



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

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English only

Committee on the Rights of Persons with Disabilities

**List of issues in relation to the initial report of Australia
adopted by the Committee at its ninth session (15-19 April
2013)**

Addendum

Replies of Australia to the list of issues* **

[30 July 2013]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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

Purpose and general obligations (arts. 1-4)

Reply to the issues raised in paragraph 1 of the list of issues (CRPD/C/AUS/Q/1)

1. Tables 1, 2, 3 and 4 at Annexure A set out data addressing this issue, from the Australian Bureau of Statistics – Australia’s official national statistical organisation.

Reply to the issues raised in paragraph 2 of the list of issues

2. The Parliamentary Joint Committee on Human Rights was established on 13 March 2012 under the Human Rights (Parliamentary Scrutiny) Act 2011. The Committee examines the compatibility of Commonwealth Bills, disallowable legislative instruments and existing legislation with Australia’s human rights obligations.

3. The definition of human rights in the Act includes the rights and freedoms set out in the United Nations Convention on the Rights of Persons with Disabilities. As at 20 June 2013, the Committee has tabled 16 reports containing its views on the compatibility of Bills and legislative instruments with human rights. The Committee has considered rights in the Convention specifically in respect of nine Bills and two instruments. In five cases, the Committee concluded that the measures proposed were compatible with the rights in the Convention. The Committee sought further information from the Ministers responsible for the remaining Bills and instruments and deferred its assessment of compatibility with human rights until this is available.

Reply to the issues raised in paragraph 3 of the list of issues

4. The Disability Discrimination Act 1992 (Cth) makes it unlawful to discriminate against someone on the grounds of disability. This is a broad standard applying to all aspects of life in Australia, including in relation to: employment, provision of goods, services and facilities, accommodation, land, clubs and associations, sports, or the administration of Commonwealth Government laws and programs. The disability standards in relation to public transport, education and premises, made under the Disability Discrimination Act 1992 (Cth), give further precision to the rights and obligations under that Act in specific circumstances, and provide greater certainty about how to comply with the Act. These three sets of disability standards are the only ones currently in force.

Reply to the issues raised in paragraph 4 of the list of issues

5. The Productivity Commission’s final report *Disability Care and Support, Productivity Commission Inquiry Report, Volume 1, No. 54* was released on 10 August 2011. The inquiry found that Australia’s disability support arrangements were underfunded, unfair, fragmented and inefficient and provided little choice for people with disability. The inquiry recommended the establishment of a national disability insurance scheme and a national injury insurance scheme to ensure high quality support to all Australians in the event of a significant disability or catastrophic accident.

6. The national disability insurance scheme (known as DisabilityCare Australia) was established in March 2013 by the *National Disability Insurance Scheme Act 2013*. The legislation creates the framework for DisabilityCare, including eligibility criteria, age requirements and the nature of support available. The legislation puts the rights of people with disability, their families and carers at the centre of the scheme. The legislation will be reviewed after two years to allow it to be adapted as needed over time.

7. DisabilityCare will support people to live and participate in the community and economy. It will provide people with significant and permanent disabilities with the right support at the right time to maximise their wellbeing and independence, and empower them

to lead a dignified life. They will be able to choose the types of support they want and how and by whom those supports are delivered, based on their particular needs and goals. DisabilityCare will take a lifetime approach to disability. This includes early intervention for people, children in particular, where there is good evidence that it will improve long-term outcomes.

8. The first stage of DisabilityCare launched in four locations around Australia in July 2013. From July 2016, the Australian and State and Territory governments will roll out DisabilityCare in full, and by July 2019 the scheme will cover around 90 per cent of the Australian population. The Australian Government is committed to achieving full national coverage by July 2019 and is continuing to work towards this goal, which would see around 460,000 people with significant and permanent disability receiving the support they need.

9. The design of DisabilityCare has been, and will continue to be, shaped by consultation with people with disability, their families, carers and disability organisations across Australia. This consultation includes advisory and expert bodies, grassroots engagement, targeted consultation and direct feedback through online forums. Consultation has also taken place through hearings of and submissions to the Parliamentary Standing Committee on Community Affairs.

10. The Australian Government is also working with States and Territories to develop a national injury insurance scheme that complements DisabilityCare by providing immediate care and support to people affected by a catastrophic injury resulting from an accident, regardless of fault. The national injury insurance scheme will build on existing accident compensation arrangements. As a first step, those jurisdictions in which DisabilityCare will launch have agreed to minimum national benchmarks for motor vehicle accidents to ensure that motor vehicle accident victims who suffer a catastrophic injury will receive the support they need over their lifetime.

Reply to the issues raised in paragraph 5 of the list of issues

11. The education initiatives developed under *Australia's Human Rights Framework* are primarily delivered over the internet in a range of accessible formats that comply with the Australian Government's *Web Content Accessibility Guidelines version 2.0*. These guidelines were endorsed by the Australian Government in 2010 and set out the standards for accessibility of Australian Government websites. The guidelines require Australian government agencies to meet "Level A (Single A)" conformance by 31 December 2012 and "Level AA (Double AA)" conformance by 31 December 2014.

12. In addition to accessible websites, downloadable human rights education materials are available in a variety of formats, including structured PDFs, which allow standards-compliant software to communicate the content to people with a print disability.

Equality and non-discrimination (art. 5)

Reply to the issues raised in paragraph 6 of the list of issues

13. Australia's Interpretive Declaration to article 18 of the Convention sets out Australia's understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia if these requirements are based on legitimate, objective and reasonable criteria.

14. **Migrants with disability.** The Department of Immigration and Citizenship assesses all visa applicants with a disability in the same manner as applicants with any other significant condition. A disability will not, of itself, necessarily result in a failure to meet

the health requirement set for visa applicants. A person with a disability may, however, fail to meet Australia's migration health requirement if a Medical Officer of the Commonwealth of Australia assesses his/her condition as likely to: (a) result in significant health care and community service costs to the Australian community; and/or (b) prejudice the access of Australians to such services during their stay in Australia.

15. In June 2010, the Commonwealth Parliament Joint Standing Committee on Migration tabled a report, *Enabling Australia: Inquiry into the Migration Treatment of Disability*, which recommended that the Australian Government:

- Adopt a more flexible and individualised approach to the application of the health requirement to people with a disability;
- Widen the range of factors that are considered when determining whether visa applicants with a disability meet the health requirement to include the consideration of a prospective migrant or their family's economic and social benefits balanced against any health and community service costs they may incur; and ensure that the methodology for, and calculation of, such costs are consistent and transparent.

16. The Committee's recommendations were framed in the context of Australia's ratification of the Convention and Australia's interpretive declaration to article 18.

17. The Australian Government has agreed with the broad intent of the recommendations. Accordingly, the Department of Immigration and Citizenship is currently developing a Net Benefit Approach that aims to enhance the migration health requirement for applicants with a significant disease or condition. Subject to a feasibility assessment of the proposed approach and its endorsement by the Australian Government, the new migration health requirement is likely to include two mutually inclusive components:

- First, a net fiscal benefit calculator to estimate the potential economic benefits of visa applicants who have been assessed as not meeting the migration health requirement; and
- Secondly, for those exceeding this threshold, an appraisal of their more intangible economic and other social contributions to Australia, grounded in a consideration of mitigating, compelling and compassionate circumstances.

18. **Humanitarian entrants.** Where health assessments of humanitarian applicants by a Medical Officer of the Commonwealth indicate that significant health care and community service costs to the Australian community would result, the health requirement would usually be waived. The only offshore humanitarian entrants who may be refused on health grounds are those who present as a public health threat, such as applicants with tuberculosis, or those who would prejudice the access of an Australian citizen or permanent resident to health care or community services.

19. **Treatment of people in immigration detention.** The Department of Immigration and Citizenship strives to ensure that people in detention are treated with respect and without discrimination, in accordance with Australian law and Australia's international human rights obligations. The department's detention policy also requires consideration and appropriate placement of clients with vulnerabilities, including disabilities.

Reply to the issues raised in paragraph 7 of the list of issues

20. The Australian Government understands that gender, race, age and other factors can significantly impact on the experience of disability. Efforts are made to ensure that the National Disability Strategy considers the effect of these factors, and that mainstream programs for women or indigenous people include the needs of people with disability.

Below are examples of programs operated by the Australian Government or by State or Territory governments or civil society organisations. A particular focus is on providing services for women and girls with disabilities, including indigenous women, who are at risk of violence.

21. In February 2011, the Commonwealth Government, in partnership with all States and Territories and the non-government sector, launched the National Plan to Reduce Violence against Women and their Children 2010-2022 (the National Plan). The National Plan demonstrates Australia's commitment to upholding the human rights of all Australian women to live free from violence. The National Plan recognises that violence does not occur in isolation from other issues faced by individuals and communities, and that different groups of women have different experiences of violence. The National Plan links with other significant national reforms, the Strategy and the Council of Australian Governments' commitment to Close the Gap in Indigenous disadvantage and the National Framework for Protecting Australia's Children 2009-2021. National Outcome Four of the National Plan ensures that services meet the needs of women and their children experiencing violence. One of the projects under this outcome specifically aims to support improvement of service delivery for women with disability.

22. The Stop the Violence Project is being implemented by civil society organisation Women with Disabilities Australia with support from People with Disabilities Australia and the University of New South Wales. This national project will lay the groundwork for improved service provision for women and girls with disabilities who are experiencing, or are at risk of, violence. It will also help to identify strategies for preventing violence or systemic barriers to responding to women with disability who experience violence.

23. The Australian Attorney-General's Department provides funding to Women's Legal Services and Indigenous Women's Programs operating through the Commonwealth Community Legal Services Program for family violence related matters. In 2011-12, Community Legal Centres assisted 1,206 Indigenous women with a disability. The Government also funds Aboriginal and Torres Strait Islander Legal Services to deliver culturally sensitive and accessible legal assistance services to Indigenous Australians, to ensure that they can fully exercise their rights as Australian citizens. In 2011-12, Aboriginal and Torres Strait Islander Legal Services provided assistance in over 200,000 matters of which a disability was recorded for 13 per cent of those matters.

24. The New South Wales Government is currently reforming laws and services relating to domestic and family violence and recognises that women with a disability are at a greater risk of experiencing violence. The New South Wales Domestic and Family Violence Reforms align with the National Plan to Reduce Violence Against Women and their Children. The Reforms acknowledge that women with disabilities require a specific response and will implement appropriate strategies to address the particular vulnerabilities and needs of women with disabilities experiencing domestic and family violence.

25. Broad policies are designed to consider the needs of people who may encounter intersectional discrimination. The New South Wales Department of Family and Community Services have a number of administrative and program measures which aim to ensure that Aboriginal people with a disability enjoy their rights on an equal basis with others. For example, New South Wales is working to ensure the cultural appropriateness and accessibility of all disability programs and services by:

- Implementing the measures of the Aboriginal Cultural Inclusion Framework including new models of accountability committing \$A24.1 million and 180 places for *Services Our Way – Aboriginal Intensive Support Packages* program which aims to build the capacity and self-resilience of Aboriginal people with a disability and their carers to be the key decision-makers in determining their supports and to

actively participate in decision-making about the planning, implementation and review of services and supports that they receive.

