

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

1 September 2018

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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. The Australian Government devotes significant effort to ensure 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 and structure of the report

3. This report has been prepared in accordance with the Committee's Guidelines on periodic reporting to the Committee on the Rights of Persons with Disabilities, including under the simplified reporting procedures¹ and the *Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties*.²
4. The issues addressed in this report are outlined in the *List of issues prior to submission of the combined second and third periodic reports of Australia*³ (List of Issues).
5. This report is a supplement to Australia's Common Core Document and should be read in conjunction with that Core Document.⁴

Consultation on the report

6. The Australian Government has consulted extensively with state and territory governments, who are responsible for many of the government activities that implement the Convention, in preparing this report.
7. The Australian Government continues to acknowledge the key role played by non-government organisations (NGOs) in the implementation of the Convention. The Australian Government consulted with NGOs at several stages during the development of this report. During initial preparations, 36 NGOs were invited to submit information they thought should be considered by the Australian Government in drafting its response to the List of Issues. One submission was received.

¹ CRPD/C/3 (2016)

² General/HRI/MC2004/3 (2004)

³ CRPD/C/AUS/QPR/2-3, adopted by the Committee at its eighteenth session (14-31 August 2017) and distributed on 19 September 2017

⁴ The Common Core Document was submitted to the Office of the High Commissioner for Human Rights on 25 July 2007.

8. The Australian Government then made the first draft report available on its website, inviting comments from NGOs and members of the public. The Australian Government also consulted with the Australian Human Rights Commission (AHRC).

Status of the Optional Protocol

9. 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.⁵
10. Of these cases, the Committee has:
 - 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)).
11. Six cases remain under consideration by the Committee and one case was discontinued.
12. The Australian Government engages comprehensively and in good faith with UN treaty bodies in response to individual communications, responding to adverse views and implementing recommendations from those views where it considers it is appropriate to do so.

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

Purpose, definition and principles

Issue 1

Incorporating the Convention into domestic law

13. The rights under the Convention have been incorporated into domestic law through a variety of Commonwealth, state and territory legislation.
14. 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.
15. Each state and territory also has legislation which prohibits discrimination on the basis of

⁵ As at 4 June 2018.

disability.⁶ This legislation is administered by state and territory bodies exercising functions under the legislation, including investigating and conciliating complaints.⁷ In addition, both Victoria and the ACT 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 in these jurisdictions.⁸

Interpretive declarations

16. The Australian Government has made an interpretive declaration to the Convention, relevant to articles 12, 17 and 18. The Australian Government does not propose to withdraw this declaration. The declaration 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.
17. 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.
18. 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.
19. Australia's guardianship laws contain safeguards in them to ensure that abuse, exploitation and neglect of persons with disabilities does not occur, consistent with article 16 of the Convention. All guardianship orders are time-limited, reviewable upon request and reviewable at the end of the order. There are also provisions for review of guardianship orders on the initiative of the

⁶ *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).

⁷ For example, the Victorian Equal Opportunity and Human Rights Commission (Vic), the Anti-Discrimination Commission Queensland (Qld); the Equal Opportunity Commission (WA); Equal Opportunity Tasmania (Tas); the ACT Human Rights Commission (ACT), the Anti-Discrimination Board of NSW (NSW) and the Northern Territory Anti-Discrimination Commission (NT).

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

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.

20. 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* with a legislative framework based on a more contemporary understanding of decision-making capacity and disability, and provides statutory recognition of supported decision-making.
21. 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.
22. 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 (for example, an enduring guardian), assigned by the legislation (for example, a spouse or relative), or appointed (for example, by a court) to make health decisions for an adult who is not capable of giving consent.⁹
23. When exercising their powers, substitute decision-makers are required to adopt one of two tests, or a combination of two, in reaching their decision. 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. Evidence of these wishes can be provided, such as advance care directives, religious beliefs and previous history of treatment).
24. 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.
25. 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.
26. Australia does not discriminate against persons with disabilities in the granting and registration of citizenship. Persons with disabilities can apply for, and be granted, Australian citizenship on an equal basis with others, including at birth. The same is true for registration as a citizen by descent.

⁹ In the NT there is no provision for consent to medical treatment without an appointment being made.

27. Australia considers that its health requirements for non-nationals seeking to enter or remain in Australia are based on legitimate, objective and reasonable criteria and are therefore consistent with the terms of Article 18.

Issue 2

28. The Australian Government has no plans to cease funding for the National Disability Advocacy Program (NDAP).

29. 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 the development, implementation and monitoring of actions to promote, protect and ensure their enjoyment of all the rights in the Convention.

30. In August 2017, the Australian Government announced a more than \$60 million investment towards a new funding round for Disability Representative Organisations (DRO), and ongoing funding for the NDAP and the National Disability Insurance Scheme (NDIS) Appeals program, to ensure funding for disability advocacy services continues until 30 June 2020.

31. The Australian Government funds DROs to provide domestic representation for persons with disabilities, consistent with Australia's obligations under the Convention. This ensures persons with disabilities have access to effective advocacy and a diversity of voices are represented in Australian Government decision-making and policy outcomes.

32. Specifically, 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 an understanding of persons with disabilities
- e. promote specific objectives contained in the Convention 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.

33. In 2017-18, the Australian Government will provide funding to 57 NDAP organisations.

34. The purpose of the NDIS Appeals program is to ensure all persons with disabilities, and others

(such as parents and carers) affected by reviewable decisions of the National Disability Insurance Agency (NDIA), have access to support when they are seeking review of those decisions in the Administrative Appeals Tribunal.

35. There are two main types of free assistance available through NDIS Appeals, which are provided by NDAP agencies and Legal Aid Commissions across Australia:
- a. access to a skilled advocate who acts as a support person, and
 - b. access to legal services – where a case raises complex or novel legal issues.

Issue 3

36. 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.
37. 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 implementing the ND Strategy.
38. The ND Strategy’s 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.
39. 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 Indigenous persons with disabilities
 - c. continued implementation of the NDIS, and
 - d. promoting the intent of the ND Strategy throughout the community.
40. 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 disability, and

- b. a research project to examine methods and processes for identifying and assessing disability in Indigenous prisoners and ex-prisoners across Australia.
41. The ND Strategy's third and final implementation plan, *Measuring Progress 2019-2020*, is currently being developed.
 42. 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.
 43. 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.
 44. 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

45. The assessment criteria for accessing the NDIS are set out in the *National Disability Insurance Scheme Act 2013* (Cth). A person will satisfy this criteria if:
 - a. they are under the age of 65
 - b. they have a disability that is due to an impairment and the impairment is 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.
46. A person who meets this 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.

