

Documents tabled on 4 June 2008:

National Interest Analysis [2008] ATNIA 18

with attachments on implementation and consultation

**United Nations Convention on the Rights of Persons with Disabilities
New York, 13 December 2006**

[2007] ATNIF 15

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

United Nations Convention on the Rights of Persons with Disabilities New York, 13 December 2006

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Nature and timing of proposed treaty action

1. Australia signed the United Nations Convention on the Rights of Persons with Disabilities when it opened for signature on 30 March 2007. It is proposed that Australia consent to be bound by the Convention through ratification under Article 43.
2. Early ratification would be highly desirable given Australia's active role in the negotiation of the Convention text, early signature and continued international support for the Convention. It is proposed that this treaty action be undertaken as soon as practicable for these reasons, as well as to increase Australia's prospects of participating in the inaugural election of the Committee on the Rights of Persons with Disabilities established under Article 34 of the Convention.
3. The Convention entered into force generally on 3 May 2008—the 30th day after the deposit of the 20th instrument of ratification. As it is already in force internationally, the Convention would enter into force for Australia on the 30th day after it deposits its instrument of ratification (Article 45). The election of the Committee must be called no later than 3 July 2008, that is, two months after the entry into force of the Convention, and held no later than 3 November 2008 (Article 34(6)).

Overview and national interest summary

4. Australia has had a long-standing commitment to upholding and safeguarding the rights of people with disability. One in five Australians is currently living with disability and it is projected that, with the ageing population, this figure is likely to rise.¹ This Convention reflects and affirms the protections already existing under Australia's domestic laws and is a major step in recognising and raising awareness of the right of all people to live life to their fullest potential, including people with disability.
5. Australia was an active participant and leader in the development of the Convention. Ratification would reinforce Australia's commitment to the rights of people with disability both nationally and internationally. Ratification would also serve an important educative purpose; fostering a more inclusive society and further encouraging the participation of people with disability in the community. Australia's Commonwealth, State and Territory legislation, policies and programs currently comply with all immediately applicable obligations, and substantially achieve implementation of the progressively realisable obligations in the Convention. As such, there are no significant financial² or regulatory implications of ratifying the Convention.

¹ Australian Bureau of Statistics estimation and projection based on 2003 census data ('Disability, Ageing and Carers: Summary of Findings', Australia, 2003 (cat. no. 4430.0)).

² See discussion of Queensland's views at paragraph 36.

Reasons for Australia to take the proposed treaty action

6. The proposed treaty action is consistent with the Australian Government's commitment to upholding the rights of people with disability to equal treatment and to participate as fully as possible in community life, free from discrimination. Australia's already robust protections against disability discrimination can also be promoted internationally through ratification, enhancing our international human rights reputation and engagement.

7. Ratification of the Convention is likely to: raise awareness of disability issues and foster a more inclusive and cohesive society by giving prominence to ensuring human rights are afforded to all people, including people with disability; promote the active participation of people with disability in the community, including workforce participation, which may reduce pressure on welfare services; enhance the independence of people with disability, thereby potentially reducing direct support services costs; promote universal design, resulting in more accessible and therefore more functional and sustainable built and information environments; and improve the self-esteem of people with disability, enabling them to enjoy their inherent dignity and respect. Ratification presents no foreseeable disadvantages for Australia and would not impose any significant costs on any sector.

Obligations

8. The purpose of the Convention, as set out in Article 1, is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disability, and to promote respect for their inherent dignity. People with disability are defined in the Convention to include 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

9. The Convention does not create any new human rights, but rather expresses existing rights in a manner that addresses the needs of people with disability. It therefore does not add to the rights enunciated in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—treaties to which Australia is party and with which it already complies. Rather, the Convention specifies the practical obligations that States Parties are required to implement in order to afford people with disability their pre-existing substantive human rights on an equal basis with others.

10. Article 4 sets out the general obligations under the Convention. States Parties are obliged to ensure and promote recognition of the fact that people with disability are entitled to all human rights and fundamental freedoms, without discrimination of any kind on the basis of disability. To achieve this aim, States Parties undertake to:

- abolish or modify laws, policies or practices that discriminate against people with disability
- take into account the rights of people with disability in policies and programs
- ensure public authorities and institutions act in accordance with the Convention
- eliminate discrimination on the basis of disability
- undertake or promote research and development of accessible goods, services and facilities that can be made available at the lowest cost
- provide accessible information on new technologies which assist people with disability, mobility aids and devices
- promote the training of professionals and other staff working with people with disability in the rights of people with disability

- implement those obligations in the Convention that are immediately applicable according to international law and, to the maximum of available resources, aim to implement progressively the obligations relating to economic, social and cultural rights, and
- closely consult with and actively involve people with disability, including children with disability, through representative organisations.

Levels of obligation

11. Different categories of rights in the Convention carry different levels of obligation. In addition, the varying language used to describe the level of an obligation provides States Parties with flexibility in implementing the Convention.

12. Article 4(2) provides that those obligations in the Convention that stem from economic, social and cultural rights are subject to progressive realisation, which means fulfilling or achieving those rights over time, taking into account available resources. This is without prejudice to the implementation of those obligations in the Convention that are immediately applicable according to international law.

13. Article 4(4) provides that nothing in the Convention shall affect, restrict or derogate from anything contained in the domestic law of a State Party or international law in force for that State which is more conducive to the realisation of the rights of people with disability.

14. Most Articles require States Parties to take ‘appropriate’ and/or ‘effective’ measures to implement a particular obligation. This affords countries some discretion in determining the best means and policies to give effect to the Convention’s obligations. However, the primary requirement is to implement the purpose or aims of the Convention in good faith.

Equality and non-discrimination

15. Article 5 obliges States Parties to prohibit generally all discrimination on the basis of disability, including by taking all appropriate steps to ensure that ‘reasonable accommodation’ is provided. Reasonable accommodation is defined in Article 2 with reference to necessary and appropriate adjustments that do not impose a disproportionate or undue burden.