- The soon-to-be-finalised *Tasmanian Women's Plan 2013-18* and *Tasmanian Primary Prevention Strategy to Reduce Family Violence and Sexual Assault* will promote consideration of the needs of and issues facing women and girls with disability, especially those who experience family violence and sexual assault. The Tasmanian Government's *Disability Framework for Action* sets out Tasmania's vision for an inclusive and caring community and applies to all Tasmanian Government agencies. The Framework includes specific actions that commit the government to:
 - Working with the Tasmanian Aboriginal Community and disability services to better understand service issues, improve data collection and service delivery for Tasmanian Aborigines with disability.
 - Increasing the cultural responsiveness of services so that they are non-discriminatory and culturally appropriate in meeting the needs of people from culturally and linguistically diverse backgrounds.

26. In the Australian Capital Territory, the ACT Disability & Community Services Commissioner is leading a project focused on increasing the accessibility and responsiveness of crisis services for women with disabilities.

27. Disability ACT is developing an Aboriginal and Torres Strait Islander People with a Disability Policy Framework, a whole community approach to improving access and culturally sensitive service delivery. The policy framework is a key action under the Australian Capital Territory's policy framework for people with disability, Future Directions: Towards Challenge 2014.

Accessibility (art. 9)

Reply to the issues raised in paragraph 8 of the list of issues

28. The Australian Government is progressing agreed government actions arising from the first five-year review of the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) released on 3 June 2011.¹ The review, conducted by an independent consultant, involved an extensive Australia-wide public consultation process through a web site, an issues paper, written submissions, public hearings and the release of a draft report for comment. It reviewed the main modes of public transport: trams, trains, buses (including school buses and community buses), coaches, taxis, ferries, and aviation.

29. The review found that the introduction of the Transport Standards had significantly changed the way that government and public transport operators thought about and provided access to public transport for people with disability. The review found that the Standards are helping to facilitate the progressive removal of discrimination experienced by people with disability and also had been effective in encouraging investment in accessible infrastructure and transport. The review made 15 key recommendations aimed at addressing systemic issues and issues specific to certain modes of transport. The recommendations provided a range of future work and targets that would help improve the efficiency and effectiveness of the Transport Standards.

¹ The review can be accessed at <http://www.infrastructure.gov.au/transport/disabilities/review/2007.aspx>

30. The Australian Government is implementing its response to the review through three national forums: the Accessible Public Transport Jurisdictional Committee (comprising representatives of all state and territory governments); the Accessible Public Transport National Advisory Committee (comprising representatives from the disability sector, public transport industry and government); and the Aviation Access Working Group (comprising representatives from airlines and airport operators, Australian Government agencies and the disability sector). Good progress has been made in some areas while work undertaken on other issues has been slow due to further detailed research and analysis required in order to ensure the right outcome.

Right to life (art. 10)

Reply to the issues raised in paragraph 9 of the list of issues

31. The ways in which decisions about medical treatment are made, and the legislative frameworks that govern those decisions, are dependent on the individual's circumstances, including the age of the person and whether the person is assessed as having capacity to make decisions about medical treatment. Another determining factor will be whether the medical treatment is urgently needed to save the person's life or the person's health. For the purposes of answering this question, Australia has assumed that the Committee's question relates to medical treatment of a person with disability where that person is assessed as not having the capacity to consent to or to refuse medical treatment.

32. **Adults.** Each State and Territory has arrangements in place to cover consent for certain treatments where a person is assessed as not having the capacity to consent to or refuse medical treatment. Information on the arrangements that are in place in New South Wales and Western Australia is set out below.

33. In New South Wales, there is a rebuttable common law presumption that adults have the capacity to consent to or refuse medical treatment. All adults in New South Wales who have the capacity are able to make an Advance Directive that provides direction about future medical treatment in circumstances where the person loses capacity to make a particular decision. This can include a direction to refuse life-sustaining treatment. An Advance Directive will be binding on a medical practitioner if it is "made by a capable adult, and is clear and unambiguous, and extends to the situation at hand." However, there is no obligation on medical professionals to continue treatments that are "therapeutically ineffective...excessively burdensome, intrusive or futile" even where requested by a substituted decision-maker or by an Advance Directive.

34. In circumstances where an adult does not have the capacity to make an informed decision about medical treatment and there is no applicable Advance Directive, the following framework exists to determine if and when life-sustaining treatment should be withdrawn:

35. A guardian appointed pursuant to the *Guardianship Act 1987* (New South Wales) may have authority to decide to withdraw life-sustaining treatment, depending on the terms of their appointment. This decision must be made in accordance with the best interests of the person in the circumstances, informed by whatever is known about the likely wishes of the person in the situation, reasonable medical opinion as to what is appropriate and the views of the family (including close friends).

36. Whether an enduring guardian can consent to the withdrawal of life-sustaining treatment will depend on the type and scope of the functions given to the guardian in the appointment. There is no case law about the role and powers of enduring guardians in end-of-life decision-making.

37. Decisions for adults who lack capacity can also be made by the Supreme Court of New South Wales as *parens patriae*.

38. There are currently no other circumstances under New South Wales law in which a decision may lawfully be made to withdraw life-sustaining treatment on another adult's behalf. As a result, a "person responsible" such as a spouse, carer or close friend or relative of the person with the disability, is not authorised to make a decision about the withdrawal, cessation, or non-provision of life-sustaining treatment.

39. In Tasmania, pursuant to Part 6 of the *Guardianship and Administration Act 1995* (Tasmania) a "person responsible" (being an appointed guardian or a person who meets a statutory relationship status) can give consent for the giving or withdrawal of medical treatment on behalf of a person who is incapable of giving or refusing such consent by reason of disability. A guardian can also consent to "health care" which would encompass nutrition and hydration.

40. In Western Australia, legal guardians are appointed by the State Administration Tribunal under the *Guardianship and Administration Act 1990* (Western Australia). The Office of the Public Advocate may appoint an advocate for the person with a disability to act on their behalf during discussions about their welfare, including decisions of a medical nature. When seeking a treatment decision for a person who lacks the capacity to make their own judgments, health professionals must follow a "set order of decision-makers" protocol, as specified in Section 110ZJ and 110ZD of the *Guardianship and Administration Act*.

41. **Children.** The Family Court of Australia has jurisdiction to make orders relating to the welfare of children—including those with a disability—under the *Family Law Act 1975* (Cth). The *Family Law Rules 2004*, made under the Act, provide guidance and make special provision in relation to applications for authorisation of a major medical procedure for a child for a purpose other than treating a bodily malfunction or disease. Evidence must be given to satisfy the court that the proposed procedure is in the best interests of the child. This evidence must include evidence from a medical, psychological or other relevant expert witness, and must consider a range of factors, including: the likely long-term physical, social and psychological effects on the child if the procedure is carried out or not carried out, if there are alternatives and less invasive treatments available – and why this procedure is recommended instead of the alternatives, whether the procedure is necessary for the welfare of the child and the child's capacity to make an informed decision about the procedure. If the child is capable of making an informed decision about the procedure — whether the child agrees to the procedure. If the child is incapable of making an informed decision about the procedure, whether the child is likely to develop sufficiently to be able to make an informed decision within the time in which the procedure should be carried out, or within the foreseeable future. In addition, the Family Court may appoint an independent children's lawyer to represent the child's best interests.

Equal recognition before the law (art. 12)

Reply to the issues raised in paragraph 10 of the list of issues

42. All States and Territories have guardianship and administration laws that determine whether a person is able to make reasonable judgements in relation to matters relating to his or her person or circumstances. Information on the arrangements in New South Wales, Western Australia and Tasmania is set out below.

43. In New South Wales, the Decision Making and Consent Policy and Procedures of the Department of Family and Community Services, encourage informal decision-making support where possible. They set out circumstances that require the appointment of a legal

guardian or financial manager. The assessment process for determining a person's capacity to make judgments is governed by the *Guardianship Act 1987* (New South Wales) and *New South Wales Trustee and Guardian Act 2009* (New South Wales). The operation of this legislation will depend on the type of decision in question, whether or not the person has appointed a guardian or attorney and whether they have the capacity to make such an appointment. The relevant test is whether the person is in need of substituted decision-making because, due to a disability, they are totally or partially incapable of managing decision-making themselves.

44. If at a time when the person had capacity they nominated a person as their enduring guardian, the decision as to whether the person now needs that guardian may be made by the Guardianship Tribunal, if requested, or may otherwise be made on the advice of a medical practitioner. An application may be made to the Supreme Court or the Guardianship Tribunal seeking a declaration that the person lacked or lacks capacity because of mental incapacity for a specified time.

45. In relation to medical and dental treatment that is not minor and is not urgently required, consent orders can be sought from the Guardianship Tribunal where a person is 16 years or older and is incapable of giving consent. The responsibility for deciding whether a patient is incapable of giving consent is that of the health care practitioner seeking to administer the treatment.

46. Financial management orders may be made by the Supreme Court of New South Wales or the Guardianship Tribunal if satisfied, on the evidence before it, that the person is incapable of managing their own affairs. Once granted by the Guardianship Tribunal, the New South Wales Trustee and Guardian can also subsequently review whether a person can manage parts of their estate. These reviews, which can be requested by the managed person or any other interested person, involve obtaining reports and opinions from the client and key stakeholders (including family members). The reports are provided to the Chief Executive Officer (CEO) of the New South Wales Trustee and Guardian who makes a final determination. The only basis that the CEO has to revoke a financial management order is regained capacity, which requires clear clinical or practical evidence.

47. In Western Australia, the *Guardianship and Administration Act 1990* provides for the appointment of guardians to safeguard the best interests of adults with decision-making disabilities. The legislation gives the State Administrative Tribunal legal powers to appoint guardians. It also gives adults with full legal capacity the power to appoint enduring guardians. Guardianship may be considered as an option when there is:

- A need for somebody with legal authority to make decisions in the best interests of a person with a decision-making disability;
- Unresolved conflict between family members and/or primary care providers about the person's best interests; and
- Concern that the person may be at risk of neglect, exploitation or abuse.

48. If an application for the appointment of a guardian (and/or administrator) has been made, the Tribunal will conduct a hearing. People with an interest in the person for whom an application has been made will be given the opportunity to put forward their views about what they believe is in the person's best interests.

49. Wherever possible, the person whose decision-making ability is being considered will also have an opportunity to state his or her views and preferences.

50. With respect to Medical Treatment under the *Mental Health Act* (Western Australia), an involuntarily detained patient can consent to medical treatment and then be discharged, granted leave or made subject to a Community Treatment Order and be referred

for medical treatment. An involuntarily detained patient who is unable because of their mental illness to consent to medical treatment may be given that treatment if it has been approved by the Chief Psychiatrist or their delegate. Such medical treatments generally involve surgery requiring a general anaesthetic. Minor medical treatments may be dealt with by the treating team. Medical treatment may also be approved by a patient's guardian, if one has been appointed. Alternatively, if a patient is unable to consent to treatment, approval for treatment may be given under the *Guardianship and Administration Act 1990* (Western Australia).

Reply to the issues raised in paragraph 11 of the list of issues

51. Australia provides answers to this question in relation to the States used as examples in paragraph 10. In Tasmania (pop. 512,000), 2,060 persons were subject to such orders from 1 July 2008 to 30 June 2012.