Support measures for ineligible persons

47. Information, Linkages and Capacity Building (ILC), delivered by the NDIA, ensures people with disability are connected into their communities by making communities more accessible and

inclusive. ILC consists of four streams that aim to support persons with disabilities regardless of whether or not 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.

48. The NDIA provides grants to organisations that carry out ILC activities and programs in their communities. In 2018-2019 ILC funding will amount to \$114 million, then rise to over \$131 million ongoing from 2019-2020.

Continuity of support

49. In the 2018-19 Budget, the Australian Government announced a \$93 million package as part of an ongoing commitment to provide Continuity of Support (CoS) for people with disability currently receiving Commonwealth services, who are ineligible for the NDIS. This will ensure they persons with disabilities are not disadvantaged in the transition to the NDIS and help them achieve outcomes similar to those they were aiming to achieve prior to the introduction of the NDIS.

50. 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 the Australian Government aged care services.

51. 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.

52. 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.¹⁰

53. Ongoing CoS arrangements will be implemented on 1 July 2019. It is expected that approximately 27,000 existing Commonwealth clients will receive CoS from 1 July 2019.

NDIS monitoring and evaluation

54. 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

¹⁰ Except WA, the NDIS is expected to be fully rolled out across WA by 1 July 2020.

participants and 1,000 service providers between 2013 and 2017.

55. The Australian Government released the NDIS Evaluation Final Report on 30 April 2018. The report 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 people from Culturally and Linguistically Diverse (CALD) or Aboriginal and Torres Strait Islander backgrounds.
56. Additionally, 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 Australian and state and territory government departments and agencies.
57. 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.
58. 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 Aboriginal and Torres Strait Islander communities, those from 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, carers, providers and other stakeholders to learn about their experiences.
59. The NDIA also undertakes ongoing monitoring by collecting satisfaction feedback from participants after the creation of their first plan.

B. Specific rights (articles 5-30)

Equality and non-discrimination (article 5)

Issue 5

60. Australia has a range of Commonwealth, state and territory legislation which contains disability discrimination protections. Commonwealth anti-discrimination legislation is contained in four separate Acts: the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.
61. These laws do not currently allow complainants to bring a single discrimination complaint in

relation to multiple attributes. At this time the Australian Government does not plan to amend Commonwealth legislation to allow complainants to bring a complaint on the basis of multiple attributes.

62. In Victoria a discrimination complaint on the basis of multiple attributes can be made under the *Equal Opportunity Act 2010*, which prohibits discrimination on 18 personal attributes, including disability, age, sex and race.

Racial discrimination

63. The *Racial Discrimination Act 1975* makes it unlawful to discriminate on the basis of race, colour or national or ethnic origin in any field of public life.
64. 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 the complaint is not successfully conciliated, the complainant may make an application to the federal courts.

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) as a priority strategy 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 against Women and their Children – 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). Lifeline Australia will pilot a program helping frontline workers recognise, respond to and refer women experiencing or at risk of violence. Eight disability-specific training workshops for frontline workers will be run during 2017-18.

- c. Fostering innovative and collaborative service delivery and outreach to improve the quality and accessibility of services (\$2.058 million funding allocated).

69. Work will also be undertaken to develop technology 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 pilot training program to build the knowledge and capacity of disability front-line workers to recognise, respond to and effectively refer women with disabilities 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, is being expanded to develop and roll out a new, free, nationally accredited two-day 'Working with Women with Disabilities' training stream for workers from the disability sector. Workshops will explore the diverse nature of violence and sexual assault experienced by women with disabilities.

NDIS Quality and Safeguarding Framework

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

72. The establishment of the NDIS Commission will enact the Australian Government's responsibilities under the Safeguarding Framework. The NDIS Commission will register providers, support the resolution of complaints, receive and analyse reportable incident notifications, manage quality standards and enforce 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:

- a. \$2.5 million funding for 20,000 smart phones and training for victims of domestic violence. Over 7,200 phones have been distributed, with 8% of recipients identifying as women with disabilities.

- b. \$0.6 million funding for 1800RESPECT to develop a mobile phone application that supports women with disabilities who experience domestic and family violence and sexual assault.
- c. \$23.3 million funding for specialist domestic violence units to provide integrated legal and other services to vulnerable and disadvantaged women. In 2016-17 19 per cent of clients identified as having a disability.

States and territories

- 74. States and territories have strategies in place to take action and help protect women and children that experience or are at risk of violence and sexual abuse, including those with disabilities.¹¹
- 75. All states and territories provide crisis response services for women and children who experience domestic and family violence which cater for persons with disabilities (for example, 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 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 programmes at the Commonwealth, state and territory levels.

National Principles for Child Safe Organisations

- 78. The Australian Government has partnered with the NSW Government to develop National Principles for Child Safe Organisations (National Child Safe Principles). These ten principles will provide a nationally consistent approach to create 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. COAG endorsement of the draft National Child Safe Principles will be sought in mid-2018.

¹¹ For example the Domestic and Family Violence Prevention Strategy 2016-2026 (QLD); the Women's Safety Strategy 2011-2022 – A Right to Safety (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-Our responsibility Ending violence against women and children (ACT); ACT Government Response to Family Violence (ACT); Domestic and Family Violence Prevention and Early Intervention Strategy 2017-2021 (NSW); Free From Violence – Victoria's Strategy to Prevent Family Violence and all Forms of Violence Against Women (VIC). WA is also developing a new 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 its Third Action Plan 2015-2018, with actions focused on supporting families to address factors such that contribute to vulnerability, including disability.

National Disability Insurance Scheme

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 approach (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 care

85. All school-age children in Australia have a right to enrol in a safe and supportive school. Most students with disabilities attend a mainstream school. 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 for students with disabilities by an average of 5.7% each year. From 2018 onwards, funding for students with disabilities will be better targeted based on needs identified through 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.
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 issues affecting 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. The *Family Law Act 1975* establishes the best interests of the child as the paramount consideration in parenting disputes. 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 report by a family consultant, a judge can interview the child or the court may ascertain the child's views through other such means it thinks appropriate.
94. Guideline 10 of the Guidelines for Independent Children's Lawyers (2013) notes that 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 under consideration is how best to inform decision-makers of the best interests of children and the views held by children in family disputes. This includes how to improve accessibility and engagement with the court 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 programme development and evaluation.

98. Australia disaggregates data about children in a range of ways, depending both on the collection process and the use. This may include, for example, age, gender, Indigenous status, languages other than English spoken, geographical status, country of birth and so on.

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.

100. The AIHW collects and publishes national data on children in OOHC. Data disaggregation includes by age, sex, Indigenous status, legal arrangement, by 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 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 for children with disabilities.