16. States Parties are specifically required to eliminate discrimination in a range of areas, including in matters relating to marriage, family, parenthood and relationships (Article 23), education (Article 24), health (Article 25), employment (Article 27), standard of living and social protection (Article 28) and participation in political and public life (Article 29). States Parties are also required to recognise that women and girls with disabilities are subject to multiple forms of discrimination and, in that regard, take all appropriate measures to ensure the advancement of women (Article 6). The obligation to eliminate discrimination also permeates the majority of the other Articles in the Convention, which oblige States Parties to recognise the status of, or provide access, protection or services to, people with disability ‘on an equal basis with others’.

Recognition before the law, legal capacity and decision-making

17. The Convention also requires States Parties to acknowledge the right of people with disability to be recognised as individuals before the law who possess legal capacity on an equal basis with others (Articles 5(1) and 12). Article 12(3) requires States Parties to take appropriate measures to provide people with disability access to the support they may need to exercise their legal capacity. Article 12(4) requires States Parties to ensure that, where such support is provided, appropriate and effective safeguards exist to prevent abuse. The safeguards must be proportionate to the degree to which the person’s rights and interests are affected. Article 12 does not prohibit substituted decision-making arrangements that provide for decisions to be made on behalf of a

person with disability where necessary, as a last resort and subject to the safeguards in Article 12(4). Article 17 also provides that people with disability have the right to physical and mental integrity on an equal basis with others. Article 17 does not prohibit compulsory treatment³ of people with disability where such treatment is necessary, as a last resort and subject to safeguards to prevent abuse.

18. Children with disability are to be registered immediately after birth and have the right to a name and nationality (Article 18(2)). In decisions concerning children with disability, the best interests of the child are to be a primary consideration (Article 7(2)). In relation to guardianship and adoption of children, or similar institutions, the best interests of the child are paramount (Article 23(2)). Separation from parents may be ordered by competent authorities, subject to judicial review, only when it is necessary for the best interests of the child (Article 23(4)). States Parties are required to ensure that children with disability are provided the opportunity and assistance to express their views freely on all matters affecting them. Their views are to be given due weight in accordance with their age and maturity, on an equal basis with other children (Article 7(3)).

Accessibility

19. The Convention also obliges States Parties to take appropriate measures to ensure access to people with disability, on an equal basis with others, to the physical environment, transportation, information and communications and other facilities and services open or provided to the public, including in rural areas (Article 9). These measures are to include the identification and elimination of obstacles and barriers to access to, *inter alia*, buildings, roads, transportation, schools, housing, medical facilities, workplaces, information, communications services and emergency services.

20. While this obligation also involves prohibiting discrimination, Article 9 provides that States Parties shall take appropriate measures to: establish minimum standards and guidelines for the accessibility of facilities and services open to the public; provide training on accessibility issues; provide in public buildings forms of live assistance (such as escorts at reception) and signage in Braille and easy to read and understand forms; promote access for people with disability to information and communication technologies; and promote the design, development, production and distribution of accessible information and communication technologies.

21. Accessibility, particularly access to information, is also fundamental to obligations contained in other Articles relating to particular areas of life, including: Article 13 regarding access to justice; Article 16 in relation to protection services; Article 19 regarding access to community services and facilities; Article 21 regarding access to information generally; Article 23 regarding access to reproductive and family planning education and related information; Article 24 in relation to various aspects of education; Article 25 regarding health services; Article 27 regarding access to vocational training and placement services; Article 28 in relation to access to social protection, poverty reduction and public housing programs and retirement benefits; Article 29 in relation to access to election information; Article 30 regarding access to cultural materials, television programs, films, theatres, museums, cinemas, libraries, tourism services, monuments and sites of national importance (as far as possible) and sporting, recreational and tourism venues. Access is to be provided to people with disability on an equal basis with others.

Inclusion and participation in society

22. The Convention contains a number of further obligations aimed at enhancing the inclusion and participation of people with disability in society. Article 19 obliges States Parties to take

³ Compulsory treatment, also referred to as 'forced treatment', 'involuntary treatment' or 'compulsory assistance', refers to medical treatment, including measures taken for the treatment of mental illness, conducted without the consent, or contrary to the wishes, of the person receiving the treatment.

effective and appropriate measures to facilitate full inclusion and participation in the community including by ensuring that people with disability have the opportunity to: choose their place of residence and living arrangements on an equal basis with others; access in-home, residential and other community support services to prevent isolation or segregation; and access community services and facilities on an equal basis with others.

23. Other Articles impose obligations specific to particular aspects of inclusion and participation, namely: personal mobility, including facilitating affordable transport and affordable access to mobility aids, devices, assistive technologies and forms of live assistance and intermediaries (Article 20); an inclusive education system, in which students with disability receive support within the general education system while individualised support measures are made available with the goal of full inclusion (Article 24); habilitation and rehabilitation to enable people with disability to attain and maintain maximum independence, vocational ability and full inclusion and participation in all aspects of life (Article 26); employment, including promoting employment and self-employment opportunities for people with disability (Article 27); equal standard of living, including assistance for disability-related needs (Article 28); political and public life, including the right and opportunity to vote and be elected (Article 29); and cultural life and sport, including the opportunity for people with disability to develop and utilise their creative, artistic and intellectual potential (Article 30).

Other obligations

24. Article 8 requires States Parties to undertake to adopt immediate, effective and appropriate measures to: raise awareness regarding people with disability; foster respect for their rights and dignity; combat stereotypes, prejudices and harmful practices relating to people with disability; and promote awareness of their capabilities and contributions. Such measures include: public awareness campaigns, fostering respect through the education system; encouraging positive portrayal of people with disability in the media; and promoting disability awareness training.

25. Article 10 requires States Parties to take all necessary measures to afford people with disability the inherent right to life of all human beings on an equal basis with others. Article 11 requires States Parties to take, in accordance with international law, all necessary measures to ensure the protection and safety of people with disability in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters. These Articles would have no effect on existing non-refoulement obligations.

26. Article 14 obliges States Parties to ensure that people with disability enjoy the right to liberty and security of the person on an equal basis with others. People with disability who are deprived of their liberty must be treated in accordance with the objectives and principles of the Convention, including by provision of reasonable accommodation (Article 14(3)). Article 15 requires States Parties to take all effective measures to prevent people with disability, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment, including non-consensual medical or scientific experimentation.

27. Article 18 requires States Parties to recognise the rights of people with disability to liberty of movement; to freedom to choose their residence; and to acquire and change their nationality, on an equal basis with others. This includes ensuring that people with disability are not deprived of nationality or other identification documentation on the basis of disability. Article 18 does not confer any additional rights on people with disability in relation to immigration processes. In particular, Article 18 does not oblige Australia to provide a favourable outcome in visa or citizenship applications.