52. In New South Wales, the Guardianship Tribunal does not make orders for compulsory treatment of people with disabilities. Guardianship orders are generally limited (not plenary). New South Wales data is as follows (pop. 7.3 million):

- Guardianship orders
 - 2008/09 – 1945;
 - 2009/10 – 2114;
 - 2010/11 – 2044;
 - 2011/12 – 2427
- Consents to medical/dental treatment:
 - 2008/09 – 473;
 - 2009/10 – 469;
 - 2010/11 – 408;
 - 2011/12 – 386
- Financial management orders:
 - 2008/09 – 1766;
 - 2009/10 – 1880;
 - 2010/11 – 1593;
 - 2011/12 – 1785;
 - 2012/13 (until 3/2013) – 1551

53. Between August 2008 and May 2013, the Western Australia State Administrative Tribunal made appointments under the *Guardianship and Administration Act 1990* (Western Australia) for 6,815 people (out of a population of 2.5 million) enabling others to make substituted decisions. This includes 1,064 people for whom the Public Advocate is guardian of last resort, 2,872 for whom the Public Trustee is administrator and 2,256 who have private administrators. There is no record of the use of enduring powers of attorney or enduring powers of guardianship as these are private documents. However, any dispute about their operation is overseen by the State Administrative Tribunal.

Reply to the issues raised in paragraph 12 of the list of issues

54. In New South Wales, guardians must follow the General Principles in section 4 of the *Guardianship Act 1987*, which state that persons must be protected against neglect, abuse and exploitation. Operated or funded services for people with a disability are required to provide support according to the Departmental Abuse and Neglect Policy and Procedures, which contain specific reporting and procedural response requirements for allegations or suspicions of abuse, including reporting abuse to police. The Policy and Procedures advise support workers to contact the Guardianship Tribunal if they suspect that the best interests of the person are not being met by a guardian or person responsible. They also provide resources for prevention, detection, early intervention and useful contacts who specialise in responding to abuse. Other mechanisms in place in New South Wales to protect persons with disabilities from abuse, exploitation or neglect include:

- The normal mechanisms of the criminal law (for instance in relation to fraud or assault);
- The review processes of the Guardianship Tribunal for guardianship orders (which can be engaged by the person subject to the order, any person with a genuine concern for that person's welfare, the Public Guardian or the Tribunal itself);
- Review in the Supreme Court of enduring guardians and enduring powers of attorney;
- Audits of private financial managers by the New South Wales Trustee and Guardian; and
- Reviews of decisions of the Public Guardian by the Administrative Decisions Tribunal (which may be sought by a person under guardianship or other interested person. Third party notifications may also trigger a review – for example visiting service providers might raise a concern).

55. In Tasmania, any guardianship or administration order is subject to periodic review as determined by the Guardianship and Administration Board (usually every 3 years). Additionally, all guardians and administrators appointed by the Board must submit an annual report which is scrutinised by the Board. Any person may apply for additional review at any time. Attorneys and enduring guardians are only subject to review on application by a party with a proper interest in the matter. The person with a disability is a party to all legal proceedings and may make an application to review his or her order. Proceedings are modified to meet the accessibility requirements of the person with a disability.

56. In Western Australia, agreements with organisations that receive funds to provide services to people with a disability must require grant recipients to report certain occurrences to the Western Australian Disability Services Commission in relation to a person with disability in their care. Notable they need to report the death, significant physical or psychological harm, assault (including sexual) or neglect that is likely to result in significant physical or psychological harm. The legislation aims to safeguard people with disability and to ensure disability service providers and Commission staff are accountable. All incidences must be reported to the Commission through a Serious Incident Report.

57. The Western Australian Disability Services Commission People at Risk Policy provides a framework for people with a disability who receive services from the Commission that aim to protect them from abuse and neglect. Related guidelines ensure that when an individual is identified as being at risk of experiencing abuse or neglect, the Commission establishes a response team to implement strategies to minimise the risk to the person with a disability.

58. Under section 97 of the *Guardianship and Administration Act 1990* (Western Australia), the Public Advocate has authority to investigate concerns that an adult with a decision-making disability may be being abused, or may be at risk of neglect or exploitation. This includes concerns that a substitute decision-maker may be misusing their authority. If concerns are substantiated, the Public Advocate can make applications to the State Administrative Tribunal for the person to be removed as a substitute decision-maker.

59. The Tribunal has authority to intervene in the operation of guardianship and administration orders, enduring powers of attorney, enduring powers of guardianship and advance health directives. This enables oversight to be applied by an independent body where there are concerns about how decisions are being made. Any person with a proper interest can make applications to the Tribunal.

Reply to the issues raised in paragraph 13 of the list of issues

60. The Capacity Toolkit is a resource used by the New South Wales medical, allied health, mental health, legal, finance, ageing and disability sectors. It is also for use by people with a disability, their family, carers and advocates. The Toolkit is online <www.diversityservices.lawlink.nsw.gov.au/>, published in hardcopy (over 75,000 distributed since 2008) and available in audio. It is used to:

- Educate sectors and the community on the broader concept of autonomy and decision-making capacity;
- Ensure understanding and practical application of the best practice capacity assessment principles which underpin assessments of capacity;
- Provide a plain English explanation of the legal tests for capacity in New South Wales and explain the relationship these tests have to capacity assessments;
- Give practical information on assisted (supported) decision-making; and
- Act as a “one-stop-shop” for other useful contacts.

61. The Toolkit provides a general guide to assisted decision-making, or providing people with a disability with the support or tools they need to make a decision for themselves. Capacity Assessment Principle 6 states that assisted decision-making must be considered during a capacity assessment before pursuing substituted decision (except where there is a court/tribunal appointed substituted decision-maker). The idea of assisted decision-making encompasses Augmentative and Alternative Communication techniques. Augmentative and Alternative Communication is used to enhance speech by using gestures, eye pointing and body language, or to provide an alternative communication system to speech by pointing to symbols, signing or spelling. While the Toolkit provides best practice examples of simple Augmentative and Alternative Communication methods, it does not contain standards. The Toolkit advocates seeking specialist advice or support from a professional where necessary.

Reply to the issues raised in paragraph 14 of the list of issues

62. There is no work underway to review Australia’s interpretive declarations to the Convention. However, there is some work being undertaken in various areas to consider Australia’s implementation of the rights to which the interpretive declarations refer. For example, in June 2013 the Government Commissioned the Australian Law Reform Commission to inquire into barriers to equal recognition before the law and legal capacity for people with a disability. The reference asks the Australian Law Reform Commission to consider Commonwealth laws and legal frameworks that deny or diminish the equal recognition of people with disability as persons before the law and their ability to exercise

legal capacity, and what if any changes could be made. Supported and substituted decision-making are specifically listed as areas to be considered.

Access to justice (art. 13)

Reply to the issues raised in paragraph 15 of the list of issues

63. The principle of equity is central to the *Strategic Framework for Access to Justice*—that is, the civil justice system should be accessible to all its users regardless of ability, gender, means or race. The Strategic Framework has formed the basis of numerous Australian Government access to justice initiatives aimed at reducing barriers and improving the accessibility of our federal civil justice system. Many of these initiatives are designed to build the resilience and capacity of the community to resolve legal issues without resorting to litigation by increasing access to education, information and support services, including:

- The Australian Government’s Access to Justice website <www.accesstojustice.gov.au> where people can find assistance with legal problems and easy access to information;
- Simple guides to educate people about dispute resolution;
- Legislation encouraging people to resolve their disputes outside of courts;
- Increased funding for legal assistance services; and
- A long-term project to develop a stronger evidence base for the civil justice system, which should provide better data about people with disability in the justice system to inform future policy and program reforms.

64. Initiatives such as these especially benefit members of society who traditionally face particular barriers of access to justice, including people with disability. More detail on the Strategic Framework can be found at <www.ag.gov.au/a2j>.

Reply to the issues raised in paragraph 16 of the list of issues

65. Australia believes that the justice system should be accessible to all. Approaches may vary significantly in different courts and jurisdictions. The approaches taken in New South Wales and Western Australia are given here as examples.

66. The New South Wales Department of Family and Community Services has developed a *Justice Services Policy and Criminal Justice Resource Manual* that provides staff with guidance in supporting people with a disability who are in, or at risk of, contact with the criminal justice system. These include guidelines for supporting witnesses or defendants at court and the preparation of documents for diversionary or sentencing processes. They also define the roles of disability staff in relation to the various arms of the justice system such as Police, corrective services/juvenile justice, and courts and tribunals. The manual includes guidelines on arranging independent support persons and facilitating effective communication between the person with intellectual disability and a lawyer or police. The Manual also encourages disability staff to utilise the disability court assistance services provided at courts by the New South Wales Justice and Attorney General Diversity Services. Department of Family and Community Services provides training in these processes to Ageing, Disability and Home Care and disability sector staff in relation to clients involved with the criminal justice system as victims, witnesses or defendants.

67. People attending court who require reasonable adjustments, including Augmentative and Alternative Modes of Communication, can advise staff by indicating the adjustment required on the “Request for court assistance” brochure (also available in Arabic, Chinese

and Vietnamese). The form enables a person to indicate other specific assistance that may be required. If the person agrees that the information may be released, it can be shared with relevant agencies, including the Office of the Director of Public Prosecutions, Legal Aid, Police, Corrective Services and Juvenile Justice. Many Augmentative and Alternative Modes of Communication adjustments are available in New South Wales courts and tribunals, including:

- AUSLAN interpreter services;
- Computer/technology assisted communication devices, symbol devices or other communication aids;
- Telephone typewriter, teleconference or videoconference;
- Court documents in alternative formats, including large print, audio or electronic format; and
- Hearing loops or infrared devices to assist people who have hearing impairments overcome variations in courtroom acoustics.

68. **Information provision.** All content provided on court and tribunal websites complies with the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0. In addition, New South Wales publishes information on court processes and victims' services designed for people with intellectual disability online and in printed format. New South Wales has produced a DVD, called "So you have to go to court!", to provide basic information for people with cognitive disabilities who are required to attend court as a witness or defendant. Copies of the DVD are distributed to relevant services, or on request, or it can be viewed online.

69. **Advocacy services.** The New South Wales Government funds advocacy services for people with intellectual disability. For example, the Intellectual Disability Rights Service provides 24-hour legal advice and support for persons with intellectual disability at police stations, legal appointments and court hearings. The Mental Health Advocacy Service provides free legal information, advice and assistance about mental health law to persons who have been admitted to a hospital and persons appearing before the Guardianship Tribunal. Legal Aid New South Wales also coordinates the presence of private duty solicitors in criminal Local Court matters. It is common for magistrates to refer self-represented persons to the duty solicitor service where it appears that the person does not understand the meaning or implications of proceedings.

70. **Assistance in Court.** New South Wales courts and tribunals may appoint a Guardian ad Litem to a person involved in legal proceedings to protect or promote their interests if they are incapable of representing themselves due to age, mental illness or incapacity, or disability. Alternatively, people with intellectual, mental or psychosocial disabilities may bring a support person to a court/tribunal hearing (often accessed through the New South Wales-funded Criminal Justice Support Network or through local disability advocacy organisations).

