removed from the electoral roll where a registered medical practitioner has certified in writing that the person is incapable of understanding the nature and significance of enrolment and voting because of unsound mind.<sup>86</sup>

### **2. Accessibility of voting procedures**

179. The Australian Electoral Commission (AEC) provides voters with a disability with a range of options to vote. For example, at the 2010 Federal election, telephone voting was available to voters who are blind or have low vision, to provide the voter with a secret vote.<sup>87</sup>

180. The AEC provides a range of information and services to assist voters with a disability to cast their vote. The AEC produced an official guide to the 2010 Federal election which was available in several accessible formats, including audio, Braille, large print formats and e-text, which provided information on accessible polling places and how a voter could cast an early vote if he or she could not attend a polling place.

181. When assessing the suitability of venues for use as polling places at the 2010 Federal election, the AEC used a checklist, which was developed in consultation with the AEC's Disability Advisory Committee and a specialist access architect. Polling places with disabled access were shown on the AEC website, including information identifying the level of accessibility. Each polling place used at the 2010 Federal election had at least one wheelchair accessible table top voting screen.

182. Legislation in Victoria, WA, and the ACT allows electors with disabilities to request assistance with voting.<sup>88</sup> There are also a number of provisions for physical accessibility of voting procedures in State and Territory elections for persons with disabilities. For example, the NSW Electoral Commission provides assistance to electors with disabilities by making available election information in a range of alternative formats such as Easy English, Large Print, Audio, Braille and TTY.

---

<sup>86</sup> Section 93(8) of the *Commonwealth Electoral Act 1918* (Cth).

<sup>87</sup> Part XVB, *Commonwealth Electoral Act 1918* (Cth).

<sup>88</sup> Eg. *Electoral Act 1907* (WA); Section 156 of the *Electoral Act 1992* (ACT).

### 3. Support for disability organisations

183. Australia is committed to giving persons with disabilities the opportunity to be actively involved in the conduct of public affairs through representative organisations. The Australian Government provides funding to twelve national disability peak bodies to contribute to government policies about disability issues affecting Australian families and communities. The national disability peak bodies represent many types of disabilities, as well as the interests of particular demographic groups of persons with disabilities, for example children, women, persons from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander persons. These bodies consult with persons with disabilities and draw on the resources of their member organisations to provide the Australian Government with the perspective of the persons with disabilities they represent. Engagement with these bodies is essential to ensuring that persons with disabilities are consulted and involved in decision-making processes concerning issues relating to persons with disabilities.

184. Persons with disabilities have the opportunity to stand for election and hold public office on an equal basis with others.

## X. Participation in cultural life, recreation, leisure and sport (article 30)

185. The Australian Government is committed to ensuring all Australians have the opportunity to participate in and enjoy cultural life, recreation, leisure and sport.

### 1. Cultural life

186. The *National Arts and Disability Strategy* focuses on access and participation of persons with disabilities, barriers which prevent emerging and professional artists and arts workers with disabilities from realising their ambitions, and audience development. Most Australian Government cultural institutions have in place provisions to ensure that they are physically accessible to persons with disabilities. These features include access ramps, lift access and hearing loops.

187. There are also a number of measures at the Commonwealth, State and Territory level to ensure that persons with disabilities have access to the cultural institutions on an equal basis with others.<sup>89</sup> For example:

(a) In 2010 the Australian Government announced support for commercial cinemas to fast track audio description and captioning technology to improve cinema access for people who are deaf, blind, visually or hearing impaired;

(b) The NSW Government's cultural institutions provide programs to facilitate access, including the incorporation of multi-sensory and tactile features into exhibition design, the provision of sensory tours, Auslan interpreted tours and Braille guides, and provision of programs designed for students with intellectual disabilities;

(c) In Victoria, the *Arts & Disability Research & Engagement Project* is aimed at increasing cultural participation of persons with disabilities.

188. In addition, there are a number of programs in place to ensure persons with disabilities can participate in the production of art. For example, the Richard Llewellyn

<sup>89</sup> For example, the WA *Department of Culture and the Arts Disability Access and Inclusion Plan 2006–2011* and the ACT Government's *Arts Facilities Strategy*.

Arts and Disability Trust Fund in SA supports projects and initiatives that develop and celebrate the creative and artistic aspirations of persons with disabilities in SA.

## **2. Access to copyright protected materials for blind and visually impaired persons**

189. Australian copyright law provides a number of exceptions and statutory licenses to facilitate access to copyright materials for persons with a disability. These include legislative arrangements permitting the copying and communication of accessible versions of materials to persons with a print or intellectual disability.