28. Article 22 obliges States Parties to afford people with disability the right to the protection of the law against arbitrary or unlawful interference with their privacy, regardless of place of residence

or living arrangements. States Parties must also protect the privacy of personal, health and rehabilitation information of people with disability on an equal basis with others.

Implementation, monitoring and reporting

29. In implementing the Convention, States Parties are required to collect appropriate statistical and research data (Article 31) and closely consult with and actively involve people with disability, including children with disability, through their representative organisations (Article 4(3)). States Parties are also required to designate one or more focal points within government for matters relating to implementation (Article 33(1)) and establish or maintain a mechanism, including at least one independent body, to promote, protect and monitor implementation (Article 33(2)). Civil society, particularly people with disability, must be involved in the monitoring process.

30. States Parties are also required to recognise the importance of international cooperation and, without prejudice to national implementation, undertake appropriate and effective measures in this regard (Article 32).

31. States Parties are obliged to report comprehensively to the Committee on the Rights of Persons with Disabilities (established under Article 34) on the progress of implementation (Article 35). The first report must be submitted within two years of entry into force for the State Party, then at least every four years thereafter (Article 35). As the Convention does not create any new rights, aspects of Australia's report to the Committee will be addressed in reports to other human rights treaty bodies. However, duplication can be minimised through cross-referencing reports; referring to Australia's Common Core Document; and—in the future—possibly omitting reporting on disability policies, legislation and programs from reports to other human rights treaty bodies. Further, according to Article 38(b), the Committee is required to consult other relevant human rights treaty bodies with a view to ensuring the consistency of their reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Implementation

32. Assessment of Commonwealth, State and Territory legislation, policies and programs indicates that Australia complies with all immediately applicable obligations, and substantially implements the progressively realisable obligations in the Convention. These include: anti-discrimination legislation; disability services legislation; guardianship, administration and mental health legislation; the Commonwealth-State-Territory Disability Agreement; the National Disability Strategy; and other Commonwealth, State and Territory laws, policies and programs.

33. Details on how Australia's legislation, policies and programs implement the Convention are set out in the **Attachment on Implementation**.

Costs

34. There are negligible financial implications for the proposed treaty action given: the Convention does not create any new rights; Australia's compliance with immediately applicable obligations and substantial implementation of progressively realisable obligations; and pre-existing funding for disability services.

35. While Australia's implementation of progressively realisable obligations can be enhanced, it is important to note that disability policy and services are already continually being improved. As demonstrated in the Attachment on Implementation (paragraph 13), enhancements to the processes of eliminating discrimination and improvements in disability services are already being financed.

36. Queensland has indicated that it considers full implementation of progressively realisable obligations to carry significant resource implications. However, in light of the quality and continual development of Australia's disability policy and services and the flexibility afforded by the concept of progressive realisation (Article 4(2)), the Australian Government considers it unlikely that ratification of the Convention will impose any significant financial costs on that State or any other.

37. Some costs associated with reporting (Article 35) are foreseeable. The costs involved are expected to be absorbed within the usual budget of the agency responsible for reporting. Reporting requirements dictate that costs would be incurred within two years of the Convention's entry into force for Australia, then at least every four years thereafter. When Australia is required to appear before the Committee on the Rights of Persons with Disabilities, travel costs would also be absorbed by the responsible agency or agencies.

Regulation Impact Statement

38. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

39. Article 47 provides that amendments may be proposed by any State Party. Proposed amendments are to be communicated by the Secretary-General to States Parties with the question of whether a conference of States Parties should be convened to consider and decide on the proposals. If at least one third of Parties agree within four months of the communication, a conference will be convened. Any amendment adopted by a majority of two thirds of the States Parties present and voting will be submitted to the General Assembly for approval and thereafter to all States Parties for acceptance. An approved amendment will then enter into force for those States Parties that accept it on the 30th day after two thirds of States Parties have accepted. It will thereafter enter into force for any State Party on the 30th day following that Party's acceptance.

40. Article 47(3) provides an alternative entry into force procedure where the approved amendment relates exclusively to Articles 34, 38, 39 or 40. If the Conference of States Parties so decides by consensus, such an amendment shall enter into force for all States Parties on the 30th day after two thirds of the States Parties at the date of adoption of the amendment have accepted it.

41. The proposal or adoption of amendments would be subject to our domestic treaty process, including consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

42. Article 48 of the Convention provides for denunciation. A State Party may denounce the Convention by written notification to the Secretary-General of the United Nations. A denunciation becomes effective one year after receipt of notification. Denunciation by Australia would be subject to our domestic treaty process, including consideration by the JSCOT.

Contact details

Human Rights Branch
Classification, Human Rights and Copyright Division
Attorney-General's Department.

ATTACHMENT ON IMPLEMENTATION

United Nations Convention on the Rights of Persons with Disabilities New York, 13 December 2006 [2007] ATNIF 15

Implementation

Anti-discrimination legislation

1. Commonwealth, State and Territory anti-discrimination laws fulfil the non-discrimination requirements in the Convention. The *Disability Discrimination Act 1992* (Cth) (DDA) renders unlawful direct and indirect discrimination on the basis of disability 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. State and Territory Anti-Discrimination Acts and Equal Opportunity Acts⁴ similarly prohibit discrimination on the basis of disability in a range of areas. (Exemptions contained in Commonwealth, State and Territory anti-discrimination legislation do not appear to present issues of non-compliance with the Convention.) The definition of ‘disability’ in the DDA is broader than that in the Convention—disability under the DDA need not be ‘long-term’, nor is it restricted to ‘impairments’. The DDA also contains the requirement to make ‘reasonable adjustments’ to accommodate the disability of a person, which accords with the concept of ‘reasonable accommodation’ in the Convention.
2. Complaints of unlawful disability discrimination can be made under the DDA to the Human Rights and Equal Opportunity Commission (HREOC) or under a State or Territory Anti-Discrimination or Equal Opportunity Act to a State or Territory anti-discrimination or equal opportunity board or commission.⁵ Under the *Human Rights and Equal Opportunity Act 1986* (Cth), HREOC has the power to investigate and conciliate complaints of disability discrimination. If the conciliation is unsuccessful, the complainant may commence legal proceedings regarding the complaint in the Federal Magistrates Court or the Federal Court.
3. Disability Standards, which are formulated under the DDA (section 31), also implement the non-discrimination obligations in the Convention, as well as obligations specifically requiring standards (eg Article 9(2)(a)) and obligations relating to particular areas of life. Disability Standards are designed to specify ways of testing compliance with the DDA and provide clarification on specific matters relating to the requirements of the DDA. The DDA renders contravention with a Disability Standard unlawful, and compliance with a Disability Standard is taken to be compliance with the DDA. The Commonwealth has developed Standards in the areas of public transport and education, which implement parts of Article 9 on accessibility and Article 24 on education. Standards for access to premises are currently being negotiated, which would also contribute to the implementation of Article 9. In addition, Part 3 of the DDA provides a framework for voluntary disability action plans which may be submitted to the Human Rights and Equal Opportunity Commission.

