

**Australia's Combined Second and Third Periodic Report under the  
Convention on the Rights of Persons with Disabilities**

**1 September 2018**

## Contents

Introduction.....	4
Preparation of the report .....	4
Consultation on the report.....	4
Status of the Optional Protocol.....	4
Part A: Purpose and general obligations (articles 1-4).....	5
Purpose, definition and principles.....	5
Issue 1 .....	5
Issue 2 .....	7
Issue 3 .....	8
Issue 4 .....	9
B. Specific rights (articles 5-30) .....	12
Equality and non-discrimination (article 5) .....	12
Issue 5 .....	12
Women with disabilities (article 6).....	12
Issue 6 .....	12
Children with disabilities (article 7).....	14
Issue 7 .....	14
Awareness raising (article 8).....	17
Issue 8 .....	17
Accessibility (article 9) .....	18
Issue 9 .....	18
Issue 10 .....	20
Issue 11 .....	21
Situations of risk and humanitarian emergencies (article 11).....	22
Issue 12 .....	22
Equal recognition before the law (article 12).....	23
Issue 13 .....	23
Access to justice (article 13).....	24
Issue 14 .....	24
Issue 15 .....	26
Liberty and security of the person (article 14).....	28
Issue 16 .....	28
Issue 17 .....	29

Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15).....	30
Issue 18 .....	30
Freedom from exploitation, violence and abuse (article 16).....	33
Issue 19 .....	33
Protecting the integrity of the person (article 17) .....	34
Issue 20 .....	34
Liberty of movement and nationality (article 18).....	36
Issue 21 .....	36
Living independently and being included in the community (article 19) .....	37
Issue 22 .....	37
Freedom of expression and opinion, and access to information (article 21).....	38
Issue 23 .....	38
Education (article 24).....	40
Issue 24 .....	40
Issue 25 .....	40
Issue 26 .....	42
Health (article 25) .....	43
Issue 27 .....	43
Access to habilitation and rehabilitation (article 26) .....	45
Issue 28 .....	45
Right to work (article 27).....	46
Issue 29 .....	46
Issue 30 .....	47
Adequate standard of living and social protection (article 28) .....	49
Issue 31 .....	49
Participation in political and public life (article 29) .....	50
Issue 32 .....	50
Statistics and data collection (article 31) .....	51
Issue 33 .....	51
International cooperation (article 32).....	53
Issue 34 .....	53
National implementation and monitoring (article 33).....	54
Issue 35 .....	54

## **Introduction**

1. The Australian Government is pleased to present to the Committee on the Rights of Persons with Disabilities (Committee) Australia's second and third periodic 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 on 16 August 2008. Australia provided an initial report under the Convention published 3 December 2010.
2. This report demonstrates Australia's commitment to respecting the rights of persons with disabilities and the significant effort devoted to ensuring persons with disabilities in Australia are able to enjoy, on an equal basis with others, all human rights and fundamental freedoms in accordance with the Convention.

## **Preparation of the report**

3. This report has been prepared in accordance with the Guidelines on periodic reporting to the Committee on the Rights of Persons with Disabilities, including under the simplified reporting procedures<sup>1</sup> and the *Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties*.<sup>2</sup>
4. The issues addressed are outlined in the *List of issues prior to submission of the combined second and third periodic reports of Australia* (List of Issues).<sup>3</sup>
5. This report should be read in conjunction with Australia's Common Core Document.<sup>4</sup>

## **Consultation on the report**

6. In preparing this report the Australian Government consulted extensively with state and territory governments, who are responsible for many of the activities that implement the Convention. The Australian Human Rights Commission (AHRC) was also consulted.
7. The Australian Government acknowledges the key role played by non-government organisations (NGOs) in the implementation of the Convention and consulted with them in developing the report. During initial preparations, 36 NGOs were invited to submit information for consideration in drafting its response to the List of Issues. Following this, the Australian Government made the first draft report available online, inviting comments from NGOs and members of the public.

## **Status of the Optional Protocol**

8. Since the Optional Protocol entered into force for Australia on 20 September 2009, Australia has received 13 individual communications regarding alleged violations of the Convention.<sup>5</sup>
9. Of these cases, the Committee has:

---

<sup>1</sup> CRPD/C/3 (2016)

<sup>2</sup> General/HRI/MC2004/3 (2004)

<sup>3</sup> CRPD/C/AUS/QPR/2-3, adopted by the Committee at its eighteenth session and distributed on 19 September 2017

<sup>4</sup> Submitted to the Office of the High Commissioner for Human Rights on 25 July 2007

<sup>5</sup> As at 26 July 2018

- a. found two cases inadmissible (*A.M v Australia* (CRPD No. 12/2013) and *D.R v Australia* (CRPD No. 14/2013)), and
  - b. issued Adverse Views against Australia in four cases (*Noble v Australia* (CRPD No. 7/2012), *F.G v Australia* (CRPD No. 19/2014), *G.B v Australia* (CRPD No. 11/2013) and *M.L v Australia* (CRPD No. 13/2013)).
10. Six cases remain under consideration by the Committee and one case was discontinued.
11. The Australian Government engages comprehensively and in good faith with United Nations (UN) treaty bodies in response to individual communications, responding to adverse views and implementing recommendations from those views where it considers it is appropriate.

## **Part A: Purpose and general obligations (articles 1-4)**

### **Purpose, definition and principles**

#### **Issue 1**

##### *Incorporating the Convention*

12. The rights under the Convention have been incorporated into domestic law through Commonwealth, state and territory legislation.
13. The *Disability Discrimination Act 1992* (Cth) (DDA) applies to the Commonwealth, states and territories and private sector bodies. It makes 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 Commonwealth laws and programs. The AHRC has the ability to investigate and conciliate complaints of disability discrimination under the DDA.
14. Each state and territory also has legislation which prohibits discrimination on the basis of disability.<sup>6</sup> This is administered by state and territory bodies who exercise functions under the legislation, including investigating and conciliating complaints.<sup>7</sup> Victoria and the Australian Capital Territory (ACT) also have human rights legislation requiring public authorities to give consideration to human rights when making decisions, act in accordance with human rights and recognise the rights of persons with disabilities.<sup>8</sup>

##### *Interpretive declarations*

---

<sup>6</sup> *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 2010* (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); and *Anti-Discrimination Act 1998* (NT).

<sup>7</sup> Victorian Equal Opportunity and Human Rights Commission (Vic); Anti-Discrimination Commission Queensland (Qld); Equal Opportunity Commission (WA); Equal Opportunity Tasmania (Tas); ACT Human Rights Commission (ACT); Anti-Discrimination Board of NSW (NSW) and Northern Territory Anti-Discrimination Commission (NT).

<sup>8</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2004* (ACT).

15. The Australian Government has made an interpretive declaration to the Convention, relevant to articles 12, 17 and 18, and does not propose to withdraw this declaration. It does not purport to exclude or modify the legal effects of the Convention, but clarify Australia's understanding that the Convention:
  - a. allows for fully supported or substituted decision-making where necessary, as a last resort and subject to safeguards
  - b. allows compulsory assistance or treatment where necessary, as a last resort and subject to safeguards, and
  - c. does not create a right for non-nationals to enter or remain in Australia or impact on Australia's health requirements where these are based on legitimate, objective and reasonable criteria.
16. Australia strongly supports the rights of persons with disabilities to legal capacity. In some cases, persons with cognitive or decision-making disabilities may require support in exercising this capacity.
17. 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) of the Convention. For example, 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.
18. Consistent with article 16 of the Convention, Australia's guardianship laws contain safeguards to prevent the abuse, exploitation and neglect of persons with disabilities. All guardianship orders are time-limited, reviewable upon request and at the end of the order. There are also provisions for review of guardianship orders on the initiative of the adult or a concerned person, such as a family member. Legislation is based on the fundamental principle of the least intervention required to achieve the clearly demonstrated needs of the person with the decision-making disability.
19. Some jurisdictions are reviewing or implementing changes to their guardianship laws to ensure that the rights and interests of adults with impaired capacity are protected. For example in March 2018, the Victorian Government introduced a Bill to replace the current *Guardianship and Administration Act 1986* (VIC) with a legislative framework based on a more contemporary understanding of decision-making capacity and disability, and provides statutory recognition of supported decision-making.
20. In Australia, compulsory assistance or treatment will only be used where it is necessary, as a last resort and subject to safeguards in accordance with article 14(2) of the Convention.
21. State and territory legislation outlines criteria for appointing substitute decision-makers concerning the medical treatment of adults deemed incapable of giving consent. Most jurisdictions provide for a decision-maker who is chosen (e.g. an enduring guardian), assigned by

the legislation (e.g. a spouse or relative), or appointed (e.g. by a court) to make health decisions for an adult who is not capable of giving consent.<sup>9</sup>

22. When exercising their powers, substitute decision-makers are required to adopt one of two tests, or a combination of both. The best interests test (which requires a balancing of the benefit to the patient against the risks of the proposed treatment) and the substituted judgement test (which involves making a decision consistent with what the person would have decided if they had the capacity to do so, using available evidence, such as advance care directives, religious beliefs and previous treatment).
23. 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.
24. These requirements are designed to ensure risks to public health in the Australian community are minimised, public expenditure on health and community services is contained and Australian residents, including Australians with disabilities, have access to health and other community services.
25. Australia does not discriminate against persons with disabilities in the granting and registration of citizenship. Persons with disabilities can apply for, and be granted, citizenship on an equal basis with others, including at birth. The same is true for registration as a citizen by descent.
26. Australia considers that its health requirements for non-nationals are based on legitimate, objective and reasonable criteria and are consistent with the terms of Article 18.

## **Issue 2**

27. The Australian Government has no plans to cease funding for the National Disability Advocacy Program (NDAP).
28. The Australian Government is committed to ensuring disability advocacy services are available for persons with disabilities and has established mechanisms to ensure the full and effective participation of persons with disabilities in actions to promote, protect and ensure their enjoyment of all the rights in the Convention.
29. In 2018-2019 the Australian Government has committed:
  - a. \$20.8 million under the NDAP to fund 60 organisations across Australia
  - b. \$2.125 million for disability representative organisations (DRO), and
  - c. more than \$9 million to the National Disability Insurance Scheme (NDIS) Appeals program.
30. All three programs are funded through grant agreements that end on 30 June 2020. They ensure that persons with disabilities have access to effective advocacy that promotes and protects their rights, and that a diversity of voices is represented in Australian Government decision-making and

---

<sup>9</sup> In the NT there is no provision for consent to medical treatment without an appointment.

policy outcomes.

31. The NDIS Appeals program ensures all persons with disabilities (as well as others like parents and carers) affected by a reviewable decision of the National Disability Insurance Agency (NDIA) have access to support when seeking a review of a decision in the Administrative Appeals Tribunal (AAT). This includes access to a skilled advocate to act as a support person and legal services where a case raises complex or novel legal issues.
32. DROs can use their funding to:
  - a. promote an understanding of the lives of persons with disabilities
  - b. promote and protect the rights and dignity of persons with disabilities and foster support for their dignity, rights, wellbeing and participation in all aspects of community life
  - c. support accessibility for persons with disabilities and the development of alternative forms of relevant resources
  - d. deliver media campaigns to promote understanding of persons with disabilities
  - e. promote specific Convention objectives such as maximizing the potential of persons with disabilities to participate as equal citizens
  - f. undertake domestic consultation with persons with disabilities, their families, carers and their representative organisation on issues relevant to the implementation of the Convention in Australia, and
  - g. monitor and report under the Convention and related UN Treaty obligations.

### **Issue 3**

33. The *National Disability Strategy 2010–2020* (ND Strategy) is Australia’s overarching policy framework for disability reform and the key mechanism for driving more inclusive policy and program design across all levels of government. It is aligned with the principles of the Convention and establishes a framework to monitor its implementation in Australia. All state and territory governments are signatories.
34. The ND Strategy reflects the findings of an extensive consultation process with the Australian community (particularly persons with disabilities, their families and carers), national disability and carer peak organisations, employers and industry experts. Ongoing engagement and consultation with persons with disabilities and their representative organisations is an important part of its implementation.
35. The first implementation plan, *Laying the Groundwork 2011–2014*, set the foundation for influencing all areas of policy and service delivery over the ND Strategy’s ten-year life span.
36. The second implementation plan, *Driving Action 2015–2018*, continues that commitment and identifies four areas of national cooperation:
  - a. improving employment outcomes

- b. improving outcomes for Aboriginal and Torres Strait Islander (Indigenous) persons with disabilities
  - c. continued implementation of the NDIS, and
  - d. promoting the intent of the ND Strategy throughout the community.
37. The second implementation plan is supported by an Australian Government action plan, as well as state and territory disability plans and local government plans. The Australian Government has also developed a plan to improve outcomes for Indigenous persons with disabilities to provide better access to culturally responsive support systems. The plan was released in October 2017 and includes up to \$3 million in funding over three years for two targeted projects:
- a. a trial of allied healthcare in remote schools for Indigenous students with behavioural and disability issues, and
  - b. a research project which aims to understand the impact of unidentified disability and/or impairment on Aboriginal and Torres Strait Islander prisoners in order to reduce potential barriers impacting on successful transition back into community and employment.
38. The third and final implementation plan, *Measuring Progress 2019-2020*, is currently being developed.
39. The Council of Australian Governments Disability Reform Council (DRC) is the key mechanism for coordinating policy and services affecting persons with disabilities, their families and carers, across all areas of the Australian Government and with all state and territory governments. DRC implements a broad range of reforms through the ND Strategy to ensure services and systems are inclusive and accessible for persons with disabilities, their families and carers.
40. The ND Strategy's first high level biennial progress report, released in 2015, details specific implementation achievements and reforms in the design and delivery of mainstream services during the first implementation period. The second progress report is due for release in mid-2018.
41. In November 2017, DRC agreed to further activities to reinvigorate the ND Strategy, including resolving issues relating to the interface between the NDIS and other services that assist persons with disabilities. DRC also agreed to commence work on preparing for a new national disability framework for beyond 2020. This will be informed by a review of the ND Strategy in 2018.

