



Australian  
Human Rights  
Commission

# Information concerning Australia's compliance with the Convention on the Rights of Persons with Disabilities

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE  
UNITED NATIONS COMMITTEE ON THE  
RIGHTS OF PERSONS WITH DISABILITIES**

25 July 2019

## Table of Contents

|          |                                                                                                                   |           |
|----------|-------------------------------------------------------------------------------------------------------------------|-----------|
| <b>1</b> | <b>Introduction .....</b>                                                                                         | <b>4</b>  |
| <b>2</b> | <b>Priority areas.....</b>                                                                                        | <b>4</b>  |
| <b>3</b> | <b>Purpose and general obligations (CRPD arts 1-5, CO 8-13) .....</b>                                             | <b>5</b>  |
| 3.1      | Domestic incorporation (LOI 1) .....                                                                              | 5         |
| 3.2      | Mechanisms to ensure the full and effective participation of persons with disability (LOI 2) .....                | 6         |
| 3.3      | National Disability Strategy (LOI 3).....                                                                         | 7         |
| 3.4      | National Disability Insurance Scheme (LOI 4).....                                                                 | 8         |
|          | (a) NDIS—access and outcomes.....                                                                                 | 8         |
|          | (b) Support measures for people ineligible for the NDIS.....                                                      | 10        |
|          | (c) NDIS monitoring and evaluation .....                                                                          | 10        |
| <b>4</b> | <b>Specific Rights .....</b>                                                                                      | <b>10</b> |
| 4.1      | Equality and non-discrimination (CRPD art 5, CO 14-15, LOI 5) ..                                                  | 10        |
| 4.2      | Women and girls with disability (CRPD art 6, CO 16-17, LOI 6) .                                                   | 12        |
| 4.3      | Children with disability (CRPD art 7, CO 18, LOI 7).....                                                          | 13        |
| 4.4      | Awareness raising (CRPD art 8, LOI 8).....                                                                        | 14        |
| 4.5      | Accessibility (CRPD art 9, CO 20-21) .....                                                                        | 15        |
|          | (a) Disability Standards (LOI 9) .....                                                                            | 15        |
|          | (b) Legislative and policy framework to ensure accessibility (LOI 10) .....                                       | 15        |
|          | (c) Accessible Housing (LOI 11).....                                                                              | 16        |
| 4.6      | Situations of risk and humanitarian emergencies (CRPD art 11, CO 22-23, LOI 12).....                              | 17        |
| 4.7      | Equal recognition before the law (CRPD art 12, CO 24-26, LOI 13) .....                                            | 17        |
| 4.8      | Access to justice (CRPD art 13, CO 37-30) .....                                                                   | 18        |
|          | (a) Indefinite detention of persons with disability assessed as unfit for trial (LOI 14).....                     | 18        |
|          | (b) Other measures to ensure access to justice (LOI 15) .....                                                     | 18        |
| 4.9      | Liberty and security of the person (CRPD art 14, CO 31-34, LOI 16-17).....                                        | 19        |
| 4.10     | Freedom from torture and cruel, inhuman or degrading treatment or punishment (CRPD art 15, CO 35-36, LOI 18)..... | 21        |
| 4.11     | Freedom from exploitation, violence and abuse (CRPD art 16, CO 37-38, LOI 19).....                                | 22        |
| 4.12     | Integrity of the person (CRPD art 17, CO 39-40, LOI 20).....                                                      | 23        |
| 4.13     | Liberty of movement and nationality (CRPD art 18, LOI 21) .....                                                   | 24        |

|                                                           |                                                                                                            |           |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------|
| <b>4.14</b>                                               | <b>Living independently and being included in the community</b><br>(CRPD art 19, CO 41–42, LOI 22).....    | <b>24</b> |
| <b>4.15</b>                                               | <b>Freedom of expression and opinion and access to information</b><br>(CRPD art 21, CO 43–44, LOI 23)..... | <b>26</b> |
| <b>4.16</b>                                               | <b>Education (CRPD art 24, CO 45–46) .....</b>                                                             | <b>27</b> |
|                                                           | (a) Data collection (LOI 24).....                                                                          | 27        |
|                                                           | (b) Measure taken to implement Article 24 (LOI 25) .....                                                   | 28        |
|                                                           | (c) Education funding model (LOI 26).....                                                                  | 29        |
| <b>4.17</b>                                               | <b>Health (CRPD art 25, LOI 27).....</b>                                                                   | <b>30</b> |
| <b>4.18</b>                                               | <b>Access to habilitation and rehabilitation (CRPD art 26, CO 47-48,<br/>LOI 28) .....</b>                 | <b>31</b> |
| <b>4.19</b>                                               | <b>Right to Work (CRPD art 27, CO 49–50).....</b>                                                          | <b>32</b> |
|                                                           | (a) Disability Employment Framework (LOI 29) .....                                                         | 32        |
|                                                           | (b) Willing to Work (LOI 30) .....                                                                         | 33        |
| <b>4.20</b>                                               | <b>Adequate standard of living (CRPD art 28, LOI 31).....</b>                                              | <b>34</b> |
| <b>4.21</b>                                               | <b>Participation in political and public life (CRPD art 29, CO 51–52,<br/>LOI 32) .....</b>                | <b>34</b> |
| <b>4.22</b>                                               | <b>Statistics and data collection (CRPD art 31, CO 53-56, LOI 33) ..</b>                                   | <b>35</b> |
| <b>4.23</b>                                               | <b>International cooperation (CRPD art 32, LOI 34).....</b>                                                | <b>36</b> |
| <b>4.24</b>                                               | <b>National implementation and monitoring (CRPD art 33, CO 57-<br/>58, LOI 35) .....</b>                   | <b>37</b> |
| <b>Attachment 1: Compilation of Recommendations .....</b> |                                                                                                            | <b>38</b> |
| <b>Priority areas .....</b>                               |                                                                                                            | <b>38</b> |

## 1 Introduction

1. This submission is made by the Australian Human Rights Commission (the Commission), an 'A status' national human rights institution established and operated in compliance with the Paris Principles.
2. The Commission has a statutory power to promote and protect human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). The AHRC Act defines 'human rights' to include the rights and freedoms recognised or declared in any relevant international instrument. This includes the *Convention on the Rights of Persons with Disabilities* (CRPD).
3. The Commission also has the power under the AHRC Act to investigate and conciliate complaints made under the *Disability Discrimination Act 1992* (Cth) (DDA) by people who experience direct or indirect discrimination. Further information about the Commission can be found at [www.humanrights.gov.au](http://www.humanrights.gov.au).
4. The Commission welcomes the opportunity to provide a written contribution ahead of the Committee's consideration of Australia's 2<sup>nd</sup> and 3<sup>rd</sup> periodic reports under the CRPD and to engaging with the Committee during its 22<sup>nd</sup> session.<sup>1</sup>
5. The Commission's proposed recommendations are contained in the body of this submission and compiled in **Attachment 1**.

## 2 Priority areas

6. The matters addressed in this submission are all of importance to Australia's compliance with the CRPD.<sup>2</sup> However, the Commission wishes to draw the Committee's attention to three areas of critical importance:
  - a. the need to introduce a legal framework that recognises the equal legal capacity of people with disability and enables and facilitates the creation and implementation of various supports for the exercise of legal capacity (see section 4.7; Recommendation 26)
  - b. the need to accelerate action to ensure people with disability are not unlawfully or arbitrarily deprived of their liberty on the basis of disability, including in the criminal justice system (see section 4.9; Recommendations 29 to 31)
  - c. the need to prohibit the practice of sterilisation of children with disability, and adults with disability without their free, prior and informed consent (see section 4.12; Recommendations 36 to 38).

7. The Commission recommends that the Committee request an update from the Australian Government on progress in the three priority areas in 12 months, under article 36 of the CRPD and Sections G and H of the working methods of the Committee.

### **3 Purpose and general obligations (CRPD arts 1-5, CO 8-13)**

#### **3.1 Domestic incorporation (LOI 1)**

8. There remain many rights in the CRPD which have not been incorporated into domestic laws. The current gaps and inconsistencies in the legal protection of the rights of people with disability will continue in the absence of comprehensive human rights laws in Australia.<sup>3</sup>
9. The Parliamentary Joint Committee on Human Rights (PJCHR) assesses whether legislation is consistent with Australia's human rights obligations.<sup>4</sup> While the Commission welcomes the work of the PJCHR, it is concerned that there is variable quality in the drafting of statements of compatibility within and across Government departments, including in respect of Australia's obligations under the CRPD.<sup>5</sup> The Commission would like to see specific disability rights impact assessments undertaken on all legislative changes that affect the rights of people with disability.
10. The Commission encourages the Australian Government to withdraw its interpretative declaration to the CRPD concerning articles 12<sup>6</sup>, 17 and 18 as they are inconsistent with the Committee's jurisprudence and prevent effective implementation of the CRPD.

**Recommendation 1: The Australian Government fully incorporate the CRPD into domestic law.**

**Recommendation 2: The Australian Government introduce specific disability rights impact assessments on legislative changes that may impact the human rights of people with disability.**

**Recommendation 3: The Australian Government withdraw its interpretative declaration to the CRPD.**

### **3.2 Mechanisms to ensure the full and effective participation of persons with disability (LOI 2)**

11. The Commission recommends the Australian Government establish stronger mechanisms for the full and effective engagement of people with disability and their representative organisations in the policy development, implementation and monitoring of actions relating to the CRPD, through (i) the National Disability Strategy (2010–2020) (NDS) and any future iterations of the NDS and (ii) the National Disability Agreement (NDA) (discussed in paragraph 20). This includes appropriately funding independent advocacy support for people with disability and increasing resources and opportunities for representative and advocacy organisations to participate in the development and monitoring of actions under the NDS.
12. A review of the NDS by the Social Policy Research Centre at the University of New South Wales (UNSW Review) in 2018 concluded that further facilitating the participation of people with disability at all levels of policy design and implementation would help to achieve the goals of the NDS.<sup>7</sup>
13. The Senate Community Affairs References Committee recommended the development of best practice guidelines for detailed consultation with people with disability and their advocates under the NDS.<sup>8</sup> It also noted the critical role of advocacy in the consultation process.
14. During the Commission's national consultations in 2016–17, many people raised concerns about the adequacy of funding for advocacy supports, including the limited resources to enable participation in the implementation and monitoring of the CRPD.<sup>9</sup>
15. The Australian Government's current funding commitment to the National Disability Advocacy Program (NDAP) will end on 30 June 2020. The Commission encourages the government to continue these funding programs beyond 2020, on a more long-term and secure basis.
16. The advocacy services that NDAP agencies can provide is specified in their grant agreement with the Australian Government.<sup>10</sup> Often the scope of the services is limited to a specific target group or service area. The Commission is concerned this significantly limits the engagement of people with disability and their representative organisations in all matters relating to the CRPD.

**Recommendation 4: The Australian Government establish permanent consultation mechanisms and develop best practice guidelines for the**

**active engagement of people with disability and their representative organisations in policy development, implementation and monitoring activities relating to the CRPD.**

**Recommendation 5: The Australian Government ensure adequate, secure and long-term funding for independent and systemic representation and advocacy in all matters relevant to the CRPD, including through the National Disability Advocacy Program.**

### **3.3 National Disability Strategy (LOI 3)**

17. The Commission welcomes the commitment by the Australian Government to develop a new NDS for 2020 and beyond (new NDS) and notes the enhanced role of the NDA suggested by the Australian Productivity Commission.
18. The Commission continues to be concerned by the slow progress in implementing the current NDS and the lack of data concerning implementation. A lack of dedicated resources and programs has hampered the implementation and effective monitoring of the actions in the NDS.
19. The third and final implementation plan of the current NDS has not yet been released. This should be finalised and released as a matter of high priority, to inform the development of the next iteration of the NDS.
20. The Australian Productivity Commission undertook a review of the NDA, with the final Study Report released on 1 February 2019. The NDA is a high-level policy and funding agreement between the Commonwealth and State and Territory governments relating to the provision of disability services across Australia. The Productivity Commission recommended a new NDA to explicitly articulate how Governments intended to fulfil commitments under the CRPD.<sup>11</sup> The Productivity Commission recommended that the NDS continue to articulate policy actions, with these actions linked to the new NDA's outcomes.
21. The Productivity Commission also recommended that the NDA and NDS be subject of a single, person-centred, national performance reporting agreement, with performance indicators and targets.<sup>12</sup> This would also be supplemented by a commitment to undertake policy and program evaluation.<sup>13</sup> It further recommended that a 'National Disability Report' be tabled in Parliament every two years, which would analyse the progress made towards the NDA's outcomes.<sup>14</sup>

22. The UNSW Review of the current NDS found that the implementation of the NDS had been uneven and lacked a systematic approach.<sup>15</sup> The review suggested the next NDS:
- a. build on positive examples of implementation, including the active participation of people with disability and cooperation across governments, local government, community organisations and businesses
  - b. complement the role of the NDIS, including through addressing interface issues
  - c. address implementation gaps and priorities
  - d. enhance government arrangements
  - e. facilitate cooperation and collaboration
  - f. facilitate flexibility and responsiveness
  - g. promote public awareness and engagement.<sup>16</sup>
23. The Commission supports the recommendations made by the UNSW Review and the Productivity Commission to improve the implementation, resourcing, monitoring and evaluation of the next NDS.