190. The Australian Government is committed to contributing to international efforts to improve access to materials for blind and visually impaired persons and is open to introducing effective domestic measures to facilitate greater access to materials in Australia. Australia is playing an active role in international discussions in the World Intellectual Property Organisation Standing Committee on Copyright and Related Rights and the possible treaty being considered by the World Blind Union.

## **3. Recreational, leisure and sporting activities**

191. The Australian Sports Commission (ASC) assists National Sporting Organisations to develop inclusive strategies and deliver participation outcomes for persons with disabilities. The ASC has developed an inclusive sports activity program called *Sports Ability*, which is aimed at providing young people with high support needs opportunities to take part in five specific adapted sports. The Australian Government also provides funding to the Australian Paralympic Committee to assist Australia's Paralympic athletes.<sup>90</sup>

# **IV. Articles 6 and 7**

## **A. Women with disabilities (article 6)**

192. There are more than 2 million women with disabilities living in Australia. All women with disabilities in Australia are entitled to enjoy their rights on an equal basis with men with disabilities, and with women without disabilities. The Government recognises that multiple forms of discrimination can affect the ability of women with disability to enjoy their rights and is committed to addressing this issue.

### **1. Protection against discrimination on the basis of sex**

193. The *Sex Discrimination Act 1984* (Cth) prohibits discrimination on the grounds of sex, and applies to all persons in Australia, including women with disabilities. There is similar legislation in all State and Territory jurisdictions.

### **2. Violence against women – disability related aspects**

194. In the NDS Report, *Shut Out*, the issue of violence against women with disabilities was a recurring theme. Submissions noted that women with disabilities escaping family or domestic violence are not well catered for within mainstream support organisations and services.<sup>91</sup> The NDS will address this important issue and complement work being carried

---

<sup>90</sup> In 2009–10 the ASC has allocated \$9.1 million to the Committee.

<sup>91</sup> *Shut Out: the Experience of People with Disabilities and their Families in Australia*, 60, available at <[http://www.fahcsia.gov.au/SA/DISABILITY/PUBS/POLICY/COMMUNITY\\_CONSULT/Pages/default.aspx](http://www.fahcsia.gov.au/SA/DISABILITY/PUBS/POLICY/COMMUNITY_CONSULT/Pages/default.aspx)>.



out on the *National Plan to Reduce Violence against Women and their Children*, the *National Framework for Protecting Australia's Children* and the *National Homelessness Strategy*. This will ensure the proposed strategies, programs and services are responsive to the particular needs of women with disabilities.

### 3. Consultation with women with disabilities on issues that affect them

195. The Australian Government provides funds to WWDA, which is the peak body representing women with disabilities in Australia. WWDA is funded to contribute to government policies about disability issues affecting Australian families and communities, to carry information between the Government and the community on social policy issues and to represent the views of its constituents.

196. The Australian Government funds six National Women's Alliances, which work collaboratively to provide informed and representative advice to government on policy development and implementation relevant to the diverse views and circumstances of women. WWDA is an active member organisation of both the Equality Rights Alliance and the Economic Security for Women Alliance.

## B. Children with disabilities (article 7)

197. All children with disabilities in Australia are entitled to enjoy their rights on an equal basis with children without a disability. In 2003 about one in 12 children in Australia had a disability (8.3% of all children, 317,900 children).<sup>92</sup> Australia recognises some of the barriers faced by children with disability in the enjoyment of these rights, and has a number of programs in place to address these barriers. For example:

(a) The national Early Childhood Development Strategy '*Investing in the Early Years*' focuses on reducing social inequities through strengthening universal maternal, child and family health services and support for vulnerable children;

(b) Australia's *National Framework for Protecting Australia's Children* recognises childhood disability as a risk factor for abuse and neglect;

(c) The Australian Government's *Helping Children with Autism* program helps to address the need for support and services for children with Autism Spectrum Disorders. All initiatives include support for parents, families, carers and children from Indigenous backgrounds, culturally linguistically diverse backgrounds and those living in rural and remote areas;<sup>93</sup>

(d) The Tasmanian and ACT Governments have both introduced a Charter of Rights for children living in out-of-home care based on the rights in the *Convention on the Rights of the Child*;

(e) The Australian Government funds Children with Disability Australia as a peak body.

<sup>92</sup> Australian Institute of Health and Welfare, *Disability Updates: Children with Disabilities*, Bulletin No. 42 July 2006, available at <<http://www.aihw.gov.au/publications/index.cfm/title/10340>>.