#### **Issue 4**

42. The assessment criteria for accessing the NDIS are set out in the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act). A person satisfies this if:
- a. they are under the age of 65
  - b. they have a disability that is due to an impairment likely to be permanent and life-long
  - c. their impairment substantially reduces their ability to participate effectively in

everyday life

- d. they are an Australian citizen or permanent resident, and
  - e. they require reasonable and necessary supports to live an ordinary life.
43. A person who meets the criteria can become a participant of the NDIS and receive an individual support package. The scheme can also provide support to people with a permanent impairment or developmental delay who would benefit from early intervention to reduce their future support needs.
44. The Australian Government is also working with the National Aboriginal Community Controlled Health Organisation (NACCHO) on a NDIS Sector Development Fund project to ensure Indigenous persons with disability can access culturally safe services. The project will identify issues and solutions to enable Aboriginal Community Controlled Health Organisations and other Indigenous organisations and businesses to provide services under the NDIS.

*Support measures for ineligible persons*

45. Information, Linkages and Capacity Building (ILC), delivered by the NDIA, ensures people with disability can connect with their communities by making them more accessible and inclusive. ILC consists of four streams to support persons with disabilities, regardless of whether they are a participant of the NDIS:
- a. information, linkage and referrals for connecting with mainstream and community-based supports
  - b. capacity building for mainstream services
  - c. community awareness activities, and
  - d. individual capacity building for persons with disabilities.
46. The NDIA provides grants to organisations that carry out ILC activities and programs. In 2018-19 ILC funding will amount to \$114 million, then increase to over \$131 million ongoing from 2019-20.

*Continuity of support (CoS)*

47. In 2018-19, the Australian Government announced a \$92 million package as part of an ongoing commitment to provide CoS for people with disability currently receiving Commonwealth services, who are ineligible for the NDIS. This will ensure they are not disadvantaged in the transition to the NDIS and will help them achieve outcomes similar to those they were aiming to achieve prior to the NDIS.
48. The Australian Government CoS Program commenced on 1 July 2016 for people over the age of 65 who are ineligible for the NDIS. This program takes on administrative responsibility for people over the age of 65 in state-based disability services as they transition to the NDIS to ensure they receive ongoing support. The types of services provided in the state-based programs are similar to those provided by Australian Government aged care services.
49. State and territory governments will provide CoS for clients of state-based disability services

under the age of 65 assessed as ineligible for the NDIS.

50. CoS for Commonwealth clients ineligible for the NDIS will be provided within existing arrangements until 30 June 2019, when it is expected the NDIS will be fully operational and all existing clients will have had an opportunity to access the NDIS.<sup>10</sup>
51. Ongoing CoS arrangements will be implemented on 1 July 2019. It is expected approximately 27,000 existing Australian Government clients will receive CoS from 1 July 2019.

*NDIS monitoring and evaluation*

52. An evaluation of the NDIS trial has been conducted by a consortium, led by the National Institute of Labour Studies at Flinders University, to provide external validation of participant experiences and outcomes. This considered the experience of more than 10,000 participants and 1,000 service providers between 2013 and 2017.
53. The Australian Government released the NDIS Evaluation Final Report on 30 April 2018. This found that overall the NDIS is working well for a majority of people and most participants experienced improved levels of support, more choice and control, and modest improvements in wellbeing. However, there are opportunities to improve outcomes for some persons with disabilities who are older, have a psychosocial or intellectual disability, have complex needs, and/or are from Culturally and Linguistically Diverse (CALD) or Indigenous backgrounds.
54. The Heads of Agreement between the Australian and state and territory governments agreed to a review of NDIS costs in 2017 by the Productivity Commission, to inform the final design of the scheme. The Commission consulted with NDIS participants, advocacy groups, peak bodies, service providers, disability care and support workers, academics, as well as Commonwealth and state and territory government departments and agencies.
55. The Australian Government is working closely with the NDIA and state and territory governments to address key findings from the review. The NDIS will be revised again in 2023 as part of five-yearly reviews into NDIS costs.
56. The NDIA also undertakes monitoring and evaluation of the rollout of the NDIS. This includes the review of a new participant and provider 'pathway' designed to significantly improve the experience of people and organisations with the NDIS, including people from Indigenous and CALD backgrounds and people with complex needs. The development of the pathway has been informed by extensive consultation with more than 1,100 participants, families and carers, providers and other stakeholders to learn about their experiences.
57. The NDIA also collects satisfaction feedback from participants after the creation of their first plan.

---

<sup>10</sup> The NDIS is expected to be rolled out across WA by 1 July 2020

## **B. Specific rights (articles 5-30)**

### **Equality and non-discrimination (article 5)**

#### **Issue 5**

58. Australia has a range of Commonwealth, state and territory legislation containing disability discrimination protections. Commonwealth anti-discrimination legislation is contained in the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Age Discrimination Act 2004* and the DDA.
59. These laws do not allow complainants to bring a single discrimination complaint in relation to multiple attributes. The Australian Government does not currently plan to amend Commonwealth legislation to allow complainants to bring a complaint on the basis of multiple attributes.
60. In Victoria a discrimination complaint on the basis of multiple attributes can be made under the *Equal Opportunity Act 2010* (VIC), which prohibits discrimination on the basis of 18 personal attributes, including disability, age, sex and race.

#### *Racial discrimination*

61. The *Racial Discrimination Act 1975* (Cth) makes it unlawful to discriminate on the basis of race, colour or national or ethnic origin in any field of public life.
62. At the Commonwealth level, an individual may make a complaint to the AHRC alleging unlawful racial discrimination. The AHRC may inquire into and attempt to conciliate the complaint. If it is not successfully conciliated, the complainant may make an application to the federal courts.

#### *NDIS*

63. An object of the NDIS Act is to give effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*.
64. As at 31 March 2018, more than 7,600 participants (5.2 per cent) identified as Indigenous. The NDIA has committed to various initiatives to ensure respectful engagement with Indigenous communities in delivering the NDIS, including:
- a. contracting community connectors from local Indigenous organisations in more remote areas
  - b. design and testing of the tailoring of the pathway for individuals from Indigenous and remote communities, and
  - c. a Participant Reference Group structured to reflect the diverse needs of people with disability, including Indigenous persons.

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

#### **Issue 6**

65. The Australian Government prioritises women's safety and the prevention of gender-based violence, recognising that women and girls with disabilities are among the most at-risk groups.

66. The ND Strategy includes strategies to reduce violence, abuse and neglect of persons with disabilities, and to ensure they have every opportunity to be full and active participants in community life. Additionally, Australian governments have developed the *National Plan to Reduce Violence against Women and their Children 2010-2022* (National Plan to Reduce Violence) to improve the safety and wellbeing of women and children, including those with disability, by targeting domestic and family violence and sexual violence.

*National Plan to Reduce Violence – Third Action Plan*

67. The Third Action Plan was released on 28 October 2016. It contains a number of measures specifically designed to recognise and address forms of violence suffered by women with disabilities.

68. Key actions aim to improve support to women with disabilities who experience, or are at risk, of violence by working with them, the disability sector, specialist family and domestic violence services and mainstream services. This will be achieved by:

- a. Engaging with women with disability, researchers and the disability sector to better understand experiences and the types of violence against women with disability (\$0.7 million funding committed).
- b. Developing accredited training for the disability workforce to improve capacity to support women with disability (\$1.5 million funding allocated).
- c. Fostering innovative and collaborative service delivery and outreach to improve the quality and accessibility of services (\$2.058 million funding allocated).

69. Technology will also be developed to support women who have experienced violence, including women with disabilities, through video and online options for real time counselling and support.

*Domestic Violence Response Training*

70. Domestic Violence Response Training (DV-alert) is a training program to build the knowledge and capacity of front-line workers to recognise, respond to and effectively refer women and their children who are experiencing, or at risk of, domestic and family violence to appropriate support services. The existing DV-alert program, delivered by Lifeline Australia, has been expanded to a new, free, nationally accredited two-day ‘Working with Women with Disabilities’ training stream for workers from the disability sector.

*NDIS Quality and Safeguarding Framework (Safeguarding Framework)*

71. The Safeguarding Framework provides a nationally consistent approach to complaints, reportable incidents and monitoring of restrictive practices. The Safeguarding Framework also places obligations on service providers to report on, and develop better ways to prevent, detect and respond to, cases of violence, abuse and neglect of persons with disabilities, including women and girls.

72. The NDIS Commission will enact the Australian Government’s responsibilities under the Safeguarding Framework by registering providers, supporting the resolution of complaints,

receiving and analysing reportable incident notifications, managing quality standards and enforcing a code of conduct for NDIS providers and workers.

#### *Women's Safety Package*

73. The \$100 million Women's Safety Package was introduced in 2015 and includes funding for:
- a. Distribution of 20,000 smart phones and training for victims of domestic violence. Over 9,111 phones have been distributed, with 8 per cent of recipients identifying as women with disabilities.
  - b. 1800RESPECT to develop a mobile phone application that supports women with disabilities who experience domestic and family violence and sexual assault.
  - c. Specialist domestic violence units to provide integrated legal and other services to vulnerable and disadvantaged women.

#### *States and territories*

74. States and territories have strategies in place to help protect women and children that experience or are at risk of violence and sexual abuse, including those with disabilities.<sup>11</sup>
75. All states and territories provide crisis response services which cater for persons with disabilities (e.g. through the provision of accessible crisis housing).
76. States and territories also have education and training programmes in place that explore respectful relationships and sexual and reproductive health. For example, the New South Wales (NSW) *Sexual Lives: Respectful Relationships* program, delivered by the Multicultural and Disability Advocacy Association and the Network of Women with Disability.

### **Children with disabilities (article 7)**

#### **Issue 7**

77. Australia protects and promotes the rights of children with disabilities through legislation and a range of policies and programs at the Commonwealth, state and territory levels.

#### *National Principles for Child Safe Organisations (National Child Safe Principles)*

78. The Australian Government has partnered with the NSW Government to lead the development of National Child Safe Principles to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing across all sectors that engage with children and young people. Principle 4 specifically addresses the need for organisations to give particular attention to children with disabilities.
79. The Council of Australian Governments (COAG) endorsement of the draft National Child Safe Principles will be sought in mid-2018.

---

<sup>11</sup> The *Domestic and Family Violence Prevention Strategy 2016-2026* (QLD); the *Women's Safety Strategy 2011-2022* (SA); the *Domestic and Family Violence Reduction Strategy 2014-2017* (NT); *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015-2020* (TAS); *Prevention of Violence against Women and Children Strategy 2011-2017* (ACT); *ACT Government Response to Family Violence* (ACT); *NSW Domestic and Family Violence Blueprint for Reform 2016-2021* (NSW); *Free From Violence – Victoria's Strategy to Prevent Family Violence and all Forms of Violence Against Women* (VIC). WA is developing a 10 year Family and Domestic Violence Strategy.

*National Framework for Protecting Australia's Children 2009-2020*

80. The *National Framework for Protecting Australia's Children 2009-2020*, developed by Australian governments under the ND Strategy, recognises childhood disability as a risk factor for abuse and neglect. Early intervention is a key strategy under the Third Action Plan, with actions focused on supporting families to address factors that may contribute to vulnerability, including disability.

*NDIS*

81. The NDIS provides people with a permanent and significant disability, including children, with the reasonable and necessary supports they need to live an ordinary life.
82. The NDIS specifically recognises the need for access to early intervention for young children and their families and carers. The Early Childhood Early Intervention (ECEI) gateway (released February 2016) allows children with developmental delay or disability from birth to six years to be assessed and provided with immediate therapeutic assistance without first having to obtain a diagnosis or seek formal admission to the NDIS.
83. At 31 March 2018, almost 80,000 NDIS participants up to the age of 18 were supported by the NDIS. This includes 10,253 children supported through the ECEI gateway. NDIS participants up to the age of 18 years account for 49 per cent of total NDIS participants (including ECEI referrals).
84. Once fully implemented, the NDIS will support an estimated 160,000 children who have a significant and permanent disability.

*Education and early childhood*

85. All school-age children in Australia have a right to enrol in a safe and supportive school. Most students with disabilities attend mainstream schools. The *Disability Standards for Education 2005* (Disability Education Standards) clarify the obligations of education and training service providers under the DDA and the rights of persons with disabilities in relation to education and training.
86. Under the ND Strategy, Australian governments have agreed to focus on actions that seek to:
- a. strengthen the capability of all education providers to deliver inclusive high quality educational programs from early childhood through adulthood
  - b. reduce the disparity in educational outcomes for students with disabilities and other students and ensure that government reforms and initiatives for early childhood, education, training and skill development are responsive to the needs of persons with disabilities, and
  - c. improve pathways for students with disabilities from school to further education, employment and lifelong learning.
87. As part of the Quality Schools reforms, the Australian Government will invest an estimated \$22.1 billion for students with disabilities from 2018–27, increasing funding by an average of

5.7 per cent each year. From 2018 onwards, funding for students with disabilities will be better targeted using the Nationally Consistent Collection of Data on School Students with Disability.