71. **Guardianship.** The Guardianship Tribunal is a specialist disability tribunal responsible for determining applications concerning adults with a decision-making disability who may require a legally appointed substitute decision-maker (including a guardian or financial manager).

72. **Training of judicial and tribunal officers.** The Judicial Commission of New South Wales publication *Equality before the Law Bench Book* provides guidance to judicial officers in relation to persons with disability appearing in court, including in relation to reasonable adjustments and capacity issues. This publication aims to assist magistrates in the provision of full access to the justice system for people with disability.

73. **Capacity Training.** New South Wales has also developed a Capacity Toolkit to provide guidance to government and community workers, professionals, families and carers as to whether an individual has the capacity to make their own decisions. The Law Society of New South Wales Client Capacity Issues Sub-Committee has also developed client capacity guidelines to assist solicitors practising in civil and family law matters who form a suspicion that their client does not have capacity to issue instructions.

74. In Western Australia, the Western Australian Disability Services Commission Justice Coordinator supports people with intellectual or cognitive disability who have been charged with a crime and require assistance to access appropriate supports, advocacy and legal advice to ensure they have equal access to justice. The Justice Coordinator also offers a consultancy service and training to disability sector organisations and justice agencies that support people with disability who are in contact with the justice system.

75. With regards to the justice system in general, the Department of the Attorney-General's Courts and Tribunal Services (Western Australia) provides support to ensure full access to the justice system on a case-by-case basis. This includes a Disability Diversion Program which is a mechanism to support referred people with disability who are litigants by assessing whether any AAC, advocacy or other disability-specific support needs are required. Supports to witnesses are generally provided (where required) or assessed by the agency working with the witness, whether it be LegalAid, the Commission's Justice Coordinator or Local Area Coordinator, or an advocate. Buildings and facilities within the justice system are designed to ensure access for all. This includes ensuring lowered height reception and enquiry counters with seating and wheelchair access, automated queuing systems, improved waiting areas, seating and signage, audio loops, disabled toilet facilities, height adjustable work stations and electronic sliding doors.

Liberty and security of the person (art. 14)

Reply to the issues raised in paragraph 17 of the list of issues

76. In November 2012 the Disability Policy and Research Working Group – Restrictive Practices Cross-Jurisdictional Reference Group presented a "Proposed Way Forward" document to Australian Government and State and Territory Community and Disability Services Ministers. These Ministers agreed that work in this area is important to ensure that the rights and interests of people with disability are protected.

77. The Australian Government, along with States and Territories, have jointly developed a proposed *National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector* (the proposed National Framework). The aim of the proposed National Framework is to reduce the use of restrictive practices in the disability service sector in a way aligned with the major reform initiatives to be delivered by DisabilityCare Australia. Consultation on the proposed National Framework has occurred with selected disability, service and community stakeholders. On 3 May 2013, all Disability Services Ministers agreed to progress to a wider community consultation process, which is continuing. The Proposed National Framework is to be finalised for consideration by Disability Services Ministers in November 2013.

78. There are additional programs underway at a State level. For example, Western Australia introduced the Positive Behaviour Framework in 2009 to provide a consistent and coordinated approach to service provision for people with disability whose behaviour can sometimes be challenging. Under the Framework, a Voluntary Code of Practice for the Elimination of Restrictive Practices was introduced in 2012. The Code guides the Western Australia disability sector's work to develop evidence-based, contemporary and respectful supports based on the application of Positive Behaviour Support principles.

Reply to the issues raised in paragraph 18 of the list of issues

79. The Australian Government and State and Territory governments have are working together on a National Seclusion and Restraint Reduction Initiative, which disseminates information about how to reduce these practices nationally via a yearly national forum. Work is also underway to improve the collection of data so that this can be better monitored. Further information can be found at <www.health.gov.au/mhsc>.

80. This national initiative is complemented by laws, policies and programs at the State level. In New South Wales, the *Ageing, Disability and Home Care Behaviour Support Policy and Practice Manual* articulates policy and minimum practice requirements for behaviour support. This includes requirements for practices which involve isolating an adult (18 years and over) who uses services funded by the New South Wales Department of Family and Community Services on their own in a setting from which they are unable to leave (“seclusion”). Seclusion of children or young people (less than 18 years of age) is prohibited. Seclusion is governed by strict guidelines which provide clear conditions and limitations on use. These requirements must be documented in a Behaviour Support Plan or Incident Prevention and Response Plan, and must then be authorised by a Restricted Panel Authorisation mechanism. Restricted Panel Authorisation authorisations must, amongst other things:

- Be time limited, and not exceed twelve months;
- Be monitored to safeguard against abuse and be replaced with a less restrictive practice as soon as possible;
- Involve transparent evaluation of a formal submission; and
- Involve a formal decision to grant or decline authorisation in relation to the submissions.

81. For services provided by the New South Wales Ageing, Disability and Home Care area of the New South Wales Department of Family and Community Services, appeals about Restricted Panel Authorisation authorisations can be raised with the Regional Manager, Community Access. A Restricted Panel Authorisation does not constitute or replace the requirement for legal consent. Where this consent is provided by a substitute decision-maker under the *Guardianship Act 1987* (New South Wales), various appeal mechanisms apply. Further details of the criteria and process for Restricted Practices, including detailed requirements for review of instances of seclusion, is available in the *Ageing, Disability and Home Care Behaviour Support Policy* at <www.adhc.New South Wales.gov.au>.

82. Under the Tasmanian *Mental Health Act 1996* (Tasmania), a person may only be involuntarily detained if a determination is made that the person appears to have a mental illness and there is, in consequence, a significant risk of harm to the person or others. The Act requires admission to hospital (with the person’s consent preferred) and requires restrictions on a person’s liberty and interference with a person’s rights, dignity and self-respect to be kept to a minimum consistent with the need to protect the person and others. All decisions to involuntarily detain a person for an extended period must be reviewed within 28 days. The Act defines mental illness as a condition resulting in serious distortion of perception or thought; or serious impairment or disturbance of the capacity for rational thought; or serious mood disorder; or involuntary behaviour or serious impairment of the capacity to control behaviour.

83. In Western Australia, the following criteria must be met for a person to be involuntarily detained:

1. A psychiatrist must be satisfied that a person has a mental illness requiring treatment.
 2. The psychiatrist must decide that a person has refused treatment or, because of the nature of the illness, that person is unable to consent to treatment.
 3. The psychiatrist must decide that a person requires treatment to:
 - a. protect the person's health or safety, or other people's health or safety; or
 - b. stop a person from causing themselves serious financial harm or harm to their reputation resulting in lasting or serious harm to important personal relationships; or
 - c. prevent serious damage to property.
84. Having decided 1, 2 and 3 above, the psychiatrist must also decide that the treatment cannot be adequately provided as a voluntary patient or as an involuntary patient on a community treatment order.
85. The Chief Psychiatrist of Western Australia has independent responsibilities, powers and duties prescribed by the *Mental Health Act 1996* (Western Australia). Central to those duties is the responsibility for the medical care and welfare of all involuntary patients, and the monitoring of standards of psychiatric care throughout the State. The Mental Health Board conducts reviews of involuntary patients detained in authorised mental health facilities or on community treatment orders, to ensure the best treatment is being provided. A request for a review of an involuntary patient's case can be made at any time.
86. The Government of Western Australia is proposing new laws that will modernise the involuntary status criteria by removing references to harm to reputation, damage to property and harm to finances. Persons subject to involuntary treatment will have automatic independent advocacy support and be entitled to more frequent administrative review.

Reply to the issues raised in paragraph 19 of the list of issues

87. The National Disability Strategy 2010-2020 provides initiatives to improve the safety and wellbeing of women and children with disability in meeting the National Plan to Reduce Violence against Women and their Children 2010-2022 (the National Plan) and the National Framework for Protecting Australia's Children. Respectful Relationships, a primary prevention initiative under the National Plan seeks to prevent sexual assault and domestic and family violence through education. A total of \$A9.1 million in funding over five years has been provided to 32 Respectful Relationship projects. The overall aim is to test different approaches to help inform future Respectful Relationships educational programs. The Australian Government is also working with the Australian Curriculum, Assessment and Reporting Authority to support the inclusion of Respectful Relationships education into the Australian National Schools Curriculum.
88. La Trobe University was funded in 2009 to develop and deliver a peer-led primary prevention program for young people with cognitive and/or intellectual disabilities across five sites. The Living Safer Sexual Lives: Respectful Relationships program was developed around key messages about respect, self-determination, rights, decision-making and safety, as well as broader messages about sexuality, sexual health, women's health and relationship, and included people with an intellectual disability in the program development. More information about the project can be found at <<http://bit.ly/12R4r1i>>.

Reply to the issues raised in paragraph 20 of the list of issues

89. A large proportion of young people in detention are Indigenous and have some form of disability. An important factor contributing to the high proportion of youth in detention in Australia is the lack of suitable or available housing options for youth to transition to

when granted bail. In many cases, prison is judged the only suitable alternative to releasing young people on bail into homelessness.

90. The Australian Government is implementing the recommendations of the *Doing Time – Time for Doing: Indigenous youth in the criminal justice system* report, including recommendations in relation to post-release accommodation for youth who are granted bail.

91. A committee of the Australian Parliament is undertaking an inquiry into the value of a justice reinvestment approach in Australia. A key area of focus is exploring alternatives to prison, in particular for Indigenous Australians and those suffering from some form of disability, mental ill-health, or hearing loss.

92. The National Disability Strategy 2010-2020 focusses on six key policy outcomes, one of which is, ensuring that “people with disability have their rights promoted, upheld and protected.” The Strategy commits the Australian Government and State and Territory governments to:

- Develop strategies to improve the experience of people with disability with heightened vulnerabilities who come into contact, or are at risk of contact, with the criminal justice system, as alleged offenders, victims or witnesses of crime; and
- Work together to better understand and support the needs of people with disability who come into contact with the criminal justice system, including through prisons and forensic services, or as victims and witnesses of crime.

93. Under this Strategy and National Disability Agreement endorsed by the Council of Australian Governments in 2012, Australian governments have committed to maintaining innovative and flexible support models for people with high and complex needs.

94. Information-sharing is considered to be an important way to improve practice. The Formal Network on Mental Illness and Cognitive Disability in the Criminal Justice System was established in late 2012 and aims to improve information-sharing across government portfolios within and across jurisdictions on problems and solutions relating to people with mental illness and cognitive disability in contact with the criminal justice system. The Network consists of government agency representatives from justice, corrections and disability services across jurisdictions.

95. In New South Wales, the only people held in correctional facilities are: people who have been convicted, people on remand (who have been charged with a criminal offence), or people who have been charged with a criminal offence who are forensic patients. Generally, a person charged with a criminal offence may become a forensic patient in two circumstances: (1) where the person is found not guilty by reason of mental illness, or (2) where the person is unfit to be tried but a qualified finding of guilt is made. The Mental Health Review Tribunal is an independent body that regularly reviews the care, detention and treatment of all forensic patients and has the power to release patients with or without conditions.

96. The Community Justice Program was established in 2006 to provide accommodation, case management and behaviour support for young people and adults with an intellectual disability exiting correctional facilities, including support for people on remand or bail conditions. The program supported 200 clients in 2011-12 with a total expenditure of \$A19 million.