103. All jurisdictions require foster and kinship carers to undergo 'working with children' checks prior to a child entering a placement and all jurisdictions 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 Child Protection Framework aims to help reduce the likelihood of children entering the child protection system. OOHC is viewed as an intervention of last resort and the preference is always for children to be reunited with their birth parents if possible.

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 2015–16.¹²

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 their contribution to society. These are grounded in a human-rights based approach consistent with the DDA and the Convention. They are designed to raise awareness of persons with disabilities and promote an inclusive Australian society.
107. The Australian Government holds the National Disability Awards annually as part of celebrations for the International Day of People with Disability to raise awareness and acknowledge the achievements and contributions that individuals with disabilities make to Australian communities.
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 of persons with disabilities.
109. The AHRC and the Disability Discrimination Commissioner play an important awareness-raising role in the Australian community. 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 and in a format suitable for screen readers.
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 he can 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 to provide 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 disabled people's organisations and government experts with relevant expertise.
112. State and territory governments also undertake awareness-raising measures to promote

¹² SCRGSP (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.

human rights and improve access and inclusion for persons with disabilities. For example, 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

113. The Australian Government has adopted the National Standards for Disability Services 2014 (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.

Transport Standards

117. The *Disability Standards for Accessible Public Transport 2002* (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 with the standards through the provision of 'equivalent access' as defined in section 33.3. 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 fail to comply with the Transport Standards.
121. Part 33A of 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 Administrative Appeals Tribunal.
122. Every five years state and territory governments are requested to provide information concerning compliance within their jurisdiction as part of the review process in Part 34 of the Transport Standards. Governments report on the extent to which discrimination has been removed within the public transport system of each jurisdiction, as well as initiatives and actions undertaken within their jurisdiction which have led to increased accessibility beyond compliance with the Transport Standards. All government submissions are made available to the public and the information reflected in the review report.

Premises Standards

123. The *Disability (Access to Premises – Buildings) Standards 2010* (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 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 from jurisdiction to jurisdiction, depending on how their enforcement schemes are designed.
126. The AHRC has the power to grant exemptions from compliance with some or all of Part H2 of the Access Code (which sets out the requirements for public transport buildings). The exemption can be for a specified period not exceeding five years and the decision is reviewable by the Administrative Appeals Tribunal.

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 Transport Standards or the Premises 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 or Federal Circuit Court. 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 a range of 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 a range of policies and strategies in place to reduce barriers faced by persons with disabilities when accessing education, employment and other services.
135. Several state and territory governments have in place Disability Inclusion Plans and strategies to support the inclusion of persons with disabilities and their access to mainstream services.
136. The NSW Government also has in place a Policy Directive *Responding to Needs of People with Disability during Hospitalisation*, which includes:
- a. using braille signage, tactile pathway strips, glare-reflecting blinds for persons with sensory disabilities, and hearing loops in hospitals and health care facilities
 - b. 'Easy Read' resources which use plain English, avoiding the use of complex language, long sentences, professional terminology and jargon
 - c. Auslan interpreters used in videos to make factsheets accessible for persons with hearing impairments, and
 - d. electronic documents are also made accessible to allow use with a screen reader for persons with visual impairments.
137. State and territory governments are committed to ensuring government and information services are accessible for persons with disabilities. For example, the Queensland Government ensures its websites are accessible under the WCAG 2.0. These guidelines ensure content is accessible to a wider range of persons with disabilities, including blindness and low vision, deafness and hearing loss, and learning disabilities. Similar standards are required by the Victorian Government under their *Accessible Communications Guidelines* and *Digital Standards*.

Issue 11

138. Australia is making efforts to ensure that an adequate supply of accessible housing is available for persons with disabilities. The Australian Government has provided funding to the state and territory governments to support improved housing outcomes for Australians under the National Affordable Housing Specific Purpose Payment and National Partnership Agreements.
139. In 2016-17 the Australian Government spent around \$4.4 billion on Commonwealth Rent Assistance, which assisted more than 1.3 million individuals and families with the cost of their rent, including around 260,000 individuals and families receiving Disability Support Pension.

Targets for Universal Housing Design

140. Under the ND Strategy, Commonwealth, state and territory governments have agreed to

develop approaches to increase the provision of universal design in public and private housing and improve community awareness of the benefits of universal design.

141. In October 2009, a National Dialogue on Universal Housing Design (National Dialogue) was convened by the Australian Government, bringing together representatives from government, the building industry and the ageing and disability advocacy sectors to discuss how housing could be better designed to meet the changing needs of occupants over their lifetime.
142. Members agreed to set aspirational targets for public and private housing to be built to meet minimum livable housing design standards by 2020. In July 2010, a strategic plan was released which set out the aspirational targets and the Livable Home Design Guidelines (LHD Guidelines). The LHD Guidelines assist the residential building and property industry and governments build homes that can respond to the changing needs of households.
143. In June 2011, National Dialogue members agreed to establish a not-for-profit organisation, Livable Housing Australia to drive the strategic directions identified by the National Dialogue and champion the LHD Guidelines.
144. State and territory governments are implementing the LHD Guidelines to help ensure there is an adequate supply of accessible housing for persons with disabilities. For example the 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.

Situations of risk and humanitarian emergencies (article 11)

Issue 12

145. The National Strategy for Disaster Resilience (NSDR) was endorsed by COAG in February 2011. It provides for the accessibility and inclusions of vulnerable persons, including those 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.
146. 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.
147. The Australian Government has recently established a National Resilience Taskforce to develop a new five year disaster mitigation framework for Australia. This new framework, to be

negotiated and developed by the Australian Government and state and territory governments, will be guided by the Sendai Framework including as it relates to persons with disabilities.

Equal recognition before the law (article 12)

Issue 13

148. The Australian Government is considering the recommendations made by ALRC Report 124: *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124), including the recommendation a Commonwealth decision-making model be introduced into relevant Commonwealth 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 training

149. Australia strongly supports the rights of persons with disabilities to legal capacity. Training programmes 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, police officers, public servants and social workers.

Judicial officers

150. At the Commonwealth level, 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 judicial officers and 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.

151. In March 2018, the Commonwealth Director of Public Prosecutions (CDPP) launched the *2018-2020 Disability and Inclusion Strategy for the Office* which includes targeted initiatives, such as training for CDPP staff, informed by the ALRC report: *Equality, Capacity and Disability in Commonwealth Laws*.

152. 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 that provide information and guidance for judicial officers about their role in making the court system accessible for persons with disabilities.¹³

¹³ For example, the Victorian *Disability Access Bench Book* (developed by the Judicial College of Victoria in partnership with the Victorian Equal Opportunity and Human Rights Commission); the Queensland *Equal Treatment Bench Book*; and the Western Australia *Equal Justice Bench Book*.