88. The Australian Government will invest around \$550 million over four years from 2018-19 in the Inclusion Support Programme (ISP) for the early childhood sector. The ISP commenced on 1 July 2016 and aims to increase access and participation in child care for children with additional needs, including children with disability, through developing and embedding services' skills to include children with additional needs alongside their typically developing peers.

#### *Children's views*

89. The Australian Government supports the right of children with disabilities to express their views on matters that concern them.
90. The National Children's Commissioner conducts inquiries into children's issues, including children with disabilities, makes submissions to inquiries and undertakes projects involving children's rights, such as youth dialogues and education projects. The Commissioner consults widely with children and young people and their representatives.
91. All states and territories have independent bodies that monitor and advocate for the needs of children – in particular at-risk groups, which could include children with disabilities.
92. In parenting disputes, the *Family Law Act 1975* (Cth) establishes the best interests of the child as the paramount consideration. In deciding what is in a child's best interests, the court must consider, amongst other things, any views expressed by the child and any relevant factors, such as the child's maturity or level of understanding.
93. There are a number of ways that children can express their views to the court: through an Independent Children's Lawyer (ICL), a family consultant report, a judge interviewing the child or other means the court deems appropriate.
94. The *Guidelines for Independent Children's Lawyers* notes particular sensitivity is required to ensure children with physical, intellectual, mental and/or emotional disabilities can participate in decision-making processes to the extent of their ability.
95. The Australian Government has directed the Australian Law Reform Commission (ALRC) to undertake a comprehensive review of the family law system. A key issue is how decision-makers can be most effectively informed of the best interests of children and the views of children in family disputes. The ALRC will also consider how to improve court accessibility and engagement for children with disabilities. The ALRC is due to report back on 31 March 2019.
96. State and territory justice systems also protect children's interests through a range of measures, including children's courts, which allow children to provide evidence in age-appropriate forms.

#### *Data collection*

97. The Australian Government is committed to improving national reporting on the welfare of children. The Australian Institute of Health and Welfare (AIHW) and the Australian Institute for Family Studies (AIFS) (independent statutory bodies) collect data, carry out research and report

on a range of matters relevant to children's health and wellbeing. All Australian governments directly commission research to support best practice policy and program development and evaluation.

98. Australia disaggregates data about children in a range of ways, depending upon the collection process and the use. This may include age, gender, Indigenous status, languages other than English spoken, geographical status and country of birth.
99. All states and territories collect data relating to the numbers of children engaging in the child protection and out of home care (OOHC) systems within each jurisdiction.
100. The AIHW collects and publishes national data on children in OOHC, which is disaggregated by age, sex, Indigenous status, legal arrangement, living arrangements, location and primary type of abuse or neglect, amongst other factors.

#### *Out of home care*

101. Australian governments undertake a range of efforts to protect children, including children with disabilities, from potentially abusive foster care or residential care situations.
102. Australia acknowledges there are ongoing issues with the high numbers of children entering the OOHC and protection system. State and territory governments administer their own child protection regimes to assist vulnerable children who are suspected of being abused, neglected, or otherwise harmed, or whose parents are unable to provide adequate care or protection, including children with disabilities.
103. All jurisdictions require foster and kinship carers to undergo 'working with children' checks and have measures in place to review OOHC placements. In all jurisdictions child protective services work with other relevant authorities to ensure children's wellbeing is upheld.
104. The Third Action Plan of the National Framework for Protecting Australia's Children aims to reduce child abuse and neglect. The key priority for governments is for children to safely remain with their family through prevention and early intervention measures and OOHC is viewed as an intervention of last resort.
105. The national recurrent expenditure on child protection and OOHC care services was \$4.3 billion in 2016–17, a real increase of \$327.3 million (8 per cent) from 2015–16.<sup>12</sup>

### **Awareness raising (article 8)**

#### **Issue 8**

106. Australia has a range of initiatives to raise awareness in society about the rights and dignity of persons with disabilities, their capabilities and contribution to society. These are grounded in a human-rights based approach consistent with the DDA and the Convention.

---

<sup>12</sup> Steering Committee for the Review of Government Service Provision 2018, *Report on Government Services 2018*, Productivity Commission, Canberra; Australian Institute of Health and Welfare 2018. *Child protection Australia 2016–17*. Child welfare series no. 68. Cat. no. CWS 63. Canberra: AIHW.

107. The Australian Government supports a range of national programs and awards as part of celebrations for the International Day of People with Disability to raise awareness and acknowledge the achievements and contributions of persons with disabilities and to promote accessibility and inclusion.
108. The Australian Government also provides funding to DROs to provide domestic representation of Australians with disabilities, including media campaigns to raise awareness and understanding.
109. The AHRC and the Disability Discrimination Commissioner play an important awareness-raising role. The AHRC undertakes educational programs to raise awareness of the human rights of persons with disabilities. The AHRC ensures that persons with disabilities are actively involved and represented in its awareness campaigns and strategies. Publications produced by the AHRC must be accessible to persons with disabilities.
110. Between October 2016 and March 2017 the Disability Discrimination Commissioner conducted national consultations to guide his priorities and seek input from the disability community on how to most effectively promote their rights. The Commissioner met with over 1,000 people across Australia and received 85 written submissions.
111. The AHRC draws on the expertise of persons with disabilities and their representatives for its projects and campaigns, including expert reference groups. A good example is the expert reference group that provides ongoing advice on the design, implementation and monitoring of the AHRC project on violence against persons with disabilities in institutional settings. Membership includes representatives from persons with disabilities' organisations and government experts with relevant expertise.
112. States and territories also undertake awareness-raising measures to promote human rights and improve access and inclusion for persons with disabilities. In NSW, the 'Don't Dis My Ability' campaign has run for 14 years, promoting active inclusion of persons with disabilities, providing a narrative of the experience of persons with disabilities and celebrating their diversity.

## **Accessibility (article 9)**

### **Issue 9**

#### *National Standards for Disability Services 2014 (NSDS)*

113. The Australian Government adopted the NSDS for all disability employment and advocacy services funded under the *Disability Services Act 1986* (Cth) (DSA). The NSDS help to promote and drive a nationally consistent approach to improving the quality of these services, focusing on rights and outcomes for persons with disabilities.
114. Services must be certified against the NSDS in order to receive funding from the Australian Government, with new providers needing to obtain certification within 12 months of the commencement of funding for employment and 18 months for advocacy services.

115. Regular audits against the NSDS are conducted by independent third-party certification bodies, accredited by the independent Joint Accreditation System of Australia and New Zealand, with reports provided to the Australian Government.

116. The Australian Government makes a financial contribution towards audit costs to funded providers and closely monitors the outcome of audits and the certification status of all disability employment and advocacy services that it funds. Under the DSA, a service that loses its certification and funding needs to regain certification before funding will be considered.

*Disability Standards for Accessible Public Transport 2002 (Transport Standards)*

117. The Transport Standards establish the minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises.

118. All conveyances, infrastructure and premises built after 2002 are required to fully comply with the Transport Standards. For public transport conveyances, premises and infrastructure built prior to 2002, the Transport Standards contain a compliance schedule over a 30 year timeframe prescribing increasing percentages of compliance.

119. The Transport Standards also provide a mechanism for public transport operators and providers to achieve compliance through the provision of ‘equivalent access’.<sup>13</sup> Equivalent access involves the use of methods, equipment and facilities that provide alternative means of access to the public transport service concerned with equivalence of amenity, availability, comfort, convenience, dignity, price and safety. Equivalent access can also involve the use of direct assistance as agreed by persons with disabilities.

120. If, and to the extent that, compliance would impose unjustifiable hardship on the operator or provider, it is not unlawful for public transport operators and providers to not comply with the Transport Standards.

121. The Transport Standards allows the AHRC to grant temporary exemptions for a specified period, not exceeding five years. The AHRC’s decision is reviewable by the AAT.

122. Every five years state and territory governments are asked to provide information concerning compliance within their jurisdiction as part of the review process in the Transport Standards. Each government reports on the extent to which discrimination has been removed within its public transport system, as well as initiatives and actions undertaken which have led to increased accessibility beyond compliance with the Transport Standards. Submissions are made available to the public and the information reflected in the review report.

*Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards)*

123. The Premises Standards provide minimum national standards for accessibility requirements to ensure dignified access to, and use of, buildings for persons with disabilities.

124. Technical requirements are set out in the Access Code for Buildings under the

---

<sup>13</sup> Section 33.3

Premises Standards. Building surveyors, both private and public, are primarily responsible for ensuring that buildings are built in compliance with all legislative and regulatory requirements, including accessibility requirements.

125. State and territory building authorities are responsible for the monitoring and enforcement of the access requirements as part of any broader building regulation, compliance, monitoring and enforcement activities. The mechanisms and resources dedicated to these activities will vary across jurisdictions, depending on the design of their enforcement scheme.

126. The AHRC has the power to grant exemptions from compliance with some or all of Part H2 of the Access Code (which provides the requirements for public transport buildings). The exemption can be for a specified period not exceeding five years and is reviewable by the AAT.

#### *AHRC complaints and conciliation*

127. A person may make a complaint to the AHRC if they feel their rights have been contravened under the DDA, including the standards.

128. The AHRC has the power to investigate and facilitate conciliation between parties, and if the matter is not settled, complainants may apply to the Federal Court of Australia or Federal Circuit Court of Australia. The AHRC's conciliation process is inclusive and strives to achieve mutually agreeable outcomes. In 2016-17, approximately 75 per cent of complaints were successfully conciliated.

### **Issue 10**

129. Australia recognises the fundamental importance of ensuring accessibility for persons with disabilities on an equal basis with others, to all facilities and services open or provided to the public. Australia has a comprehensive and coordinated legislative and policy framework in place to achieve this (see Issues 1 and 9 for legislative framework).

#### *Policy framework*

130. The ND Strategy seeks to drive a more inclusive approach to the design of policies, programs and infrastructure so persons with disabilities can participate in all areas of Australian life.

131. One of the central outcomes of the ND Strategy is to ensure that persons with disabilities live in accessible and well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life. The ND Strategy commits to action areas designed to achieve this outcome, focusing on:

- a. improving access and increasing participation of persons with disabilities in a range of sporting, recreational and social activities
- b. monitoring adherence to, and evaluating the effectiveness of, accessibility standards, and
- c. increased provision and greater community awareness of universal design.

132. The Australian Government continues to work with the Aviation Access Forum (AAF), which

meets biannually to provide advice on disability access policies as well as operational and administrative issues associated with access to air services for persons with disabilities. The AAF provides an opportunity for information to be exchanged between representatives of disability sector organisations, the aviation industry and Australian Government agencies as a means of further improving disability access.

133. All Australian Government agencies are required to comply with the Digital Transformation Agency's Digital Service Standard. This standard mandates that government online services designed or re-designed after 6 May 2016 are accessible to all users, regardless of their ability and environment. The Digital Service Standard requires conformance to Web Content Accessibility Guidelines (WCAG) 2.0 level AA.
134. State and territory governments also have policies and strategies in place to reduce barriers faced by persons with disabilities when accessing education, employment and other services.
135. Several states and territories have Disability Inclusion Plans and strategies in place to support the inclusion of persons with disabilities and access to mainstream services.
136. The NSW Government has a Policy Directive *Responding to Needs of People with Disability during Hospitalisation*, which includes tools and principles that may assist in providing accessible communication for people with disability, such as braille signage, tactile pathway strips, hearing loops in healthcare facilities, 'Easy Read' resources, Auslan interpreters in videos to make factsheets accessible and ensuring electronic documents can be used with a screen reader.

#### **Issue 11**

137. Australia is working to ensure an adequate supply of accessible housing is available for persons with disabilities. In 2017, the Australian Government announced measures under its *Reducing Pressure on Housing Affordability Plan* to support improved outcomes in housing. This includes the National Housing and Homelessness Agreement (NHHA) and an independent National Housing Finance and Investment Corporation (NHFIC) established on 30 June 2018.
138. The NHFIC is intended to improve housing outcomes through a \$1 billion National Housing Infrastructure Facility (NHIF) and an Affordable Housing Bond Aggregator (Bond Aggregator). The NHIF will help finance critical infrastructure needed to unlock and accelerate new housing supply, which could include accessible housing. The Bond Aggregator will improve the efficiency of financing for community housing providers, enabling them to improve housing outcomes for their clients, including for persons with disabilities.
139. In 2016-17 the Australian Government spent around \$4.4 billion on Commonwealth Rent Assistance assisting more than 1.3 million individuals and families, including approximately 260,000 individuals and families receiving Disability Support Pension (DSP).

#### *Universal Housing Design*

140. The Australian Government works collaboratively with states and territories (who are

responsible for the regulatory framework governing the built environment) to ensure a nationally consistent and cost effective approach to building and construction regulation.

141. The Australian Government leads collaboration through the Building Ministers' Forum (BMF), consisting of building ministers from each jurisdiction. The BMF covers a range of building policy matters, including the National Construction Code (NCC) and accessibility.
142. In February 2011, COAG agreed to an aspirational target within the ND Strategy that all new homes meet agreed universal accessibility design standards by 2020. State and territory governments have made progress towards increasing the stock of universal and accessible housing, particularly in relation to public and social housing. For example, the Northern Territory (NT) Department of Housing and Community Development's Urban Public Housing Design Guidelines require all new urban public housing to meet the silver level rating under the Guidelines.
143. In October 2017, the BMF instructed the Australian Building Codes Board (ABCB) to undertake a national Regulatory Impact Assessment (RIA) for the inclusion of minimum accessibility standards for housing in the NCC, in consultation with Disability Ministers. The ABCB will now develop an options paper for this RIA, incorporating input from the Disability Reform Council, for the BMF to consider at its next meeting.