97. In Tasmania, the only people held in corrections facilities are: people who have been convicted or people on remand who have been charged with a criminal offence. Persons found unfit to plead or not guilty by reason of insanity where a court has ordered detention are held in a secure mental health facility (irrespective of their disability type). A centre

was built for this specific purpose in 2006. The centre may also accommodate prisoners, remandees and youth detainees with a mental illness or disability whose transfer is directed by a court or recommended and supported by prison and centre authorities. Tasmania also operates a Court Liaison Service whose role includes identifying persons with mental health needs who have come into contact with the criminal justice system and providing appropriate advice to court officials.

98. Western Australia is offering in-reach services to people in this situation. The service began in April 2013 for six people with disability who are in prison, five of whom are Aboriginal. The Western Australia Government is further establishing two disability justice centres to house up to 16 people with intellectual or cognitive disability who have been accused of a crime but deemed unfit to stand trial. The centres will provide a secure and supportive environment as an alternative to prison and are expected to open in December 2014.

Reply to the issues raised in paragraph 21 of the list of issues

99. In Australia, the focus of mental health policies and programs now and over the last 20 years have been aimed at providing sufficient community-based services to adequately support people within their communities to prevent their hospitalisation or involuntary treatment. States and Territories manage specialised, community-based mental health services which provide ongoing clinical and psychosocial supports to people with severe and persistent mental illness.

100. In Tasmania, the *Mental Health Act 1996* (Tasmania) provides for community treatment orders which facilitate the involuntary treatment of persons with a mental illness in the community. The Act requires restrictions on a person's liberty and interference with a person's rights, dignity and self-respect to be kept to a minimum consistent with the need to protect the patient or person and others.

101. The Western Australia Government's strategic plan for mental health, *Mental Health 2020: Making it Personal and Everybody's Business*, proposes greater emphasis on services capable of supporting people to live well in the community and avoid hospital admissions. This direction will be reflected in the 10 year mental health services plan that is currently being developed by the Western Australia Mental Health Commission.

Freedom from exploitation, violence and abuse (art. 16)

Reply to the issues raised in paragraph 22 of the list of issues

102. The intergovernmental Safety and Quality Partnership Standing Committee of Australian Health Ministers Advisory Council, is examining ways to reduce the use of restraints across Australia.

103. The *National Safety Priorities in Mental Health: a National Plan for Reducing Harm* includes the commitment to reduce and, where possible, eliminate the use of restraint and seclusion. New South Wales Health promotes the use of a range of therapeutic interventions and risk minimisation and management approaches to respond to aggression or disturbed behaviour to be utilised in place of seclusion and restraint whenever this is safely possible. This approach focuses on prevention and de-escalation strategies applied through early identification of risk by interpersonal, environmental and clinical interventions.

104. The New South Wales Policy Directive *Aggression, Seclusion and Restraint: Preventing, Minimising and Managing Disturbed Behaviour in Mental Health Facilities in New South Wales* provides an additional guideline focussing on restraint issues in the care

of older people. This includes rigorous monitoring and review processes where seclusion or restraint is used. The Policy requires mental health facilities to keep a register of all seclusion and restraint events and this register is reviewed regularly by independent monitors called Official Visitors as well as through Mental Health Services quality assurance processes. Seclusion and Restraint Reduction Project Officers have been working within health services over the last three years to implement the policy through education, development of systems governance and improved data collection. The use of hard mechanical restraints (shackles) is absolutely not supported in New South Wales Health facilities and the Ministry has required Local Health Districts to report on their policies and procedures for mechanical restraint. Any inappropriate or potentially harmful restraint methods or devices are reported by the Official Visitors.

105. New South Wales Health provides data on rate of seclusion per 100 bed days as a national indicator and has been assisting the national initiative to improve data collection related to restraint incidents.

106. Tasmania is also committed to reducing, and where possible, eliminating the use of seclusion and restraint in inpatient facilities. The *Mental Health Act 1996* (Tasmania) limits the circumstances where a person can be restrained or secluded, and only if authorised. Occasions of seclusion or restraint are reported to the Mental Health Tribunal; and a matter relevant to the use of seclusion and restraint in inpatient facilities is monitored by Official Visitors.

107. In Western Australia under the *Mental Health Act 1996* (Western Australia) the Chief Psychiatrist has responsibility for the medical care and welfare of all involuntary patients. In respect of other patients, the Chief Psychiatrist is required to monitor the standards of psychiatric care provided throughout the State.

Protecting the integrity of the person (art. 17)

Reply to the issues raised in paragraph 23 of the list of issues

108. Australia is unable to provide comprehensive data. As noted above in paragraphs 9-11, process varies across States and Territories, but many of these decisions are made privately. Records are only kept for decisions made by the relevant Tribunal or other public body. For example, in Tasmania, the Guardianship and Administration Board has given consent on 72 occasions between 1 July 2008 and 30 June 2012. However, complete data is not available as the Tasmanian Department of Justice does not have access to the number of times that a private “person responsible” has given consent pursuant to Part 6 of the *Guardianship and Administration Act 1995* (which does not require an order by the Board).

109. Please note reference to the Australian Government reservation expressed previously.

Reply to the issues raised in paragraph 24 of the list of issues

110. Australia has not undertaken any formal consultation with DPOs and there are currently no plans to repeal Australia’s declaration regarding Art 17.

Liberty of movement and nationality (art. 18)

Reply to the issues raised in paragraph 25 of the list of issues

111. Australia has not undertaken any formal consultation with DPOs and does not currently propose to repeal this declaration, but notes the work in paragraph 6 may be relevant.

Living independently and being included in the community (art. 19)

Reply to the issues raised in paragraph 26 of the list of issues

112. Under the *National Disability Strategy 2010-2020*, the Commonwealth and State and Territory governments have agreed to pursue a person-centred, self-directed, sustainable Disability Support System that maximises opportunities for independence and participation in the community. It will be responsive to the particular needs and circumstances of people with complex and high needs for support and have universal personal and community support services available to meet the needs of people with disability, their families and carers.

113. One of the three key outcomes that Commonwealth, State and Territory governments have committed to under the National Disability Agreement is that people with disability enjoy choice, wellbeing and the opportunity to live as independently as possible. While State and Territory governments have the overall responsibility for funding of accommodation support under the split in jurisdictional responsibilities for disability services outlined in the National Disability Agreement, the Commonwealth in partnership with the States and Territories has funded a number of additional initiatives to support the objectives of deinstitutionalisation and more appropriate forms of accommodation.

114. A guiding principle contained in the legislation underpinning DisabilityCare Australia, the national disability insurance scheme, is to promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and enjoy full inclusion in the mainstream community.

115. The Commonwealth, State and Territory governments have established the Younger Persons in Residential Aged Care Program to reduce the number of younger people at risk of entry or who are living in residential aged care. Between 2005 and 2011, the number of permanent residents of residential aged care under age 65 has decreased, including by 35 per cent in the case of persons under 50.

116. The \$A60 million Supported Accommodation Innovation Fund is an opportunity for community organisations to design innovative housing options which embody choice and control for people with disability. In all, 21 organisations have been funded through the Fund to deliver more appropriate housing options for people with severe or profound disability. Projects are due for completion in June 2014.

117. The data in Table 5 (see annexure) demonstrates the commitment, at all levels of Governments, to move people out of institutional accommodation. Since 2003, the number of people with a disability in institutional accommodation has fallen by 25 per cent. Simultaneously, the number of people with a disability in alternative support (i.e. "other community settings") has grown by 45 per cent. A further breakdown of transition from institutional care to independent living disaggregated by gender, disabilities, age, and indigenous people is not available.

118. In the Australian Capital Territory, the Human Rights Act 2004 provides a statutory basis for respecting, protecting and promoting individuals' civil and political rights,

including the freedom to choose a place to live. The Housing Options Facilitator supports individuals to explore, consider and plan for their future housing and support needs and provides broader education on housing options to people with disability, their families, advocates or community service workers. A Principle Based Supported Accommodation Framework is being designed by Disability ACT to improve the transparency and equity in the decisions concerning access to supported accommodation and the development of future accommodation options. Key actions include the development of an Innovative Housing Unit to assist individuals and organisations to progress their plans for innovative housing models and accommodation futures planning sessions.

119. The Tasmanian Government does not support institutional care models for people with disability and has not had any such institutions since the Community Integration Program commenced in 2000.

120. Western Australia began the devolution of its institutions to community residences in the late 1980s and this continued until completion in 1999. The *Count Me In* strategy demonstrates a commitment to responding to individual need, including housing. This contemporary approach ensures institutions are not in the equation.

121. The *Disability Services Act 1993* (New South Wales) requires that services provided (or funded) under the legislation, including accommodation supports, be provided (or funded) in conformity with the principles and applications of principles as set out in the legislation. These principles provide that:

- Persons with disabilities have the right to live in and be part of the community;
- Persons with disabilities have the right to choose their own lifestyle and to have access to sufficient and appropriately-provided information to allow informed choice; and
- Persons with disabilities receiving services have the same rights as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities.

122. Under *Stronger Together: A new direction for disability services in New South Wales 2006-2016 (Stronger Together 2)* the New South Wales Government has allocated \$A255.4 million in capital and recurrent funding to provide replacement accommodation to support the closure of all remaining Large Residential Centres by June 2018. An additional allocation of funds may be sought if required. A total of 18 Large Residential Centres have been closed since 2002 and 562 people with disability transitioned to new accommodation. 35 Large Residential Centres are currently being closed, which will transition 644 people to new accommodation.

Freedom of expression and opinion and access to information (art. 21)

Reply to the issues raised in paragraph 27 of the list of issues

123. Under the National Disability Strategy, all Australian governments have agreed to adopt the mandated conformance levels for web accessibility as a baseline requirement to ensure that more people with disability have access to online information and services. One of the six outcomes of the Strategy is “inclusive and accessible communities”. Action 1.8 under this outcome involves the adoption of website accessibility standards, *Web Content Accessibility Guidelines Version 2.0*, and the development of a web accessibility national transition strategy. Under the Strategy, agencies must comply with Level A by the end of December 2012 and AA by the end of 2014. Agencies are required to report their progress against the milestones set out in the strategy. The *Web Accessibility National Transition*

Strategy 2010 Baseline Report is publically available and agencies are in the process of reporting their progress against the 2012 milestone.

124. The Australian Government seeks to deliver innovative approaches to make all its programs as accessible as possible for people with a disability to enable them to live independently and participate fully in all aspects of life. Funding arrangements require best use of new communication technologies and online access in community areas and in family homes, including utilising the increased reach and capacity provided by the new National Broadband Network.

125. The Australian Government administers a range of practical programs including: captioning and information services, print disability services, accessible cinemas and remote hearing and vision services for children to empower people with disability. The Government also ensures that people with disability can have their say. One example is by funding the Australian Broadcasting Commission's Ramp Up website (a news website for and about people with disability); another is the National Disability Conference initiative to improve access and participation at conferences on disability issues.

126. In the Australian Capital Territory, the *Human Rights Act 2004* (Australian Capital Territory) provides an explicit statutory basis for protecting, promoting and respecting political and civil rights, including the right to freedom of expression. This legislation applies equally to people with a disability and those without, and the *Disability Services Act 1991* (Australian Capital Territory) outlines the human rights principles to be furthered in relation to people with disability.