⁴ *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1998* (NT); *Anti-Discrimination Act 1991* (Qld); *Anti-Discrimination Act 1998* (Tas); *Discrimination Act 1991* (ACT); *Equal Opportunity Act 1984* (SA); *Equal Opportunity Act 1995* (Vic); and *Equal Opportunity Act 1984* (WA).

⁵ Australian Capital Territory Human Rights Commission; New South Wales Anti-Discrimination Board; Northern Territory Anti-Discrimination Commission; Queensland Anti-Discrimination Commission; South Australian Equal Opportunity Commission; Tasmanian Office of the Anti-Discrimination Commissioner; Victorian Equal Opportunity and Human Rights Commission; and West Australian Equal Opportunity Commission.

Disability Services legislation

4. Commonwealth, State and Territory Disability Services Acts⁶ provide a legislative and funding framework for a range of specialist disability services. This framework provides the platform for implementation of various obligations in the Convention, including Articles 9, 19, 24-28 and 30, and overarching principles such as full and effective inclusion in society, increased independence and promotion of a positive image of people with disability.⁷ While the definition of 'disability' in these Acts may be narrower than that of the Convention,⁸ the Acts align with the Convention in providing general eligibility for specialist services to those people with disability who require ongoing support.

The Commonwealth-State-Territory Disability Agreement

5. Substantial Commonwealth, State and Territory funding is dedicated to disability services under the Commonwealth-State-Territory Disability Agreement—the national framework for the provision of government support to services for people with disability. Under the three Agreements signed to date, all parties have shared and continue to share responsibility for funding specialist disability services, advocacy services and research and development. State and Territory governments bear responsibility for the planning, policy setting and management of accommodation support, community support, community access and respite care for people with disability. The Australian Government has similar responsibilities for specialised disability employment assistance. The current Agreement was due to expire on 30 June 2007, but has been extended to 30 June 2008 while negotiations for another Agreement are finalised in the context of reform to Commonwealth-State relations agreed by the Council of Australian Governments.

6. A set of eight guiding standards, known as the National Standards for Disability Services,⁹ ensure that services funded under the Agreement accord with the principles and objectives of Commonwealth, State and Territory anti-discrimination, disability services and other¹⁰ legislation. The National Standards include: service access, individual needs, decision-making and choice, privacy, dignity and confidentiality, participation and integration, valued status, complaints and disputes and service management. In addition, Disability Services Standards have also been developed by a Working Party to ensure the delivery of quality employment services.¹¹ All Australian Government funded disability employment services must comply with those Standards as a pre-requisite for ongoing funding. Those Standards cover similar matters to the National Standards, with the addition of Standards on service recipient training, and support and protection of human rights and freedom from abuse. The two sets of Standards give effect to various

⁶ *Disability Services Act 1986* (Cth); *Disability Services Act 1991* (ACT); *Disability Services Act 1993* (NSW); *Disability Services Act 2004* (NT); *Disability Services Act 2006* (Qld); *Disability Services Act 1993* (SA); *Disability Services Act 1992* (Tas); *Disability Services Act 1991* (Vic) and *Intellectually Disabled Persons' Services Act 1986* (Vic); and *Disability Services Act 1993* (WA).

⁷ Refer to section 3, *Disability Services Act 1986* (Cth) and Articles 1, 3 and 4 of the Convention.

⁸ In the abovementioned Disability Services Acts, 'disability' is defined with reference to 'substantially reduced capacity' and the need for 'ongoing support'. This is narrower than the definition in the Convention, which appears at paragraph 9 of the National Interest Analysis.

⁹ The National Standards were developed in 1992-1993 by a Working Party comprising Australian Government and State/Territory government representatives, three consumer representatives and three service provider representatives.

¹⁰ Legislation concerning Guardianship, Equal Employment Opportunity, Occupational Health and Safety and Freedom of Information.

¹¹ The Disability Services Standards for employment services were developed by the Disability Services Standards Working Party established in February 1992. The Disability Standards Review and Quality Assurance Working Party undertook a review of those Standards in 1996-1997. Amendments to the *Disability Services Act 1986* to encompass the introduction of the Quality Strategy came into effect on 1 July 2002. The system was introduced on a voluntary basis from 1 January 2002, with the requirement that all Australian Government funded disability services and rehabilitation programmes be independently certified by 31 December 2004.

obligations and overarching principles in the Convention, including Articles 12, 14-17, 19, 20, 22, 24-28 and 30.

Guardianship, Administration and Mental Health legislation and decisions relating to children

7. Under State and Territory Guardianship and Administration Acts¹², Mental Health Acts¹³ and other medical legislation, people with disability are provided with support in exercising legal capacity when necessary. The legislation provides safeguards against abuse which are intended to ensure that decisions or orders reflect respect for the rights and preferences of the individual person; are only made to the extent necessary; are free from conflict of interest and undue influence; and are reviewable. Legislative safeguards are also intended to ensure that compulsory treatment or intervention is only used when necessary. The legislation and associated regulations and policies give effect to Articles 5(1), 12 and 17 of the Convention.

8. State and Territory Births, Deaths and Marriages Registration Acts require the immediate¹⁴ registration of all children, which complies with Article 18(2) of the Convention. Decisions relating to children with disability are made pursuant to the *Family Law Act 1975* (Cth) and relevant State and Territory legislation¹⁵. In such decisions, the best interests of the child are either a primary or the paramount consideration. This aligns with Articles 7, 23(2) and 23(4) of the Convention.