## **Situations of risk and humanitarian emergencies (article 11)**

### **Issue 12**

144. The *National Strategy for Disaster Resilience* (NSDR) provides for the accessibility and inclusions of vulnerable persons, including persons with disabilities, in all situations of risk. The NSDR acknowledges that often vulnerable community members are hardest hit by disasters and emphasises this group as a priority. This includes identifying those most vulnerable, educating them on the risks, building a risk reduction plan specific to their needs and prioritising their assistance in an emergency.
145. The Australian Government supports the 38 indicators of the Sendai Framework which provide an important mechanism for reporting against, and driving momentum for, disaster risk reduction. Australia is working closely with stakeholders to consider the most pragmatic and effective way to report on Sendai Framework implementation. This work is ongoing and remains a national priority.
146. The Australian Government recently established a National Resilience Taskforce to develop a five year National Risk Reduction Framework to lead nation-wide reforms and reduce the impact and financial burden of disasters. Development of the new framework will be led by the Australian Government, in collaboration with state and territory governments, community groups and the private sector. It will be guided by the Sendai Framework, including as it relates to persons with disabilities.

## Equal recognition before the law (article 12)

### Issue 13

147. The Australian Government is considering the recommendations made by the ALRC in *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124), including the recommendation that a Commonwealth decision-making model be introduced into relevant laws and legal frameworks that encourages supported decision-making. The inquiry will inform any future work with state and territory governments on this issue.

#### *Legal capacity*

148. Australia strongly supports the rights of persons with disabilities to legal capacity. Training programs are available at the Commonwealth, state and territory level on working with persons with disabilities and recognising their legal capacity on an equal basis with others. This is available to a range of actors, including judicial officers, federal court staff, police officers, public servants and social workers.

#### *Judicial officers and staff*

149. An online disability awareness package has been developed for staff of the federal courts called 'Let's Talk Disability'. The package is designed to assist federal court staff to develop the knowledge, skills and awareness to work effectively with persons with disabilities and to assist them to access justice in the courts.

150. In March 2018, the Commonwealth Director of Public Prosecutions launched the *Disability and Inclusion Strategy 2018-2020 for the Office* which includes targeted initiatives, such as training for staff, informed by ALRC Report 124.

151. States and territories also provide training for judicial officers to develop their understanding of the potential difficulties, barriers or inequities people from different backgrounds (including persons with disabilities) may face in relation to procedural laws and practices. This includes professional development courses and bench books with specific chapters providing information and guidance for judicial officers about their role in making the court system accessible for persons with disabilities.<sup>14</sup>

#### *Police officers*

152. The Australian Federal Police's Interviewing Vulnerable Witnesses Program includes a session on understanding the types of mental (and to a degree physical) disabilities that may contribute to intellectual impairment. This includes how to assist persons and where to seek assistance as required.

153. States and territories have training programs in place for staff working in the justice system, including custodial officers, youth justice officers, community corrections officers, police officers

---

<sup>14</sup> For example, the Victorian *Disability Access Bench Book*; the Queensland *Equal Treatment Bench Book*; and the Western Australia *Equal Justice Bench Book*.

and medical or allied health staff. These are developed in consultation with relevant community groups and provide training on working with persons with disabilities. They cover topics such as interviewing of children and persons with mental health impairment, working with victims with disabilities, people with communication and other disability impairment and some feature guest speakers from non-government organisations, such as deaf service providers.

154. In Western Australia (WA), the Department of Communities delivers disability awareness training to staff working in the justice system, which aims to provide people who interact with persons with disabilities the ability to support them appropriately within various environs (such as prisons and police stations).

#### *Public servants and social workers*

155. Commonwealth, state and territory government employees are bound by codes of conduct, which contain provisions on diversity, respect and human rights (including disability rights). Some jurisdictions also have Human Rights Charters, which include fundamental human rights (including disability rights).<sup>15</sup>
156. The AHRC provides disability rights training for private sector organisations and members of the public service with specific obligations under the Convention, the DDA and associated standards and the ND Strategy. For example, the AHRC recently delivered training in partnership with the NSW Department of Family and Community Services on disability awareness for policy and project staff in the NSW public service.
157. State and territory government agencies provide relevant disability awareness training for their staff. In Queensland, the Centre of Excellence for Clinical Innovation and Behaviour Support provides training for all disability service providers to help build the sector's capacity. It also partners with the Office of Public Guardian to promote supported decision making as a method to assist persons with disabilities to exercise their right to make their own decisions.

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

#### **Issue 14**

158. *The health of Australia's prisoners 2015* (Prisoners Report) is the 4th report by the AIHW on the National Prison Health Indicators, developed to help monitor the health of prisoners and inform and evaluate the planning, delivery and quality of prison health services. For the first time, this report includes data on the disabilities of prisoners in Australia.
159. The Prisoners Report includes data from prisons in all states and territories in Australia, with 84 per cent of prisons participating, and approximately 49 per cent of prison entrants and 42 per cent of sentenced discharges in those prisons taking part in the data collection. AIHW is working with the states and territories to improve data collection coverage for future reports.

---

<sup>15</sup> For example, the *Charter of Human Rights and Responsibilities Act 2006* (VIC).

160. The Prisoners Report refers to a number of Australian studies that found adults with intellectual disability are significantly over-represented among prisoners, particularly Indigenous prisoners. The Prisoners Report notes that up to 12 per cent of the prison population has low IQ indicating intellectual disability and up to 30 per cent has an IQ indicating borderline intellectual disability. Those with intellectual disability are more likely to be male, Indigenous, have less than 10 years formal schooling, unstable accommodation immediately prior to imprisonment, a history of juvenile detention, poor self-assessed health status, depression and substance dependence.
161. There is currently limited information on prisoners with physical disabilities in Australia. The Prisoners Report found that almost one-third (30 per cent) of participants reported a long-term health condition or disability that limited their daily activities and/or affected their participation in education or employment.

*Table 10.2: Prison entrants, extent of activity limitations, 2015 (per cent)<sup>16</sup>*

	<b>Profound / severe</b>	<b>Moderate</b>	<b>Mild</b>	<b>None</b>	<b>Total</b>
<b>Sex</b>					
Male	6	14	3	75	100
Female	7	21	5	64	100
<b>Age group (years)</b>					
18-24	4	10	2	82	100
25-34	6	13	3	76	100
35-44	7	21	3	68	100
45+	12	17	5	63	100
<b>Indigenous Status</b>					
Indigenous	5	12	4	78	100
Non-Indigenous	7	16	3	72	100
<b>Total (number)</b>	65	151	31	742	1,011
<b>Total (per cent)</b>	6	15	3	73	100

#### *States and territories*

162. Most state and territory governments do not currently collect information about prisoners' disability status. The Victorian Government reports approximately 580 offenders with a registered intellectual disability are in prisons, under community or supervision orders and on parole. It is estimated that approximately 1,200 adult prisoners in Victoria have an acquired brain injury and approximately 1,000 prisoners have been admitted for psychiatric treatment prior to their incarceration.
163. Some state and territory governments collect data on persons with disabilities in juvenile detention. The Victoria Government reports an estimated 130 offenders in the youth justice system with an intellectual disability. The NSW Government reports that in 2016-2017 there were

<sup>16</sup> Totals include 5 entrants whose age was unknown and 5 whose Indigenous status was unknown. There were 23 entrants whose disability status could not be ascertained.

727 young people in juvenile detention categorized as having a disability and an estimated 23 per cent of these young people have an intellectual disability.

164. The Queensland Government has commenced work to explore new screening and assessment tools to assist in identifying the number of prisoners with disabilities within Queensland correctional centres.

### **Issue 15**

165. Issue 13 contains information about relevant Commonwealth, state and territory training programs.

#### *Access to Justice*

166. Australia recognises that ensuring effective access to justice for persons with disabilities is crucial for persons with disabilities to exercise their legal rights on an equal basis with others.
167. Under the *National Partnership Agreement on Legal Assistance Services 2015-2020*, cases requiring a grant of aid involving special circumstances, such as disability, are treated as a priority for Commonwealth legal aid funding.
168. In 2016-17, persons with disabilities or mental illness received 12.6 per cent of legal aid grants for Commonwealth matters. In 2016-17, persons with disabilities or mental illness received 32.8 per cent of community legal centre representation services.
169. The Australian Government also administers a range of statutory and non-statutory legal financial assistance schemes. For example, under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), the Attorney-General may provide financial support to a person commencing proceedings for unlawful discrimination in the federal courts. A reduced fee is also available for applications made under the federal courts human rights jurisdiction, including for persons with disabilities.
170. As discussed under Issue 1, Australia has systems in place to provide supported or substitute decision-making in order to assist persons with disabilities unable to navigate the legal system by themselves.
171. State and territory governments also provide funding and support for access to justice for persons with disabilities. For example, Queensland has allocated over \$4.6 million in funding over 2017–20 for organisations delivering legal assistance services to persons with disabilities.

#### *Accessibility*

172. The Australian Government recognises the importance of ensuring that courts and the justice system are accessible to persons with disabilities. The federal courts provide wheelchair access, hearing loops in court rooms and interpretation services. Their websites meet Australian Government standards for web content accessibility. Building works on existing and proposed court buildings continue to take into account the needs of persons with disabilities. The Family Court of Australia and Federal Circuit Court also currently provide live chat as a means of

communicating with and helping clients to navigate court practice and procedure.

173. Most state and territory governments ensure that courts are accessible for persons with disabilities. Services can be made available to assist persons with disabilities to attend and participate in court proceedings. For example, courts can arrange for an infra-red hearing loop to be available on the day of a court hearing for people who are deaf or have a hearing impairment.

#### *Jury composition*

174. The Sheriff of the Federal Court (the only federal court with the power to conduct jury trials) is currently developing Jury and Jury Officers Manuals, which will harmonise the regulation of the Court's jury composition with the Convention. The Federal Court website provides potential jurors with details on translation and interpretation services and the National Relay Service for persons with hearing disability.

175. Some states and territories have passed legislation to support equal participation of persons with disabilities in the jury system. For example, in 2018 the ACT made amendments to the *Juries Act 1967* (ACT) to facilitate the provision of reasonable support to jurors with disabilities participating in the jury process. Reasonable support may include an interpreter, assistance animal, disability aid or support person.

#### *Contesting detention and criminal charges*

176. Prisons and other places of detention in the criminal justice system are administered by states and territories. 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. There are policies and practices in place to accommodate the specific needs of persons with disabilities, including access for persons with physical disabilities and access to information for persons with vision or hearing impairment, or cognitive disability.

177. As discussed under Issue 16, Australian governments are considering draft National Principles that recognise the rights of persons with cognitive or mental health impairments and identify safeguards throughout the legal process and periods where a person is subject to orders.

178. Many states and territories provide services to meet additional support needs of offenders with disabilities. For example, the WA Intellectual Disability Diversion Program offers personalised case management and support for adults with a cognitive or intellectual impairment who plead guilty or have given an indication they will plead guilty to a charge before the Magistrates Court. The *Mental Health Act 2014* (WA) requires that all persons subject to an involuntary treatment order, including persons with cognitive or intellectual disabilities who are detained in an authorised hospital, are contacted by a mental health advocate within a set timeframe who can assist and provide support as necessary. The WA Government also recently committed to reforming the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) to include accommodations to assist persons with mental impairment in participating in court

processes.

### *Overrepresentation*

179. The Australian Institute of Criminology has conducted a number of investigations into persons with disabilities in the criminal justice system. For example, a study released in October 2017 found there are higher rates of cognitive impairment among Indigenous Australians in custody compared to non-Indigenous Australians. The study also found cognitively impaired prisoners were more likely to re-offend, were younger at first offence and had greater numbers of prior offences. These recent findings signal the continuing need for culturally targeted disability assistance and diversionary options at all levels of the criminal justice system.
180. Several state and territory governments have conducted investigations or are responding to independent reports into the overrepresentation of persons with disabilities in the criminal justice system. In 2015 the Victorian Parliament conducted an inquiry into abuse in disability services. The final report was completed in May 2016 and the Victorian Government is considering its findings.
181. The NT Law Reform Committee's 2016 *Report on the Interaction between people with Mental Health Issues and the Criminal Justice System* made 22 recommendations related to how people with mental health issues are dealt with before the Local Court's criminal division. The NT Government is currently developing options to implement the recommendations.

## **Liberty and security of the person (article 14)**

### **Issue 16**

182. Australia is committed to ensuring that no one in Australia is deprived of their liberty on the basis of their disability. However, Australia recognises there are particular challenges in relation to the treatment of persons with mental impairment in the health and criminal justice context. This is an area of ongoing review and reform.
183. In 2015 a cross-jurisdictional working group was established on the treatment of people with cognitive disability or mental impairment unfit to plead or found not guilty by reason of mental impairment. The working group undertook to collate and analyse data across jurisdictions on fitness to stand trial, the defence of mental impairment and interstate forensic transfers, and develop a national statement of principles relating to persons unfit to plead or not guilty by reason of cognitive and mental health impairment (the National Principles).
184. The draft National Principles recognise the rights of persons with cognitive or mental health impairments and seek to identify safeguards throughout the legal process and periods where a person is subject to orders.
185. In June 2018, the Council of Attorneys-General considered a revised version of the draft National Principles and agreed to deliberate further at its next meeting in 2018.
186. Australia's approach to healthcare for persons with disabilities is to wherever possible

provide the least restrictive environment, protect the person's rights and recognise the role of families and carers. Persons with disabilities will only be detained in a health context where there is a risk of harm to themselves and others.