127. In New South Wales, disability legislation aims to ensure that services available to the general public are equally available to people with disability. Principle 1(e) of the *Disability Services Act 1993* (New South Wales) establishes that persons with disabilities have the right to choose their own lifestyle and to have access to information, provided in a manner appropriate to their disability and cultural background, necessary to allow informed choice. Section 9 requires that New South Wales government departments prepare and make provisions for the implementation of a plan that encourages the provision of services in accordance with the legislation.

128. In Western Australia, Disability Access Inclusion Plans (as legislated in the *Disability Services Act 1993*) contribute to the potential for freedom of expression by people with intellectual or mental, physical, hearing, visual, and or psychosocial disability. The Plans ensure that people with disability have the same opportunities as others to make complaints and to participate in consultation by a public authority.

Respect for home and the family (art. 23)

Reply to the issues raised in paragraph 28 of the list of issues

129. The *Marriage Act 1961* (Cth) provides that a marriage is void where the consent of either of the parties is not real because that party is mentally incapable of understanding the nature and effect of the marriage ceremony. A marriage may be declared void for this reason by the Family Court of Australia or the Supreme Court of a State or Territory following evidence concerning the specific facts of each case.

130. Before each marriage is entered into, the authorised marriage celebrant must determine that the parties to the marriage are mentally capable of understanding the nature and effect of the marriage ceremony. It is an offence for an authorised celebrant to solemnise a marriage where he or she has reason to believe that one of the parties does not meet this standard (see section 100, *Marriage Act*). This standard is intended to protect

vulnerable members of society from exploitation and forced marriage, whilst also ensuring that anyone who is able to understand and consent can freely marry.

Reply to the issues raised in paragraph 29 of the list of issues

131. In 2011-12, 5,727 carers accessed the Respite Support Program and 3,031 attended a MyTime peer support group.

Reply to the issues raised in paragraph 30 of the list of issues

132. In its response to its Universal Periodic Review of Human Rights in June 2011, Australia stated that it considers the “best interests” tests as articulated and applied in Australia to be consistent with Australia’s international obligations. Recognising concerns raised in Australia and internationally, the Australian Government is committed to work with States and Territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability. This commitment was reaffirmed in the *National Human Rights Action Plan* released in December 2012.

133. The Senate inquiry into sterilisation tabled its report on involuntary or coerced sterilisation of people with disabilities in Australia on 17 July 2013. The Australian Government will now examine the report findings to inform further consideration.

Education (art. 24)

Reply to the issues raised in paragraph 31 of the list of issues

134. The *Disability Discrimination Act 1992* (Cth) recognises that all people with a disability have the right to participate fully and with dignity in community life. The Act makes it unlawful to discriminate on the basis of disability in prescribed areas of public life, including education.

135. Section 22 of the Act makes it unlawful for an educational authority or institution (including schools, colleges, universities, or any other institution at which education or training is provided) to do any of the following on the basis of a person/student’s disability:

- Refusing or failing to accept an application for admission;
- Placing discriminatory terms or conditions on the application for admission;
- Denying, or limiting, a student with disability’s access to any benefit provided by the educational authority or institution;
- Expelling the student; or
- Subjecting to the student to any other detriment.

136. The *Disability Standards for Education 2005* further clarify and elaborate on the legal obligations in relation to education contained in the *Disability Discrimination Act 1992* (Cth) to ensure that it is clear how students with disability are able to access and participate in education on the same basis as other students. These standards set out the right to comparable access, services and facilities, and the right to participate in education and training without discrimination for students with disability.

137. The first five year Review of the Standards and the Australian Government Response was released on 1 August 2012. The Review found that the Standards provide a good framework for assisting students with a disability to access and participate in education on the same basis as other students and made 14 recommendations to improve

their effectiveness. The Australian Government is working with States, Territories and non-government education authorities to address the school-related recommendations.

Reply to the issues raised in paragraph 32 of the list of issues

138. Australia is undertaking new initiatives to improve the collection of data. At present, Australia is able to provide the following information:

- **Early Childhood.** The Australian Government does not collect nationally consistent data on preschool children with a disability. The Government is undertaking two streams of work that will go some way towards improving data in this area. First, data on children with special needs in preschools are currently being collected in the 2013 Workforce Census; data from this survey will not be available for several months. Secondly, as part of the next *National Partnership Agreement on Universal Access to Early Childhood Education*, endorsed by the Council of Australian Governments in April 2013, States and Territories will be developing data on vulnerable and disadvantaged children, which will include children with a disability.
- Data may be available at the State level. For example, in Tasmania, there were 206.5 full-time equivalent children enrolled in Early Childhood Intervention programs in 2012, equating to 590 children receiving support due to disability through Early Childhood Intervention programs. This service provides support for children with disability from birth and their families prior to the formal commencement of school.
- **School Education.** Currently, data about school students with disability are limited to the numbers of students in receipt of targeted program support. This data is not comparable between jurisdictions and sectors. From 2013, the Australian Government, along with all State and Territory government and non-government education authorities, will commence the implementation of the nationally consistent collection of data on school students with disability. Once fully implemented in 2015, this initiative will provide information on the number of students for whom a reasonable adjustment (as defined in the *Disability Discrimination Act 1992* and Disability Standards for Education) is provided, and the level of the adjustment, in order to support these students to participate in schooling on the same basis as other students.
- In Tasmania, 884.4 full time equivalent students with intellectual, physical, multiple disability, autism, vision impairment, blindness, hearing impairment, deafness, or psychosocial disability were supported with special needs funding through the Register of Severe Disability in 2012. Seventy-seven per cent of the student population with severe disability is enrolled and supported in their neighbourhood/mainstream schools, with 23 per cent enrolled in specialist settings. Specialist staff are allocated to support students with disability and their mainstream classroom programs. This includes trained teachers of the Deaf, vision resource teachers, autism consultants, school psychologists and speech and language pathologists.
- **Tertiary Education.** The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education collects the information about student disability in Table 6 (see annexures). This data set examines groups of impairments, not the categories requested.
- **Vocational Education and Training.** Data on students with disabilities in the Vocational Education and Training sector is published on an annual basis by the National Centre for Vocational Education Research. Underreporting is likely, however, as Vocational Education and Training providers generally only collect data

on students with disabilities who need some form of assistance/adjustment and choose to disclose their condition. Please refer to Table 7 (in annexures).

Reply to the issues raised in paragraph 33 of the list of issues

139. In 2007, the number of students with a disability participating in higher education in Australia was 30,244 or 4.1 per cent of the total. In 2011 it was 42,111 or 5.1 per cent.

Health (art. 25)

Reply to the issues raised in paragraph 34 of the list of issues

140. The provisions of the *Disability Discrimination Act 1992* apply with full force.

(See response to paragraph 3.)

Reply to the issues raised in paragraph 35 of the list of issues

141. Please also see the response to paragraph 27. Australia attempts to ensure that public health information is provided to all people in an accessible format and without discrimination. Below are examples of measures taken to achieve this aim at federal, state and territory level.

142. **Medicare services.** Information regarding Medicare (Australia's public health insurance scheme) is available in a number of formats including in person at a Medicare office (which are located throughout Australia), by telephone and in writing (post, e-mail, fax, internet) and in several languages. A speech to text service is also available.

143. **Public hospitals.** States and Territories are reviewing and updating their existing Public Patients' Hospital Charters. The Charters set out how the principles of the *National Health Reform Agreement* are to apply to the provision of public hospital services in States and Territories and a statement of rights and responsibilities. Each Charter is to be in appropriate community languages and forms to ensure that it is accessible to people with disabilities and from non-English speaking backgrounds. Public health information is provided in a range of formats in order to meet the needs of the whole population, including people with a range of disabilities. Much public health information is available online, and is accessible as per the approaches set out in the response to paragraph 27. The National Relay Service and Auslan Interpreter Services provide support and access to information, education and services for people with a hearing impairment. The Australian Government Department of Families, Housing, Community Services and Indigenous Affairs funds the National Auslan Interpreter Booking and Payment Service, which provides accredited Auslan (Australian Sign Language) interpreters to deaf Auslan users free of charge when they attend private medical consultations.

144. At the State level, there are a number of specific measures in place to ensure that people with disability have access to suitable information, education support and health services. Examples include the Family Planning Association of Tasmania, which has a state-wide team of educators who specialise in providing services and information on family planning for people with a disability. The Family Planning Association of Tasmania also continues to provide the "So Safe" program that teaches safe social and sexual behaviours to people with intellectual disability. The Tasmanian Government also has communication guidelines, which provide advice and links to resources for services communicating with people with a range of disabilities.

145. All Western Australia Health printed publications are available in alternative formats on request for any person with a disability.

146. Western Australia's Department of Health and the Disability Services Commission have established a Disability Health Network to improve the health experiences and health outcomes of people with disability. This includes making recommendations about models of care and public health information and education.

Reply to the issues raised in paragraph 36 of the list of issues

147. The Australian Government recognises the psychosocial disabilities of people with severe mental illness and provides a range of social support health and welfare services to meet these needs.

148. There is some distinction between access to services for people with mental disability compared with people with other disabilities, but these are increasingly being considered together within the context of DisabilityCare, as outlined in response to paragraph 4.

149. Legislation at the State level may recognise people with psychiatric disability as being within the target group for disability support and services (For example, the New South Wales *Disability Services Act 1993*).

Reply to the issues raised in paragraph 37 of the list of issues

150. The *National Standards for Mental Health Services* and the *Mental Health Statement of Rights and Responsibilities* enshrine both informed consent to treatment options for people with mental health conditions and the rights of carers of people with mental health conditions to participate in the development of treatment options or their review. These documents also include a right to timely, independent and impartial review of involuntary treatment orders.

151. The National Prescribing Service is the Australian Government's implementation arm for quality use of medicines programs and is independent of Government and industry. The National Prescribing Service assists health professionals to put into practice the principles of quality use of medicines and medical tests, including safe, wise and judicious prescribing and dispensing.

152. In New South Wales, services for people with disability are required to follow the *Health Care Policy, Medication Policy and Decision Making and Consent Policy*. The Policy requires that people with disability have an annual health assessment with their general practitioner, including a review of their medications. Quarterly reviews are also conducted in-house, or at any time there is a change in a person's health and circumstances.

153. The common law applying in New South Wales provides that a person who has legal capacity to make their own decisions cannot be given medication (or medical treatment) without their consent or specific legal authority.

154. The *Mental Health Act* (New South Wales) allows for people to be detained and treated for a mental illness without their consent if they pose a serious risk to themselves or others. Detention decisions under the Act are either made by (or subject to review by) an independent Mental Health Review Tribunal. The care and treatment of people falling under the Act is also subject to oversight by Official Visitors, who are independent of the health system.

155. In New South Wales, the administration of psychotropic medication on an "as required" basis is considered a "restricted practice" and is governed by the *Ageing, Disability and Home Care Behaviour Support Policy*, which mandates that psychotropic medication must not be the primary behaviour support strategy for a person with intellectual disability. Where used at all, it must form part of a documented support plan developed in collaboration with the consultant psychiatrist/paediatrician. Consent is always

required for the administration of psychotropic medication and consent is of no effect if the treatment is for a purpose other than promoting the health and well-being of the person with disability.