National Disability Strategy and other Commonwealth laws, policies and programs

9. The Australian Government is currently developing a National Disability Strategy aimed at addressing the needs of people with disability by setting a consistent national direction for the enhancement of disability legislation, policy and standards, which is inclusive and aligns with the tenets of the Convention. Specific Commonwealth laws, policies and programs which currently implement the Convention include: captioning requirements contained in the *Broadcasting Services Act 1992*; *Telecommunications (Equipment for the Disabled) Regulations 1998*; disability employment services, including the National Mental Health and Disability Employment Strategy (under development), JobAccess, Disability Employment Network, Disability Business Services, Wage Subsidy Scheme and Workplace Modifications Scheme; the National Forum on Emergency Warnings to the Community; National Arts and Disability Strategy; the Australian Sports Commission's Disability Education Program; Australian Electoral Commission Disability Action Plan; National Relay Service; Workplace Modifications Scheme; Auslan for Employment Program; and National Disability Awards.

Other State and Territory policies and programs

10. Numerous pre-existing State and Territory policies and programs also give effect to the obligations in the Convention. Some examples include: the Australian Capital Territory's Wellbeing (Disability) Services, Quality of Life Grants and Planning Guidelines for Access and Mobility; New South Wales' 'Better Together' policy, Home and Community Care Program,

¹² *Adult Guardianship Act 1988* (NT); *Guardianship Act 1987* (NSW); *Guardianship and Administration Act 2000* (Qld); *Guardianship and Administration Act 1993* (SA); *Guardianship and Administration Act 1995* (Tas); *Guardianship and Administration Act 1986* (Vic); *Guardianship and Administration Act 1990* (WA); and *Guardianship and Management of Property Act 1991* (ACT).

¹³ *Mental Health Act 1990* (NSW); *Mental Health Act 2000* (Qld); *Mental Health Act 1993* (SA); *Mental Health Act 1996* (Tas); *Mental Health Act 1986* (Vic); *Mental Health Act 1996* (WA) and *Criminal Law (Mentally Impaired Defendants) Act 1996* (WA); *Mental Health and Related Services Act 1998* (NT); and *Mental Health (Treatment and Care) Act 1994* (ACT).

¹⁴ Most legislation requires registration within 60 days.

¹⁵ *Child Protection Act 1999* (Qld); *Children (Care and Protection) Act 1987* (NSW); *Children and Community Services Act 2004* (WA); *Children and Young People Act 1999* (ACT); *Children, Young Persons and Their Families Act 1997* (Tas); *Children, Youth and Families Act 2005* (Vic); *Children's Protection Act 1991* (SA); and *Community Welfare Act 1983* (NT) – to be replaced by *Care and Protection of Children Act 2007* (NT).

'Enable NSW' strategy and Disability Sport Assistance Program; the Northern Territory's Aged and Disability Program, 'Willing and Able' Strategy and Sports Ability Program; Queensland's Government Disability Service Plan, Disability Sector Quality System and 'Building Supportive Communities' policy; South Australia's 'Promoting Independence' strategy, 'Students with Disability' policy, Independent Living Equipment Programme and 'Persons Needing Assistance to Remain Independent' policy; Tasmania's Disability Framework for Action, Disability Bureau initiatives and Companion Card Program; Victoria's State Disability Plan, Quality Framework for Disability Services, Industry Development Plan and 'Access for All Abilities' sports and recreation program; and Western Australia's Government Disability Action and Inclusion Plans, 'Count Us In' awareness campaign, 'Feel Safe' program and Disability and Arts Inclusion Initiative.

11. Policies and programs common to most jurisdictions include government disability action plans, disability advisory councils, public advocates, disability services standards, disability specific health services and programs, transport and other concession programs, transport accessibility programs, housing schemes, community or disability legal centres, education programs, funding of disability organisations, compliance with the World Wide Web Consortium Web Content Accessibility Guidelines 1.0 and mobile and accessible polling and assistance during elections.

Scope for further progressive realisation

12. Areas have been identified as offering opportunities to enhance implementation of the progressively realisable obligations in the Convention; namely: general awareness raising; education and training for people who work or, in the course of their work, interact with people with disability, particularly those working in the administration of justice; merit tested legal representation for people with disability wishing to challenge guardianship and administration orders; more accessible signage in public buildings; encouraging the private sector to be mindful of accessibility issues and to adopt universal design in production, particularly by considering the needs of people with disability in the production of mobility aids and other assistive devices; and improved access to services in rural and regional areas. Disability sector and other non-government organisations have also called for a national audit of disability legislation, policy and services.

13. The natural progression and gradual improvement of policies and services in Australia also ensures the progressive realisation of the obligations in the Convention. Current or impending developments and reviews include: the National Disability Strategy; the Standing Committee on Treaties project on harmonisation of anti-discrimination laws; the National Mental Health and Disability Employment Strategy; the Transport Standards review; the inquiry into captioning; the Education Standards due to be reviewed in 2010; the development of Access to Premises Standards; and the Disability for Development Strategy (AusAID). The Australian Government has also committed to conducting a National Human Rights Consultation, which will determine how best to recognise and protect human rights and responsibilities in Australia and may also advance and promote the rights in the Convention.

ATTACHMENT ON CONSULTATION

United Nations Convention on the Rights of Persons with Disabilities New York, 13 December 2006 [2007] ATNIF 15

1. On 23 July 2007, the former Attorney-General wrote to his State and Territory counterparts and other relevant Australian Government, State and Territory Ministers, informing them of the commencement of the process towards considering ratification. During August 2007, the Attorney-General's Department and then Department of Families, Community Services and Indigenous Affairs (FaCSIA) wrote to relevant Australian Government, State and Territory departments and agencies, foreshadowing the consultation process and seeking contact details.
2. Consultations on potential ratification were in addition to those conducted during the negotiation of the text of the Convention from 2001 to 2006.