**Recommendation 6: The Australian Government ensure that the National Disability Agreement and the next National Disability Strategy have adequate resourcing, measurable goals and robust monitoring, reporting, evaluation, governance and accountability requirements, including by implementing the recommendations made by the Productivity Commission and the Social Policy Research Centre at the University of New South Wales.**

### **3.4 National Disability Insurance Scheme (LOI 4)**

#### **(a) NDIS—access and outcomes**

24. The Commission remains concerned that people with disability are treated inconsistently under the NDIS. People who face social, cultural, educational or literacy barriers and/or experience intersectional discrimination are often disadvantaged in accessing the NDIS.<sup>17</sup> Access to the NDIS by Aboriginal and Torres Strait Islander peoples with disability and Culturally and Linguistically Diverse (CALD) people with disability is tracking below expected numbers.<sup>18</sup>
25. The Commission welcomes the National Disability Insurance Agency's (NDIA) Aboriginal and Torres Strait Islander Engagement Strategy,<sup>19</sup> the Rural and Remote Strategy<sup>20</sup> and the Culturally and Linguistic Diversity Strategy.<sup>21</sup> These strategies should be supported by action plans that identify specific activities, responsible actors, timeframes, monitoring and

evaluation mechanisms and public reporting. These action plans should also address inequality in initial access to the NDIS, including the cost of assessments to demonstrate evidence of disability and ensuring access forms are available in a variety of accessible formats and community languages. The action plans should be developed in close consultation with people with disability from these community groups and their representative organisations.

26. The Commission is concerned that women and girls with disability comprise only 37% of NDIS participants.<sup>22</sup> In 2015, 18.6% of women and 18.0% of men in Australia had disability.<sup>23</sup> There is currently no policy, strategy or action plan focusing on gender inequality in the NDIS. The Commission encourages the NDIA to develop a specific strategy to ensure that women and girls have equal access to, and outcomes from, the NDIS.
27. The Commission is also concerned about issues faced by children and young people with disability in accessing and using the NDIS, including a lack of accessible and age-appropriate information and supports to express their views. The Commission recommends that the NDIA develop a dedicated strategy for children and young people.
28. The Commission welcomes the NDIS Thin Market Project to improve the availability of supports, including in geographically rural/remote areas, support for Aboriginal and Torres Strait Islander participants and support for CALD participants.<sup>24</sup> The Commission suggests that this work be strengthened with independent data collection and reporting on participant outcomes disaggregated by gender, age, location and ethnicity.

**Recommendation 7: The Australian Government develop and adequately resource action plans for the implementation of the Aboriginal and Torres Strait Islander Engagement Strategy, the Rural and Remote Strategy and the Culturally and Linguistic Diversity Strategy.**

**Recommendation 8: The Australian Government develop an NDIS Gender Equality Strategy and an NDIS Children and Young People Strategy, each supported by an action plan with concrete goals and timeframes.**

**Recommendation 9: The Australian Government address inequality in access to, and outcomes from, the NDIS, by:**

- a. providing ongoing support for the NDIS Thin Markets Project
- b. improving the collection and reporting of disaggregated data
- c. addressing barriers to access, including proving eligibility.

**(b) Support measures for people ineligible for the NDIS**

29. The Commission recognises the importance of the Information, Linkages and Capacity Building (ILC) element of the NDIS, as a mechanism to support all people with disability, their families and carers, regardless of whether they are eligible for the NDIS. ILC services provide information about, and referrals to, community and mainstream services (including health, education, transport, justice and housing).
30. However, the broad remit and lack of funding for ILC has led to a lack of clarity about the purpose of the program and reduced effectiveness. As recommended by the Productivity Commission, Australian governments should clarify the role of ILC and the level of funding required to ensure its effectiveness, before it is fully rolled out in 2019–20.<sup>25</sup>

**Recommendation 10: The Australian Government clarify the role of the Information, Linkages and Capacity Building of the NDIS and the level of funding required to ensure the effectiveness of the program.**

**(c) NDIS monitoring and evaluation**

31. The Commission is concerned that an overarching performance reporting framework for the NDIS has not yet been developed. The Commission notes that the Productivity Commission recommended that the NDIS use the same performance framework as the framework developed for the new NDA.<sup>26</sup>
32. A performance framework must involve the ongoing and active participation of people with disability and their representative organisations in the evaluation and monitoring of the NDIS.

**Recommendation 11: The Australian Government act upon the recommendations of the Productivity Commission to ensure effective monitoring and evaluation of the NDIS that actively involves people with disability and their representative organisations.**

## **4 Specific Rights**

### **4.1 Equality and non-discrimination (CRPD art 5, CO 14-15, LOI 5)**

33. The duty to make reasonable adjustments under the DDA is narrower than the reasonable accommodation duty provided by the CRPD and explained by the Committee in General Comment No. 6 (2018). Under the

DDA, a failure to provide a reasonable adjustment,<sup>27</sup> may amount to direct disability discrimination<sup>28</sup> or indirect disability discrimination<sup>29</sup>. The Commission is concerned that the decision of the Full Federal Court in *Sklavos v Australian College of Dermatologists* [2017] FCAFC 128 (Sklavos decision) narrows the scope of the duty to make reasonable adjustments under the DDA, by introducing a requirement that the disability of the aggrieved person be a reason for the failure to make reasonable adjustments, in order for it to amount to direct discrimination. It is the Commission's view that this additional requirement is too onerous. It is also contrary to Article 5 of the CRPD, as clarified by General Comment No.6, which provides that any denial of reasonable accommodation, no matter the reason for the denial, is a form of disability-based discrimination.

34. The Commission has recommended that the Australian Government amend the DDA to address the implications of the Sklavos decision by creating a new standalone provision in the DDA that provides for a positive duty to make reasonable adjustments unless doing so would involve an unjustifiable hardship.
35. The Commission is also concerned that, in the absence of comprehensive human rights protections in Australia, people with disability are not adequately protected from intersectional discrimination.<sup>30</sup> The effects of intersectional discrimination and disadvantage on Aboriginal and Torres Strait Islander peoples with disability are particularly pronounced.
36. The *Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability* was released in 2017.<sup>31</sup> Aboriginal and Torres Strait Islander peoples with disability and their representative organisations must be consulted and enabled to participate meaningfully in all stages of the design, implementation, monitoring and review of this plan. The plan must be appropriately resourced to achieve real change for Aboriginal and Torres Strait Islander peoples with disability. The Commission recommends that the Australian Government review and update the plan as part of the next iteration of the NDS.

**Recommendation 12: The Australian Government review and amend the *Disability Discrimination Act 1992* (Cth) to ensure it aligns with the CRPD, particularly the 'reasonable accommodation' duty.**

**Recommendation 13: In respect of the *Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability*, the Australian Government:**

- a. **closely consult and actively involve Aboriginal and Torres Strait Islander peoples with disability and their representative organisations in all aspects of the design and implementation of actions under the plan and the monitoring and review of the plan**
- b. **adequately resource actions under the plan**
- c. **review and update the plan to align with the next NDS.**

#### **4.2 Women and girls with disability (CRPD art 6, CO 16-17, LOI 6)**

37. Women with disability experience violence and abuse at higher rates than women without disability in Australia. A report by the Australian Institute of Health and Welfare (AIHW) in 2019, focusing on family domestic and sexual violence, found that:
  - approximately 32% women with disability had experienced emotional abuse from a current or previous partner since the age of 15, compared with 19% women without disability
  - 25% of women with disability had experienced sexual violence (including assault and threats) since the age of 15, compared with 15% of women without disability.<sup>32</sup>
38. The Commission is currently undertaking a National Inquiry into Sexual Harassment in Australian Workplaces. The Commission's 2018 National Survey on Sexual Harassment in the Workplace found that 52% of women with disability had experienced workplace sexual harassment during the last five years.<sup>33</sup>
39. The Commission welcomes the development of the Fourth Action Plan (2019–2022) under the National Plan to Reduce Violence Against Women and their Children. It has recommended that the Fourth Action Plan:
  - a. address all forms of violence
  - b. ensure protections are in place to prevent involuntary or coerced sterilisation
  - c. include targeted prevention and early intervention initiatives
  - d. include measures to ensure information, resources and education are provided in a range of accessible formats
  - e. expand research and data-collection measures to better understand the nature and prevalence of violence and to inform evidence-based policy responses.<sup>34</sup>

40. A Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) was established in April 2019. The Commission encourages the Royal Commission to examine the gender-based aspects of violence, abuse, neglect and exploitation.

**Recommendation 14: The Australian Government ensure the *Fourth Action Plan* under the *National Plan to Reduce Violence against Women and their Children 2010–2022*:**

- a. addresses all forms of violence perpetrated against women and children with disability**
- b. ensures protections are in place to prevent involuntary or coerced sterilisation of women and children with disability**
- c. includes targeted prevention and early intervention initiatives for women with disability, such as support and education on respectful relationships**
- d. includes measures to ensure information, resources and education for women with disability are provided in a range of accessible formats**
- e. expands research and data-collection measures to better understand the nature and prevalence of violence against women and girls with disability, to inform evidence-based policy responses.**

**4.3 Children with disability (CRPD art 7, CO 18, LOI 7)**

41. The Commission remains concerned that legislation, policies, programs, service standards, operational procedures and compliance frameworks that apply to children and young people generally do not incorporate the rights of children with disability as articulated in the CRPD and the *Convention on the Rights of the Child* (CRC). The Commission is concerned that there is no national plan of action for the realisation of the rights of the child.<sup>35</sup>
42. Children with disability are often not provided with disability and age-appropriate assistance to participate and express their views. For example, in the context of the Family Law system, courts are not required to provide children with disability with the assistance and procedural accommodations that they may need to express their views in relation to matters that affect them. This issue was not addressed by the Australian Law Reform Commission (ALRC) in its inquiry into the family law system.<sup>36</sup>
43. The Commission welcomes the Australian Government's commitment to improving national reporting on the welfare of children.<sup>37</sup> However, it remains concerned that data relating to child protection, out-of-home care and juvenile justice (and many other systems), is not disaggregated by

disability and, as a consequence, the specific needs of children with disability are not considered.<sup>38</sup>

**Recommendation 15: The Australian Government amend the *Family Law Act 1975* (Cth) to require that children are provided with assistance and accommodations to express their views in all matters that affect their rights or interests.**

**Recommendation 16: Australian Governments, in conjunction with the Office of the National Data Commissioner, develop a national children's data framework to ensure appropriate data collection that can be disaggregated by a range of factors, including disability.**

**Recommendation 17: The Australian Government ensure children with disability and their families are provided with adequate and appropriate community-based supports, including through the NDIS, to prevent institutionalisation.**

#### **4.4 Awareness raising (CRPD art 8, LOI 8)**

44. The largest number of complaints received by the Commission consistently relate to disability discrimination. Over the last five years, 37% of complaints have been lodged under the DDA. In 2017–2018, it was 42%.<sup>39</sup> In June 2019 the Centre of Research and Excellence in Disability and Health at the University of Melbourne published results from a national survey on community attitudes towards people with Australia.<sup>40</sup> It found that 78% of survey participants agreed that people were unsure how to act around people with disability and 61% of participants said people were likely to avoid people with intellectual disability. These statistics indicate a need for disability rights education and awareness in Australia.
45. One of the policy directions of the NDS is to increase awareness and acceptance of the rights of people with disability. However, there has been limited government action and funds to promote the awareness of the rights of people with disability.
46. In 2011, a scoping project conducted by UNSW found that strategies with a combination of activities at the personal (e.g. public advertising campaigns), organisational (e.g. training) and structural levels (e.g. legislation) were most successful in changing attitudes and overcoming prejudice towards people with disability.<sup>41</sup>
47. The UNSW Review of the NDS found that public awareness of the rights of people with disability was critical to the implementation of the strategy. It recommended that responsibilities for promoting awareness be clarified

and that public awareness campaigns reflect the diversity of people with disability and capture the range of actions people can take to create an inclusive society.<sup>42</sup>

**Recommendation 18: The Australian Government ensure that the next National Disability Strategy include policy directions and dedicated actions at the individual, organisational and structural levels to develop and implement awareness raising and education programs that are consistent with the CRPD.**

#### **4.5 Accessibility (CRPD art 9, CO 20–21)**

##### **(a) Disability Standards (LOI 9)**

48. The Commission is concerned that the lack of measures to ensure nationally consistent implementation, enforceability, monitoring and compliance under the Disability Standards for Accessible Public Transport 2002 (Transport Standards) and the Disability (Access to Premises—Buildings) Standards 2010 (Building Standards) has limited the effectiveness of both Standards.<sup>43</sup>
49. The Commission is also concerned that there is a lack of progress and insufficient resources allocated to implement the recommendations made following the statutory reviews of the Standards every five years.

**Recommendation 19: The Australian Government introduce a national data collection and reporting framework, coordinated between the Commonwealth, State and Territory governments, to enable the measurement of progress and compliance against the Building Standards and Transport Standards.**

**Recommendation 20: The Australian Government consider additional enforcement mechanisms for the Building Standards and Transport Standards.**

**Recommendation 21: The Australian Government take immediate action to implement the recommendations from the reviews of the Building Standards and Transport Standards and allocate sufficient resources to implement these recommendations.**

##### **(b) Legislative and policy framework to ensure accessibility (LOI 10)**

50. The Commission is concerned about gaps in Australia's legislative and policy framework to ensure accessibility for people with disability,

including gaps relating to: (i) accessibility of information and methods communications, (ii) air travel, (iii) emerging forms of transport services, including ride sharing services, (iv) emerging technology and digital accessibility, and (v) commercial premises, public spaces and amenities.<sup>44</sup>

51. The Commission is leading a project on human rights and technology, including the rights of people with disability to technology.<sup>45</sup> Preliminary work suggests that people with disability encounter increased barriers in accessing technology, especially assistive technology, compared with those who do not have a disability. The Commission will consider how the Australian Government should promote accessible and innovative technology to ensure inclusion.<sup>46</sup> A Discussion Paper is currently being prepared, with a Final Report to be published in the first half of 2020.