Police officers

153. The Australian Federal Police (AFP) has an Interviewing Vulnerable Witnesses Program that 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.
154. States and territories have training programmes in place for staff working in the justice system, including custodial officers, youth justice officers, community corrections officers, police officers and medical or allied health staff. These programmes 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 can feature guest speakers from non-government organisations, such as deaf service providers.
155. A good example is WA, where 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

156. 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).¹⁴
157. 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.
158. State and territory government agencies provide relevant disability awareness training for their staff. For example, in Queensland, the Centre of Excellence for Clinical Innovation and Behaviour Support (Centre) provides training for all disability service providers to help build the sector's capacity. The Centre 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.

¹⁴ For example, the *Charter of Human Rights and Responsibilities Act 2006* (VIC).

Access to justice (article 13)

Issue 14

159. *The health of Australia's prisoners 2015* (Prisoners Report) is the 4th report by the AIHW on the National Prison Health Indicators, which were 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.

160. The Prisoners Report includes data from prisons in all states and territories in Australia, with 84 per cent of prisons participating, and about 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.

161. The Prisoners Report refers to a number of Australian studies that have 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.

162. Currently, there is 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)

	Profound / severe	Moderate	Mild	None	Total
Sex					
Male	6	14	3	75	100
Female	7	21	5	64	100
Age group (years)					
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
Indigenous Status					
Indigenous	5	12	4	78	100
Non-Indigenous					100
Total (number)	6	151	31	742	1,011
Total (per cent)	6	15	3	73	100

Data from states and territories

163. Most state and territory governments do not currently collect information about prisoners' disability status in their databases. The Victorian Government reports that there are approximately 580 offenders with a registered intellectual disability in prisons, under community or supervision orders and on parole. It is estimated that approximately 1,200 adult prisoners have an acquired brain injury in Victorian prisons and approximately 1,000 prisoners have been admitted for psychiatric treatment prior to their incarceration.
164. 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 2016-17 there were 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.
165. 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

166. Issue 13 above contains information about Commonwealth, state and territory training programmes on working with persons with disabilities.

Access to Justice

167. Australia recognises that ensuring effective access to justice for persons with disabilities is crucial in ensuring that persons with disabilities can exercise their legal rights on an equal basis with others.
168. 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.
169. 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.
170. 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*, the Attorney-General may provide financial support to a person commencing proceedings for unlawful discrimination in the Federal Courts. The Australian Government also provides for a reduced fee for applications made under the federal courts human rights jurisdiction, including persons with disabilities.
171. As discussed above 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. There are a range of safeguards in place and the primary consideration is ensuring that the rights and interests of adults with impaired capacity are protected.
172. State and territory governments also provide funding and support for access to justice for persons with disabilities. For example, QLD has allocated funding for the delivery of legal assistance services to persons with disabilities over 2017-20, including \$522,098 to the Aged and Disability Advocacy Australia, \$2,687,605 to Basic Rights Queensland and \$1,476,151 to Queensland Advocacy Incorporated.

Accessible courts and the justice system

173. The Australian Government recognises the importance of ensuring that courts and the justice system more generally are accessible to all persons with disabilities. Federal courts provide wheelchair access, hearing loops in court rooms and interpretation services and 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 and Federal Circuit Court also currently provide live chat as a means of communicating with and helping clients to navigate court practice and procedure.
174. Most state and territory governments ensure that courts are accessible for persons with

disabilities. Services can be made available to make it easier for persons with disabilities to attend and participate in court proceedings and facilitate their access to justice. 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

175. The Sherriff of the Federal Court (the only Australian 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.
176. 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* to facilitate reasonable support being provided to jurors with disabilities to support them to participate in the jury process. Reasonable support may include an interpreter (including an Auslan interpreter) and an assistance animal, disability aid or support person.

Contesting lawfulness of detention

177. Prisons and other places of deprivation of liberty in the criminal justice system are administered by state and territory governments. Where persons with disabilities are deprived of their liberty in the criminal justice context, they benefit from the same procedural guarantees as all other persons deprived of their liberty. There a number of 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.
178. As discussed under Issue 16 below, 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.
179. Many states and territories provide services to meet additional support needs of offenders with disabilities. For example, the WA Intellectual Disability Diversion Program is a court diversion program which offers personalised case management and support for adults with a cognitive or intellectual impairment who plead guilty or have given an indication that 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 the introduction of accommodations to assist persons with mental impairment in participating in court processes.

Overrepresentation in the criminal justice system

180. 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 that there are higher rates of cognitive impairment among Indigenous Australians in custody compared to non-Indigenous Australians. The study also found that 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.

181. 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 a parliamentary inquiry into Abuse in Disability Services. The final report was completed in May 2016 and the Victorian Government is currently considering its findings.

182. The NT Law Reform Committee's 'Report on the Interaction between people with Mental Health Issues and the Criminal Justice System' was released on 17 July 2016. The report made 22 recommendations in relation to the manner in which 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

183. Australia is committed to ensuring that no one in Australia is deprived of their liberty on the basis of their disability. However, Australia recognises that there are particular challenges in relation to the treatment of persons with mental impairment in both the health and criminal justice context. This is an area of ongoing review and reform.

184. 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. The working group also undertook to 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).

185. 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.

186. 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.

187. 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.

188. While some jurisdictions have indefinite term detention, these detention measures are subject to safeguards, such as a requirement that the term is appropriate for the offence charged, oversight and periodic review is provided by an independent body and there is a complaints process.¹⁵ The ACT recently adopted the fixed term approach, where if a person unfit to plead is detained, the individual can only be detained for a specific period of time not exceeding the nominated term imposed by the court (the best estimated sentence of imprisonment that would have been considered appropriate if the person had been tried under normal criminal proceedings).¹⁶

189. Consent to medical treatment is regulated by state and territory policies and legislation. These provide for a number of ways in which a person can express their treatment preferences, including advance consent directions, identifying a 'nominated person' or guardian and appointing enduring power of attorney.¹⁷ Treatment will only be provided without free, prior and informed consent if the person doesn't have capacity and the treatment to be provided is the least restrictive way for the person to be treated.¹⁸

190. As discussed above under Issue 1, Australia considers that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental illness, where such treatment is necessary as a last resort and subject to appropriate and effective safeguards.

¹⁵ *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*; *Mental Health Act 2014* (WA)

¹⁶ *Mental Health Act 2015* (ACT).

¹⁷ 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.

¹⁸ 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).

Issue 17

191. 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.

192. In the meantime, some steps are being taken to implement report recommendations.

For example:

- a. As discussed above under Issue 16, Australian governments are considering draft National Principles and a working group has been undertaking work to collate and analyse data (recommendations 8 and 9).
- b. Some state and territory governments have implemented or are implementing a Disability Justice Plan to improve access to justice services for persons with disability (recommendation 2).¹⁹
- 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 Attorney Act 2014*, following a comprehensive review of supported decision-making. In 2018, a pilot will commence of an intermediary scheme (recommendation 3).
- 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 (recommendation 27).

Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15)

Issue 18

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

194. Some state and territory governments 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.²⁰ Some jurisdictions also have bodies that provide an education role, through the development of best practice guidelines and recommending alternative support

¹⁹ Disability Justice Plan 2017-2020 (TAS); Disability Justice Plan 2014-2017 (SA); and the Disability Action Plan 2017-2021 (VIC).

²⁰ *Mental Health Act 2013* (Tas); *Guardianship and Administration Act 2000* and the *Mental Health Act 2016* (QLD); *Disability Services Act 2017* (NT); ACT has legislation expected to commence on 1 July 2018; *Mental Health Act 2014* (WA); and the *Prisons Act 1981* (WA). NSW regulates this practice through mandatory policy directives.

options that avoid the use of restrictive practices.²¹

NDIS service providers

195. 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 a person with disability.

196. 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.

197. 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 restrictive practice.

Schools

198. Part 8 of the Disability Education Standards requires education providers to ensure they are providing students with an educational environment that is free from harassment and victimisation. To fulfil this obligation, schools must provide students with a learning environment where they are safe from violent or challenging behaviour of other students as well as providing a safe learning environment for students who are themselves exhibiting violent or challenging behaviour.

199. In response to two Senate inquiries in 2015, in which concerns about use of restrictive practices were raised, the Australian Government has noted it is committed to continuing to improve support for students with disabilities in schools and it will continue to collaborate with state and territory government and non-government education authorities to identify opportunities to expand and strengthen work already underway.

200. A number of states and territories have recently conducted their own reviews relating to schooling for students with disability.²² There has also been significant progress in recent years ensuring that teachers have the appropriate skills and understanding to effectively meet the learning needs of all students, including those with disability.

²¹ 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).

²² Victoria, ACT, NSW and Queensland.

Mental Health Services

201. The Australian Health Ministers' Advisory Council, through its key national mental health committees, 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 2009-2010.²³
203. The National Standards for Mental Health Services (2010) includes a standard specifically related to client safety. The criteria for this client safety standard is 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 how Australia can reduce 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 the recommendations made in its report 'Supporting Mental Health Professionals Through Cultural 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 the recommendations from a 2017 independent *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities*²⁴ 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

²³ <https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/restrictive-practices/seclusion>

²⁴ The review report and implementation plan for the recommendations are publicly available at www.health.nsw.gov.au/patients/mentalhealth

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.²⁵
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.

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, which called for a Royal Commission, is the only recommendation not agreed to.
213. The Australian Government has carefully considered recommendation one and the report findings, along with the work being 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. The Safeguarding Framework

²⁵ 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, p 19.

also places obligations on service providers to report on, and to 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 \$209.0 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, as recommended by the report.
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 that Australian governments should undertake appropriate measures to safeguard them. It also recognises that 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 complaints mechanisms. For example, in the NT there is the Health and Community Services Complaints Commission, the Anti-Discrimination Commission and the Ombudsman. The NT Government also funds two peak bodies – Integrated disAbility Action (for consumers) and National Disability Services NT (for service providers) that provide information and advocacy services for persons with disabilities and service providers.
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 is a flagship service under the National Plan to Reduce Violence, and has support available 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 and isolated workers. Telephone, online and specialised trauma counselling is provided by experienced counsellors. The service also provides information to professionals on inclusive practice, and detailed information on responding to violence against persons with disabilities.

223. NDIS workers can support persons with disabilities to access counselling and psychological support services.

224. The National Redress Scheme for people who have experienced institutional child sexual abuse will provide support to people who were sexually abused as children while in the care of an institution, including psychological counselling. NSW, Victoria, Tasmania, ACT, NT and Queensland have joined the National Redress Scheme. Psychological counselling is available under the Scheme.

225. State and territory governments also have taken steps to ensure appropriate counselling is available to persons with disabilities. For example, in 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

226. 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.

227. 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 regulating sterilisation has been significantly reformed. These laws now provide better protection for persons with disabilities than has historically been the case in Australia.

228. 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.

229. 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; where 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 section 67ZC of the *Family Law Act 1975* (Cth).

230. The Family Court of Australia 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.²⁶
231. Under the Family Law Rules, 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 (Family Law Rule 4.09(1)). 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 (see Family Law Rule 4.09(2)).
232. Part of the ALRC review of the family law system (discussed under 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.
233. 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.²⁷ 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.

²⁶ *Re: Carla* (2016) FamCA 7

²⁷ *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*, No. 98, 2013

Liberty of movement and nationality (article 18)

Issue 21

234. 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.
235. Most applicants for an Australian visa are required to meet certain minimum health requirements in order to be granted a visa, as outlined in Schedule 4 Public Interest Criteria of the *Migration Regulations 1994* (Cth).
236. The purpose of these health requirements is to:
- a. protect the Australian community from threats to public health (this is 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.
237. Conditions considered a threat to public health, may prevent the grant of a visa to enter Australia.
238. Section 52 of the DDA exempts the *Migration Act 1958* from unlawful discrimination provisions of the DDA. The purpose of this is to ensure that 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 under the *Migration Act 1958* and legislative instruments made under the *Migration Act 1958*, including processes for applying for visas or seeking review of adverse decisions.
239. 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 condition in itself will not result in a failure to meet the health requirements.
240. 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.
241. For some visa sub-classes a health requirement waiver is available, which can be exercised if the delegate is satisfied that 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.

242. All people in Australia found to be refugees in Australia or who engage Australia's *non-refoulement* obligations under human rights treaties are afforded Australia's protection regardless of whether they have a disability. 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

Closure of residential institutions

243. 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, SA and ACT no longer house persons with disabilities in residential institutions and have completely transitioned to community residences and other innovative models of support accommodation options. The roll out of the NDIS is resulting in further transition of persons with disabilities from residential institutions to more appropriate accommodation options of their choice across Australia. In particular, the transition of people aged under 65 living in residential aged care into alternative accommodation under the NDIS is a priority for the Australian Government.

244. 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, QLD 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 Victoria's last disability institution at Colanda in 2016 and is in the process of redeveloping the site.

Free choice and independent living

245. 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 and they have choice and control over that support. The number of participants in the NDIS continues to grow – 151 970 participants had 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 by 2021.²⁸

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

247. Some state and territory governments also offer a range of 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

248. 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.

249. In 2015-16, there were 331,817 disability service users,²⁹ 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 various other settings.

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

Issue 23

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

Prioritising accessible communication

251. The Australian Government is committed to ensuring the needs of persons with disabilities are met as the use of technology and our community changes and grows, and online services are accessible and inclusive.