187. While some jurisdictions have indefinite term detention, this is subject to safeguards, such as requirements the term is appropriate for the offence charged, oversight and periodic review is provided by an independent body and there is a complaints process.<sup>17</sup> The ACT recently adopted the fixed term approach where if a person unfit to plead is detained, this can only be for a specific period of time not exceeding the nominated term imposed by the court (an estimated sentence considered appropriate if the person had been tried under normal criminal proceedings).<sup>18</sup>
188. Consent to medical treatment is regulated by state and territory policies and legislation. These provide a number of ways for a person to express their treatment preferences, including advance consent directions, identifying a 'nominated person' or guardian and appointing enduring power of attorney.<sup>19</sup> Treatment will only be provided without free, prior and informed consent if the person does not have capacity and the treatment to be provided is the least restrictive method.<sup>20</sup>
189. As discussed under Issue 1, Australia considers 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 appropriate and effective safeguards.

## Issue 17

190. The Australian Government is considering the recommendations in the Senate Community Affairs References Committee's 2016 report *Indefinite detention of people with cognitive and psychiatric impairment in Australia* and expects to provide a response at the end of 2018.
191. In the meantime, some steps are being taken to implement report recommendations.

For example:

- a. Australian governments are considering draft National Principles and a working group has undertaken work to collate and analyse data (see Issue 16).
- b. Some state and territory governments have or are implementing a Disability Justice Plan to improve access to justice services for persons with disability.<sup>21</sup>
- c. Some state and territory governments are undertaking work to review and reform their relevant legislation. For example, in 2014 Victoria implemented the *Powers of*

---

<sup>17</sup> *Criminal Code* (NT); *Disability Act 2006* (VIC); *Mental Health Act 2013* (Tas); *Mental Health Act 2016* (QLD); *Mental Health Act 2007* (NSW); *Criminal Law (Mentally Impaired Accused) Act 1996* (WA); *Mental Health Act 2014* (WA)

<sup>18</sup> *Mental Health Act 2015* (ACT).

<sup>19</sup> Noting that in WA an enduring power of attorney is limited to dealing with the management of assets, property and financial affairs, not treatment decisions.

<sup>20</sup> For example, the *Guardianship and Administration Act 1995* (Tas); *Mental Health Act 2014* (VIC); *Declared Places (Mentally Impaired Accused) Act 2015* (WA); *Health Consent to Treatment Policy 2016* (WA); the *Consent to Medical Treatment and Palliative Care Act 1995* (SA), the *Mental Health Act 2009* (SA), the *Advanced Care Directives Act 2013* (SA), the *Guardianship and Administration Act 1993* (SA) and the *Civil and Administrative Tribunal Act 2013* (SA).

<sup>21</sup> *Disability Justice Plan 2017-2020* (TAS); *Disability Justice Plan 2014-2017* (SA); and the *Disability Action Plan 2017-2021* (VIC).

*Attorney Act 2014* (VIC) following a comprehensive review of supported decision-making.

- d. Other jurisdictions are developing frontline training for situations involving cognitive or psychiatric impairment issues. For example, specialist mental health education and training programmes are currently being developed for Victoria Police, to improve their capacity to manage incidents involving a person experiencing a mental health issue.

## **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

### **(article 15)**

#### **Issue 18**

192. Australia is committed to working towards the elimination of restrictive practices, supporting an approach that restrictive practice is a last resort and the dignity and human rights of people accessing services should be respected and supported at all times.

193. Some states and territories have legislation in place to ensure the use of seclusion and restraint is a last resort, meets appropriate standards, is reported to a responsible body and then reviewed.<sup>22</sup> Some jurisdictions also have bodies that provide an education role, through the development of best practice guidelines and recommending alternative support options that avoid the use of restrictive practices.<sup>23</sup>

#### *NDIS service providers*

194. The NDIS Commission will have a role in ensuring best practice in the use of behaviour support strategies to manage behavioural issues and reduce and eliminate the use of restrictive practices which limit the freedom and dignity of persons with disabilities.

195. The NDIS Commission's behaviour support function builds on the commitments of Commonwealth, state and territory governments under the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*. The NDIS Commission will work towards the reduction and elimination of restrictive practices in disability services by providing national oversight, implementing mandatory reporting requirements, using data to inform best practice and providing leadership, education and guidance.

196. Under the new arrangements, restrictive practices can only be used in the context of a behaviour support plan, as a last resort, be the least restrictive option available, be in proportion to the risk posed by the behaviour and include a strategy for reducing and removing the need for the

---

<sup>22</sup> *Mental Health Act 2013* (Tas); *Guardianship and Administration Act 2000* and the *Mental Health Act 2016* (QLD); *Disability Services Act 2017* (NT); *Mental Health Act 2014* (WA); and the *Prisons Act 1981* (WA). NSW regulates this practice through mandatory policy directives.

<sup>23</sup> Senior Practitioner under the *Disability Services Act 2011* (Tas); Office of the Public Guardian (QLD); Office of the Senior Practitioner (ACT); Chief Psychiatrist (WA); *Inspector of Custodial Services Act 2003* (WA). Chief Psychiatrist (NSW); and Senior Practitioner-Disability (VIC).

restrictive practice.

### *Schools*

197. The Disability Education Standards require education providers to ensure they provide students with an educational environment that is free from harassment and victimisation. Schools must provide students with a learning environment where they are safe from violent or challenging behaviour from other students as well as providing a safe learning environment for students who are exhibiting violent or challenging behaviour.
198. In response to two Senate inquiries in 2015, which raised concerns about use of restrictive practices, the Australian Government has noted its commitment to continuing to improve support for students with disabilities in schools and will continue to collaborate with state and territory government and non-government education authorities to identify opportunities to expand and strengthen work already underway.
199. A number of states and territories have recently conducted their own reviews into schooling for students with disability.<sup>24</sup>
200. In recent years there has also been significant progress ensuring teachers have the appropriate skills and understanding to effectively meet the learning needs of all students, including those with disability.

### *Mental health facilities*

201. The Australian Health Ministers' Advisory Council has held eleven national forums on restrictive practices to share results and support broader change efforts towards the elimination of restrictive practices. A twelfth forum is planned for November 2018.
202. Data from the AIHW on the use of seclusion and restraint in Australian specialised public mental health hospital services shows a significant reduction in the use of seclusion, with the rate of seclusion events almost halving since 2009-10.<sup>25</sup>
203. The *National Standards for Mental Health Services 2010* includes a standard specifically related to client safety with the criteria that the mental health service reduces and, where possible, eliminates the use of restraint and seclusion within all settings.
204. Australia's National Mental Health Commission (Mental Health Commission) has commissioned a project by the Australian College of Mental Health Nurses (ACMHN) to help build the evidence base for reducing the use of seclusion and restraint. The project specifically seeks to better understand the factors that impact on and influence the decisions of frontline workers, such as mental health nurses.
205. The Mental Health Commission is also currently working with the ACMHN to progress recommendations made in its report *Supporting Mental Health Professionals Through Cultural*

---

<sup>24</sup> Victoria, ACT, NSW and Queensland.

<sup>25</sup> <https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/restrictive-practices/seclusion>

*and Clinical Change: Facilitating ongoing reduction in seclusion and restraint in mental health settings in Australia.*

206. The use of seclusion and restraint is an area of ongoing review and reform for states and territories. For example, the NSW government recently accepted recommendations from a 2017 independent *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities* and committed \$20 million to improve the therapeutic environment inside acute mental health units in NSW.

*National preventative mechanisms*

207. On 21 December 2017, Australia ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). The Australian Government is now working collaboratively with states and territories on the implementation of OPCAT, in particular the establishment of Australia's National Preventive Mechanism (NPM). This will be a cooperative network of Australian Government, state and territory bodies (NPM bodies) responsible for inspecting places of detention and will be facilitated by an NPM Coordinator.

208. Implementation is intended to initially focus on 'primary' places of detention under Australia's jurisdiction and control. Based on frequency of use, duration of detention, intensity of supervision and negotiation with states and territories, primary places of detention are considered to be: adult prisons, juvenile detention centres, police lock-ups or police station cells, certain closed psychiatric and disability facilities, immigration detention facilities and military detention facilities – with the scope and focus of more specific oversight measures to be considered over time. The precise scope and functions of NPM bodies and the NPM Network is an ongoing issue for discussion between the Commonwealth, states and territories.

209. This approach is consistent with the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment's guidance that NPMs be mindful of the principle of proportionality when determining prioritisation and focus for the implementation of OPCAT obligations.<sup>26</sup>

210. For NDIS service providers and workers, the NDIS Commission will register providers, handle complaints, analyse reportable incident notifications, manage quality standards and enforce a Code of Conduct.

211. State and territory governments will continue to provide existing services with a broader scope, such as ombudsmen, human rights and public advocacy services.

---

<sup>26</sup> United Nations Committee against Torture. (2016). *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/57/4.

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

### **Issue 19**

212. The Australian Government agreed, agreed in principle, or noted 29 of the 30 recommendations in the Senate Community Affairs References Committee report *Violence, abuse and neglect against people with disability in institutional and residential settings*. Recommendation one, calling for a Royal Commission, is the only recommendation not agreed to.
213. The Australian Government has carefully considered the report findings, along with work undertaken in similar state-based inquiries. The NDIS Safeguarding Framework addresses many of the concerns raised in the report, including minimising the risk of abuse.
214. The Safeguarding Framework provides a nationally consistent approach to complaints, reportable incidents and the monitoring of restrictive practices. It also places obligations on service providers to report on, and develop better ways to prevent, detect and respond to, cases of violence, abuse and neglect of persons with disabilities.
215. The Australian Government has provided \$209 million in the 2017-18 Budget to fund the establishment and operation of the independent NDIS Safeguards Commission over the next four years, which will enact the Australian Government's responsibilities under the Safeguarding Framework.
216. Therefore, the Australian Government does not consider that a Royal Commission is required.
217. Australia has strong national frameworks to protect people from exploitation, violence and abuse, including persons with disabilities. The ND Strategy recognises that persons with disabilities may experience increased risks of violence, exploitation and neglect and Australian governments should undertake appropriate measures to safeguard them. It also recognises gender can significantly impact on the experience of disability, and women and girls with disabilities often face different challenges by reason of their gender.
218. The NSDS set out six national standards applicable to all disability service providers. Standard One promotes individual rights to freedom of expression, self-determination and decision-making and actively prevents abuse, harm, neglect and violence. Standard Four promotes seeking feedback and complaints to inform individual and organisation-wide service reviews and improvement.
219. NDIS Commission registered providers will be subject to reporting and oversight arrangements by the NDIS Commission when handling allegations or incidents of violence and abuse and other serious incidents.
220. At the state and territory level, persons with disabilities have access to a range of oversight and complaint mechanisms.
221. Australian governments at all levels have measures in place to ensure persons with disabilities who have experienced institutional abuse or violence are able to access appropriate counselling

services.

222. 1800RESPECT is a national sexual assault, domestic and family violence counselling service, funded by the Australian Government. It provides support 24 hours a day, seven days a week for people who have experienced, or are at risk of experiencing, sexual assault or family and domestic violence, their family and friends and frontline workers. Telephone, online and specialised trauma counselling is provided by experienced counsellors. The service also provides information for professionals on inclusive practice and responding to violence against persons with disabilities.
223. The National Redress Scheme for people who have experienced institutional child sexual abuse will provide support, including access to counselling, to people who were sexually abused as children while in the care of a participating institution. The Commonwealth, NSW, Victoria, Tasmania, ACT, NT, SA and Queensland have joined the National Redress Scheme.
224. State and territory governments also have taken steps to ensure appropriate counselling is available to persons with disabilities. In South Australia (SA) the Mental Health Triage Service assistance line is staffed by mental health professionals who are able to provide advice.

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

### **Issue 20**

225. The Australian Government is committed to respecting the rights of all persons to physical integrity and reproductive rights, and recognises persons with disabilities have historically been subjected to sterilisation without their consent or against their wishes, the majority of whom have been women.
226. Over the past two decades, the regulation of sterilisation of persons with disabilities has been subject to a number of inquiries and reviews and Australian, state and territory laws have been significantly reformed to provide better protection for persons with disabilities than has historically been the case.
227. While available data suggests the numbers of sterilisations of persons with disabilities is quite low, the inconsistency of data collection practices remains a cause of concern. For this reason, in 2015 the Australian Government provided funding to the Office of the Public Advocate Victoria, representing the Australian Guardianship and Administration Council, to develop indicators to standardise the collection of data across jurisdictions.
228. In the absence of valid consent, surgical intervention is an offence under Australian criminal and civil law. It is generally within the bounds of a parent's responsibility to be able to consent to medical treatment for and on behalf of their child. However, parental authority does not extend to cases where the medical procedure is non-therapeutic, invasive and irreversible, there is a significant risk of making the wrong decision and the consequences of a wrong decision would be particularly grave. In such cases, Family Court authorisation is required as part of the court's

welfare jurisdiction under the *Family Law Act 1975* (Cth).