**Recommendation 22: The Australian Government undertake a gap analysis of Australia's laws and policies to identify measures needed to ensure accessibility for people with disability, on an equal basis with others. In particular, gaps relating to: (i) accessibility of information and methods of communication, (ii) air travel, (iii) emerging forms of transport services, including ride sharing services, (iv) emerging technology and digital accessibility, and (v) commercial premises, public spaces and amenities.**

**(c) Accessible Housing (LOI 11)**

52. The Commission remains concerned that the 2020 targets for universal housing design will not be met. The use of voluntary measures to increase the supply of accessible private housing have been ineffective.
53. A regulatory intervention is needed to introduce a mandatory minimum standard of accessibility for all private dwellings in Australia. An amendment of the National Construction Code (NCC) is the most viable way to introduce this standard.
54. The Australian Building Codes Board (ACBC) is undertaking a Regulatory Impact Assessment of options to introduce a minimum accessibility standard for housing in the NCC. The Commission has recommended that the ACBC be guided by Australia's commitments under the CRPD in considering the minimum standard of accessibility for housing.<sup>47</sup> Ongoing consultations should also be held with people with disability and their representative organisations.

**Recommendation 23: The Australian Government introduce a mandatory minimum standard of accessibility in the National Construction Code for all private dwellings in Australia.**

#### **4.6 Situations of risk and humanitarian emergencies (CRPD art 11, CO 22–23, LOI 12)**

55. The Commission welcomes the Australian Government's support of the Sendai Framework for Disaster Risk Reduction (2015–2030) and the work of the Australian Institute for Disaster Resilience and National Resilience Taskforce. However, the Commission is concerned that the National Strategy for Disaster Resilience (2011) and the National Disaster Risk Reduction Framework do not integrate a disability perspective as required by the Sendai Framework.
56. The Commission has argued for improved community accessibility in reconstruction programs following disasters. The Commission submits that funding for disaster recovery should include provision for new buildings or refurbishments to meet the *Disability (Access to Premises—Building) Standards 2010*.

**Recommendation 24: The Australian Government revise the National Strategy for Disaster Resilience and other relevant policies and frameworks, to align with the Sendai Framework for Disaster Risk Reduction (2015-2030), including to:**

- a. ensure emergency information and warning systems are fully available, free and accessible throughout Australia for all persons with disability**
- b. provide explicitly for accessibility for and inclusion of people with disability in all responses to situations of risk**
- c. require all public services to develop individual and local plans for the safe evacuation of people with disability in consultation with people with disability through their representative organisations.**

**Recommendation 25: The Australian Government require that all funding for disaster recovery include provision for new buildings or buildings requiring refurbishment as a result of natural disasters to meet the *Disability (Access to Premises—Building) Standards 2010*.**

#### **4.7 Equal recognition before the law (CRPD art 12, CO 24-26, LOI 13)**

57. The Commission is concerned by a lack of progress in implementing a nationally consistent supported decision-making framework, as recommended in the *Equality, Capacity and Disability in Commonwealth Laws* report by the ALRC.<sup>48</sup>

58. The Commission welcomes the Australian Government's support of training programs at the Commonwealth, State and Territory level recognising the legal capacity of people with disability on an equal basis with others.<sup>49</sup> However, the training will only be effective alongside laws and policies that recognise the legal capacity of people with disability on an equal basis as others.

**Recommendation 26: The Australian Government implement a nationally consistent supported decision-making framework, as recommended in the Australian Law Reform Commission's 2014 report *Equality, Capacity and Disability in Commonwealth Laws*.**

#### **4.8 Access to justice (CRPD art 13, CO 37–30)**

**(a) Indefinite detention of persons with disability assessed as unfit for trial (LOI 14)**

59. The Commission welcomes the work of the AIHW to gather data on the number of people with disability in Australia's prison system and to work with states and territories to improve data collection. However, this work is limited to prisons and does not extend to gathering data, disaggregated by disability, throughout all stages of the criminal justice system, including contact with law enforcement, courts and post-release.

**Recommendation 27: The Australian Institute of Health and Welfare extend its data collection to all stages of the criminal justice system and continue to work with states and territories to improve data collection to allow for disaggregation by disability, age, gender, location and ethnicity.**

**(b) Other measures to ensure access to justice (LOI 15)**

60. People with disability, particularly Aboriginal and Torres Strait Islander peoples with disability, are overrepresented in the criminal justice system in Australia.<sup>50</sup> This includes children with disability, who are similarly overrepresented in the juvenile justice system, particularly children with intellectual disabilities or psychosocial disabilities.<sup>51</sup> Children with Fetal Alcohol Spectrum Disorder (FASD) are particularly prevalent in the juvenile justice system.<sup>52</sup>
61. The Commission's research has found that necessary procedural accommodation for people with disability is frequently not provided in the justice system.<sup>53</sup> It also found that negative attitudes and a lack of

awareness about disability was a significant barrier to people with disability accessing justice.<sup>54</sup>

62. The Commission recommended, in its 2014 *Equal Before the Law* report, that each jurisdiction in Australia should develop a holistic, overarching response to ensuring equal recognition before the law and access to justice, through a Disability Justice Plan. This recommendation has not been widely implemented. The Commission considers that a Disability Justice Plan provides a framework to coordinate, inform and monitor: (i) the removal of barriers, (ii) the provision of procedural and gender- and age-appropriate accommodations, and (iii) the provision of appropriate training to those working in the field of administration of justice.

**Recommendation 28: All Australian governments develop Disability Justice Plans to detail the actions they will take to ensure access to justice for people with disability, including by:**

- a. reviewing and amending civil and criminal legislation and procedural rules to ensure a duty to provide procedural accommodations in all legal proceedings;
- b. developing and implementing measures to ensure the same substantive and procedural guarantees for people with disability in the context of legal proceedings as for others
- c. developing assessment protocols to improve data collection and assist police, courts, and correctional institutions to identify the supports required to provide procedural guarantees and age appropriate accommodations
- d. developing and implementing measures to ensure people with disability can serve as jurors
- e. developing and implementing targeted measures to promote, support and empower people with disability to work in the justice system
- f. incorporating compulsory modules on working with people with disability into training programmes for those working in the field of the administration of justice.

#### **4.9 Liberty and security of the person (CRPD art 14, CO 31–34, LOI 16–17)**

63. The Commission is concerned that little progress has been made by the Australian Government in repealing legislation and withdrawing policies and practices listed in Issue 16 since these were first raised by the Committee in 2013. The Australian Government is yet to respond to the Senate Community Affairs References Committee's report *Inquiry into*

*indefinite detention of people with cognitive and psychiatric impairment in Australia.*

64. The Commission reiterates its concern that in some jurisdictions declarations of unfitness to stand trial may lead to the indefinite detention of unconvicted people with disability, including children with disability.<sup>55</sup> For example, in Western Australia a person can be indefinitely detained in a custodial setting without trial if found unfit to stand trial.<sup>56</sup> A person can spend a longer time in detention than if they pleaded guilty and were sentenced to imprisonment for the offence.<sup>57</sup> There are no special procedures for children.<sup>58</sup> Children with FASD are at particular risk of being held in indefinite detention and are overrepresented in the juvenile justice system.<sup>59</sup>
65. The Commission commends the voluntary commitment made by Australia following the Universal Periodic Review in 2015 to improve the way in which the criminal justice system treats people with mental and/or cognitive disability who are found unfit to plead or not guilty by reason of mental impairment.<sup>60</sup> Whilst the Commission welcomes the establishment of a cross-jurisdictional working party on the matter, it is concerned that the draft *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment* (the National Statement) has not been released for public comment and people with disability and their representative organisations have not been consulted. Consideration of the National Statement by the Council for Attorneys-General has not progressed since June 2018.<sup>61</sup> The Commission is also concerned that the National Statement is not being prepared as part of a wider framework to reform the law to remove the declarations of ‘unfitness to plead’ and ‘not guilty by reason of cognitive or mental health impairment’.
66. The Commission remains concerned that mental health laws, frameworks and policies in Australia permit the provision of mental health services to people with psychosocial disability and mental health conditions in ways that breach their human rights, including their right to liberty and security.<sup>62</sup> In 2016–2017, nearly half (45.4%) of public health overnight separations with specialised care were patients with an involuntary mental health status.<sup>63</sup> The Commission recommends that all mental health laws, frameworks and policies be examined and reformed to ensure alignment with the rights and obligations enshrined in the CRPD.

**Recommendation 29: The Australian Government implement the recommendations of the Senate Community Affairs References Committee**

**in the *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia* report.**

**Recommendation 30: The Australian Government release the draft *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment* for consultation.**

**Recommendation 31: The Australian Government work with State and Territory governments to adopt a human rights-based approach to mental health laws and review all laws that authorise:**

- a. involuntary hospitalisation, including committal to mental-health facilities, on the basis of perceived or actual impairment
- b. the administration of medical intervention to people with disability without the free, prior and informed consent of the person concerned
- c. imposition of compulsory treatment by means of Community Treatment Orders.

#### **4.10 Freedom from torture and cruel, inhuman or degrading treatment or punishment (CRPD art 15, CO 35–36, LOI 18)**

67. The Commission is concerned about the lack of a nationally consistent approach to monitoring, regulating and reducing and eliminating the use of restrictive practices<sup>64</sup> on people with disability.
68. These practices still occur in a range of environments outside the NDIS, including mental health facilities, hospitals and aged care facilities. The Commission is particularly concerned about the use of restrictive practices on children with disability in schools.<sup>65</sup> The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector only applies to disability services.
69. The Senate Community Affairs References Committee considered the use of restrictive practices in relation to people with disability in detail in 2016. The Committee recommended that the Australian Government work with State and Territory governments to implement a national zero-tolerance approach to eliminate restrictive practices in all service delivery contexts.<sup>66</sup> The Royal Commission into violence against people with disability is likely to further consider the use of restrictive practices in Australia.
70. The NDIS Quality and Safeguards Commission (NDIS Commission) oversees the regulation of restrictive practices within the NDIS.<sup>67</sup> The Commission recommends that the progress made towards minimising the

use of restrictive practices, including data on the reported use of regulated and non-regulated restrictive practices, be made publicly available.

71. The Commission has been leading a civil society consultation to support Australia's ratification of the Optional Protocol to the Convention against Torture (OPCAT) and implementation process, including the establishment of a National Preventive Mechanism (NPM).<sup>68</sup> A number of stakeholders noted the importance of: (a) the NPM being disability aware and inclusive of people with disability,<sup>69</sup> and (b) OPCAT compliance to extend to disability-specific institutions.<sup>70</sup>

**Recommendation 32: The Australian Government work with State and Territory governments to develop a national framework to monitor and regulate the use of restrictive practices, against people with disability, with a view to reducing and eliminating their use, in all settings and contexts where they are used, including justice, education, health, mental health and aged care facilities.**

**Recommendation 33: The Australian Government direct the NDIS Quality and Safeguards Commission to report annually on the progress made towards reducing and eliminating the use of restrictive practices and publish data on the total number of reported uses of restrictive practices.**

**Recommendation 34: The Australian Government implement OPCAT with a view to applying it to all places of detention where an individual is or may be deprived of his or her liberty, including disability-specific settings, such as mental health facilities, forensic psychiatric or disability units, residential institutions (including group homes) and segregated educational facilities.**

#### **4.11 Freedom from exploitation, violence and abuse (CRPD art 16, CO 37–38, LOI 19)**

72. The Commission commends the Australian Government for establishing the Royal Commission and welcomes the broad scope of the terms of reference, which recognises the human rights and fundamental freedoms of people with disability under the CRPD.<sup>71</sup> It is essential that the Royal Commission is fully accessible and inclusive of people with disability.
73. The Commission also welcomes the establishment of the NDIS Commission. However, additional oversight, complaint and redress mechanisms are needed for people with disability who are not NDIS participants.

74. In June 2018, the Commission published the *A Future Without Violence* report, which outlined the Commission's recommendations on the ways in which quality, safeguarding and oversight mechanisms that prevent and address violence against people with disability in institutional settings can be strengthened.<sup>72</sup>

**Recommendation 35: The Australian Government implement the recommendations in the Australian Human Rights Commission's report *A Future Without Violence*.**

#### **4.12 Integrity of the person (CRPD art 17, CO 39-40, LOI 20)**

75. The Commission remains deeply concerned that the sterilisation of people with disability, particularly women and girls with disability, continues to take place in Australia without free, prior and informed consent.<sup>73</sup> The Commission is also concerned by the forced administration of contraceptives and abortion procedures.<sup>74</sup>
76. There is domestic and international concern relating to involuntary surgery on infants born with variations in sex characteristics.<sup>75</sup> The Commission is conducting a research project to better understand these concerns and will develop recommendations for a nationally consistent human rights-based approach to decision making about medical interventions. The Commission is working towards releasing the final report and recommendations in 2019.
77. The Commission considers a cause of these issues is the failure to understand and operationalise the principle of free, prior and informed consent consistent with the CRPD and the National Decision-Making Principles and Commonwealth decision-making model recommended by the ALRC.

**Recommendation 36: The Australian Government work with State and Territory governments to adopt uniform legislation prohibiting, in the absence of the free, prior and informed consent of the person concerned:**

- a. the administration of contraceptives and abortion procedures on women and girls with disability**
- b. the sterilisation of adults and children with disability.**

**Recommendation 37: The Australian Government review and amend the Family Law Rules 2004 relating to Medical Procedure Applications so that they align with the CRPD and the CRC.**

**Recommendation 38: The Australian Government work with State and Territory governments to ensure a nationally consistent human rights-based approach to decision-making about medical interventions on children with variations in sex characteristics.**

**4.13 Liberty of movement and nationality (CRPD art 18, LOI 21)**

78. People with disability are not treated on an equal basis with others in relation to migration and asylum. The Commission is particularly concerned about the health requirement in Australia's migration laws,<sup>76</sup> which result in routine, exclusion of people with disability from Australia.<sup>77</sup> The Joint Standing Committee on Migration found that the health requirement was discriminatory against people with disability and recommended it be reformed.<sup>78</sup>
79. Section 52 of the DDA provides that Divisions 1 (Discrimination in Work), 2 (Discrimination in other areas) and 2A (Disability Standards) do not affect:
- (a) discriminatory provisions in (i) the Migration Act 1958 (Cth); or (ii) a legislative instrument made under that Act; or (b) render unlawful anything that is permitted or required to be done by that Act or instrument.*
80. The Special Rapporteur on the human rights of migrants recommended that Australia repeal section 52 of the DDA, expressing particular concern about children and family members with disabilities.<sup>79</sup>

**Recommendation 39: The Australian Government review and amend Australia's migration laws and policies to ensure people with disability do not face discrimination in any of the formalities and procedures relating to migration and asylum.**

**4.14 Living independently and being included in the community (CRPD art 19, CO 41–42, LOI 22)**

81. The NDIS rules and operational guidelines for specialist disability accommodation (SDA) provide for the building of: (i) group homes—houses that accommodate four to five long-term residents,<sup>80</sup> and (ii) in limited circumstances, larger dwellings, that house more than five long-term residents.<sup>81</sup> The Commission is concerned that the SDA framework facilitates and encourages the establishment of residential institutions and will result in people having to live in particular living arrangements to access NDIS supports.