156. The *Drug and Alcohol Treatment Act* (New South Wales) enables treatment and short term detention. The Act only applies where a person lacks the capacity for decision-making in relation to their drug or alcohol use, and treatment can only be given to address drug or alcohol addiction. Orders under the Act are subject to review by a Magistrate of the New South Wales Local Court.

157. The *Guardianship and Administration Act 1995* (Tasmania) sets out the circumstances in which a person with a mental illness who is unable to make a decision about his or her own medical treatment may be given treatment; including if the treatment is consented to by a person responsible or by the Guardianship and Administration Board.

158. The *Mental Health Act 1996* (Tasmania) provides that a person in an approved hospital may be provided with medical treatment only with the patient's informed consent, or if the treatment is authorised by or under the *Guardianship and Administration Act 1995* (Tasmania).

159. In Western Australia, there is no specific mention of medication in the *Mental Health Act* but it is included as a "psychiatric treatment" under ss.108 and 109 and under Part 5. A Patient (Individual) Treatment Plan could include information such as specific medication and should include information the clinician thinks is important for the patient to know in order to be able to comply with treatment. The supervising psychiatrist has a responsibility for continuous monitoring, including medication either as an inpatient or as part of treatment in the community.

Reply to the issues raised in paragraph 38 of the list of issues

160. The Council of Australian Governments *Roadmap for National Mental Health Reform 2012-2022* sets out Australia's vision for "a society that values and promotes the importance of good mental health and wellbeing, and maximises opportunities to prevent and reduce the impact of mental health issues and mental illness and supports people with mental health issues and mental illness, their families and carers to live full and rewarding lives". The Roadmap outlines the direction governments will take over the next 10 years. Over recent years many Australian governments have significantly increased their expenditure on mental health. Implementation of the Roadmap by jurisdictions will ensure the money is well spent and delivers better models of care and support for people with mental illness, thereby creating more cost-effective and sustainable interventions. It is about better targeting the existing funds where they are needed and to the right models of care.

161. The Australian Government is committed to ongoing mental health reform to improve the lives of Australians experiencing and affected by mental illness through better access to services, better detection, better targeting and better coordination. The 2011-12 *Delivering National Mental Health Reform* package is a cross-sector plan that recognises the diverse impact of mental illness throughout a person's lifetime to build resilient children, support teenagers and help families dealing with the challenge of mental illness, improve access to primary care and target more community-based services to people living with a severe mental illness and their families.

162. The reforms reduce fragmentation in the Australian mental health system, particularly for those with more severe illness who are less able to negotiate a sometimes complex network of services. The reform package covers the spectrum of actions, from prevention and early intervention to initiatives for those with severe and persistent mental illness, and also initiatives to help us know what is working well to inform future decisions.

163. There are also plans and programs at the State level. For example, the Western Australia Government's strategic plan for mental health, *Mental Health 2020: Making it Personal and Everybody's Business*, proposes greater emphasis on services capable of supporting people to live well in the community and avoid hospital admissions. This direction will be reflected in the 10 year mental health services plan that is currently being developed by the Mental Health Commission. Proposed new mental health legislation will modernise the delivery of mental health services by requiring the consideration of consumer wishes at all times (including when the person is subject to an involuntary treatment order) and mandating family and carer involvement in decision-making.

Reply to the issues raised in paragraph 39 of the list of issues

164. The *Disability Discrimination Act* (Cth) recognises that all people with disability have the right to participate fully and with dignity in community life. The *Disability Discrimination Act 1992* makes it unlawful to discriminate on the basis of disability in prescribed areas of public life, including in the provision of goods, services and facilities. "Services" is defined broadly and non-exhaustively so that the provision of health and medical services would also be covered. Section 24 makes it unlawful for a service provider, including a health or insurance service provider, to do any of the following on the basis of a person's disability:

- Refuse to provide services
- Place unfavourable or disadvantageous terms or conditions on how they provide the service, or
- Provide the services in an unfavourable or disadvantageous manner.

165. The *Disability Discrimination Act* (Cth) also contains limited exceptions from unlawful discrimination in relation to the provision of insurance to people with disability. Section 46 of the *Disability Discrimination Act* (Cth) permits insurance providers to do the following on the basis of a person's disability:

- Refuse to offer the person with disability an insurance policy or annuity, and
- To discriminate on the terms and conditions on which the insurance policy is provided.

166. However, such discrimination is only permitted where it is based on actuarial or statistical data which is reasonable for the insurance provider to rely on. If such actuarial or statistical data is not available and cannot be reasonably obtained, the discrimination must be reasonable having regard to any other relevant factors. The policy rationale for these exceptions is that the way the industry offers insurance services is by assessing risks and, in some circumstances, a person's disability may be relevant to assessing an individual's risk and the likelihood of that person making a claim. The exceptions are also limited in that they require the relevant insurance provider to be able to demonstrate that there is an evidence base (through actuarial and statistical data, or any other relevant information) for any discriminatory behaviour. In addition, section 107 of the *Disability Discrimination Act* (Cth) permits the Australian Human Rights Commission to request the actuarial or statistical data that an insurance provider has relied on when engaging in an act that would, but for the exceptions in section 46, constitute unlawful discrimination. Failure to comply with this request is an offence.

167. In addition to the national Disability Discrimination Act, similar laws may apply at the State level. Examples include New South Wales' and Tasmania's *Anti-Discrimination Acts*.

168. There are two forms of health insurance for Australian residents, Medicare, the public health insurance scheme, which is regulated under the *Health Insurance Act (Cth)* and private health insurance, which is regulated under the *Private Health Insurance Act (Cth)*.

169. Medicare benefits are payable under the *Health Insurance Act (Cth)* for the cost of medical expenses incurred for prescribed medical services or treatment, provided to any Australian resident and certain other people (such as temporary visa holders and some diplomatic staff). Whether a person has a disability, the frequency of treatment or any other individual circumstances concerning the person is irrelevant in respect of the benefit payable, which is calculated according to a formula set out in the legislation.

170. Under section 55-1 of the *Private Health Insurance Act (Cth)*, private health insurers must insure anyone who chooses to have private health insurance cover with them. Insurers are also prevented from discriminating between people on the basis of their health or for any other reason.

171. The principle of community rating prevents private health insurers from taking action or failing to take action, or in making a decision having regard or failing to have regard to any matter that would improperly discriminate against a person. Improper discrimination includes, but is not limited to, the suffering of a chronic disease, illness or other medical condition, any characteristic of a person that is likely to result in an increased need for treatment, the frequency with which a person receives treatment or the amount of benefits payable (sections 55-5 and 66-1 of the *Private Health Insurance Act (Cth)*).

Habilitation and rehabilitation (art. 26)

Reply to the issues raised in paragraph 40 of the list of issues

172. DisabilityCare Australia is adopting a needs-based and person-centred approach to disability support, rather than an approach based only on medical diagnosis, which will enable people with a disability to choose the supports that are right for them. Access to the scheme will be determined by a functional assessment of the impact of a person's disability on their capacity to undertake everyday activities. This assessment will be based, in part, on the World Health Organization's International Classification of Functioning, Disability and Health, which integrates aspects of the social model of disability. The scheme will also focus on a person's goals and aspirations, and take into consideration their particular circumstances, including the impact of their disability on their capacity for social and economic participation.

173. The Government-funded *Targeted Community Care (Mental Health)* program provides accessible, responsive, high-quality and integrated community-based mental health services that improve the capacity of individuals, families and carers to manage the impacts of mental illness on their lives and improve their overall wellbeing. Participants are assisted to access services that support economic and social connections.

174. To support cultural and attitudinal change in mental health services throughout Australia, a *National Recovery-oriented Mental Health Practice Framework* is being developed. This framework is being developed with reference to international human rights instruments, including the Convention on the Rights of Persons with Disabilities; and the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

175. The Australian Government funds a number of psychosocial support programs for people with severe and persistent mental illness. The major programs are the Personal

Helpers and Mentors program, the Day to Day Living in the Community program and the Partners in Recovery program.

176. New South Wales acknowledges the importance of effective, person-centred habilitation and rehabilitation to ensure that people with disabilities are able to realise all of their human rights. *Stronger Together 2*, the New South Wales Government's current long-term plan for disability support, includes a focus on providing a lifespan approach to disability support. This approach embeds early intervention and skills development habilitation principles across a person's whole life with a focus on providing support at significant life stages and transition points so as to facilitate the development of educational, vocational and other life skills.

177. Contemporary learning and skills development programs are funded by the New South Wales Department of Family and Community Services to:

- Provide contemporary learning and skills development activities within a continuum of supports for people with a disability, using a person-centred approach;
- Offer options to individuals to engage in meaningful activities, learn to do new things and develop skills, increase independence and participate as valued and active members of society;
- Provide greater flexibility and choice in terms of individual goals, needs, values, age, life stage, health, interests, service hours and other priorities; and
- Offer supports and activities that can be customised to the expectations and aspirations of each participant in the programs.

178. The primary focus of the new Rehabilitation Model of Care in New South Wales is to return the patient back home safely and enable independence in daily living. There is an emphasis on ensuring that people can obtain appropriate care at the right place and right time irrespective of income, physical location or cultural background.

Reply to the issues raised in paragraph 41 of the list of issues

179. Australia is adopting a needs-based and person-centred approach to disability support to enable people with significant and permanent disability to attain maximum independence by supporting them to undertake activities of daily living and participate fully in social and economic life. DisabilityCare participants, supported by their families and carers as appropriate, will work with DisabilityCare to develop and shape their own personal support plan that meets their needs and life goals. The scheme will empower people with a disability to engage as equal partners in decisions affecting their lives. This includes having choice over the types of support they want and how these are delivered. DisabilityCare will also be flexible and responsive to a person's changing circumstances over their lifetime.

180. The supports available under the scheme will vary from person to person, but may include therapies, home and vehicle modifications, assistive devices and equipment, assistance with household tasks, personal care and transport, and assistance for family and carers. The scheme will make early investments that improve the long-term outcomes for people, reduce lifetime costs and delay or mitigate the deterioration in a person's functional capacity, so they can remain independent for as long as possible.

181. DisabilityCare will also support people with disability to access services outside the scheme and work with communities and other systems to support them to become more welcoming and inclusive.

182. The Australian Government also operates the Targeted Community Care (Mental Health) Program, which funds supports such as Personal Helpers and Mentors services

which assists people aged 16 years and over whose ability to manage their daily activities and to live independently in the community is impacted because of a severe mental illness; and Family Mental Health Support Services target vulnerable and at-risk children, young people and families through prevention and early intervention, including family support and counselling, information and referral to clinical or other community services, home-based support and education/skills development.

183. The framework of programs that provide habilitation services to people with all disabilities are managed by States and Territories and guided by their mental health policies and Commonwealth disability and supported accommodation policies.

184. The New South Wales Department of Family and Community Services framework for providing contemporary learning and skills development programs for adults with disability focuses, according to a lifespan approach, on the following significant lifestages and transition points:

- Prior to school: a focus on early detection and outreach to enable successful transition to school;
- The school years: a focus on working intensively with the education system and families to plan for transition to post-school life and to maximise the development of functional, vocational and life skills;
- Leaving school and entering employment: a focus on ensuring life and vocational skills are optimally developed for independence.