229. The Family Court has affirmed that any medical procedure resulting in the sterilisation of a child must be therapeutic in nature for it to be within the bounds of permissible parental authority and not require court authorisation.<sup>27</sup>

230. Under the *Family Law Rules 2004*, when a Medical Procedure Application seeking an order authorising a major medical procedure for a child is made (including sterilising or removing a child's reproductive organs), evidence must be given to satisfy the court that the proposed procedure is in the best interests of the child.<sup>28</sup> That evidence must include medical, psychological or other expert evidence that establishes, amongst other things:

- a. if the child is capable of making an informed decision about the procedure – if the child agrees
- b. if the child is incapable of making an informed decision about the procedure— that the child:
  - i. is currently incapable of making an informed decision, and
  - ii. is unlikely to develop sufficiently to be able to make an informed decision within the time in which the procedure should be carried out, or within the foreseeable future.<sup>29</sup>

231. Part of the ALRC review of the family law system (discussed in Issue 7) is considering whether changes should be made to the Family Court's welfare jurisdiction to support best outcomes for children, including intersex children.

232. There is increasing recognition of the needs of people who are intersex in Commonwealth law and policy. In 2013, the *Sex Discrimination Act 1984* (Cth) was amended to introduce protections from discrimination on the ground of intersex status.<sup>30</sup> Australia is one of the first jurisdictions to provide specific protection from discrimination for people who are intersex. The *Australian Government Guidelines on the Recognition of Sex and Gender* clearly define intersex as a biological condition and provide an avenue for people who are intersex to establish or change their gender in Australian Government records. Over time, these reforms should support greater social acceptance of variations in gender identity and sex characteristics.

---

<sup>27</sup> *Re: Carla* (2016) FamCA 7

<sup>28</sup> Rule 4.09(1)

<sup>29</sup> Rule 4.09(2)

<sup>30</sup> *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*, No. 98, 2013

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

### **Issue 21**

233. As discussed under Issue 1, the Australian Government considers it is appropriate to impose health requirements for non-nationals seeking to enter or remain in Australia, where these are based on legitimate, objective and reasonable criteria.
234. Most applicants for an Australian visa are required to meet certain minimum health requirements in order to be granted a visa, as outlined in the *Migration Regulations 1994* (Cth).
235. The purpose of these health requirements is to:
- a. protect the Australian community from threats to public health (primarily focused on stopping the importation of active Tuberculosis)
  - b. contain public expenditure on health and community services, and
  - c. safeguard the access of Australian residents to health and other community services in short supply.
236. Conditions considered a threat to public health may prevent the grant of a visa to enter Australia.
237. The DDA exempts the *Migration Act 1958* (Cth) and its legislative instruments from its unlawful discrimination provisions. The purpose of this is to ensure Australians, including Australians with disabilities, continue to receive appropriate essential health and community services. This is reflected in all aspects of migration health procedures. The exemption does not extend to administrative processes, including processes for applying for visas or seeking review of adverse decisions.
238. The Australian Government's current method of assessing whether visa applicants meet health requirements does not discriminate between applicants who have a disability, disease, or a combination of both. All applicants are treated in an equal and fair manner. Where a person has a disability, this in itself will not result in a failure to meet the health requirements.
239. As part of the visa application process, applicants will undertake an Immigration Medical Examination where a Medical Officer of the Commonwealth assesses whether a visa applicant's condition, including disability, would be likely to result in 'significant' health care and community service costs or prejudice the access of Australian citizens to health care and community services that are in short supply, were a visa granted.
240. For some visa sub-classes a health requirement waiver is available, which can be exercised if the delegate is satisfied there are compassionate and compelling circumstances, or mitigating factors which outweigh the potential costs and/or prejudice to access of Australian citizens or permanent residents to health care or community services in short supply.
241. All people in Australia found to be refugees or who engage Australia's non-refoulement obligations under human rights treaties are afforded Australia's protection regardless of whether

they have a disability. Protection-related visas for persons applying in Australia have a health-screening requirement, however the aim is to identify health issues that require follow-up. Having a health condition does not result in the refusal of a visa.

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

### **Issue 22**

#### *Residential institutions*

242. There is no national framework for the closure of residential institutions, however, most states and territories relocated the majority of persons with disabilities out of residential institutions to community-based living in the 1980s and 1990s. NT, WA and ACT no longer house persons with disabilities in residential institutions and have transitioned to community residences and other innovative models of support accommodation. The NDIS is resulting in further transition of persons with disabilities from residential institutions to more appropriate accommodation of their choice across Australia. In particular, the transition of people aged under 65 living in residential aged care into alternative accommodation is a priority for the Australian Government.

243. In March 2018, 320 people remain living in three large residential centres in NSW, although the NSW Government is in the process of transferring these residents to new accommodation in the community. Since 2013, Queensland has allocated over \$9 million to transition 115 persons with intellectual disabilities or cognitive impairments residing in public health facilities into community living arrangements. This is expected to significantly increase over the coming year with the roll out of the NDIS, along with the closure of the remaining residential institutions in NSW. Victoria announced the closure of its last disability institution at Colanda in 2016.

#### *Independent living*

244. The NDIS represents a very significant change to the way persons with disabilities are supported, aiming to ensure that persons with disabilities receive supports based on their needs with choice and control over that support. The number of NDIS participants continues to grow with 151,970 participants having an approved plan at 31 March 2018. It is estimated that 460,000 participants will have an approved plan by the time the full scheme has been rolled out across Australia in 2021.<sup>31</sup>

245. The NDIS will fund reasonable and necessary disability-related supports to assist eligible individuals to live independently in the community, including assistance with navigating rental markets, tenancy obligations, short-term transitional accommodation, home modifications, assistive products for household tasks and specialist disability accommodation (SDA) support. At full scheme, funding for SDA is expected to total approximately \$700 million per year. This will facilitate the construction of a large number of highly accessible residences across Australia,

---

<sup>31</sup> From the COAG report to the Disability Reform Council

enabling persons with disabilities to live independently in their communities.

246. Some state and territory governments also offer alternative housing options and support to help persons with disabilities access appropriate and affordable housing. For example, the Victorian Government prioritises access to public and community housing for persons with disabilities who live in unsuitable housing requiring major structural modifications or personal support in order to live independently.

#### *Data on residential settings*

247. The majority of housing options for persons with disabilities in Australia comprises a mix of independent living and shared living arrangements in private residences and group homes.
248. In 2015-16, there were 331,817 disability service users,<sup>32</sup> with information on residential settings available for 287,568 of these users. Of these, 80.7 per cent (232,005) were living in private residences in the community and 5.2 per cent (14,812) were living in domestic-scale supported living facilities such as group homes. A further 2.8 per cent (8,046) were living in supported accommodation facilities with the remaining 11.4 per cent (32,705) living in other settings.

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

### **Issue 23**

249. Australia has no official or national language, however a range of languages are recognised as widely used, including Australian sign language (AUSLAN).

#### *Accessible communication*

250. The Australian Government is committed to ensuring the needs of persons with disabilities are met, and online services are accessible and inclusive, as the use of technology and our community changes and grows.
251. The National Relay Service (NRS) allows people who are deaf or have a hearing or speech impairment to access standard telephone services. NRS users can make and receive personal or business calls independently via a range of relay service options. Users can also access some of these relay services through the NRS application for smartphones and tablets. On 23 June 2017, the Australian Government released an implementation plan to ensure the long term sustainability of the NRS. In April 2018, the Australian Government announced a tender for continued provision of the NRS and outreach, with a total annual funding allocation of \$22 million.
252. The Australian Government Print Disability Services Program (PDSP) provides funding for organisations to convert print material into alternative formats to meet the needs of people with print disability. In 2017-18, the budget for PDSP is \$1.4 million. From 1 July 2018, this increased to \$1.9 million per annum. Postal Concessions for the Blind (PCB) provides concessions for

---

<sup>32</sup> Services provided under the *National Disability Agreement 2015–16*

eligible individuals and organisations using postal services to distribute eligible resources for people who are blind or have vision impairment.

253. Under the *Broadcasting Services Act 1992* (Cth), there is a captioning regime for programs broadcast on free-to-air and subscription television in Australia. Subscription television licensees are also subject to captioning targets that gradually increase until they reach 100 per cent of programming by 1 July 2033.
254. In April 2017, the Australian Government established the Audio Description Working Group to examine options for sustainably increasing the availability of audio description services in Australia. The working group provided a report to Government in December 2017 and the Government is considering its findings.
255. The *Copyright Amendment (Disability Access and Other Measures) Act 2017* (Cth) establishes two new simplified exceptions to facilitate access to copyright material by persons who would otherwise have difficulty reading, viewing, hearing or comprehending the material because of a disability and by educational institutions and not-for-profit organisations assisting persons with disabilities.
256. A number of states and territories also provide funding to promote the development of accessible communication for persons with disabilities. For example, the ACT Government runs an annual grant program that supports increased opportunities for persons with disabilities to participate and engage in the community.

#### *Accessible information*

257. The Australian Government provides information about laws, policies, systems and obligations in accessible formats, including in Easy Read and Easy English where possible. Under the DDA, all Australian Government agencies are required to ensure that information and services are provided in a non-discriminatory and accessible manner.
258. The Australian Government website ‘Australia.gov.au’ is the central point for information on government services, laws, obligations and policies in Australia. It provides information and services in an accessible and non-discriminatory manner and complies with Level A of the WCAG version 2.0.
259. States and territories also provide accessible and responsive communication services, publications and online materials. For example, Queensland’s Department of Transport and Main Roads provides an accessible app and website and is working with Vision Australia to ensure real time information and access to the transport network is accessible for persons with disabilities. This includes text to voice audio systems at stations, tactile ground surface indicators at bus stops and Braille signs.

## **Education (article 24)**

### **Issue 24**

260. The 2017 Nationally Consistent Collection of Data on School Students with Disability (NCCD) identified 724,624 students receiving an educational adjustment due to disability, representing 18.8 per cent of school students in Australia. In 2015, 31.7 per cent of persons with disabilities aged 20 and over had completed secondary schooling, or its equivalent, an increase of 5.6 per cent since 2003.
261. The NCCD is designed to collect information on the full range of students receiving adjustments to support their access and participation in learning because of disability, not just those who have a medical diagnosis. As a result, higher numbers of students are reported than in other data collections on students with disability. The collection is having a positive impact on the support provided to students with disability in Australian schools.
262. There is no national collection of data on suspensions, use of restraint and seclusion of students with disability. The Australian Government does not endorse corporal punishment as an approach to student behaviour management in schools, and criminal penalties apply in all jurisdictions to teachers who abuse or assault children.
263. The ACT, NSW, SA, Queensland, Tasmania, Victoria and WA have either explicitly banned the use of corporal punishment in government schools or removed legislative provisions that provided a defence to the use of reasonable chastisement by people acting in the place of a parent (such as teachers). NSW, NT, Tasmania, Victoria and WA have legislated and SA has introduced a Bill into its Parliament to ban corporal punishment in both government and non-government schools.

### **Issue 25**

264. The Australian Government has implemented significant systemic reforms to improve the educational outcomes of students with disability over the past decade, but acknowledges there is considerable work ahead to ensure students with disability are able to achieve optimal educational outcomes. The Australian Government supported, or supported-in-principle seven of the Senate Education and Employment References Committee's 2016 *Access to real learning: the impacts of policy, funding and culture on students with disability* report recommendations.

### *Data collection*

265. Australian Government school funding arrangements focus on student need. A base amount is provided for every student, with additional loadings for disadvantage, including students with disability. Findings from the NCCD will form the basis for the student with disability loading from 2018. Measures to improve the accuracy and quality of the NCCD are underway, including projects through the Education Council involving state and territory governments.

### *Bullying*

266. Australia's *National Safe Schools Framework* is endorsed by all Education Ministers. This framework, developed with education authorities, supports schools to develop and implement student safety and wellbeing policies and practices.

### *Teaching practices*

267. The Australian Professional Standards for Teachers, accreditation standards and procedures include elements to support the participation and learning of students with disability. The Australian Curriculum, Assessment and Reporting Authority (ACARA) is working to improve accessibility to the Australian Curriculum for all students, including students with disability. In 2015-16 ACARA partnered with schools in four jurisdictions to film illustrations of practices that will support students with disability to access the Australian Curriculum.

268. The Disability Education Standards are reviewed every five years. The 2015 review found awareness of the Standards with educators had increased since the 2010 review.

269. During the 2015 review, stakeholders indicated greater awareness was needed of how to practically implement the standards. In response, the Australian Government funded development of a set of Exemplars of Practice in consultation with select stakeholders to demonstrate how the standards could be used to support better learning outcomes and educational experiences for students in early learning, schools, vocational education and higher education settings.

270. The Australian Government and state and territory governments are working together to address other recommendations from the 2015 review through the Education Council. Both Victoria and Queensland have undertaken reviews of disability inclusion in their education systems and are implementing recommendations. The Victorian Government accepted 21 of the 25 recommendations emerging from a 2016 comprehensive *Review of the Program for Students with Disabilities* and provided a \$22 million package to implement the recommendations and support the implementation of complementary initiatives and reforms.

271. The Australian Government is investing \$243.5 billion in recurrent school funding over 2018-27, including an estimated \$22.1 billion for the students with disability loading. On average, funding for students with disability will increase by 5.7 per cent each year over this period. This is on top of state and territory funding towards students with disability.