82. The Commission reiterates its concern about a lack of appropriate and accessible housing in Australia, which severely limits the capacity of people with disability in Australia to choose their place of residence (refer to the information provided, and recommendations made, in section 4.5).
83. In March 2019, the Australian Government released a *Younger People in Residential Aged Care—Action Plan*, outlining Government action to reduce the number of people under the age of 65 years living in aged care facilities. The Commission welcomes the Action Plan. However, the Action Plan should be revised to provide that *no* person aged under 65 years should enter or live in residential aged care by 2025.
84. A greater focus on the role of advocacy supports is also needed. The Commission recommends that a specific stream of funding be introduced within the National Disability Advocacy Program to fund advocacy organisations to support people with disability currently residing, or at risk of residing, in aged-care facilities.
85. Finally, the Young People Action Plan does not sufficiently address the needs of young people living in aged care facilities who may not be eligible to access the NDIS. The Commission recommends that the Australian Government develop and implement actions, with dedicated funding, to support the transition of these young people to living independently in the community.

**Recommendation 40: The Australian Government develop a national framework for the closure of all disability-specific residential institutions in Australia, and the prevention of trans-institutionalisation including:**

- a. addressing how people with disability not eligible for the NDIS can be supported to transition to live independently in the community
- b. ensuring consistent quantitative and qualitative data collection relating to people with disability who live in residential institutions.

**Recommendation 41: The Australian Government review and amend the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* and related operational guidelines and policies to ensure alignment with Article 19 of the CRPD and General Comment No. 5 (2017).**

**Recommendation 42: The Australian Government introduce regulatory safeguards to prevent young people with disability entering or remaining in aged care facilities and strengthen the *Younger People in Residential Aged Care—Action Plan* by:**

- a. **amending the Action Plan to provide that no person aged under 65 years should enter or live in residential aged care by 2025.**
- b. **including a dedicated and well-funded role for the National Disability Advocacy program to provide advocacy services to all young people with disability living, or at risk of entering, aged care facilities**
- c. **including specific actions to support young people in aged care facilities, or at risk of entering aged care facilities, who are not eligible to access the NDIS, transition to living independently in the community.**

#### **4.15 Freedom of expression and opinion and access to information (CRPD art 21, CO 43–44, LOI 23)**

86. People with disability cannot access communication and information systems, including electronic media, on an equal basis with others. The Commission noted several areas of concern in its *Information for List of Issues Prior to Reporting*,<sup>82</sup> which remain current.
87. In 2017, the Australian Communications and Media Authority (ACMA) submitted a report on a statutory review of captioning rules for TV services under the *Broadcasting Services Act 1992*. The report's key findings were:
- a. captioning rules do not apply to multi-channels<sup>83</sup>
  - b. the current framework for subscription television is too complex
  - c. that the government conduct a review of the framework, including the criteria for granting captioning exemptions and target reduction orders to television services.<sup>84</sup>
88. The Audio Description Working Group (ADWG), within the Department of Communications and the Arts, released in its final report in May 2018.<sup>85</sup> The ADWG identified three options for the delivery of audio description and discussed ways to introduce an ongoing audio description service.
89. During the Disability Discrimination Commissioner's national consultations in 2016–17, many participants highlighted the importance of providing information and communicating in Easy Read and plain English formats. Participants expressed concern with the lack of information about changes to laws and policies provided in Easy Read formats. Even in the context of disability-specific policies, such as the NDIS, the Commission has been told that information is not always accessible.

90. The Commission encourages the government to upgrade the 'Australia.gov.au' website so it is compatible with the updated Web Content Accessibility Guidelines (WCAG) 2.1.

**Recommendation 43: The Australian Government review the captioning exemption and target reduction process under the *Broadcasting Services Act 1992* (Cth) and introduce incremental captioning targets for multi-channels and online videos.**

**Recommendation 44: The Australian Government, drawing on the Audio Description Working Group's report, develop and introduce amendments to the *Broadcasting Services Act 1992* (Cth) requiring audio description of not less than 10% of all television content to facilitate greater access to television news, information and entertainment for people with disability.**

**Recommendation 45: The Australian Government work with State and Territory governments to ensure that all information about significant changes to laws, policies, systems and obligations should be provided in a range of accessible formats, including Easy Read.**

**Recommendation 46: The Australian Government update the 'Australia.gov.au' website to comply with Web Content Accessibility Guidelines (WCAG) 2.1.**

#### **4.16 Education (CRPD art 24, CO 45–46)**

##### **(a) Data collection (LOI 24)**

91. The *Nationally Consistent Collection of Data on Schools Students* collects data about school students with disability who receive an adjustment. While this data is important, it is also critical to know how many children did not qualify for an adjustment or were not assessed for an adjustment.
92. It is also important to collect national disaggregated data in a range of other areas. The Senate Education and Employment References Committee in the *Access to real learning: the impact of policy, funding and culture on students with disability* report recommended collection and publication of information about the levels of access and attainment for students with disability, including the use of restrictive practices and seclusion, and suspension and expulsion rates.<sup>86</sup>

**Recommendation 47: The Australian Government expand the Nationally Consistent Collection of Data on School Students with Disability to collect data on:**

- a. the numbers of students with disability who do not qualify for an adjustment**
- b. the number of students who are unable to enrol in their local mainstream schools**
- c. educational attainment and completion rates**
- d. the rates of suspension and expulsion**
- e. the use of restrictive practices.**

**(b) Measure taken to implement Article 24 (LO1 25)**

93. The Commission has identified the following key factors that are impeding progress to achieving an inclusive education system in Australia.
- a. Registration and gatekeeping: schools continue to turn away local students because of their disability by discouraging enrolment or not allowing them to attend fulltime.<sup>87</sup>
  - b. Growth of segregated learning: the last decade has seen a proportionate increase in the use of segregated settings to educate students with disability (special education units/classes and special schools).<sup>88</sup> Research published in 2019 shows that this increase in segregation has disproportionately affected autistic students. Between 2009 and 2015, the inclusion of autistic students in mainstream classes decreased from 18.8% to 3.3%.<sup>89</sup>
  - c. Persistence in the use of restrictive practices: multiple government committees, have recommended that the government work with states and territories to end the use of restrictive practices in schools.<sup>90</sup> However, a 2017 survey of students with disability found that 19% of respondents had experienced restraint at school and 21% had experienced seclusion.<sup>91</sup>
  - d. Lack of support, training and resources for principals and teachers.<sup>92</sup>
  - e. Inconsistent and inadequate provision of reasonable adjustments.<sup>93</sup>
94. The Commission welcomes the Australian Government's acknowledgment that there is considerable work needed to ensure that students with disability achieve optimal educational outcomes.<sup>94</sup> It encourages the Australian Government to implement the recommendations made by the Senate Education and Employment References Committee in the *Access to real learning: the impact of policy, funding and culture on students with disability* report (2016).

95. A review of the *Melbourne Declaration on Education Goals for Young Australians* (Melbourne Declaration) is currently underway. The Melbourne Declaration sets the ideological direction for Australian schooling. The Commission has recommended that the Melbourne Declaration be updated to include 'improving education outcomes for students with disabilities by promoting inclusive education at all levels', consistent with CRPD, as a new priority area for action.<sup>95</sup>
96. The third review of the Disability Standards for Education (2005) (Education Standards) will take place in 2020. Many of the recommendations made following the 2015 review of the Education Standards have not been implemented. It is critical that the Australian Government conduct a robust review of the Education Standards. This includes a thorough and well-planned consultation process and sufficient resources for the review and implementation of the recommendations.

**Recommendation 48: In line with General Comment No. 4, targets 4.5 and 4.8 of the Sustainable Development Goals and the recommendations made in the *Access to Real Learning* report, the Australian Government work with State and Territory governments to develop a comprehensive and coordinated strategy for ensuring inclusive education across Australia, with clear timeframes for implementation.**

**Recommendation 49: The Australian Government update the *Melbourne Declaration on Education Goals for Young Australians* to include a specific commitment to promote inclusive education.**

**Recommendation 50: As part of the Third Review of the Disability Standards for Education (2005), the Australian Government:**

- a. conduct a comprehensive consultation process, including with children and young people with disability
- b. consider how the implementation, enforceability, monitoring and compliance of the Education Standards can be improved
- c. dedicate adequate resources to implementing the recommendations made following the review.

**(c) Education funding model (LOI 26)**

97. A review of the loading for students with disability is currently underway, with a report to be submitted to the Minister for Education by December 2019.<sup>96</sup> The *Review of Funding for Schooling* recommended an additional loading for all students with disability.<sup>97</sup>

98. The Commission does not support the clarification suggested by the Australian Government to General Comment No. 4.<sup>98</sup> It encourages the Australian Government to move as expeditiously and effectively as possible to transfer resources from segregated to inclusive environments.

**Recommendation 51: The Australian Government ensure that the funding model and budgetary allocations for students with disabilities expeditiously and effectively transfer resources from segregated to inclusive education environments.**

#### **4.17 Health (CRPD art 25, LOI 27)**

99. The Commission is concerned that people with disability continue to face a range of barriers in accessing health services on an equal basis with others, without discrimination, including mental health services.
100. The AIHW found:
- 1 in 6 people with disability aged under 65 years experienced discrimination by health staff
  - 2 in 5 people with disability aged under 65 years had difficulty accessing medical facilities
  - 1 in 5 people with disability aged under 65 years delayed or did not see a GP because of the cost
  - people with disability aged under 65 years living in the community in outer regional and remote areas were less likely than those living in major cities to see a GP, medical specialist or dentist.<sup>99</sup>
101. People with intellectual disability experience substantially elevated mortality rates above the general population, with over twice the rate of avoidable deaths (with at least 38% of deaths potentially avoidable) and lower rates of preventative healthcare and illness detection. Health professionals face challenges communicating with people with intellectual disability, distinguishing health problems from the disability, and diagnosing complex health conditions.<sup>100</sup>
102. Aboriginal and Torres Strait Islander peoples with disability face unique, intersectional discrimination in accessing health services. People with disability in rural and remote areas also face considerable challenges to accessing affordable, accessible, quality and culturally sensitive health services. People with disability and their carers report travelling long distances, extensive waiting times and workforce shortages resulting in difficulties accessing therapy and high levels of unmet need.<sup>101</sup> Physiotherapy, occupational therapy, speech pathology, and early

intervention services are examples of services that are not readily available in regional and remote areas, yet these play an important role in supporting people with disability to participate in society on an equal basis with others. This lack of support is particularly exacerbated for children living in rural areas.<sup>102</sup>

103. As noted by the Productivity Commission, there are concerns that ‘a lack of clarity at the interface of the NDIS and mainstream service systems, particularly the health system, is leading to people missing out on, or experiencing delayed access to, some services’.<sup>103</sup> This includes services for people with psychosocial disability.<sup>104</sup>

**Recommendation 52: The Australian Government work with State and Territory governments to develop an action plan to ensure:**

- a. all people with disability have access, on an equal basis with others, to affordable, accessible, quality and culturally sensitive health services, including sexual and reproductive health and mental health services, with particular consideration of people in rural and remote areas and Aboriginal and Torres Strait Islander peoples with disability
- b. all health care services and programmes are based on a human rights approach to disability, are non-discriminatory and seek informed consent prior to any medical treatment
- c. health-care practitioners are provided with training on the human rights-based approach to disability to enhance their capacity to provide accessible, quality health care to people with disability.

**Recommendation 53: The Australian Government redouble their efforts to achieve the Closing the Gap targets, including by adequately funding the *National Aboriginal and Torres Strait Islander Health Plan*, the *Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability* and targeting programs to address the social determinants of health.**

**4.18 Access to habilitation and rehabilitation (CRPD art 26, CO 47-48, LOI 28)**

104. The Commission is concerned that Commonwealth, State and Territory legislation which governs the provision of habilitation and rehabilitation services by health services, outside of the NDIS, are not underpinned by a human rights-based approach.
105. Noting that all habilitation and rehabilitation services and programs must be voluntary and based on free and informed consent,<sup>105</sup> the Commission

is concerned about the continued practices of denying, removing or restricting the legal capacity of a person with disability. It is also concerned that children with disability are not enabled to fully participate in decisions related to their habilitation and rehabilitation and in a manner and format that is understandable and accessible to them.