<sup>93</sup> \$190 million for this program was committed for the four years up to June 2012.

**1. Best interests of the child**

198. As explained in Australia's Fourth Report under the Convention on the Rights of the Child, a determination of the best interests of the child is the key principle in most legislation concerning children in Australian, State and Territory jurisdictions.<sup>94</sup>

**2. Ability of children with disabilities to express views on matters that affect them**

199. The WA Commissioner for Children and Young People encourages the participation of children and young persons, including children with disabilities, in the making of decisions by government and non-government agencies. Young persons with a disability are encouraged to participate in the ACT Government's Youth Advisory Council. Young persons with a disability were also consulted during the development of the ACT's *Young People's Plan 2009–2014*.

**3. Early childhood intervention for children with disabilities**

200. All Australian jurisdictions have early childhood intervention programs for children with disabilities. For example, Victoria provides specialist support to families with children that have a disability or developmental delay, including special education, therapy, counselling, service planning and coordination, and assistance and support to access services such as playgroup and kindergarten. The *NSW Statewide Infant Screening – Hearing program* is a universal hearing test which aims to identify babies with hearing impairment to promptly provide intervention services.

**4. National Strategy for Young Australians**

201. The *National Strategy for Young Australians* sets out the Australian Government's vision for young people 'to grow up safe, healthy, happy and resilient and to have the opportunities and skills they need to learn, work, engage in community life and influence decisions that affect them'. The *National Strategy for Young Australians* will help guide future Australian Government policies and initiatives for young people, including consideration of groups at risk such as young people with a disability, those with mental health issues and young people exiting care.

**V. Articles 31–33****A. Statistics and data collection (article 31)****1. National Minimum Dataset**

202. All Australian Governments annually provide data for a Disability Services National Minimum Data Set on government-funded disability services. The Dataset provides nationally comparable data about NDA-funded services. Real direct service delivery expenditure by service type and jurisdiction is shown in Annex D.

**2. Australian Bureau of Statistics (ABS)**

203. The SDAC provides disability prevalence rates for Australia and is the main source of data used to assist government departments and community groups in the development

---

<sup>94</sup> Australia's Fourth Report under the Convention on the Rights of the Child (2009), paragraphs 70–78, available at <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_ReportsundertheConventionontheRightsoftheChild](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_ReportsundertheConventionontheRightsoftheChild)>.

of relevant policies to meet the needs of Australians with a disability. The 2009 SDAC was conducted from April to December 2009, and the results are expected to be released in late-2010 or early-2011. *People with a Need for Assistance – A Snapshot 2006* provided a ‘snapshot’ of disability as captured by the 2006 Census and allows for the examination of this population by demographic, geographic and economic characteristics.

204. ABS surveys are conducted under the authority of the *Census and Statistics Act 1905* (Cth). The Act prohibits the disclosure of identifiable information of a personal or domestic nature and requires that information can only be published in a manner that is not likely to enable the identification of a particular person or organisation. In addition, all ABS surveys comply with the requirements of the *Privacy Act 1988* (Cth).

205. All publications, spreadsheets and Census data on the ABS website are available free to any member of the public with Internet access.

## **B. International cooperation (article 32)**

### **1. Programs and projects that specifically target persons with disabilities**

206. The AusAID’s disability-inclusive development strategy *Development for All: Towards a disability-inclusive Australian aid program 2009–2014* is the first strategy to guide Australia’s overseas aid program that includes, and deliberately focuses on, persons with disabilities. The Strategy aims to integrate disability within existing programs, and to support disability specific activities that enable social and economic participation of persons with disabilities.<sup>95</sup>

### **2. Safeguards in use of donor funds**

207. AusAID implements fraud control and risk management procedures, and works with partner governments and other donors to identify and strengthen partner government systems used to deliver aid funds.<sup>96</sup>

### **3. Inclusion of the most vulnerable groups**

208. The guiding principles of the *Development for All* strategy contain a specific commitment to focus on ‘vulnerable’ or excluded groups including children and women with disability. Examples of specific initiatives implemented include:

(a) Negotiation of a partnership with the United Nations Children’s Fund (UNICEF) to increase access by children with disability to quality education through UNICEF’s *Child Friendly Schools initiative*;

(b) Funding for research on gender-based violence, and access to services by women with disability under Australia’s Development Research Awards;

(c) The integration of women and girls with disability as a priority area within Australia’s partnership with the United Nations Development Fund For Women.