252. The National Relay Service (NRS) allows people who are deaf or have a hearing or speech

²⁸ Statistics and estimates from the COAG report to the Disability Reform Council

²⁹ Disability support services refer to services provided under the National Disability Agreement 2015–16

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. The Australian Government will tender for continued provision of the NRS and outreach with a total annual funding allocation of \$22 million.

253. 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 budget will increase to \$1.9 million per annum. Similarly, the Postal Concessions for the Blind (PCB) provides concessions for eligible individuals and organisations using postal services to distribute resources for people who are blind or have print disability.
254. Under the *Broadcasting Services Act 1992*, 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.
255. On 6 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 on 22 December 2017 and the Australian Government is considering its findings.
256. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the Treaty) entered into force for States Parties on 30 September 2016. No amendments were necessary in order to implement the Treaty in Australia.
257. The *Copyright Amendment (Disability Access and Other Measures) Act 2017* (Cth) puts in place 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. This includes an exception for persons with disabilities and anyone assisting them, as well as an exception for educational institutions and other not-for-profit organisations assisting persons with disabilities.
258. A number of states and territories run grant programs and 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 mainstream community.

Providing accessible information

259. The Australian Government provides information about laws, policies, systems and obligations in accessible formats, including providing documents 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.
260. The Australian Government website Australia.gov.au is the central point for information on government services, laws, obligations and policies in Australia. This website meets the requirements of providing information and services in an accessible and non-discriminatory manner. Australia.gov.au complies with Level A of the WCAG version 2.0.
261. State and territory governments are also committed to providing 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. Queensland also ensures that AUSLAN interpreters are used during disaster event media briefings and closed captions are also used where possible.

Education (article 24)

Issue 24

262. 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. The NCCD is based on the broad definition of disability used in the DDA and the Disability Standards for Education.
263. 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 through the collection than in other data collections on students with disability. The collection is having a positive impact on the support that is provided to students with disability in Australian schools.
264. There is no national collection of data on suspensions, use of restraint and seclusion of students with disability. It is important to note that 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.

265. The ACT, NSW, SA, Queensland, Tasmania, Victoria and WA have either explicitly banned the use of corporal punishment in government schools or have removed provisions in legislation 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 to ban corporal punishment in both government and non-government schools.

Issue 25

266. 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

267. Australian Government school funding arrangements focus on student need. A base amount is provided for every student, with additional loadings for disadvantage, including for 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

268. 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.

Inclusion and teaching practices

269. The Australian Professional Standards for Teachers, and 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 different jurisdictions to film illustrations of practices that will support students with disability to access the Australian Curriculum.
270. The Disability Education Standards are reviewed every five years. The second review in 2015 found that good progress had been made in raising awareness of the Standards with educators since the first review in 2010.

271. During the 2015 review, stakeholders indicated greater awareness was needed of how to practically implement the standards. In response, the Australian Government funded the development of a set of Exemplars of Practice, developed 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.
272. 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 to strengthen Victoria's education system.
273. The Australian Government is investing a total of \$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 funding is on top of state and territory funding towards students with disability.
274. Each state and territory government makes funding arrangements for students with disabilities in their education systems.
275. The Victorian Government's has announced several new funding packages in response to the 2016 Review of the Program for Students with Disabilities including:
- a. \$17 million to better support the needs of students with learning difficulties such as dyslexia or with autism, and
 - b. \$42 million in school initiatives to increase the participation, achievement and wellbeing of approximately 90,000 students in government schools with disabilities or additional needs.

Accessible tertiary education

276. The *Higher Education Support Act 2013* (HESA) makes grants available to eligible higher education providers to improve access for students with disabilities through the Higher Education Disability Support Program (DSP). The DSP includes the 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.

277. 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 the existing resources for use in VET institutions to raise awareness about inclusion and obligations under the Disability Education Standards.

Issue 26

278. 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 ICESCR 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.

279. 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

280. 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.³⁰ This applies to

³⁰ Section 3(a)(ii)

persons with disabilities who may be excluded from the NDIS, those who reside in rural areas and those who 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.³¹

281. 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.
282. In July 2011, Medicare benefits were introduced for out-of-hospital private medical specialist video consultations in telehealth-eligible rural and remote locations, in 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 practitioner, nurse practitioners, midwives, Aboriginal health workers or practice nurses to attend at the patient-end during the video consultation.
283. 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 which would be applicable to persons with disabilities. Specific items are also listed for specialist and allied health services for persons with a disability.
284. People who are incarcerated in Australia are eligible for Medicare when they enter prison, but are not eligible for Medicare benefits.³² 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.
285. 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.
286. The Australian Government provides funding to health services to provide health care to Indigenous people under the Indigenous Australians' Health Programme (IAHP). The IAHP provides funding for secondary and tertiary health services and community services which may include the provision of culturally appropriate disability services.
287. State and territory governments 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

³¹ For example, the *Disability Services Act 2006* (QLD), the *Disability Services Regulations 2015* (Tas) and the *Mental Health Act 2015* (ACT).

³² Subsection 19(2)(d) of the *Health Insurance Act 1973*

quality, culturally sensitive and inclusive health services.³³

288. This includes programmes 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 26,000 people state-wide in 2016-17.

289. The NDIS is not intended to replace mainstream services. State and territory governments 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.

290. The interactions between the NDIS and mainstream service systems, such as the health system, are guided by the legislative framework for the NDIS³⁴ and the Principles to Determine the Responsibilities of the NDIS and Other Service Systems,³⁵ agreed by COAG in April 2013 and reviewed in 2015.

291. For people who are currently receiving state disability services and are 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.

Training curricula and ethical standards

292. 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. For example, the *National Practice Standards for the Mental Health Workforce 2013*. Human rights and Convention 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. All states and territories have training curricula in place relevant to persons with disabilities, provided to medical practitioners, nurses, midwives, allied health practitioners, (such as social workers, physiotherapists and speech pathologists), and community health workers).

293. For example NSW Health has developed ten 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.

³³ 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*.

³⁴ the *National Disability Insurance Scheme Act 2013*

³⁵ The principles are available at <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>

294. The National Standards for Disability Services³⁶ help to promote and drive a nationally consistent approach to improving the quality of services provided to persons with disabilities, their families and carers. Standard Six, 'Service Management' 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

295. 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. Australia has specific programs focussed on habilitation of persons with disabilities in the areas of health, employment, education and social services and a number of rehabilitation programs are designed to help persons with disabilities to 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.³⁷

Employment

296. Disability Employment Services (DES) is the Australian Government's specialised employment service for people whose disability, injury or health condition is their main barrier to gaining employment in the open labour market. DES services can include, where appropriate, 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.