State and Territory Governments

3. The Attorney-General's Department provided written and oral briefing to the Commonwealth-State-Territory Standing Committee on Treaties (SCOT) during its meeting on 26 September 2007. On 28 November 2007, the Attorney-General's Department and then FaCSIA wrote to SCOT officers, commencing the consultation with the States and Territories. The purpose of the consultation was to ascertain whether State and Territory laws, policies, programs and services comply with the obligations in the Convention, and to identify any areas that would require additional laws, policies or programs. Responses to that consultation were received throughout March and April 2008.
4. The issue of ratification of the Convention was a general business item on the agenda of the July 2007 meeting of the Standing Committee of Attorney's General. A progress update was also provided at the meeting on 27-28 March 2008.
5. The State and Territory consultation documentation sent to SCOT officers on 28 November 2007 consisted of a cover letter, a subject reference guide to the Convention, the full text of the Convention and a questionnaire. The cover letter contained an overview of, and important background and contextual information to, the Convention, and a guide to the consultation. The reference page divided the Articles of the Convention into subject-matter that broadly reflected the main ministries of States and Territories. The questionnaire comprised a plain English description of each Article in the Convention (with the exception of the operational articles) and corresponding consultation questions which were intended to serve as a guide to the interpretation of the Articles of the Convention and to streamline the consultation process. The Articles were again categorised by subject-matter for ease of reference and allocation.
6. All States and Territories either completed the questionnaire or, in the case of New South Wales, provided a summary of disability instruments containing a list of the most pertinent disability related legislation and policies and further information relating to education and transport. While Queensland noted that full implementation of progressively realisable obligations would have resource implications, all States and Territories confirmed that their legislation and policies are not inconsistent with the obligations in the Convention.
7. State and Territory responses to the questionnaire also highlighted areas in which implementation of the progressively realisable obligations in the Convention can be enhanced. Those areas, which have been identified as such in the Attachment on Implementation (paragraph 12), are as follows:

- education and training for people who work or, in the course of their work, interact with people with disability, particularly in the administration of justice
- more accessible signage in public buildings
- encouraging the private sector to be mindful of accessibility issues and to adopt universal design in production, particularly by considering the needs of people with disability in the production of mobility aids and other assistive devices, and
- improving access to services in rural and regional areas.

Relevant Australian Government Departments/Agencies

8. On 27 February 2008, the Attorney-General’s Department commenced consultations with relevant Australian Government departments and agencies. The aim of that consultation was to ascertain whether Commonwealth laws, policies and programs comply with the obligations in the Convention, and identify any gaps that would require additional laws, policies or programs.

9. The following departments and agencies were consulted:

Departments:

Attorney-General’s Department	Human Services
Broadband, Communications and the Digital Economy	Immigration and Citizenship
Education, Employment and Workplace Relations	Infrastructure, Transport, Regional Development and Local Government
Environment, Heritage and The Arts	Innovation, Industry, Science and Research
Families, Housing, Community Services and Indigenous Affairs	Prime Minister and Cabinet
Finance and Deregulation	Resources, Energy and Tourism
Foreign Affairs and Trade	Veterans’ Affairs
Health and Ageing	

Agencies:

Australian Agency for International Development	Commonwealth Rehabilitation Service
Australian Electoral Commission	Human Rights and Equal Opportunity Commission
Australian Federal Police	Office for Women
Australian Sports Commission	

(Departments also consulted their portfolio agencies where relevant.)

10. Initial departmental or agency responses were received during March and April 2008.

11. In a small number of cases, initial Australian Government responses indicated that a more detailed analysis could assist in making it clear that a particular Article is fully complied with. In all of those cases, further consultation confirmed Australia’s compliance. In particular, the following was noted:

- Electoral Acts: Under Commonwealth and some State and Territory Electoral or Constitution Acts, ‘a person who, by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting’ is not entitled to have his or her name placed or retained on the Roll (eg s 93(8)(a), *Commonwealth Electoral Act 1918*).

The Australian Electoral Commission (AEC) advised that, under the Commonwealth Act, a person is deemed to be ‘of unsound mind’ when an objection to enrolment is made

accompanied by a certificate of a medical practitioner stating the same (s 118(4)). That decision is an administrative decision made by a Commonwealth Officer and is therefore subject to review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and *Judiciary Act 1903* (Cth). Decisions made under the Commonwealth Act would also be subject to the requirements of the *Ombudsman Act 1976* (Cth) and the *Disability Discrimination Act 1992* (Cth) (DDA). The AEC also advised that the main purpose of the provisions is to excuse those who do not have the capacity to vote from having to comply with mandatory voting requirements.

The relevant State and Territory provisions mirror those of the Commonwealth Act and attach similar review rights.

These arrangements and review rights ensure that the right of people with disability to vote, stand for election and hold office on an equal basis with others is not encroached upon, and that those who do not have the capacity to vote are rightly excused from mandatory voting. As such, the provisions are considered to be consistent with Article 29 of the Convention.

- Immigration processes; health requirement: The health requirement in migration legislation allows a visa to be refused where a person's medical condition (which could include a disability) would be likely to result in significant health care or community costs or prejudice access of Australian citizens or permanent residents to health care or community services (the level of assessment varies depending on the length and nature of stay applied for). Because of the health requirement, the *Migration Act 1958* (Cth) and anything done pursuant to that Act are exempt from the DDA (s 52, DDA).

The Articles in the Convention that are relevant to the immigration processes are: the general non-discrimination obligations (Articles 4(1)(b), 4(1)(d) and 5(2)); and Article 18, which relates to the liberty of movement and nationality.

Australia's immigration processes comply with those Articles. The processes apply to all applicants, are based on legitimate, objective and reasonable criteria and would not constitute discrimination under international law. The Australian Government is currently considering whether it is desirable to lodge an interpretive declaration to this effect.

- Non-refoulement: Under existing international law, the principle of non-refoulement prohibits the expulsion or return (refoulement) of a person to a country where there are substantial grounds for believing that they would face a real risk of torture, or arbitrary deprivation of their life.

Article 10 (the right to life), Article 11 (situations of risk and humanitarian emergencies), Article 15 (freedom from torture or cruel, inhuman or degrading treatment) and Article 18 (liberty of movement and nationality) have no effect on existing non-refoulement obligations.

12. Australian Government consideration also identified one area in which implementation of the progressively realisable obligations in the Convention could be enhanced. That area has been identified as such in the Attachment on Implementation (paragraph 12); namely, the need for greater education and training for people who work or, in the course of their work, interact with people with disability, particularly in the administration of justice.