272. Each state and territory government has funding arrangements for students with disabilities in their education systems.

### *Tertiary education*

273. The *Higher Education Support Act 2013* (Cth) (HESA) makes grants available to eligible higher education providers to improve access for students with disabilities through the Higher Education Disability Support Program. This includes Additional Support for Students with Disabilities, which funds eligible higher education providers to meet the costs of supporting students with disabilities (such as amplified stethoscopes, wireless microphones and personal scribes). Students with intellectual disability can also be supported with respite room furniture and software programs such as word prediction and text to speech.
274. The Australian Industry Skills Committee (AISC), funded by the Australian Government, has also commissioned work to improve the training outcomes of persons with disabilities in vocational education and training (VET). For example, adapting existing resources used in VET institutions to raise awareness about inclusion and obligations under the Disability Education Standards.

### **Issue 26**

275. As the Australian Government noted in its 2016 submission to the Committee on the then-draft General Comment 4:
- a. In respect of the Committee's comments urging States Parties to 'achieve a transfer of resources from segregated to inclusive environments', Australia's view is that a State Party will meet its obligations under article 24 through an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education options including enrolment in mainstream classes in mainstream schools with additional support, specialist classes or units in mainstream schools and specialist schools. A range of education options ensure that the best interests of the student are a primary consideration.
  - b. Australia specifically notes that articles 13(3) and (4) of the International Covenant on Economic Social and Cultural Rights provide for the liberty of parents and guardians to choose schools for their children provided that educational institutions meet certain minimum standards and the educational objectives in article 13(1). Accordingly, Australia suggests that the Committee clarify that States Parties may offer education through specialist classes or schools consistently with article 24.
276. The funding model used by the Australian Government to support school students with disability has been based, since 2018, on the level of adjustment required by the student to access education on the same basis as other students. It is not based on the type of school the student attends. The majority of students with disability attend mainstream schools.

## Health (article 25)

### Issue 27

#### *Equal access*

277. The DDA aims to eliminate discrimination against persons on the ground of disability in the provision of goods and services, including the provision of health services. This applies to persons with disabilities who may be excluded from the NDIS, reside in rural areas or are incarcerated. State and territory legislation also acknowledges the rights of persons with disabilities and promotes their inclusion in society and equal access to services.<sup>33</sup>
278. The Australian Government recognises the potential of digital health technology to deliver better health care services and health outcomes, especially for people living in rural and remote areas. The use of telehealth services may reduce barriers to patient access based on geographical isolation, travel time, cost and other resources.
279. In July 2011, Medicare benefits were introduced for out-of-hospital private medical specialist video consultations in telehealth-eligible rural and remote locations, eligible residential aged care facilities and Aboriginal Medical Services throughout Australia. Medicare benefits are also available for clinical services provided by general practitioners or other medical practitioners, nurse practitioners, midwives, Aboriginal health workers or practice nurses to attend the patient-end of the video consultation.
280. In the areas of sexual and reproductive health, mental health and psychological support, there are a range of professional attendance items on the MBS for services applicable for persons with disabilities. Specific items are also listed for specialist and allied health services for persons with disabilities.
281. People who are incarcerated in Australia are eligible for Medicare when they enter prison, but are not eligible for Medicare benefits.<sup>34</sup> Eligibility for access to medicines on the Pharmaceutical Benefits Scheme (PBS) relies on the same criteria, so prisoners are not generally able to access PBS medicines.
282. Notwithstanding these general provisions, the Australian Government funds access for prisoners in each state and territory to the Highly Specialised Drugs (HSD) Program within the PBS. This recognises the need to provide access to medicines used to treat complex chronic conditions, such as HIV/AIDS, hepatitis B and C, Parkinson disease, and schizophrenia.
283. The Australian Government provides funding to health services to provide health care to Indigenous persons under the Indigenous Australians' Health Programme (IAHP). The IAHP provides funding for secondary and tertiary health services and community services which may

---

<sup>33</sup> For example, the *Disability Services Act 2006* (QLD), the *Disability Services Regulations 2015* (Tas) and the *Mental Health Act 2015* (ACT).

<sup>34</sup> *Health Insurance Act 1973*

include the provision of culturally appropriate disability services.

284. States and territories have policies and programs in place to help ensure that the needs of persons with disabilities are met and that persons with disabilities have access to quality, culturally sensitive and inclusive health services.<sup>35</sup>
285. This includes programs that assist isolated patients with the costs of travel and accommodation to see a medical specialist, including persons with disabilities. For example, NSW Health's Isolated Patients Travel and Accommodation Assistance Scheme which assisted 29,724 people state-wide in 2017-18.
286. The NDIS is not intended to replace mainstream services. States and territories will continue to provide health services to persons with disabilities who are ineligible for the NDIS. For example, in the ACT the Community Assistance and Support Program provides short to medium term support for people and their carers if they are experiencing daily living difficulties due to a health issue.
287. Interactions between the NDIS and mainstream services, such as the health system, are guided by the legislative framework for the NDIS<sup>36</sup> and the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems*, agreed by COAG in April 2013 and reviewed in 2015.
288. For people who are currently receiving state disability services and not eligible for the NDIS, COAG has committed to providing continuity of support to ensure they are not disadvantaged in the transition to the NDIS.

#### *Ethical standards and training curricula*

289. Health care professionals and community health workers in the states and territories are governed by professional and ethical standards of practice and professional codes of conduct, including the *National Practice Standards for the Mental Health Workforce 2013*. Human rights principles are embedded in these, reflecting the human rights of all persons to be treated with respect, dignity and autonomy, regardless of their background or whether they have a disability.
290. All states and territories have training curricula in place relevant to persons with disabilities and provided to medical practitioners, nurses, midwives, allied health practitioners, (such as social workers, physiotherapists and speech pathologists) and community health workers. NSW Health has implemented eleven online training courses and a guardianship training package to increase skills and knowledge among NSW Health staff and better meet the needs of patients with disabilities.
291. The National Standards for Disability Services<sup>37</sup> help to promote and drive a nationally consistent approach to improving the quality of services provided to persons with disabilities,

---

<sup>35</sup> For example, the ACT's *Towards Culturally Appropriate and Inclusive Services, a Coordinating Framework* (2014-2018), the *Victorian State Disability Plan 2013-2016* and the *Queensland Health Disability Service Plan 2017-2020*.

<sup>36</sup> *National Disability Insurance Scheme Act 2013*

<sup>37</sup> Department of Social Services, 2013, *National Standards for Disability Services*, Australian Government [website], <[https://www.dss.gov.au/sites/default/files/documents/06\\_2015/nsds\\_full\\_version.pdf](https://www.dss.gov.au/sites/default/files/documents/06_2015/nsds_full_version.pdf)>.

their families and carers. Standard Six sets out the quality standards of service management and leadership to ensure frontline staff, management and governing bodies are suitably qualified, skilled and supported to maximise outcomes for individuals.

## **Access to habilitation and rehabilitation (article 26)**

### **Issue 28**

292. Australia provides a range of services that address the needs of persons with disabilities and aim to help them develop maximum independence in their daily lives. This includes specific programs focussed on habilitation of persons with disabilities in the areas of health, employment, education and social services and rehabilitation programs designed to help persons with disabilities attain maximum independence. The provision of, and access to, these services is underpinned by a human rights-based approach through Commonwealth, state and territory legislation, which enshrine the rights of individuals to access services that observe, respect and promote the person's rights, liberty, dignity autonomy and self-respect.<sup>38</sup>

#### *Employment*

293. Disability Employment Services (DES) is an Australian Government employment service for people whose disability, injury or health condition is the main barrier to gaining employment in the open labour market. DES services can include vocational rehabilitation services and supports to gain new skills and education, and to understand, compensate for, and manage an injury or disability by building work capacity.

294. In addition, the Commonwealth and each state and territory has its own workers' compensation scheme for workers who suffer any injury and provide for the management of injuries in a manner that enables an injured worker to return to work.

#### *Healthcare*

295. There are health services in each jurisdiction that focus on rehabilitation services for persons with disabilities. For example, the NT Government's Office of Disability supports and funds persons with disabilities to develop an individual support plan, which outlines their priorities, sets goals for increased participation in educational, vocational and social arenas and maximises independence in accordance with their goals and aspirations.

#### *Consent*

296. State and territory governments have policies with mandatory requirements for health professionals to obtain a patient's consent for treatment. These are based on a general principle that patients have a recognised legal right of autonomy and treatment shall not be provided without patient consent, except in certain limited circumstances (such as an emergency where the

---

<sup>38</sup> *Disability Services Act 1986* (Cth), *Disability Services Act 1993* (NSW), *Disability Act 2006* (VIC), *Disability Services Act 1993* (WA), *Disability Services Act 2006* (QLD), *Disability Services Act 1991* (ACT), *Disability Services Act 2011* (TAS), *Disability Services Act 1993* (SA); and the *Disability Services Act 1993* (NT).

patient is incapable). Where patients lack capacity to provide consent, policies set out a hierarchy of decision makers for treatment which must be used to identify a substitute decision maker.<sup>39</sup>

297. If a person has a disability which precludes them from consenting to medical treatment, consent in most instances is dealt with by way of an Advance Health Directive or a guardian.

298. All states and territories have an Office of the Public Guardian or Public Advocate which provides services and performs functions in relation to people with impaired decision-making capacity. These support persons with disabilities to participate and make decisions where possible, consulting with that person and taking into account their views and wishes to the greatest practicable extent.

## **Right to work (article 27)**

### **Issue 29**

299. In 2015, the Disability Employment Taskforce was established to review the disability employment system and develop a new National Disability Employment Framework to boost employment rates for persons with disabilities. Through this framework, the Australian Government developed reforms to the DES program.

300. The Australian Government is also progressing reforms to improve supported disability employment in Australia, including those outlined in the Committee's 2013 Concluding Observations on Australia (CRPD/C/AUS/CO/1, para 50):

301. On 5 June 2015, the Fair Work Commission (FWC) removed the Business Services Wage Assessment Tool (BSWAT) from the Supported Employment Services Award 2010 (SES Award). All Australian Disability Enterprises previously using the BSWAT have now transitioned to an alternative approved wage assessment tool under the SES Award.

302. On 10 October 2017, the FWC agreed to vary the Supported Wage System under the SES Award from 1 July 2018. The variations were trialled in 2016 and subsequently demonstrated in 2017 in consultation with Australian Disability Enterprises, disability advocates, unions and other interested parties. The variations allow for a more accurate assessment of productivity in workplaces covered by the SES Award. The SES Award is currently under review as part of the FWC four-yearly modern Award review.

303. The DES program currently provides specialist employment assistance to approximately 193,000 jobseekers with disabilities, injuries or health conditions. Over 46 per cent are women with disabilities. Around 30 per cent of female participants are in employment three months following participation in the program (32 per cent for male participants). The Australian Government is progressing reforms to the DES to help address structural barriers faced by women at different stages of employment.

---

<sup>39</sup> See Issue 1 for Australia's position on substitute decision-making

### Issue 30

304. The Australian Government has taken a number of steps to implement the recommendations contained in the AHRC's *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Willing to Work report).

#### *Disability Employment Services*

305. In the 2017-18 Budget, the Australian Government provided for significant reforms to the DES to help more persons with disabilities find and keep jobs. From 1 July 2018, changes include:

- a. improving participant choice and control
- b. engendering competition and contestability between providers
- c. improving financial incentives through a new risk-adjusted funding model and a new payment for achieving employment of at least a year
- d. a trial of expanded DES eligibility for school leavers with disability, and
- e. introducing indexed provider payments.

#### *New Enterprise Incentive Scheme (NEIS)*

306. Through the NEIS, the Australian Government provides business assistance to help people pursue self-employment. Changes in 2016–17 mean eligible persons with disabilities are now able to approach a NEIS provider directly to register for assistance without a referral from a DES provider. People receiving DES can receive NEIS services concurrently while establishing their small business.

#### *Educational resources*

307. The AHRC undertakes educational functions and produces educational tools and resources on employment discrimination against persons with disabilities. The Fair Work Ombudsman (FWO) produces educational resources such as fact sheets on workplace discrimination to help employers and employees understand their rights and responsibilities under Australian workplace laws. The FWO also investigates allegations of unlawful workplace discrimination and may initiate litigation against an employer for contravening section 351 of the *Fair Work Act 2009* (Cth) (FWA).

#### *Flexible work arrangements*

308. The Australian Government is committed to promoting the benefits of flexible work. The FWO and Workplace Gender Equality Agency (WGEA) provide information and tools for employers and employees to encourage the adoption of flexible working arrangements. Under the National Employment Standards, all employers must comply with section 65 of the FWA, which outlines situations where employees have a legal right to request flexible working arrangements, including where an employee has a disability. The Australian Government considers the Willing to Work report recommendation to review the functionality of this section was addressed by the 2015 Productivity Commission Inquiry into the workplace relations framework, which did

not recommend any change.