297. In addition, the Commonwealth and each state and territory has its own workers' compensation scheme to compensate workers who suffer any injury and make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work.

³⁶ 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>.

³⁷ *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), *Disability Services Act 1993* (NT)

Healthcare

298. 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 develop an individual support plan, which outlines their priorities, sets goals for increased participation in educational, vocational and social arenas and maximises independence in line with their goals and aspirations.

CoS Programme

299. As discussed above, CoS is a national programme that provides continuity of support to older people with disability who are receiving state-administered specialist disability services but are ineligible for the NDIS.

300. The CoS service delivery principles ensure choice and flexibility is optimised for each client through a client-centred practice, providing opportunities for each client to be actively involved in addressing their goals. Services are offered in the areas of accommodation support, community support, community access and respite.

Consent

301. State and territory governments have policies in place with mandatory requirements in place for health professionals to obtain a patient's consent to treatment. These are based on a general principle that patients have a recognised legal right of autonomy and that treatment shall not be provided without patient consent, except in certain limited circumstances (such as an emergency situation where the patient is incapable of giving consent). 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.³⁸

302. 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 (AHD) or by a guardian for the person.

303. 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. This service supports 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

304. In 2015, the Disability Employment Taskforce was established to review the entire disability

³⁸ See discussion in Issue 1 for Australia's position on substitute decision-making.

employment system and develop a new National Disability Employment Framework to boost employment rates for persons with disabilities. Through the development of this framework, the Australian Government developed reforms to the Disability Employment Services program.

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

- a. On 5 June 2015, the Fair Work Commission 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.
- b. On 10 October 2017, the Fair Work Commission agreed to vary to the Supported Wage System under the SES Award, in effect 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 Fair Work Commission four-yearly modern Award review.

306. The Australian Government contracts Disability Employment Services (DES) providers to assist persons with disabilities, injury or health conditions prepare for, find and keep a job.

307. Currently, the program provides specialist employment assistance to around 194,000 jobseekers with disabilities, injuries or health conditions. Almost 46 per cent are women with disabilities. Around 30 per cent of female DES participants are in employment three months following participation in the program (31 per cent for male participants).³⁹ The Australian Government is progressing a range of reforms to the DES to help address structural barriers faced by women at different stages of employment.

Issue 30

308. 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 report.

Disability Employment Services

309. In the 2017-18 Budget, the Australian Government provided for significant reforms to the

³⁹ Further information on the DES reforms currently underway is outlined in response to Key Issue 30 below.

DES to help more persons with disabilities find and keep jobs. From 1 July 2018, changes to DES 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.

310. These reforms were informed by the Willing to Work report as well as stakeholder consultations.

New Enterprise Incentive Scheme

311. The Australian Government provides new business assistance to help people pursue self-employment with the New Enterprise Incentive Scheme (NEIS). Changes introduced in 2016–17 mean eligible persons with disabilities interested in participating in NEIS 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 (recommendations 12 and 36).

Educational resources

312. The AHRC undertakes educational functions and produces educational tools and resources on employment discrimination against persons with disabilities on its website. In addition, 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

313. 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 from their employer, including where an employee has a disability. Recommendation 55 of the Willing to Work report was a review of the functionality of this section. The Australian Government considers this was considered appropriately in the 2015

Productivity Commission Inquiry into the workplace relations framework. The review did not recommend any change.

Changing attitudes

314. In 2016-17, the Australian Government committed to communicate with employers to raise awareness 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 range of existing programs and services available (recommendation 28).
315. AccessAbility Day is a pilot disability employment initiative that was trialled in eight locations across Australia in December 2017, to coincide with International Day of People with Disability. The initiative allows employers to see the potential of persons with disabilities and learn about available support, while also providing an opportunity for persons with disabilities to gain an insight into a new workplace and establish new contacts. Following the success of the pilot, the Australian Government will be rolling out the initiative nationally this year in the week 26-30 November 2018.
316. The JobAccess Advice Service and website is the national hub for information about disability employment. It continues to provide tailored information to persons with disabilities and employers, connecting them to the range of free government disability employment supports. Website enhancements are currently underway to include new content, improved resources and online training for employers, and promote good practice in disability employment.
317. The JobAccess Employer Engagement – National Disability Recruitment Coordinator (NDRC) is supporting employers to increase their disability confidence and develop the skills to enable them to employ more persons with disabilities. The entire JobAccess Service will be evaluated in 2018-2019, taking into consideration recommendations from the Willing to Work report. Findings from the evaluation will be used to inform improvements to the service delivery model.
318. The Australian Government also provides financial support to encourage employment of persons with disabilities. The Employee Assistance Fund (EAF) provides financial assistance to persons with disabilities or their employer for workplace modifications, equipment and services they require as a result of their disability and are necessary for them to be able to perform their employment duties. A review of the EAF guidelines is planned for 2018, which will consider the recommendations of the Willing to Work report and include stakeholder consultation.
319. 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 for DES Youth

internees who achieve employment with their host employer. There are around 1,700 Wage Start subsidies available each year and participants must be employed for at least six months.

State and territory implementation

320. State and territory governments also play a role in promoting and supporting employment of persons with disabilities and implementing recommendations from the Willing to Work report. 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

321. 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.

Transitional National Partnership Agreement on Homelessness

322. The Australian Government spends more than \$6 billion annually on housing support and homelessness services that help millions of Australians experiencing homelessness or who are at risk of homelessness.

323. The Australian Government provided \$117.2 million to state and territory governments under the Transitional National Partnership Agreement on Homelessness (NPAH) to fund frontline homelessness services. The NPAH is aligned with the key objectives of the ND Strategy, including driving 'improved performance of mainstream services in delivering outcomes for people with a disability'. The National Housing and Homelessness Agreement (NHHA) will begin on 1 July 2018 and includes funding previously provided under the NPAH. Under the NHHA, state and territory governments must demonstrate delivery of services that provide support for priority cohorts, which includes women and children experiencing domestic or family violence, and homeless young people.

324. The Australian Government will dedicate \$620 million to homelessness services over five years from 2018–2019 under the new NHHA, and this funding will be matched by state and territory governments.

Social housing and homelessness services

325. 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.

326. In Australia, state and territory governments are responsible for addressing homelessness and working 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 as part of the broader focus on supporting all individuals experiencing homelessness to access and maintain housing.

327. Many state and territory governments work with community organisations to provide preventative assistance to maintain stable, affordable housing for individuals. For example, the Victorian Government is implementing a number of 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.

328. In the ACT, Victoria and NSW, specialist homelessness services provide support to persons with disabilities, Aboriginal and Torres Strait Islander people, women, children, and people with psychosocial disability at risk of homelessness.