Disability Sector, other Non-government Organisations, Industry Stakeholders and the General Public

13. The Attorney-General's Department and Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) also consulted disability sector, industry and other

non-government stakeholders. That consultation was also open to the public. On 21 January 2008, over 200 invitations to participate in that consultation were issued. The Attorney-General and the Parliamentary Secretary for Disabilities and Children's Services also launched the consultation through a joint media release, which included the web address for the consultation. The consultation closed on 14 March 2008, but late submissions were accepted until 31 March 2008.

14. FaHCSIA also provided the Australian Federation of Disability Organisations (AFDO) with funding to assist in the consultation with the disability sector. Under the funding agreement, AFDO was commissioned to provide the Attorney-General's Department and FaHCSIA with advice on aspects of the consultations and to consult the disability sector and make a submission outlining the sector's views on the anticipated impact of ratification on people with disability and disability service providers. AFDO submitted its report on the 31 March 2008.

15. A total of 65 submissions were received from disability sector, other non-government and industry stakeholders, independent government agencies and members of the public. 59 of the 65 submissions supported ratification and one opposed (five did not comment on ratification directly).

16. A small number of the submissions suggested that Australia does not comply with particular Articles. In all of these cases, further consultation confirmed Australia's compliance. These cases are as follows:

- The right to life (Article 10); in utero testing for disability and abortion: A number of submissions suggested that Article 10—the right to life—obliges States Parties to prohibit abortion; particularly abortion on the basis of disability confirmed through in utero testing. Life from the point of conception was not intended to be protected by the right to life, as enunciated in Article 6 of the International Covenant on Civil and Political Rights. Given that the Convention on the Rights of Persons with Disabilities does not create any new rights, the Australian Government considers that Article 10 of the Convention carries this meaning also.
- Mental illness and the administration of justice, for example, self-representation in court and encounters with prison staff: In light of the Inquiry of the Senate Select Committee on Mental Health, government action (for example, the Council of Australian Governments' Mental Health Action Plan) and the current Inquiry into Mental Health Services of the Senate Community Affairs Committee, it is considered that this issue is being adequately addressed.
- Insurance, for example, people with mental illness experiencing discrimination when seeking insurance and employers allegedly discriminating against people with disability due to concerns about insurance premiums: This issue was raised in two public submissions, one with reference to Article 25(e), which requires States Parties to prohibit discrimination against people with disability in the provision of health and life insurance, 'which shall be provided in a fair and reasonable manner'.

The DDA and State and Territory anti-discrimination legislation prohibit unlawful discrimination against people with disability in the areas of insurance as well as in employment. Section 46 of the DDA provides an exemption for discriminating against a person on the basis of his or her disability by refusing to offer that person insurance or superannuation, or in respect of the terms and conditions of insurance or superannuation, if the discrimination is reasonable: based on actuarial or statistical data and other relevant factors; or, where no such actuarial or statistical data is available, based on any other relevant factors. State and Territory legislation contain similar exemptions in relation to insurance (for example, s 49Q, *Anti-Discrimination Act 1977* (NSW); s 43, *Equal Opportunity Act 1995* (Vic); ss 74-75, *Anti-Discrimination Act 1991* (Qld)). The general prohibition of disability discrimination in insurance and the restricted application of the insurance exemption ensure

that insurance is provided ‘in a fair and reasonable manner’. Accordingly, the Australian Government considers that Australia complies with Article 25(e) of the Convention.

- Western Australia’s education policy: One non-government organisation (NGO) suggested that Western Australia’s education policy does not allow children in the State school system the choice of attending a specialist school where necessary. Section 6.3.6 of Western Australia’s Department of Education and Training Enrolment Policy provides that parents of children with disability in Western Australia have a choice between mainstream and specialist schools.
- Immigration processes; health assessments: Three NGOs raised the abovementioned immigration issues. The first expressed particular concern regarding the DDA exemption for the *Migration Act 1958* (Cth) (s 52, DDA). It suggested that the exemption may be inconsistent with Articles 4(1)(b), 5(2), 18 and 23(4) of the Convention, and recommended that current immigration policies may be brought into alignment with the Convention by ensuring that assessments take into account the social contribution of people with disability to our society, and removing all discrimination on the basis of disability in the processing of humanitarian visas. The second submission supported the recommendations made by the first. The third suggested non-compliance with Article 18 and submitted that Australia is required to re-evaluate its immigration processes with a view to eliminating discrimination therein in order to comply with that Article. It also proposed that blindness or vision impairment should not preclude a person from obtaining a temporary visa; and that person need not disclose his or her disability upon entry into the country.

As previously mentioned, the Australian Government considers that Article 18 does not confer any additional rights on people with disability in relation to immigration processes. The Australian Government is currently considering the issue of whether it is desirable to lodge a declaration to this effect.

- Guardianship and administration: While a number of submissions mentioned guardianship and administration, few expressed concern regarding compliance with the Convention. One submission raised the ‘medical and other treatment’ provisions in the *Guardianship and Administration Act 1986* (Vic) and possible non-compliance with Article 12(4) of the Convention. Under Part 4A of the Victorian Act, where a person with a disability is unable to consent to medical or dental treatment, a ‘person responsible’ may consent on their behalf (unless the treatment is a ‘special procedure’). ‘Person responsible’ is defined as the spouse or domestic partner, primary carer or nearest relative (s 37). (Similar medical treatment provisions exist in other jurisdictions, for example, Part 5—‘medical and dental treatment’—*Guardianship Act 1987* (NSW); s 119, *Guardianship and Administration Act 1990* (WA).) Article 12(4) of the Convention sets out the necessary safeguards for supported or substituted decision-making, including regular review by an independent body. The submission suggested that, since the authority of the ‘person responsible’ is not subject to regular review by an independent body, these provisions do not accord with Article 12(4).

Victoria advised that, while decisions made by a ‘person responsible’ are not strictly subject to regular review, another ‘person responsible’ or person with a ‘special interest’ (ie a health professional) can make an application for review of any such decision through the Office of the Public Advocate, which may then refer the matter to the Guardianship and Administration Tribunal. Such arrangements ensure that people are not deprived of necessary medical treatment merely because they lack the capacity to consent to such treatment, while also safeguarding their rights and interests.