**Recommendation 54: The Australian Government work with State and Territory governments to review laws and policies that govern the provision of habilitation and rehabilitation services by health services to ensure they align with the CRPD and promote a person-centred, rights-based and participatory approach that is gender- and age-sensitive.**

#### **4.19 Right to Work (CRPD art 27, CO 49–50)**

##### **(a) Disability Employment Framework (LOI 29)**

106. The Commission welcomes the Australian Government's commitment to boosting the employment rates of people with disability by developing a new National Disability Employment Framework. However, the status of this framework is unclear, and the Commission is concerned that the development of the Framework has halted.
107. While the Commission has concerns that the Supported Wage System may further disadvantage some groups such as people with an intellectual disability. It also has broader concerns around Australian Disability Enterprises (ADEs) and whether they align with the right of people with disability to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disability. In particular, the Commission is concerned that people working in ADEs are not being adequately supported, including by the Disability Employment Services (DES) program, to transition to open forms of employment.
108. The Commission welcomes the Australian Government's commitment to progressing reforms to the DES to help address structural barriers faced by women at different stages of employment,<sup>106</sup> and looks forward to further detail on these measures.
109. A central aspect of the NDIS is supporting the economic participation of people with disability<sup>107</sup> and the Commission encourages the NDIA to continue to focus on this area.<sup>108</sup>

**Recommendation 55: The Australian Government provide a timeframe for finalising and implementing the National Disability Employment Framework.**

**Recommendation 56: The Australian Government undertake a comprehensive review of Australian Disability Enterprises (ADEs) against the requirements of Article 27 of the CRPD and provide services to transition people with disability into open forms of employment.**

**Recommendation 57: The Australian Government provide detail on the nature of reforms to Disability Employment Services which seek to address underlying structural barriers experienced by women with disability, and work with women with disability and their representative organisations, to develop and implement these reforms.**

**(b) Willing to Work (LOI 30)**

110. The Commission commends the steps taken by the Australian Government to implement the recommendations made in the Commission's report, *Willing to Work—National Inquiry into Employment Discrimination against Older Australians and Australians with Disability* (*Willing to Work* report). However, The Commission remains concerned by the lack of substantial progress in improving the rates of labour force participation and employment for people with disability. In 2015, 53.4% of people with disability between 15 and 64 years participated in the labour force, compared with 83.2% of people without disability.<sup>109</sup>
111. The Commission is particularly concerned by the low rates of people with disability working in the public service. As at 30 June 2018, the proportion of Australian Public Service employees with disability was 3.7%.<sup>110</sup> This represents no movement since 2016 and only a 0.5 percentage point increase since 2013.

**Recommendation 58: The Australian Government continue to implement the Willing to Work report recommendations, including expanding the role of the Workplace Gender Equality Agency (WGEA) to extending its current functions to Australians with disability.**

**Recommendation 59: The Australian Government commission an independent evaluation of the Australian Public Service Disability Employment Strategy (2016–2019).**

## **4.20 Adequate standard of living (CRPD art 28, LOI 31)**

112. The Commission is concerned about the limited consideration of persons with disability in poverty and homelessness reduction strategies. The National Housing and Homelessness Agreement does not comprehensively include people with disability, including those with intellectual and psychosocial disabilities, as a national homelessness cohort with specific priority measures.
113. Australia currently lacks a national poverty reduction plan and has yet to agree to a consistent, national definition of 'poverty'.<sup>111</sup> The Commission also reiterates its concern about the lack of accessible housing in Australia (discussed in section 4.5) and notes that this is a contributing factor to homelessness for people with disability.

**Recommendation 60: The Australian Government work with State and Territory governments to ensure people with disability are included as a priority cohort in the implementation of the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.**

**Recommendation 61: The Australian Government develop a national poverty reduction plan that addresses disability as a cross-cutting issue.**

## **4.21 Participation in political and public life (CRPD art 29, CO 51–52, LOI 32)**

114. The Commission commends the work of the Australian Electoral Commission (AEC), including through the Disability Advisory Committee, to promote greater accessibility, inclusion and participation in the electoral system. A trial of Accessible Voting Centres during the pre-poll period was conducted at the 2019 federal election.<sup>112</sup>
115. Australian electoral laws provide that persons of 'unsound mind' are not entitled to have their names on the electoral roll or to vote in elections and may be removed from the electoral roll following objection.<sup>113</sup> The ALRC has recommended the repeal of these provisions.<sup>114</sup>
116. Research funded by the AEC and State and Territory election commissions has demonstrated the need for greater support for people with intellectual disability to vote.<sup>115</sup> The study recommended that electoral commissions:
- continue to develop and promote strategies to build the capacity of disability organisations and their staff to support people with intellectual disabilities to voting

- b. explore strategies to engage families in education about voting rights and support that can be provided to people with intellectual disability
- c. explore and pilot peer education to build the individual capacity of people with intellectual disability to participate in voting
- d. consider the role of law reform in removing uncertainties and doubts about who has the right to vote
- e. increase clarity around legitimate types of support
- f. explore strategies to produce and disseminate clear and accessible information for people with intellectual disability about political platforms and public affairs.<sup>116</sup>

**Recommendation 62: The Australian Government continue to support and resource the work of the Australian Electoral Commission to ensure all voting and election processes are fully accessible and inclusive for people with disability.**

**Recommendation 63: The Australian Government repeal the ‘unsound mind’ provisions of the *Commonwealth Electoral Act 1918* (Cth) and work with State and Territory governments to review and benchmark all electoral laws against the CRPD.**

#### **4.22 Statistics and data collection (CRPD art 31, CO 53-56, LOI 33)**

- 117. There is a lack of data on people with disability disaggregated by age, location, socio-economic status, cultural background, disability, lesbian, gay, bisexual, trans and intersex (LGBTI) status and priority population groups, including Aboriginal and Torres Strait Islander peoples with disability. There is also no framework or nationally consistent measures for the collection and public reporting of disaggregated data across the obligations contained in the CRPD. These data gaps impede Australia’s capacity to monitor and report on the CRPD and the wellbeing of people with disability.
- 118. In July 2018, the Australian Government created the Office of the National Data Commissioner to oversee and monitor the integrity of Australia’s data system. The Commission welcomes this initiative.
- 119. The Productivity Commission recommended that a new NDA should establish a clear strategy for the collection, funding, and reporting of data required for the agreement’s performance reporting framework.<sup>117</sup> The Commission is of the view that this strategy could form the basis of a broader data collection strategy for people with disability.

120. Australia is yet to commission and fund a comprehensive assessment of the situation of women and girls with disability<sup>118</sup> and a comprehensive assessment of the situation of children and young people with disability.<sup>119</sup>

**Recommendation 64: The Australian Government, in conjunction with the Office of the National Data Commissioner, develop a national disability data framework to ensure appropriate, nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD.**

**Recommendation 65: The Australian Government commission a comprehensive assessment on the situation of women and girls with disability and children with disability in Australia, as part of the next National Disability Strategy.**

#### **4.23 International cooperation (CRPD art 32, LOI 34)**

121. The Office of Development Effectiveness conducted an independent review of Australia's Development for All Strategy 2015–2020 in November 2018.<sup>120</sup> The Commission is pleased that the independent review found disability is now a cross-cutting priority for the aid program. However, continued improvement is required for the Australian aid program to be fully disability inclusive. The review made six recommendations to further strengthen disability inclusion.
122. The Commission considers it important that the next Development for All Strategy 2015–2020 details how Australia's aid program will align with the 2030 Agenda for Sustainable Development, drawing on the linkages between the 2030 Agenda and the CRPD.<sup>121</sup>
123. Through the Department of Foreign Affairs and Trade, the Commission implements human rights technical cooperation activities with other countries in the Indo Pacific region. The Commission welcomes the Australian Government's support of these programs, several which focus on enhancing the rights of persons with disabilities.

**Recommendation 66: The Australian Government ensure the next Development for All Strategy:**

- a. implements the recommendations made by the Office Development Effectiveness in its 2018 review of the strategy**
- b. is informed by the linkages between the CRPD and the 2030 Agenda for Sustainable Development Goals**
- c. is developed in a timely manner**
- d. had adequate resources for implementation.**

#### **4.24 National implementation and monitoring (CRPD art 33, CO 57-58, LOI 35)**

124. The Commission is of the view that a clear coordination mechanism is needed to facilitate whole of Government action to implement the CRPD, including to monitor measures for implementation, develop further measures for implementation and to coordinate the ongoing processes for reporting under the CRPD.<sup>122</sup>
125. As discussed in paragraph 20, the Productivity Commission recommended a new NDA to better promote cooperation, enhance accountability and clarify roles and responsibility of Commonwealth, State and Territory governments. The Productivity Commission also recommended that the NDA articulate how governments intended to fulfil Australia's commitments under the CRPD.<sup>123</sup> A strengthened NDA could serve as an overarching funding mechanism for implementation of the NDS and CRPD.
126. In 2017, the Senate Standing Committee on Community Affairs recommended the Australian Government establish an Office of Disability Strategy as a coordination strategy for the NDS.<sup>124</sup> This Office could sit within the Department of Prime Minister and Cabinet and drive national implementation and monitoring of the CRPD across all agencies and levels of Government.

**Recommendation 67: The Australian Government ensure that an updated National Disability Agreement embeds the obligations provided by the CRPD and serves as coordination and funding mechanism for implementation of the NDS and CRPD.**

**Recommendation 68: The Australian Government establish an Office of Disability Strategy, within the Department of Prime Minister and Cabinet, as a central national coordination agency to drive implementation and monitoring of the CRPD across all agencies and levels of Government.**

## **Attachment 1: Compilation of Recommendations**

### **Priority areas**

The matters addressed in this submission are all of importance to Australia's compliance with the CRPD. However, the Commission wishes to draw the Committee's attention to three areas of critical importance:

- a. the need to introduce a legal framework that recognises the equal legal capacity of people with disability and enables and facilitates the creation and implementation of various supports for the exercise of legal capacity (Recommendation 26)
- b. the need to accelerate action to ensure people with disability are not unlawfully or arbitrarily deprived of their liberty on the basis of disability, including in the criminal justice system (Recommendations 29 to 31)
- c. the need to prohibit the practice of sterilisation of children with disability, and adults with disability without their free, prior and informed consent (Recommendations 36 to 38).

The Commission recommends that the Committee request an update from the Australian Government on progress in relation to the above three priority areas in 12 months, under article 36 of the CRPD and Sections G and H of the Working methods of the Committee on the Rights of Persons with Disabilities.

### **General principles and obligations**

**Recommendation 1: The Australian Government fully incorporate the CRPD into domestic law.**

**Recommendation 2: The Australian Government introduce specific disability rights impact assessments on legislative changes that may impact the human rights of people with disability.**

**Recommendation 3: The Australian Government withdraw its interpretative declaration to the CRPD.**

**Recommendation 4: The Australian Government establish permanent consultation mechanisms and develop best practice guidelines for the active engagement of people with disability and their representative organisations in policy development, implementation and monitoring activities relating to the CRPD.**

**Recommendation 5: The Australian Government ensure adequate, secure and long-term funding for independent and systemic representation and advocacy in all matters relevant to the CRPD, including through the National Disability Advocacy Program.**

**Recommendation 6: The Australian Government ensure that the National Disability Agreement and the next National Disability Strategy have adequate resourcing, measurable goals and robust monitoring, reporting, evaluation, governance and accountability requirements, including by implementing the recommendations made by the Productivity Commission and the Social Policy Research Centre at the University of New South Wales.**

**Recommendation 7: The Australian Government develop and adequately resource action plans for the implementation of the Aboriginal and Torres Strait Islander Engagement Strategy, the Rural and Remote Strategy and the Culturally and Linguistic Diversity Strategy.**

**Recommendation 8: The Australian Government develop an NDIS Gender Equality Strategy and an NDIS Children and Young People Strategy, each supported by an action plan with concrete goals and timeframes.**

**Recommendation 9: The Australian Government address inequality in access to, and outcomes from, the NDIS, by:**

- a. providing ongoing support for the NDIS Thin Markets Project
- b. improving the collection and reporting of disaggregated data
- c. addressing barriers to access, including proving eligibility.

**Recommendation 10: The Australian Government clarify the role of the Information, Linkages and Capacity Building of the NDIS and the level of funding required to ensure the effectiveness of the program.**

**Recommendation 11: The Australian Government act upon the recommendations of the Productivity Commission to ensure effective monitoring and evaluation of the NDIS that actively involves people with disability and their representative organisations.**

## **Equality and non-discrimination**

**Recommendation 12: The Australian Government review and amend the *Disability Discrimination Act 1992* (Cth) to ensure it aligns with the CRPD, particularly the 'reasonable accommodation' duty.**

**Recommendation 13:** In respect of the *Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability*, the Australian Government:

- a. closely consult and actively involve Aboriginal and Torres Strait Islander peoples with disability and their representative organisations in all aspects of the design and implementation of actions under the plan and the monitoring and review of the plan
- b. adequately resource actions under the plan
- c. review and update the plan to align with the next NDS.

## **Women and girls with disability**

**Recommendation 14:** The Australian Government ensure the *Fourth Action Plan* under the *National Plan to Reduce Violence against Women and their Children 2010–2022*:

- a. addresses all forms of violence perpetrated against women and children with disability
- b. ensures protections are in place to prevent involuntary or coerced sterilisation of women and children with disability
- c. includes targeted prevention and early intervention initiatives for women with disability, such as support and education on respectful relationships
- d. includes measures to ensure information, resources and education for women with disability are provided in a range of accessible formats
- e. expands research and data-collection measures to better understand the nature and prevalence of violence against women and girls with disability, to inform evidence-based policy responses.

## **Children with disability**

**Recommendation 15:** The Australian Government amend the *Family Law Act 1975 (Cth)* to require that children are provided with assistance and accommodations to express their views in all matters that affect their rights or interests.

**Recommendation 16:** Australian Governments, in conjunction with the Office of the National Data Commissioner, develop a national children's data framework to ensure appropriate data collection that can be disaggregated by a range of factors, including disability.