Income support

329. The Australian Government provides income support payments to individuals with permanent physical, intellectual and/or psychiatric impairments that prevent them from working or training for work through the Disability Support Pension (DSP). The DSP provides much needed financial support to these individuals in the community and contributes to reducing poverty and homelessness in Australia.

330. People who receive DSP receive a Pensioner Concession Card which provides access to cheaper medicine and health services and other concessions. They can also receive financial assistance to pay rent. In addition, the Australian Government provides a service through the Rent Deduction Scheme, to automatically deduct rental payments from income support payments.

Participation in political and public life (article 29)

Issue 32

331. 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

332. 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) (the Electoral Act). However, section 93(8) of the Electoral Act provides that 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.' 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.

Decision making and election processes

333. The Australian Electoral Commission (AEC) is responsible for maintaining an impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of federal polling services and targeted education and public awareness programs.

- a. The AEC supports the ND Strategy through the AEC's Disability Inclusion Strategy 2012-2020 (the AEC Strategy), which was developed to support persons with disabilities to participate fully in the electoral system. It includes a number of actions designed to maximise visibility of and physical accessibility to polling places and provide a range of alternative and assisted voting options including, for example, telephone voting for voters who are blind or have low vision and voting options through the National Relay Service.

334. The AEC Strategy also includes a number of actions to ensure that voting material is accessible for all voters, including those with disabilities. For example, the AEC provides 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 an accessible online enrolment form. During an election, information is available in large print, e-text, MP3 and Braille.

335. The AEC is continuing to work on improvements to the voting system to ensure accessibility to 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. The 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

336. Many state and territory governments implement similar measures at state and territory elections in Australia, including providing information in accessible formats, ensuring physical accessibility of polling centres and allowing for postal voting and assisted voting in hospitals and at polling places. In addition, some state and territory electoral commissions have introduced electronic voting systems, including internet voting, to provide secret and unassisted voting services for electors with disability. 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

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

Survey / Data collected	Frequency	Information collected	Disaggregation
Survey of Disability, Ageing and Carers	Three years	Disability prevalence data, access to services, experiences of discrimination, social participation and health and wellbeing	Age, sex and geographic location
National Health Survey and General Social Survey	Three years	Posing question based on the SDAC, so disability can be investigated alongside other socioeconomic factors	Age, CALD status, socio-economic status and remoteness (amongst others)
Personal Safety Survey	Four years	Asks people aged 18 years and over, including those with disabilities, about their experience of various forms of violence since age 15	Gender, age, location, CALD status, education and long/short term disability status

Survey / Data collected	Frequency	Information collected	Disaggregation
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 and remoteness
National Aboriginal and Torres Strait Islander Social Survey	Six years	Disability measures relating to Aboriginal and Torres Strait Islander people	
Report on Government Services	Annually	Provides information on the equity, effectiveness and efficiency of government services in Australia, including disability services	Age, sex, geographic location, remoteness, CALD status and Indigenous status

338. Through the National Disability Agreement (NDA), the Commonwealth, state and territory governments fund a range of disability focused research and data projects. Information on the use of NDA services is collected in the Disability Services National Minimum Data Set (DS NMDS). The DS NMDS 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 provided to jurisdictions, which in turn provide the data for national collation and reporting.

339. Australia's National Research Organisation on Women's Safety (ANROWS) is jointly funded by the Australian Government and all state and territory governments of Australia. Its purpose is to fund relevant and translatable research evidence which drives policy and practice leading 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.

340. 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.
341. The Australian Government has also funded the Data Integration Partnership for Australia to maximise the use of existing data. The datasets created under the DIPA bring together otherwise siloed datasets to expand the available data, and include a range of information relevant to the circumstances and wellbeing of people living with disability. The information is used to guide the development of effective policies, programs and services.

International cooperation (article 32)

Issue 34

342. Australia is committed to advancing human rights globally. Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program (the Development for All Strategy) articulates Australia's commitment to taking a leadership role in disability inclusive development internationally. The Development for All Strategy details Australia's human rights based twin track approach to implementing disability-inclusive development through mainstreamed and targeted efforts.
343. Implementation of the Development for All Strategy is currently under independent review by Australia's Office of Development Effectiveness (ODE). In December 2017, the review published findings on the effectiveness of Australia's advocacy for disability-inclusive development, finding strong evidence that it has been effective overall. In particular, that the capacity of DPO's has grown and continues to grow and Australia's support has increased the capacity of other advocates, built coalitions and helped crowd-in other bilateral donors.
344. The review highlights that these short-term outcomes have led to important intermediate outcomes including persons with disabilities and their representative organisations having a greater voice. DFAT's advocacy of disability-inclusive development has also helped transform policies of the United Nations System, UN agencies and other organisations.
345. A second phase of the ODE evaluation focusing on DFAT's delivery of disability-inclusive development assistance is currently underway with findings to be published in the second half of 2018.
346. The Australian Government's commitment to playing a leadership role internationally in disability-inclusive development is reflected in the current co-chairing of the Global Action on Disability (GLAD) network alongside the International Disability Alliance (IDA). The GLAD network

brings together bilateral governments, multilateral agencies, foundations and private sector organisations, in collaboration with disability organisations and partner governments, to advance the rights of persons with disabilities. The GLAD network has the three key focus areas of disability inclusive education, social protection and humanitarian action. Although a relatively new initiative, Australia's carriage of the co-chair position since its inception in 2015 has significantly contributed to the strategic direction and growth of GLAD.

347. Consistent with the guiding principles of the Development for All Strategy, as well as 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 work by the UN Statistics Division and early work by the World Health Organisation to develop the Model Disability Survey. Australia is a leading advocate for the use of 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 and continues to provide support to the Washington Group to disseminate these data collection tools and provide technical assistance.

348. Australia is also investing, including through partnerships with the International Disability Alliance, Disability Rights Advocacy Fund and the Pacific Disability Forum, in building the capacity of disabled peoples' organisations in developing countries to better advocate for the rights of persons with disabilities and their full inclusion in development efforts.

National implementation and monitoring (article 33)

Issue 35

349. 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.

350. The AHRC has a strong role in promoting, protecting and monitoring the implementation of the CRPD. The CRPD has been declared as an international instrument relating to human rights and freedoms for the purposes of the *Australian Human Rights Commission Act 1986*.

Accordingly the AHRC can exercise its functions in relation to the rights under the CRPD, for example the AHRC has functions to:

- a. to promote an understanding and acceptance, and public discussion of the CRPD in

Australia

- b. undertake research and educational programs to promote the CRPD
- c. report to the Attorney-General on laws that should be made or action taken on matters relating to the CRPD
- d. intervene in court proceedings that involve issues related to the CRPD
- 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 CRPD.

351. In addition, 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.

352. 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 Commission. The independence of the AHRC is protected by federal legislation.