In addition, all States and Territories have indicated that their guardianship, administration and other supported or substituted decision-making arrangements include safeguards to ensure

that decisions or orders are only made to the extent necessary, free from conflict of interest and undue influence; and reflect respect for the rights and preferences of the individual person. The Australian Guardianship and Administration Council (AGAC) has also expressed its view that Australia's guardianship and administration arrangements affirm and promote the rights of people with disability.

- Sterilisation: Five submissions referred to the sterilisation of children or people with disability, three of which raised concerns of non-compliance with Article 23(1)(c) of the Convention. Article 23(1)(c) obliges States Parties to ensure that people with disability, including children with disability, retain their fertility on an equal basis with others.

In relation to adults with a decision-making disability in Australia, sterilisation is a 'special procedure' or 'special treatment' dealt with under guardianship and administration laws (as addressed above).

In relation to children, Article 7 of the Convention must be borne in mind. Article 7 requires that, in all actions concerning children with disability, the best interests of the child are to be a primary consideration. In Australia, sterilisation of a child must be authorised by a court or tribunal (*Marion's Case* (1992)). Application for authorisation may be sought under the *Family Law Act 1975* (Cth) or relevant State or Territory legislation where such legislation exists (ie in South Australia, New South Wales, Queensland and Tasmania). There are two different legislative tests for determining whether sterilisation can be authorised: whether sterilisation is medically necessary to save the child's life or prevent serious physical or psychological harm (New South Wales); and whether sterilisation is in the best interests of the child (South Australia, New South Wales, Queensland and Tasmania).

Despite the fact that there are two tests in use, it appears that outcomes have been reasonably consistent across jurisdictions. (Also, AGAC is developing a protocol to promote consistency in these procedures.) In any case, the 'medical necessity' test appears to be more stringent than the 'best interest of the child' test. As such, both tests would comply with Articles 7 of the Convention. These procedures also apply to the proposed sterilisation of any child. Australia therefore also complies with Article 23(1)(c).

17. The majority of submissions received made suggestions on how Australia could improve disability policy and services, and enhance its implementation of the progressively realisable obligations in the Convention. Suggestions include:

- conduct a national audit of all disability laws, policies and programs
- harmonise anti-discrimination laws
- develop a uniform definition of disability
- run a national disability awareness campaign
- increase the number of supported accommodation facilities
- increase or improve services in remote areas
- broaden the powers of the Human Rights and Equal Opportunity Commission
- increase disability related research and development
- make the voluntary disability action plans under the DDA mandatory
- enhance data collection on disability, including intellectual disability
- ensure carers and health workers working with people with disability are adequately trained
- introduce litigation guardian arrangements to enable people with a decision-making disability to litigate where necessary
- review the exclusion of people with severe hearing or visual impairment from jury duty

- review disability support pensions
- review disability employment services
- give greater weighting in migration assessments to the social contribution of potential migrants with disability
- ensure guardianship legislation recognises a sliding scale of decision-making
- review mental health legislation to provide consistency
- enhance anti-discrimination protections for children with autism in the context of education
- adopt the recommendations of the *Final Report Review of Adult Guardianship within the Northern Territory for Department of Health and Community Services Northern Territory of Australia* (May 2005)
- improve medical training in medical assessment and management of people with intellectual disability
- introduce screening programs to prevent or alleviate complications of deafblindness or health issues which cannot be detected or communicated by a deafblind person
- ensure that health promotion information is accessible to people with intellectual disability
- provide consistency in funding for assistive devices
- introduce mandatory newborn hearing screening, and
- develop a consistent definition of rehabilitation care.

18. Two areas raised by submissions have been noted in the Attachment on Implementation (paragraph 12) as areas requiring particular attention to enhance implementation of the progressively realisable obligations in the Convention. These are the need for greater awareness-raising and merit tested legal representation for people with disability wishing to challenge guardianship and administration orders.

19. The disability sector, as represented by the AFDO co-ordinated submission, also recommended that the Australian Government lodge statements of interpretation or declarations, stating that:

- (a) references to ‘deaf’, ‘blind’ and ‘deafblind’ in the Convention are interpreted to include vision and hearing impairments (where appropriate)
- (b) the broader definition of ‘disability’ that is contained in the *Disability Discrimination Act 1992* (Cth) (DDA) is adopted, rather than the definition contained in the Convention
- (c) ‘reasonable accommodation’ is interpreted as having the same meaning as ‘reasonable adjustment’ under the DDA, which requires adjustments to be made unless such adjustments would impose ‘unjustifiable hardship’ (those represented in the AFDO submission consider the latter to be more beneficial to people with disability)
- (d) Article 12, which relates to recognition before the law and legal capacity, is interpreted as permitting, and even requiring, substituted decision-making arrangements (as a last resort and subject to safeguards)
- (e) Article 17, which relates to protecting the physical and mental integrity of the person, is interpreted as permitting, and even requiring, compulsory treatment (as a last resort and subject to stringent safeguards), and
- (f) Australia does not consider itself limited to ‘fostering’, ‘promoting’ or ‘encouraging’ non-State actors to observe the rights in the Convention, but may in fact require them to do so on an equivalent basis to State actors.

20. In relation to recommendation (a), Article 4(4) of the Convention provides that the Convention does not affect, restrict or derogate from anything contained in the domestic law of a State Party which is more beneficial for people with disability. While the recommendation reflects an appropriate interpretation, a statement of interpretation or interpretive declaration on the matter is unnecessary, particularly given that the recommended interpretation would have the effect of extending the obligations under the Convention rather than limiting them (that is, it is one instance of the situation envisaged in Article 4(4)). Similarly, recommendations (b) and (c) are also unnecessary as they are, once again, instances of the situation envisaged in Article 4(4).

21. Recommendation (f), which is based on the suggestion that state and non-state actors should be subject to the same level of obligation under the Convention, cannot be accommodated as the Convention binds States Parties; not private entities.

22. In relation to recommendations (d) and (e), two independent submissions also called for similar declarations on Articles 12 and 17. The Australian Government is currently considering those recommendations.

23. AFDO's submission also recommended that the Australian Government acknowledge in its speech accompanying ratification Indigenous persons as a specific population requiring attention in the implementation and monitoring of the Convention. A decision on whether to make such a statement has yet to be made.