**Recommendation 17: The Australian Government ensure children with disability and their families are provided with adequate and appropriate community-based supports, including through the NDIS, to prevent institutionalisation.**

## **Awareness raising**

**Recommendation 18: The Australian Government ensure that the next National Disability Strategy include policy directions and dedicated actions at the individual, organisational and structural levels to develop and implement awareness raising and education programs that are consistent with the CRPD.**

## **Accessibility**

**Recommendation 19: The Australian Government introduce a national data collection and reporting framework, coordinated between the Commonwealth, State and Territory governments, to enable the measurement of progress and compliance against the Building Standards and Transport Standards.**

**Recommendation 20: The Australian Government consider additional enforcement mechanisms for the Building Standards and Transport Standards.**

**Recommendation 21: The Australian Government take immediate action to implement the recommendations from the reviews of the Building Standards and Transport Standards and allocate sufficient resources to implement these recommendations.**

**Recommendation 22: The Australian Government undertake a gap analysis of Australia's laws and policies to identify measures needed to ensure accessibility for people with disability, on an equal basis with others. In particular, gaps relating to: (i) accessibility of information and methods of communication, (ii) air travel, (iii) emerging forms of transport services, including ride sharing services, (iv) emerging technology and digital accessibility, and (v) commercial premises, public spaces and amenities.**

**Recommendation 23: The Australian Government introduce a mandatory minimum standard of accessibility in the National Construction Code for all private dwellings in Australia.**

## **Situations of risk and humanitarian emergencies**

**Recommendation 24:** The Australian Government revise the National Strategy for Disaster Resilience and other relevant policies and frameworks, to align with the Sendai Framework for Disaster Risk Reduction (2015-2030), including to:

- a. ensure emergency information and warning systems are fully available, free and accessible throughout Australia for all persons with disability
- b. provide explicitly for accessibility for and inclusion of people with disability in all responses to situations of risk
- c. require all public services to develop individual and local plans for the safe evacuation of people with disability in consultation with people with disability through their representative organisations.

**Recommendation 25:** The Australian Government require that all funding for disaster recovery include provision for new buildings or buildings requiring refurbishment as a result of natural disasters to meet the *Disability (Access to Premises—Building) Standards 2010*.

## **Equal recognition before the law**

**Recommendation 26:** The Australian Government implement a nationally consistent supported decision-making framework, as recommended in the Australian Law Reform Commission's 2014 report *Equality, Capacity and Disability in Commonwealth Laws*.

## **Access to justice**

**Recommendation 27:** The Australian Institute of Health and Welfare extend its data collection to all stages of the criminal justice system and continue to work with states and territories to improve data collection to allow for disaggregation by disability, age, gender, location and ethnicity.

**Recommendation 28:** All Australian governments develop Disability Justice Plans to detail the actions they will take to ensure access to justice for people with disability, including by:

- a. reviewing and amending civil and criminal legislation and procedural rules to ensure a duty to provide procedural accommodations in all legal proceedings;

- b. developing and implementing measures to ensure the same substantive and procedural guarantees for people with disability in the context of legal proceedings as for others**
- c. developing assessment protocols to improve data collection and assist police, courts, and correctional institutions to identify the supports required to provide procedural guarantees and age appropriate accommodations**
- d. developing and implementing measures to ensure people with disability can serve as jurors**
- e. developing and implementing targeted measures to promote, support and empower people with disability to work in the justice system**
- f. incorporating compulsory modules on working with people with disability into training programmes for those working in the field of the administration of justice.**

## **Liberty and security of person**

**Recommendation 29:** The Australian Government implement the recommendations of the Senate Community Affairs References Committee in the *Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia* report.

**Recommendation 30:** The Australian Government release the draft *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment* for consultation.

**Recommendation 31:** The Australian Government work with State and Territory governments to adopt a human rights-based approach to mental health laws and review all laws that authorise:

- a. involuntary hospitalisation, including committal to mental-health facilities, on the basis of perceived or actual impairment**
- b. the administration of medical intervention to people with disability without the free, prior and informed consent of the person concerned**
- c. imposition of compulsory treatment by means of Community Treatment Orders.**

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

**Recommendation 32:** The Australian Government work with State and Territory governments to develop a national framework to

**monitor and regulate the use of restrictive practices, against people with disability, with a view to reducing and eliminating their use, in all settings and contexts where they are used, including justice, education, health, mental health and aged care facilities.**

**Recommendation 33: The Australian Government direct the NDIS Quality and Safeguards Commission to report annually on the progress made towards reducing and eliminating the use of restrictive practices and publish data on the total number of reported uses of restrictive practices.**

**Recommendation 34: The Australian Government implement OPCAT with a view to applying it to all places of detention where an individual is or may be deprived of his or her liberty, including disability-specific settings, such as mental health facilities, forensic psychiatric or disability units, residential institutions (including group homes) and segregated educational facilities.**

## **Freedom from exploitation, violence and abuse**

**Recommendation 35: The Australian Government implement the recommendations in the Australian Human Rights Commission's report *A Future Without Violence*.**

## **Integrity of the person**

**Recommendation 36: The Australian Government work with State and Territory governments to adopt uniform legislation prohibiting, in the absence of the free, prior and informed consent of the person concerned:**

- a. the administration of contraceptives and abortion procedures on women and girls with disability**
- b. the sterilisation of adults and children with disability.**

**Recommendation 37: The Australian Government review and amend the Family Law Rules 2004 relating to Medical Procedure Applications so that they align with the CRPD and the CRC.**

**Recommendation 38: The Australian Government work with State and Territory governments to ensure a nationally consistent human rights-based approach to decision-making about medical interventions on children with variations in sex characteristics.**

## **Liberty of movement and nationality**

**Recommendation 39:** The Australian Government review and amend Australia's migration laws and policies to ensure people with disability do not face discrimination in any of the formalities and procedures relating to migration and asylum.

## **Living independently and being included in the community**

**Recommendation 40:** The Australian Government develop a national framework for the closure of all disability-specific residential institutions in Australia, and the prevention of trans-institutionalisation including:

- d. addressing how people with disability not eligible for the NDIS can be supported to transition to live independently in the community
- e. ensuring consistent quantitative and qualitative data collection relating to people with disability who live in residential institutions.

**Recommendation 41:** The Australian Government review and amend the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* and related operational guidelines and policies to ensure alignment with Article 19 of the CRPD and General Comment No. 5 (2017).

**Recommendation 42:** The Australian Government introduce regulatory safeguards to prevent young people with disability entering or remaining in aged care facilities and strengthen the *Younger People in Residential Aged Care—Action Plan* by:

- d. amending the Action Plan to provide that no person aged under 65 years should enter or live in residential aged care by 2025.
- e. including a dedicated and well-funded role for the National Disability Advocacy program to provide advocacy services to all young people with disability living, or at risk of entering, aged care facilities
- f. including specific actions to support young people in aged care facilities, or at risk of entering aged care facilities, who are not eligible to access the NDIS, transition to living independently in the community.

## **Freedom of expression and opinion and access to information**

**Recommendation 43:** The Australian Government review the captioning exemption and target reduction process under the *Broadcasting Services Act 1992* (Cth) and introduce incremental captioning targets for multi-channels and online videos.

**Recommendation 44:** The Australian Government, drawing on the Audio Description Working Group's report, develop and introduce amendments to the *Broadcasting Services Act 1992* (Cth) requiring audio description of not less than 10% of all television content to facilitate greater access to television news, information and entertainment for people with disability.

**Recommendation 45:** The Australian Government work with State and Territory governments to ensure that all information about significant changes to laws, policies, systems and obligations should be provided in a range of accessible formats, including Easy Read.

**Recommendation 46:** The Australian Government update the 'Australia.gov.au' website to comply with Web Content Accessibility Guidelines (WCAG) 2.1.

## **Education**

**Recommendation 47:** The Australian Government expand the Nationally Consistent Collection of Data on School Students with Disability to collect data on:

- a. the numbers of students with disability who do not qualify for an adjustment
- b. the number of students who are unable to enrol in their local mainstream schools
- c. educational attainment and completion rates
- d. the rates of suspension and expulsion
- e. the use of restrictive practices.

**Recommendation 48:** In line with General Comment No. 4, targets 4.5 and 4.8 of the Sustainable Development Goals and the recommendations made in the *Access to Real Learning* report, the Australian Government work with State and Territory governments to develop a comprehensive and coordinated strategy for ensuring inclusive education across Australia, with clear timeframes for implementation.

**Recommendation 49:** The Australian Government update the *Melbourne Declaration on Education Goals for Young Australians* to include a specific commitment to promote inclusive education.

**Recommendation 50:** As part of the Third Review of the Disability Standards for Education (2005), the Australian Government:

- a. conduct a comprehensive consultation process, including with children and young people with disability
- b. consider how the implementation, enforceability, monitoring and compliance of the Education Standards can be improved
- c. dedicate adequate resources to implementing the recommendations made following the review.

**Recommendation 51:** The Australian Government ensure that the funding model and budgetary allocations for students with disabilities expeditiously and effectively transfer resources from segregated to inclusive education environments.

## **Health**

**Recommendation 52:** The Australian Government work with State and Territory governments to develop an action plan to ensure:

- a. all people with disability have access, on an equal basis with others, to affordable, accessible, quality and culturally sensitive health services, including sexual and reproductive health and mental health services, with particular consideration of people in rural and remote areas and Aboriginal and Torres Strait Islander peoples with disability
- b. all health care services and programmes are based on a human rights approach to disability, are non-discriminatory and seek informed consent prior to any medical treatment
- c. health-care practitioners are provided with training on the human rights-based approach to disability to enhance their capacity to provide accessible, quality health care to people with disability.

**Recommendation 53:** The Australian Government redouble their efforts to achieve the Closing the Gap targets, including by adequately funding the *National Aboriginal and Torres Strait Islander Health Plan*, the *Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability* and targeting programs to address the social determinants of health.

## **Access to habilitation and rehabilitation**

**Recommendation 54:** The Australian Government work with State and Territory governments to review laws and policies that govern the provision of habilitation and rehabilitation services by health services to ensure they align with the CRPD and promote a person-centred, rights-based and participatory approach that is gender- and age-sensitive.

## **Right to work**

**Recommendation 55:** The Australian Government provide a timeframe for finalising and implementing the National Disability Employment Framework.

**Recommendation 56:** The Australian Government undertake a comprehensive review of Australian Disability Enterprises (ADEs) against the requirements of Article 27 of the CRPD and provide services to transition people with disability into open forms of employment.

**Recommendation 57:** The Australian Government provide detail on the nature of reforms to Disability Employment Services which seek to address underlying structural barriers experienced by women with disability, and work with women with disability and their representative organisations, to develop and implement these reforms.

**Recommendation 58:** The Australian Government continue to implement the Willing to Work report recommendations, including expanding the role of the Workplace Gender Equality Agency (WGEA) to extending its current functions to Australians with disability.

**Recommendation 59:** The Australian Government commission an independent evaluation of the Australian Public Service Disability Employment Strategy (2016–2019).

## **Adequate standard of living**

**Recommendation 60:** The Australian Government work with State and Territory governments to ensure people with disability are included as a priority cohort in the implementation of the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.

**Recommendation 61: The Australian Government develop a national poverty reduction plan that addresses disability as a cross-cutting issue.**

## **Participation in political and public life**

**Recommendation 62: The Australian Government continue to support and resource the work of the Australian Electoral Commission to ensure all voting and election processes are fully accessible and inclusive for people with disability.**

**Recommendation 63: The Australian Government repeal the 'unsound mind' provisions of the *Commonwealth Electoral Act 1918* (Cth) and work with State and Territory governments to review and benchmark all electoral laws against the CRPD.**

## **Statistics and data collection**

**Recommendation 64: The Australian Government, in conjunction with the Office of the National Data Commissioner, develop a national disability data framework to ensure appropriate, nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the CRPD.**

**Recommendation 65: The Australian Government commission a comprehensive assessment on the situation of women and girls with disability and children with disability in Australia, as part of the next National Disability Strategy.**

## **International cooperation**

**Recommendation 66: The Australian Government ensure the next Development for All Strategy:**

- a. implements the recommendations made by the Office Development Effectiveness in its 2018 review of the strategy
- b. is informed by the linkages between the CRPD and the 2030 Agenda for Sustainable Development Goals
- c. is developed in a timely manner
- d. had adequate resources for implementation.

## **National implementation and monitoring**

**Recommendation 67: The Australian Government ensure that an updated National Disability Agreement embeds the obligations**

**provided by the CRPD and serves as coordination and funding mechanism for implementation of the NDS and CRPD.**

**Recommendation 68: The Australian Government establish an Office of Disability Strategy, within the Department of Prime Minister and Cabinet, as a central national coordination agency to drive implementation and monitoring of the CRPD across all agencies and levels of Government.**

<sup>1</sup> This submission is based on work that has been undertaken by the Commission in accordance with its mandate and functions, or otherwise on publicly available information. The Commission has brought the issues raised in this submission to the attention of the Australian Government. This submission provides information concerning disability discrimination experienced by key population groups in Australia and other thematic issues relating to disability discrimination. In relation to each section the Commission has referred to the relevant articles of CRPD engaged, the relevant paragraph of the Committee's concluding observations on Australia's first report (CO) and the Committee's list of issues (LOI) and questions in relation to the second and third periodic report of Australia.

<sup>2</sup> The Commission notes that the LOI did not include issues pertaining to Articles 10, 20 and 23. The Commission supports consideration of these matters by the Committee during the interactive dialogue.

The Commission is concerned that people with disability in Australia do not enjoy their right to life on an equal basis with others (article 10). For example, people with intellectual disability experience over twice the rate of avoidable deaths (see paragraph 101).

The Commission also considers that further measures are needed to ensure personal mobility with the greatest possible independence for all people with disability (article 20). This includes measures in respect of the NDIS (see paragraphs 24-28) and ensuring accessible environments (see paragraphs 48-54).

Finally, the Commission is concerned that parents with disability, particularly those with intellectual disability, experience significant discrimination (article 23), including having a child removed from their care at disproportionately higher rates. Australian Institute of Family Studies, 'Parental Intellectual Disability and Child Protection: Key Issues' (December 2009) <<https://aifs.gov.au/cfca/publications/parental-intellectual-disability-and-child-protection-key-i>>.

<sup>3</sup> The Commission, in its submission under the Universal Periodic Review process, recommended that Australia's human rights obligations be directly incorporated into Australian law. See: Australian Human Rights Commission, *Submission under the Universal Periodic Review Process: Australia's Second Universal Periodic Review* (2015), 8.

<<https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>>

<sup>4</sup> *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.