#### *Changing attitudes*

309. In 2016-17, the Australian Government committed to raising awareness amongst employers about employing persons with disabilities. Since then, approximately \$3 million has been allocated to develop and implement a communication strategy and training materials to target employers, aiming to promote employment of persons with disabilities and the different programs and services available.
310. AccessAbility Day is an Australian Government initiative that was piloted in eight locations across Australia in December 2017. Following the success of the pilot, it will be rolled out nationally in November 2018. The initiative encourages employers to host job seekers with disabilities in their workplace for one day to see the potential of persons with disabilities and learn about available support, while providing an opportunity for persons with disabilities to experience a new workplace and establish contacts.
311. The JobAccess Advice Service and website is the national hub for information about disability employment. It provides tailored information to persons with disabilities and employers, connecting them with free government disability employment supports. Improvements are underway to include new content, improved resources, online training for employers and promote good practice in disability employment.
312. The JobAccess Employer Engagement – National Disability Recruitment Coordinator (NDRC) supports employers to increase their disability confidence and skills to employ more persons with disabilities. The JobAccess Service will be evaluated in 2018-19, taking into consideration recommendations from the Willing to Work report. Findings will be used to inform improvements to the service delivery model.
313. The Australian Government also provides financial support to encourage employment of persons with disabilities. The Employee Assistance Fund provides financial assistance to persons with disabilities or their employer for workplace modifications, equipment and services necessary for them to perform their employment duties.
314. The new Wage Start subsidy, available from December 2017, provides up to \$6,000 to employers who provide jobs for long term unemployed DES participants and DES Youth internees who achieve employment with their host employer. Approximately 1,700 Wage Start subsidies are available each year and participants must be employed for at least six months.

#### *States and territories*

315. States and territories also promote and support the employment of persons with disabilities. For example, the ACT and NSW governments have developed training materials and resources to raise awareness about the rights of persons with disabilities and encourage employers to promote inclusive workplaces.

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

### **Issue 31**

316. The Australian Government provides a range of specific measures that focus on reducing the risk of poverty and homelessness in Australia (including persons with disabilities), spending more than \$6 billion annually on housing support and homelessness services that help millions of Australians.

#### *National Housing and Homelessness Agreement*

317. The \$1.5 billion per annum NHHA commenced on 1 July 2018. Under the NHHA, states and territories must have a housing and homelessness strategy that addresses the needs of identified priority cohorts (including women and children experiencing family and domestic violence, children and young people, Indigenous persons and people exiting care or institutions). States and territories can identify other priority cohorts, including persons with disabilities.

318. The Australian Government will dedicate \$620 million to homelessness services over five years from 2018–2019 under the new NHHA, which will be matched by states and territories.

#### *Previous Transitional National Partnership Agreement on Homelessness (NPAH)*

319. In 2017, the Australian Government provided \$117.2 million to state and territory governments under the NPAH to fund frontline homelessness services. The NPAH aligned with the key objectives of the ND Strategy, including driving ‘improved performance of mainstream services in delivering outcomes for people with a disability’.

#### *Social housing and homelessness*

320. Mainstream social housing and homelessness services play a critical role in enabling persons with disabilities to obtain and sustain stable housing and connection with services.

321. States and territories are responsible for addressing homelessness and work in partnership with the community sector to provide public and social housing to eligible people, including those with disabilities or mental illness who are experiencing or at risk of homelessness and unemployed or on low incomes. Persons with disabilities who are homeless are generally prioritised for housing and support services.

322. Many states and territories work with community organisations to provide preventative assistance to maintain stable, affordable housing for individuals. For example, the Victorian Government is implementing initiatives to prevent homelessness by supporting people to maintain stable accommodation and increasing the supply of housing through faster planning, promoting stability and affordability for renters, increasing and renewing social housing stock and improving housing services.

323. In the ACT, Victoria and NSW, specialist homelessness services provide support to persons with disabilities, Indigenous persons, women, children, and people with psychosocial disability at risk of homelessness.

### *Income support*

324. The Australian Government provides income support payments through the DSP to individuals with permanent physical, intellectual and/or psychiatric impairments that prevent them from working or training. DSP recipients receive a Pensioner Concession Card which provides access to concessions such as cheaper medicine and health services. They can also receive financial assistance for rent.
325. People who are unemployed and looking for work may receive Newstart Allowance if aged 22 or over or Youth Allowance (YA) if aged 16-21. Recipients with disabilities may be assessed as having a Partial Capacity to Work, if they cannot work at least 30 hours per week. This makes them eligible for a Pharmaceutical Allowance. Young people with disabilities who receive DSP or YA also receive a Youth Disability Supplement. Mobility Allowance is available for persons with disabilities unable to use public transport.

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

### **Issue 32**

326. The Australian Government is committed to ensuring the meaningful participation of persons with disabilities in decision making processes at all levels, including their ability to vote and exercise choice.

### *Presumption of capacity*

327. Every eligible Australian citizen who has attained the age of 18 years is required to enrol and vote in federal elections under the *Electoral Act 1918* (Cth). However, people are not entitled to have their name placed or retained on the Electoral Roll, or to vote, where they are incapable of understanding the nature and significance of enrolment and voting by reason of ‘unsound mind.’<sup>40</sup> 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.

### *Election processes*

328. The Australian Electoral Commission (AEC) is responsible for maintaining an impartial and independent electoral system for eligible voters through electoral roll management, delivery of federal polling services and education and public awareness programs.
329. The AEC supports the ND Strategy through its *Disability Inclusion Strategy 2012-2020* (the AEC Strategy), developed to support persons with disabilities participate fully in the electoral system. It includes actions designed to maximise the visibility of and physical accessibility to polling places and provide alternative and assisted voting options. For example, telephone voting for voters who are blind or have low vision and voting options through the NRS.

---

<sup>40</sup> Section 93(8), *Electoral Act 1918* (Cth)

330. The AEC Strategy also includes actions to ensure that voting material is accessible for all voters. For example, easy English and video guides to enrolling and voting in federal elections. The video includes AUSLAN, a voiceover and plain English captions. All information on the AEC website is accessible, including the online enrolment form. During an election, information is available in large print, e-text, MP3 and Braille.

331. The AEC is continuing to improve the voting system to ensure accessibility for persons with disabilities. In particular, the AEC will implement a trial of Accessible Voting Centres during the pre-poll period at the next federal election. Centres will feature improved physical accessibility, including larger floor space, hearing loops and adjustable lighting. The AEC is also exploring the implementation of an online disability awareness training module to educate election staff.

*States and territories*

332. Many states and territories implement similar measures at their elections, including providing information in accessible formats, ensuring physical accessibility of polling centres and allowing for postal voting and assisted voting in hospitals and polling places. Some state and territory electoral commissions have introduced electronic voting systems, including internet voting, to provide secret and unassisted voting services for persons with disabilities. For example, NSW has utilised the iVote system, an electronic assisted voting platform available over the phone or internet that can be used by persons who are blind or have low vision to more easily cast a secret ballot.

**Statistics and data collection (article 31)**

**Issue 33**

333. The Australian Government systematically collects, reports on and coordinates disability prevalence data in a range of surveys, most disaggregated by various indicators.

<b>Survey / Data collected</b>	<b>Frequency</b>	<b>Information collected</b>	<b>Disaggregation</b>
Survey of Disability, Ageing and Carers	Three years	Disability prevalence data, access to services, discrimination, social participation and health and wellbeing	Age, sex and geographic location
National Health Survey and General Social Survey	Three years	Includes a short disability module, so it can be investigated alongside other socioeconomic factors	Age, CALD status, socio-economic status and remoteness (amongst others)

<b>Survey / Data collected</b>	<b>Frequency</b>	<b>Information collected</b>	<b>Disaggregation</b>
Personal Safety Survey	Four years	Asks people aged 18 years and over, including those with disabilities, about their experience of violence since age 15	Sex, age, location, CALD status, education and long/short term disability status
Nationally Consistent Collection of Data on Schools Students with Disability	Annually	Number of students with disability, category of disability and adjustment required to access education on the same basis as other students.	Jurisdiction, level of adjustment, disability category and type of school.
Australian Census of Population and Housing	Five years	People who need assistance with a core activity	Age, sex, CALD status and other demographic and socio-economic variables
National Aboriginal and Torres Strait Islander Health Survey	2018-19 iteration in development	The general and long term health of Indigenous persons	Age, sex, socioeconomic variables and remoteness
National Aboriginal and Torres Strait Islander Social Survey	Six years	Includes a short disability module, so it can be investigated alongside other socioeconomic factors	Age, sex, socioeconomic variables and remoteness
Report on Government Services	Annually	The equity, effectiveness and efficiency of government services in Australia, including disability services	Age, sex, geographic location, remoteness, CALD and Indigenous status

334. Through the National Disability Agreement (NDA), the Australian, state and territory governments fund a range of disability focused research and data projects. The Disability Services National Minimum Data Set is an annual, national collection of a standard set of data items on

disability support services provided under the NDA. Data is collected from service users by funded agencies and then provided to jurisdictions, which in turn provide the data for national collation and reporting.

335. Australia's National Research Organisation on Women's Safety (ANROWS) is jointly funded by the Australian Government and state and territory governments. Its purpose is to fund relevant and translatable research evidence, which drives policy and practice and helps lead to a reduction in the levels of violence against women and their children. Current disability-themed research projects include mothers and children with disability using early intervention services and accessing justice for women with disabilities who experience violence.
336. The RoGS Disability and Aged Care Working Group was established by the Productivity Commission to ensure the continuous improvement of the disability and aged care services chapters by improving the quality and scope of data collection and definitions, and investigating and resolving comparability issues in the performance indicators.
337. The Australian Government also funded the Data Integration Partnership (DIPA) to maximise the use of existing data. The datasets created under DIPA bring together otherwise siloed datasets and expand the available data, including a range of information relevant to persons with disability. The information is used to guide the development of effective policies, programs and services.

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

### **Issue 34**

338. Australia is committed to advancing human rights globally. The *Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program* (Development for All Strategy), articulates Australia's commitment to taking an international leadership role in disability inclusive development. The Development for All Strategy details Australia's human rights-based, twin track approach to implementing disability-inclusive development through mainstreamed and targeted efforts.
339. Australia's Office of Development Effectiveness (ODE) is currently undertaking an independent review of the Development for All Strategy. In December 2017, the review published findings on the effectiveness of Australia's advocacy for disability-inclusive development, finding strong evidence it was effective overall. In particular, the capacity of DPO's has grown, continues to grow and Australia's support has increased the capacity of other advocates, built coalitions and helped crowd-in other bilateral donors.
340. The review highlights these short-term outcomes have led to important intermediate outcomes, including a greater voice for persons with disabilities and their representative organisations. Australia's advocacy of disability-inclusive development has also helped transform policies of the United Nations System, UN agencies and other organisations.
341. As part of the review, ODE is evaluating disability inclusion in aid programming to identify

progress made and what needs to be done to further strengthen disability inclusion. The evaluation report will be published in the second half of 2018.

342. Disability rights is a focus for Australia's term on the UN Human Rights Council (HRC). Australia also has a representative on the UN Committee on the Rights of Persons with Disabilities, which complements Australia's HRC role and demonstrates our commitment to protecting and strengthening civil society.
343. Australia's international advocacy on disability inclusion is spearheaded through our role as Co-Chair of the Global Action on Disability (GLAD) network. The GLAD Network harnesses the collective voice, role and resources of bilateral and multilateral donors, the private sector and foundations, to ensure international development and humanitarian action includes and benefits persons with disabilities. The GLAD network has three key focus areas: disability inclusive education, social protection and humanitarian action. Since its inception in 2015, Australia's carriage of the co-chair position has significantly contributed to the strategic direction and growth of GLAD.
344. Consistent with the guiding principles of the Development for All Strategy, and the principle embedded in the 2030 Agenda to leave no one behind, the Australian Government is investing in building the evidence base and monitoring of outcomes for persons with disabilities. Australia has supported a range of disability data capacity building efforts, including the Washington Group Short Set of Questions and the UNICEF/Washington Group Child Functioning Module for disaggregating data by disability for the purposes of monitoring implementation of the SDGs. Australia continues to provide support to the Washington Group to disseminate these data collection tools and provide technical assistance.

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

#### **Issue 35**

345. The AHRC is Australia's A-status national human rights institution. It is an independent statutory body, with functions including education and awareness raising, investigating and conciliating complaints of unlawful discrimination and human rights, conducting national inquiries and reporting on issues of human rights concern, providing advice and submissions to parliaments and governments and undertaking and coordinating research into human rights and discrimination issues.
346. The AHRC has a strong role in promoting, protecting and monitoring the implementation of the Convention. The Convention has been declared as an international instrument relating to human rights and freedoms for the purposes of the AHRC Act. Accordingly the AHRC can exercise its functions in relation to the rights under the Convention, to:
- a. promote an understanding, acceptance and public discussion of the Convention in Australia

- b. undertake research and educational programs to promote the Convention
- c. report to the Attorney-General on laws that should be made or action taken on matters relating to the Convention
- d. intervene in court proceedings that involve issues related to the Convention
- e. inquire into and attempt to conciliate complaints of unlawful disability discrimination under the DDA, and
- f. inquire into and attempt to conciliate complaints that an act or practice of the Commonwealth that may be inconsistent with or contrary to the human rights recognised in the Convention.

347. Australia's dedicated Disability Discrimination Commissioner leads the AHRC's work relating to the rights of persons with disabilities, including promoting understanding and acceptance of, and compliance with, the DDA, engaging with stakeholders to address disability discrimination in the workplace and in the community, addressing barriers to equality and participation caused by disability discrimination, and undertaking research and education projects to combat the attitudes and stereotypes that can contribute to disability discrimination.

348. On 24 January 2017, the AHRC was re-accredited as an 'A-status' National Human Rights Institution by the Accreditation Sub Committee of the Global Alliance of National Human Rights Institutions, in accordance with the Paris Principles. The Australian Government is committed to the Paris Principles and respects and values the independence of the AHRC, which is protected by Commonwealth legislation.