<sup>95</sup> In 2008–09 to 2009–10 the Australian Government committed \$5 million for initial planning and implementation of the Australian Agency for *International Development (AusAID)*’s *Development for All strategy*. In the May 2010 Budget the Australian Government announced a new budget initiative *Disability: Fair Development Accessible to All* to the value of \$30.2 million over four (4) years. This budget initiative will be invested in the disability specific activities outlined in the *Development for All strategy*.

<sup>96</sup> AusAID, *2008–9 Annual report*, 178–9, available at <<http://www.ausaid.gov.au/anrep/rep09/default.cfm>> at 8 April 2010.

#### **4. Participation of persons with disabilities**

209. The *Development for All* strategy was developed with the active input of persons with disabilities, particularly those in our partner countries. A Disability Inclusive Development Reference Group has also been established comprising international and Australian leaders in this field, including persons with disabilities and representative of a regional Disabled Peoples Organisation.

#### **5. Mainstreamed action**

210. Australia intends that its aid program will become increasingly disability inclusive. AusAID is reviewing flexible programs to ensure that they meet the needs and priorities of persons with disabilities.<sup>97</sup> New AusAID strategies to address HIV/AIDS,<sup>98</sup> disaster risk reduction,<sup>99</sup> financial services,<sup>100</sup> and mine action<sup>101</sup> have incorporated disability-inclusive aspects.

#### **6. Millennium Development Goals**

211. The Australian Government believes that strengthening Australia's commitment to the rights of persons with disabilities is a critical part of achieving the Millennium Development Goals (MDGs) and meeting Australia's obligations under the Convention. Australia continues to support efforts to close the gap between policy and practice regarding mainstreaming the perspective of persons with disabilities into the work of the UN in realising the MDGs.

### **C. National implementation and monitoring (article 33)**

#### **1. Focal points**

212. In accordance with article 33(1) of the Convention, the Attorney-General's Department (AGD) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) have been designated as joint focal points within government for matters relating to the implementation of the Convention. While each Department has responsibility for specific areas of the Convention, both work in close partnership. AGD maintains broad responsibility for all human rights matters, including the DDA and other legislative issues, as well as coordinating Australia's reports under the Convention. FaHCSIA provides specific policy advice and disability sector expertise in strategically guiding and promoting key elements of the Convention's implementation.

#### **2. Framework for implementation and monitoring**

213. The NDS will establish a framework to promote, protect and monitor the implementation of the Convention. The Attorney-General has also made a declaration under the *Australian Human Rights Commission Act 1986* (Cth), the effect of which is to

---

<sup>97</sup> For example scholarship and small grants guidelines, procurement and contracts.

<sup>98</sup> AusAID, *Intensifying the Response: Halting the Spread of HIV* (2009), <<http://www.ausaid.gov.au/publications/pdf/AusAIDHIVStrategy2009.pdf>>.

<sup>99</sup> AusAID, *Investing in a Safer Future: A Disaster Risk Reduction policy for the Australian aid program* (2009), <<http://www.ausaid.gov.au/keyaid/disasterriskreduction.cfm>>.

<sup>100</sup> AusAID, *Financial Services for the Poor: A strategy for the Australian aid program 2010–15* (2010) <[http://www.ausaid.gov.au/keyaid/growth\\_microfinance.cfm](http://www.ausaid.gov.au/keyaid/growth_microfinance.cfm)>.

<sup>101</sup> AusAID, *Mine Action Strategy for the Australian aid program* (2009) <<http://www.ausaid.gov.au/keyaid/mineaction.cfm>>.

---

include the rights which are recognised by the Convention in the definition of human rights, for the purposes of the AHRC's functions under section 11 of this Act.

214. In particular, under this Act the Commission may:

- (a) Inquire into an act or practice of the Australian Government that may be inconsistent with the Convention;
- (b) Prepare guidelines for the avoidance of acts or practices inconsistent with the Convention;
- (c) Promote an understanding and acceptance of the rights in the Convention;
- (d) Report to the Attorney-General as to the laws that should be made by the Australian Government on matters relating to the Convention;
- (e) Report to the Attorney-General on action that needs to be taken by Australia in order to comply with the provisions of the Convention.<sup>102</sup>

215. The AHRC is Australia's national human rights institution, and meets the requirements of the 'Paris Principles'.

### **3. Involvement of civil society in the monitoring process and preparation of the report**

216. As noted above at paragraph 6, the Government sought the views of NGOs at several key stages of drafting the report. In addition, Australia supported the production of a NGO Shadow Report on Australia's progress against the Convention by providing funding for the production of this report.

---

<sup>102</sup> Each of these functions may be exercised either on the Commission's own initiative or at the request of the Attorney-General.