<sup>5</sup> George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Review for Human Rights' 41(2) *Monash University Law Review* 469, 474-5; Australian Law Reform Commission, 'Traditional Rights and Freedom -Encroachments by Commonwealth Laws' (ALRC Report 129, 2 March 2016) <<https://www.alrc.gov.au/publications/freedoms-alrc129>>. For example, some statements of compatibility devote cursory attention to assessing a draft law's identified impingement on human rights and some simply assert (without due explanation) that a draft law is compatible with human rights even where an impingement on rights has been acknowledged.

<sup>6</sup> The Commission recommends that the Australian Government implement the recommendations made by in the Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (ALRC Report 124, August 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>>..

<sup>7</sup> University of New South Wales, Social Policy Research Centre, 'Review of Implementation of the National Disability Strategy 2010-2020: Final Report' (August 2018) 17 <<http://doi.org/10.26190/5c7494b61edc4>>.

<sup>8</sup> Parliament of Australia, Senate Community Affairs References Committee, 'Delivery of Outcomes under the National Disability Strategy 2010-2020 to Build Inclusive and Accessible Communities' (November 2017) Recommendation 5

<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AccessibleCommunities/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AccessibleCommunities/Report)>.

<sup>9</sup> Australian Human Rights Commission, 'Working towards Equality for People with Disability' (December 2017) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/working-towards-equality-people-disability>>.

<sup>10</sup> Australian Government, Department of Social Services, 'Disability, Mental Health and Carers Programme - Disability and Carer Support Guidelines Overview' (June 2014) <[https://www.dss.gov.au/sites/default/files/documents/12\\_2014/disabilityand\\_carer\\_support\\_programme\\_guidelines\\_0.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2014/disabilityand_carer_support_programme_guidelines_0.pdf)>; Australian Government, Department of Social Services, 'Operational Guidelines for the National Disability Advocacy Program' (February 2018) <[https://www.dss.gov.au/sites/default/files/documents/03\\_2018/ndap\\_operational\\_guidelines\\_february\\_2018.pdf](https://www.dss.gov.au/sites/default/files/documents/03_2018/ndap_operational_guidelines_february_2018.pdf)>.

<sup>11</sup> Productivity Commission, 'Review of the National Disability Agreement: Study Report' (January 2019) 10 <<https://www.pc.gov.au/inquiries/completed/disability-agreement/report/disability-agreement.pdf>>.

<sup>12</sup> Productivity Commission, above n 11, 2, 37, 161.

<sup>13</sup> Productivity Commission, above n 11, 38, 116–119.

<sup>14</sup> Productivity Commission, above n 11, 2, 23, 38.

<sup>15</sup> University of New South Wales, Social Policy Research Centre, above n 7, 1.

<sup>16</sup> University of New South Wales, Social Policy Research Centre, above n 7, 2–4.

<sup>17</sup> Karen Soldatic et al, 'Intellectual Disability and Complex Intersections: Marginalisation under the National Disability Insurance Scheme' 1(1) *Research and Practice in Intellectual and Developmental Disabilities* 6.

<sup>18</sup> The NDIA expect that around 20% of NDIS participants will be from a CALD background. As at 31 March 2019, 8.2% of NDIS participants were from a CALD background.

National Disability Insurance Agency, 'Cultural and Linguistic Diversity Strategy 2018' (2018) 5 <<https://www.ndis.gov.au/about-us/strategies/cultural-and-linguistic-diversity-strategy>>; National Disability Insurance Agency, 'COAG Disability Reform Council - Quarterly Report' (31 March 2019) 67 <<https://www.ndis.gov.au/about-us/publications/quarterly-reports>>.

The NDIA have not projected the percentage of participants who will be Aboriginal and Torres Strait Islander people. The Australian Bureau of Statistics estimates that 60,000 Aboriginal and Torres Strait Islander people have a 'severe or profound disability'. This equates to 7.5% of the projected total number of participants. As at 31 March 2019, 5.5% of NDIS participants were Aboriginal and Torres Strait Islander people.

Australian Bureau of Statistics, 'Disability, Ageing and Carers, Australia: Summary of Findings, 2015' (18 October 2016) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>>; National Disability Insurance Agency, 'COAG Disability Reform Council - Quarterly Report', 66.

<sup>19</sup> National Disability Insurance Agency, 'Aboriginal and Torres Strait Islander Engagement Strategy' (2017) <<https://www.ndis.gov.au/about-us/strategies/aboriginal-and-torres-strait-islander-strategy>>.

<sup>20</sup> National Disability Insurance Agency, 'Rural and Remote Strategy (2016-2019)' (February 2016) <<https://www.ndis.gov.au/about-us/strategies/rural-and-remote-strategy>>.

<sup>21</sup> National Disability Insurance Agency, 'Cultural and Linguistic Diversity Strategy 2018', above n 18.

<sup>22</sup> National Disability Insurance Agency, 'COAG Disability Reform Council - Quarterly Report', above n 18, Table E.13, 71.

<sup>23</sup> Australian Bureau of Statistics, above n 18.

<sup>24</sup> The Hon Paul Fletcher MP, The Hon Sarah Henderson MP, 'Joint Media Release: Government Tackles NDIS Market with Sector Engagement' <<https://www.paulfletcher.com.au/media-releases/joint-media-release-government-tackles-ndis-market-with-sector-engagement>>; Commonwealth of Australia, Department of Social Services, 'NDIS Thin Markets Project' <<https://engage.dss.gov.au/ndis-thin-markets-project>>.

<sup>25</sup> Productivity Commission, above n 11, 12.

<sup>26</sup> Productivity Commission, above n 11, Recommendation 5.3.

<sup>27</sup> Defined as 'an adjustment to be made by a person is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the person' *Disability Discrimination Act 1992* (Cth) s 4.

<sup>28</sup> *Disability Discrimination Act 1992* (Cth) s 5(2).

<sup>29</sup> *Disability Discrimination Act 1992* (Cth) s 6(2).

<sup>30</sup> As explained in the United Nations Committee on the Rights of Persons with Disabilities *General Comment No.6 (2011) on Equality and Non-Discrimination* UN Doc CRPD/C/GC/6 (26 April 2018).

<sup>31</sup> Commonwealth of Australia, Department of Social Services, 'Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability' (2017) <[https://www.dss.gov.au/sites/default/files/documents/10\\_2017/dss0001\\_atsti\\_disability\\_plan\\_accessible\\_v1.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2017/dss0001_atsti_disability_plan_accessible_v1.pdf)>.

<sup>32</sup> Australian Institute of Health and Welfare, 'Family, Domestic and Sexual Violence in Australia: Continuing the National Story 2019' (5 June 2019) <<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-australia-2019/report-editions>>.

<sup>33</sup> Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018). <<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>>

<sup>34</sup> Australian Human Rights Commission, 'Input to the Fourth Action Plan under the National Plan to Reduce Violence against Women and Their Children 2010-2022' (18 October 2018).

<sup>35</sup> Australian Human Rights Commission, Submission to the United Nations Committee on the Rights of the Child, *Information Relating to Australia's Joint Fifth and Sixth Report under the Convention on the Rights of the Child, Second Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and Second Report on the Optional Protocol on the Involvement of Children in Armed Conflict* (1 November 2018) [20], Recommendation 5. <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>>.

<sup>36</sup> Australian Law Reform Commission, 'Family Law for the Future — An Inquiry into the Family Law System' (March 2019) <[https://www.alrc.gov.au/sites/default/files/alrc\\_report\\_135.pdf](https://www.alrc.gov.au/sites/default/files/alrc_report_135.pdf)>.

<sup>37</sup> Australian Government, 'Combined Second and Third Periodic Reports Submitted by Australia under Article 35 of the Convention, Due in 2018' (CRPD/C/AUS/2-3, 5 February 2019) [97].

<sup>38</sup> Australian Institute of Health and Welfare, 'Child Protection Australia 2017-18' (8 March 2019) 2017-18 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2017-18/contents/table-of-contents>>.

<sup>39</sup> Australian Human Rights Commission, '2017-2018 Complaint Statistics' <[https://www.humanrights.gov.au/sites/default/files/AHRC\\_Complaints\\_AR\\_Stats\\_Tables\\_2017-18.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_Complaints_AR_Stats_Tables_2017-18.pdf)>.

<sup>40</sup> Anne Kavanagh et al, 'Community Attitudes towards Australians with Disability: Results from a National Survey, June 2019' (30 June 2019) <[https://melbourne.figshare.com/articles/Community\\_Attitudes\\_towards\\_Australians\\_with\\_Disability\\_Results\\_from\\_a\\_National\\_Survey\\_June\\_2019/8341343](https://melbourne.figshare.com/articles/Community_Attitudes_towards_Australians_with_Disability_Results_from_a_National_Survey_June_2019/8341343)>.

<sup>41</sup> Social Policy Research Centre, Disability Studies and Research Centre, University of New South Wales, 'Community Attitudes to People with Disability: Scoping Project' (Occasional Paper No.39) <[https://www.sprc.unsw.edu.au/media/SPRCFile/Australian\\_community\\_attitudes\\_to\\_disability.pdf](https://www.sprc.unsw.edu.au/media/SPRCFile/Australian_community_attitudes_to_disability.pdf)>.

<sup>42</sup> University of New South Wales, Social Policy Research Centre, above n 7, 4.

<sup>43</sup> Australian Human Rights Commission, 'Review of the Disability Standards for Accessible Public Transport 2002 - Submission to the Disabilities Transport Access Secretariat Department of Infrastructure, Regional Development and Cities' (30 November 2018); Australian Human Rights Commission, 'Submission No.38 to the Senate Community Affairs Reference Committee - Inquiry'<sup>53</sup>

into the Delivery of Outcomes under the National Disability Strategy 2010-2020 to Build Inclusive and Accessible Communities' (April 2017)

<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AccessibleCommunities/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AccessibleCommunities/Submissions)>.

<sup>44</sup> Australian Human Rights Commission, 'Submission No.38 to the Senate Community Affairs Reference Committee - Inquiry into the Delivery of Outcomes under the National Disability Strategy 2010-2020 to Build Inclusive and Accessible Communities', above n 43.

<sup>45</sup> Australian Human Rights Commission, 'Human Rights and Technology' <<https://Tech.Humanrights.Gov.Au/>>.

<sup>46</sup> Australian Human Rights Commission, 'Human Rights and Technology Issues Paper' (July 2018) 37-42 <<https://tech.humanrights.gov.au/sites/default/files/2018-07/Human%20Rights%20and%20Technology%20Issues%20Paper%20FINAL.pdf>>.

<sup>47</sup> Australian Human Rights Commission, 'Minimum Standards for Accessible Housing - Submission to the Australian Building Codes Board' (6 December 2018).

<sup>48</sup> Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws', above n 6.

<sup>49</sup> Australian Government, above n 37, [148].

<sup>50</sup> Australian Human Rights Commission, 'Equal before the Law - Towards Disability Justice Strategies' (February 2014) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>>; Law Council of Australia, 'The Justice Project Final Report - Part 1 - People with Disability' (August 2018) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>>; Human Rights Watch, "'I Needed Help, Instead I Was Punished' - Abuse and Neglect of Prisoners with Disabilities in Australia' (6 February 2018) <<https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>.

<sup>51</sup> Law Council of Australia, above n 50.

<sup>52</sup> Australian Law Reform Commission, 'Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (ALRC Report 133, 28 March 2018) 66 <<https://www.alrc.gov.au/publications/indigenous-incarceration-report133>>; Carol Bower et al, 'Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study among Young People Sentenced to Detention in Western Australia' (2018) 8(2) *BMJ Open* e019605. At <<http://dx.doi.org/10.1136/bmjopen-2017-019605>>

<sup>53</sup> Australian Human Rights Commission, 'Equal before the Law - Towards Disability Justice Strategies', above n 50, 12.

<sup>54</sup> Australian Human Rights Commission, 'Equal before the Law - Towards Disability Justice Strategies', above n 50, 8, 20 and 29.

<sup>55</sup> Australian Human Rights Commission, 'Information for List of Issues Prior to Reporting - Australia' (June 2017) [33]-[34] <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1342&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1342&Lang=en)>; Australian Human Rights Commission, 'Information Relating to Australia's Joint Fifth and Sixth Report under the Convention on the Rights of the Child, Second Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and Second Report on the Optional Protocol on the Involvement of Children in Armed Conflict' (1 November 2018) [354] <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/report-un-committee-rights-child-2018>>. Australian Law Reform Commission, 'Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (Discussion Paper 84)' (July 2017) <[https://www.alrc.gov.au/publications/indefinite-detention-when-unfit-stand-trial#\\_ftn86](https://www.alrc.gov.au/publications/indefinite-detention-when-unfit-stand-trial#_ftn86)>; Piers Gooding et al, 'Unfitness to Stand Trial and the Indefinite Detention of Persons with Cognitive Disabilities in Australia: Human Rights Challenges and Proposals for Change' 40 *Melbourne University Law Review* 816.

<sup>56</sup> *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) s 19; Australian Institute of Criminology, *Diversionary Pathways for Aboriginal Youth with Fetal Alcohol Spectrum Disorder* (28 August 2018) Australian Institute of Criminology 5 <<https://aic.gov.au/publications/tandi/tandi557>>.

<sup>57</sup> Gooding et al, above n 55.

<sup>58</sup> Australian Institute of Criminology, above n 56, 5.

<sup>59</sup> House of Representatives, Standing Committee on Indigenous Affairs, 'Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities' (June 2015) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Indigenous\\_Affairs/Alcohol/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/Alcohol/Report)>.

<sup>60</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review - Australia' (A/HRC/31/14, 13 January 2016) [141] <<https://undocs.org/A/HRC/31/14>>; Human Rights Council, 'Report of the Working Group on the Universal Periodic Review - Australia; Addendum - Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review' (A/HRC/31/14/Add.1, 29 February 2016) [37] <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUIndex.aspx>>.

<sup>61</sup> The draft *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty By Reason of Cognitive or Mental Health Impairment* was not considered by the Council of Attorneys General at the most recent meetings held on November 2018 and June 2019. Council of Attorneys-General, 'Communique' (23 November 2018) <<https://www.ag.gov.au/About/CommitteesandCouncils/Council-of-Attorneys-General/Documents/Council-of-Attorneys-General-communique-November-2018.pdf>>; Council of Attorneys-General, 'Communique' (28 June 2019) <<https://www.ag.gov.au/About/CommitteesandCouncils/Council-of-Attorneys-General/Documents/CAG-June-2019.pdf>>.

<sup>62</sup> Australian Human Rights Commission, 'Inquiry into the Social and Economic Benefits of Improving Mental Health - Submission to the Productivity Commission' (Submission No. 491, 18 April 2019) <<https://www.pc.gov.au/inquiries/current/mental-health/submissions>>.

<sup>63</sup> Australian Institute of Health and Welfare, 'Mental Health Services in Australia' (Web Report, 3 May 2019) <<https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/restrictive-practices>>.

<sup>64</sup> Understood as a practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, with the primary purpose of protecting the person or others from harm - Council of Australian Governments, 'National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector' (1 May 2013) <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>>.

<sup>65</sup> Australian Human Rights Commission, 'Information Relating to Australia's Joint Fifth and Sixth Report under the Convention on the Rights of the Child, Second Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and Second Report on the Optional Protocol on the Involvement of Children in Armed Conflict', above n 55, [285].

<sup>66</sup> Parliament of Australia, Senate Standing Committee on Community Affairs, 'Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, Including the Gender and Age Related Dimensions, and the Particular Situation of Aboriginal and Torres Strait Islander People with Disability, and Culturally and Linguistically Diverse People with Disability' (25 November 2015) Recommendation 10.58 <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)>.

<sup>67</sup> *NDIS (Restrictive Practices and Behaviour Support) Rules 2018*; Australian Government, Department of Social Services, 'NDIS Quality and Safeguarding Framework' (9 December 2016)

<<https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework-0>>.

<sup>68</sup> Australian Human Rights Commission, 'OPCAT in Australia Consultation - Implementation Consultations with Civil Society' (15 May 2017) <<https://www.humanrights.gov.au/our-work/rights-and-freedoms/opcat-consultation-page>>.

<sup>69</sup> Australian Human Rights Commission, 'OPCAT in Australia - Consultation Paper: Stage 2' (June 2018) 23 <<https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/opcat-australia-consultation-paper-stage-2>>; Meredith Lea et al, 'A Disability Aware Approach to Torture Prevention? Australian OPCAT Ratification and Improved Protections for People with Disability' (2018) 24(1) *Australian Journal of Human Rights* 70.

<sup>70</sup> Australian Human Rights Commission, 'OPCAT in Australia - Consultation Paper: Stage 2', above n 69, 34.

<sup>71</sup> Governor General of Australia, 'Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Letters Patent' (4 April 2019) <<https://disability.royalcommission.gov.au/about/Pages/letters-patent.aspx>>.

<sup>72</sup> Australian Human Rights Commission, 'A Future Without Violence: Quality, Safeguarding and Oversight to Prevent and Address Violence against People with Disability in Institutional Settings' (June 2018) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/future-without-violence-2018>>.

<sup>73</sup> Australian Human Rights Commission, 'Information Concerning Australia's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women' (12 June 2018) [25] <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT\\_CEDAW\\_IFN\\_AUS\\_31439\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT_CEDAW_IFN_AUS_31439_E.pdf)>; Australian Human Rights Commission, 'Information Relating to Australia's Joint Fifth and Sixth Report under the Convention on the Rights of the Child, Second Report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and Second Report on the Optional Protocol on the Involvement of Children in Armed Conflict', above n 55, 36; Australian Human Rights Commission, 'Information Concerning Australia's Compliance with the International Covenant on Civil and Political Rights - Submission to the UN Human Rights Committee' (18 September 2017) [61] <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT\\_CCPR\\_NHS\\_AUS\\_28980\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_NHS_AUS_28980_E.pdf)>; Australian Human Rights Commission, 'Information for List of Issues Prior to Reporting - Australia', above n 55, [44]-[46]; Australian Human Rights Commission, 'Submission by the Australian Human Rights Commission under the Universal Periodic Review Process' (April 2015) [26] <<https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review>>; Australian Human Rights Commission, 'The Involuntary or Coerced Sterilisation of People with Disabilities in Australia - Submission to the Senate Community Affairs References Committee' (Submission No.5, 20 November 2012) <<http://www.aph.gov.au/DocumentStore.ashx?id=3d3c9b64-7a59-4e30-bd96-e38d52fe85c8&subId=16108>>.

<sup>74</sup> Australian Human Rights Commission, 'The Involuntary or Coerced Sterilisation of People with Disabilities in Australia - Submission to the Senate Community Affairs References Committee', above n 73.

<sup>75</sup> Australian Human Rights Commission, 'Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015' (10 June 2015) 57 <<https://www.humanrights.gov.au/our-work/lgbti/publications/resilient-individuals-sexual-orientation-gender-identity-intersex>>.

<sup>76</sup> *Migration Act 1958* (Cth) s 65(1)(a)(i) and *Migration Regulations 1994* Division 2.5A.

<sup>77</sup> Ben Saul, 'Migrating to Australia with Disabilities: Non-Discrimination and the Convention on the Rights of Persons with Disabilities' (2010) 16(1) *Australian Journal of Human Rights* 63.

<sup>78</sup> House of Representatives, Joint Standing Committee on Migration, 'Enabling Australia: Inquiry into the Migration Treatment of Disability' (21 June 2010)

<[https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mig/disability/report.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/disability/report.htm)>.

<sup>79</sup> UN Special Rapporteur on the human rights of migrants, 'UN Special Rapporteur on the Human Rights of Migrants Concludes His Official Visit to Australia' (1 November 2016) [49], [92] <<https://un.org.au/files/2016/11/16.11-SRM-Australia-End-of-mission-Statement.pdf>>.

<sup>80</sup> *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* r 4.5(d).

<sup>81</sup> *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* rr 4.5(e), 4.6 and 4.11.

<sup>82</sup> Australian Human Rights Commission, 'Information for List of Issues Prior to Reporting - Australia', above n 55, [54], [55].

<sup>83</sup> Multiple commercial television broadcasting services in digital model under a single commercial television broadcasting service licence.

<sup>84</sup> Australian Communications and Media Authority, 'Report on the Review of the Captioning Obligations in the Broadcasting Services Act 1992' (April 2017) <[https://www.acma.gov.au/-/media/Content-Projects-and-Policy/Information/pdf/ACMA-captioning-report\\_April2017-pdf.pdf?la=en](https://www.acma.gov.au/-/media/Content-Projects-and-Policy/Information/pdf/ACMA-captioning-report_April2017-pdf.pdf?la=en)>.

<sup>85</sup> Australian Government, Department of Communications and the Arts, 'Audio Description Working Group - Final Report' (December 2017) <<https://www.communications.gov.au/documents/audio-description-working-group-final-report>>.

<sup>86</sup> Commonwealth of Australia, Senate Education and Employment References Committee, 'Access to Real Learning: The Impacts of Policy, Funding and Culture on Students with Disability' (15 January 2016) Recommendation 8 <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/students\\_with\\_disability/Report/b01](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report/b01)>.

<sup>87</sup> Monash University, Castan Centre for Human Rights Law, 'Improving Educational Outcomes for Children with Disability in Victoria - Final Report' (June 2018) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/students\\_with\\_disability/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report)>.

<sup>88</sup> Australian Institute of Health and Welfare, 'Disability in Australia: Changes over Time in Inclusion and Participation in Education' (2017) <<https://www.aihw.gov.au/getmedia/34f09557-0acf-4adf-837d-eada7b74d466/Education-20905.pdf.aspx>>.

<sup>89</sup> Kate de Bruin, 'The Impact of Inclusive Education Reforms on Students with Disability: An International Comparison' (2019) 23(7–8) *International Journal of Inclusive Education* 1, 5–6.

<sup>90</sup> Parliament of Australia, Senate Standing Committee on Community Affairs, above n 66; Commonwealth of Australia, Senate Education and Employment References Committee, above n 86.

<sup>91</sup> Children and Young People with Disability Australia, 'CYDA Education Survey 2017 Summary' (2017) <<https://www.cyda.org.au/Default.aspx?PageID=7327229&A=SearchResult&SearchID=11705047&ObjectID=7327229&ObjectType=1>>.

<sup>92</sup> Commonwealth of Australia, Senate Education and Employment References Committee, above n 86, 65–67; Monash University, Castan Centre for Human Rights Law, above n 87.

<sup>93</sup> Urbis, '2015 Review of the Disability Standards for Education 2005 - Final Report' (17 July 2015) 38–40 <<https://docs.education.gov.au/system/files/doc/other/final-report-2015-dse-review.pdf>>; Commonwealth of Australia, Senate Education and Employment References Committee, above n 86, 3.

<sup>94</sup> Australian Government, above n 37, [264].

<sup>95</sup> Australian Human Rights Commission, 'Review of the Melbourne Declaration - Submission' (14 June 2019).

<sup>96</sup> Australian Government, Department of Education, 'Review of the Loading for Students with Disability (SwD)' <<https://www.education.gov.au/review-loading-students-disability-swd>>.

<sup>97</sup> Australian Government, 'Review of Funding for Schooling - Final Report' (December 2011) xvi-xvii <<https://docs.education.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf>>.

<sup>98</sup> Australian Government, above n 37, [275(b)].

<sup>99</sup> Australian Institute of Health and Welfare, 'Access to Health Services by Australians with Disability' (3 December 2017) <<https://www.aihw.gov.au/reports/disability/access-health-services-disability/contents/content>>.

<sup>100</sup> Julian Trollor et al, 'Cause of Death and Potentially Avoidable Deaths in Australian Adults with Intellectual Disability Using Retrospective Linked Data' (2017) 7(2) *BMJ Open* e013489; Faculty of Medicine, The Department of Developmental Disability Neuropsychiatry 3DN, 'Health Inequality and People with Intellectual Disability - Research Summary' (April 2019) <<http://www.nswcid.org.au/images/Advocacy/Research-Analysis-Health-Status-of-People-With-Intellectual-Disability.pdf>>.

<sup>101</sup> Australian Human Rights Commission, 'The Indicators of, and Impact of, Regional Inequality in Australian - Submission to the Senate Economics References Committee' (Submission 33, 30 April 2018) <<https://www.aph.gov.au/DocumentStore.ashx?id=16515e83-f424-432f-ae02-ea62d338d2f0&subId=565544>>.

<sup>102</sup> For example, 32% of children living in rural or remote NSW are unable to access the health services they need. Royal Far West, 'The Invisible Children - The State of Country Children's Health and Development in Australia' (2017) <<https://www.royalfarwest.org.au/wp-content/uploads/2017/12/Invisible-children-web.pdf>>.

<sup>103</sup> Productivity Commission, above n 11, 12-13, 93.

<sup>104</sup> Productivity Commission, above n 11, 14.

<sup>105</sup> UN Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights - Empowering Children with Disabilities for the Enjoyment of Their Human Rights, Including through Inclusive Education*, UN Doc A/HRC/40/27 (22 January 2019) 32.

<sup>106</sup> Australian Government, above n 37, [303].

<sup>107</sup> *National Disability Insurance Scheme Act 2013 (Cth)* s 3(1)(c).

<sup>108</sup> The Commission supports the establishment of a Participant Employment Taskforce and an Economic Participation Grant Round through the NDIA's ILC program. The Hon Paul Fletcher MP, The Hon Sarah Henderson MP, 'Media Release: More than \$19 Million to Support the Work of the NDIS Participant Employment Taskforce' (25 November 2018) <<https://www.ndis.gov.au/news/1166-more-19-million-support-work-ndis-participant-employment-taskforce2>>.

<sup>109</sup> Australian Bureau of Statistics, above n 18.

<sup>110</sup> Australian Public Service Commission, 'APS Employment Data 30 June 2018 Release - Diversity and Gender' (30 June 2018) <<https://www.apsc.gov.au/3-diversity-and-gender>>.

<sup>111</sup> Australia Council of Social Service and the University of New South Wales, *Poverty in Australia 2018* (2018) <[https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS\\_Poverty-in-Australia-Report\\_Web-Final.pdf](https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf)>.

<sup>112</sup> Australia Council of Social Service and University of New South Wales, 'Poverty in Australia 2018' (2018) <[https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS\\_Poverty-in-Australia-Report\\_Web-Final.pdf](https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf)>.

<sup>113</sup> *Commonwealth Electoral Act 1918 (Cth)*, s 93(8)(a), 118(4). See also *Parliamentary Electorates and Elections Act 1912 (NSW)* s 25(a); *Electoral Act 1907 (WA)* s 18(1)(a); *Electoral Act 1985 (SA)* s 29(1)(iv).

<sup>114</sup> Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws', above n 6.

<sup>115</sup> Christine Bigby et al, 'Final Report: Strategies to Support People with Intellectual Disabilities to Participate in Voting.' (Living with Disability Research Centre, La Trobe University, April 2019) <<http://arrow.latrobe.edu.au:8080/vital/access/manager/Repository/latrobe:42631>>.

<sup>116</sup> Bigby et al, above n 115, 63.

<sup>117</sup> Productivity Commission, above n 11, 37, Recommendation 5.2.

<sup>118</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th Sess, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) [54].

<sup>119</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th Sess, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) [56].

<sup>120</sup> Office of Development Effectiveness, Department of Foreign Affairs and Trade, 'Development for All: Evaluation of Progress Made in Strengthening Disability Inclusion in Australian Aid' (November 2018).

<sup>121</sup> Australian Human Rights Commission, 'Inquiry into the United Nations Sustainable Development Goals - Submission to the Senate Foreign Affairs, Defence and Trade References Committee' (Submission No. 138, 12 April 2018)  
<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/SDGs/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/SDGs/Submissions)>.

<sup>122</sup> Parliament of Australia, Senate Community Affairs References Committee, above n 8, 93.

<sup>123</sup> Productivity Commission, above n 11, 10.

<sup>124</sup> Parliament of Australia, Senate Community Affairs References Committee, above n 8.