185. Adult years: a focus on continued participation, community inclusion and employment opportunities.

186. The Framework includes a number of human-rights-based reforms, such as:

- Making services increasingly person-centred;
- Enabling an individual to “self-manage” their program including the option to self-manage with the support of an intermediary or receive direct payments;
- Ensuring people can exercise choice in terms of how they receive services (model options);
- Developing better provisions for ongoing services and support for people after they leave school, through adulthood and on to older age;
- Building greater capacity to provide individually funded learning and skills development programs while moving away from block grant funding; and
- Enabling individuals to change service providers and transition from programs as they age and/or move from one life stage to another.

187. The Australian Capital Territory Government delivers a range of habilitation services under the *Disability Services Act*, including case management, information services, therapy, accommodation support, community access and respite services. The Act also outlines the requirements to be complied with in relation to the design and delivery of services relating to people with disabilities. These requirements are underpinned by human rights approaches and practices that focus on person-centred service delivery and that highlight the need to improve the quality of life of people with disability in areas including independence, education and employment opportunities.

188. In Tasmania, the *Disability Services Act 2011* embodies a broad human rights perspective. The Act relates to disability services that are either funded or provided by the Tasmanian Department of Health and Human services. Furthermore, the principles in the

Operational Framework for Disability Services 2009 reflect contemporary practice with a strong focus on human rights.

Work and employment (art. 27)

Reply to the issues raised in paragraph 42 of the list of issues

189. The *Disability Discrimination Act* (Cth) makes it unlawful to discriminate on the basis of disability in all areas of work and employment and in relation to all kinds of employees and professionals. Section 15 makes it unlawful for an employer or potential employer to discriminate against an employee or potential employee on the basis of their disability:

- In the arrangements for determining who should be offered employment and the terms or conditions on which employment is offered;
- By denying or limiting an employee's access to opportunities for promotion, transfer or training, or any other benefit associated with employment;
- By dismissing the employee; or
- By subjecting the employee to any other detriment.

190. Similar provisions also apply for commission agents and contract workers under sections 16 and 17. In addition, section 19 prohibits any authority or body that has responsibility for conferring or revoking professional qualifications from discriminating on the basis of a person's disability:

- By refusing or failing to confer, renew or extend the qualification;
- In the terms or conditions on which the qualification is conferred, renewed or extended; or
- By revoking or varying the terms and conditions of the qualification.

191. Similar protections also exist at the State level; for example, the Tasmanian *Anti-Discrimination Act*.

192. Section 351(1) of the *Fair Work Act 2009* (Cth) prevents an employer from taking "adverse action" against an employee or prospective employee because of that person's disability. "Adverse action" is defined to include a range of behaviours falling short of dismissal, including refusing to employ a person, prejudicially altering a person's employment or treating an employee differently than other employees. There are a range of remedies available to the employee in the case of breach.

193. Section 65 of the Act provides that an employee is entitled to make a request for flexible working arrangements in certain circumstances. Following recent amendments, these circumstances have been expanded to include if the employee has a disability, or provides care or support to a person who has a disability. These amendments are intended to promote flexible working arrangements that accommodate the needs of both employees and employers. This will promote the ability of employees with disability, and those that care for them, to practice their professions unhindered and in a manner that supports their needs.

Reply to the issues raised in paragraph 43 of the list of issues

194. Australia is committed to the principle that people with disability get paid "real wages for real work" Most Australians with disability participate in the workforce at full rates of pay, however those that are unable to find or keep a job at full wage rates due to the

effect of disability on their workplace productivity have access to the Supported Wage System, a process that allows employers to pay a productivity-based wage that matches an independently assessed productivity rate. A panel of independent assessors conduct workplace productivity assessments for employers who wish to employ people with disability under the Supported Wage System provisions. Eligible employees undergo an assessment that measures their work productivity in comparison to a co-worker undertaking a similar job or other identified industry benchmarks. An online tool is used by assessors to record information collected relevant to the productivity assessment. Once the assessor has determined a fair rate of pay, commensurate with the employee's assessed productivity level and all parties agree on the wage rate, the wage agreement is submitted to Australia's Industrial Relations Tribunal, the Fair Work Commission, and the employer can commence paying the agreed wage. People with disability who participate in the Supported Wage System have the same conditions of employment as their co-workers and the assessed percentage of productivity applies to the wage rate only.

195. A review of the employee's workplace productivity is completed annually, or earlier, to take account of any significant change in duties or productivity and to ensure that the employee is receiving the correct rate of pay.

Reply to the issues raised in paragraph 44 of the list of issues

196. There were 22,311 persons with disability who accessed Supported Employment services in Australian Disability Enterprises during 2011-12. The Australian Bureau of Statistics *Disability, Ageing and Carers, Australia: Summary of Findings (2009)* records that a total of 1,086,400 people with disability were employed.

Participation in political and public life (art. 29)

Reply to the issues raised in paragraph 45 of the list of issues

197. The *Commonwealth Electoral Act 1918* requires that a person is not entitled to have their name placed on the Roll or be retained on the Roll where they are incapable of understanding the nature and significance of enrolment and voting by reason of unsound mind. The Australian Electoral Commission requires evidence from a medical practitioner to support any such finding prior to action being taken to remove a person from the Roll. There are numerous avenues to challenge a decision including merits review under the *Electoral Act*, the *Disability Discrimination Act*, the *Administrative Decisions (Judicial Review) Act* and by the Ombudsman. The number of electors removed from the Roll is as follows:

- 2008-09 – 5,735;
- 2009-10 – 4,341;
- 2010-11 – 13,082;
- 2011-12 – 5,445

198. There are separate commissions for voting in State/Territory elections. In New South Wales, a person that is medically incapable of voting may be removed by application by that individual or their carer/relative. The process by which this happens is that the individual/carer/relative indicates to the New South Wales Electoral Commission that they believe an individual is lacking in capacity. They are then required to fill out a form to this effect (provided by the Australian Electoral Commission), which necessitates the provision of a medical certificate to evidence their condition. That application is assessed and the person removed from the electoral roll as required.

Reply to the issues raised in paragraph 46 of the list of issues

199. The *Commonwealth Electoral Act* provides for the elector's right to have an assisted vote. Persons who are blind or vision impaired have access to a form of electronic voting. Work is underway to have all State and Territory Electoral Commissions adopt a single form of electronic voting based on a telephone keypad. If successful, it is likely to be made available to a wider group of electors.

200. This system is currently operational in New South Wales. iVote has allowed blind, vision impaired, and disabled voters, as well as those living in remote areas, to cast a secret and unassisted vote remotely using an interactive voice recognition-based phone number or an Internet-enabled PC since 2011. Once lodged, iVotes are printed out in a central location as completed ballot papers and included in the manual count processes.

201. The New South Wales Electoral Commission has developed a variety of resources to provide electors with easy-to-understand, relevant and accessible information about enrolment, elections and voting suited to a variety of needs. Information on voting is available for people with all disabilities including those with intellectual or mental and/or psychosocial disabilities from the New South Wales Electoral Commission website in, for example: audio, AUSLAN (with captioning and voice over), braille, large print, animation/slideshow/video and Easy Read guides.

202. In line with Western Australia's *Disability Services Act 1993*, a number of public authorities provide a range of information and services to support electors with disability to vote. The Western Australian Electoral Commission has developed strategies to improve access to elections and voting. Since 2008, the Western Australian Electoral Commission has offered a range of strategies to support people with disability. Electors with physical mobility issues can drive through polling places and use redesigned desktop voting screens. Electors with hearing challenges can use Hard of Hearing counter cards and TTY facilities. Electors with limited sight can use magnifying sheets at polling places. In addition, electors with permanent disability, serious illness or infirmity can vote by post or use mobile polling offered to people in hospital, aged care centres and other institutions where people live. Changes to the *Electoral Act 1907* (WA) enabled electors with disability to obtain assistance from any person they choose.

International cooperation (art. 32)

Reply to the issues raised in paragraph 47 of the list of issues

203. Australia is committed to disability-inclusive development. The strategy *Development for All: Towards a disability-inclusive Australian aid program 2009-2014* aims to improve quality of life for people with disability and to promote active participation by people with disability in the aid program. The Australian Agency for International Development (AusAID) also receives guidance on the integration of disability into AusAID's activities and programs from its disability-inclusive development Reference Group of eminent international disability experts, most of whom are people with a disability themselves.

204. In 2012, an independent review found that "considerable and impressive" progress had been made towards a more disability-inclusive aid program during the first three years of the Strategy. It found that people with disability are more able to advocate for their rights to governments as a result of Australia's support to Disabled People's Organisations. The 2013 Organisation for Economic Co-operation and Development Development Assistance Committee Peer Review highlighted AusAID's "exceptional emphasis on disability which makes it a leader in this area internationally."

205. AusAID is working to systematise the inclusion of people with disability in its planning processes through guidance and capacity building. For example, AusAID's *Accessibility Design Guide: Universal design principles for Australia's aid program*, provides practical information about how barriers to the built environment can be minimised to improve access for people with disability. This guide specifically promotes active involvement of people with disability throughout the project cycle, including on general planning committees and in design, construction and administration. An internal guidance titled *Integrating Disability into Investment Development* requires AusAID staff to consider how people with disability will be involved in the implementation of the initiative and participate in decision-making structures.

206. This work has real-world impacts, such as the support provided to the Samoan National Disabled People's Organisation to access technical assistance prior to the design of a national program on disability.

National implementation and monitoring (art. 33)

Reply to the issues raised in paragraph 48 of the list of issues

207. The Australian Government consulted widely on the ratification of the Convention. Disability-sector NGOs and representatives of the disability sector were among 200 plus invitations issued to participate. The consultation was also open to the public. A grant of \$A50,000 was provided by the Australian Government to the Australian Federation of Disability Organisations to assist with disability sector consultations. The Organisation's role was to assist the Government by providing advice on aspects of the consultations and reporting on the sector's views.

208. The National Disability Strategy aims to ensure that principles underpinning the Convention are incorporated into policies and programs affecting people with disability. The National Disability Strategy Implementation Reference Group was established in June 2012 to provide collaborative and expert advice and information to Government on issues relating to the implementation of the Strategy. The Reference Group comprises equal representation of members of the National People with Disabilities and Carer Council and National Organisations Representing People with Disability, their carers and families to help ensure that the views of people with disability are heard in the implementation of the Strategy. The National Disability Strategy Implementation Group's Indigenous Working Group, made up of key Indigenous and disability stakeholders, has been established to provide advice to the Australian Government on a national Closing the Gap target for increased access to specialist disability services and support for Indigenous people with disability in the context of the introduction of DisabilityCare. An interim report is expected by mid-July 2013.

209. The National People with Disabilities and Carer Council also provides advice and information to Government on the implementation of the National Disability Strategy and on issues affecting people with disability, their families and carers in Australia. Its membership includes people with lived experience of disability, including intellectual and psychosocial disability.

210. In addition, the Australian Government provided funding to support the development of the *Disability Rights Now Civil Society Shadow Report* on the Convention, and to facilitate civil society attendance at committee sessions relating to Australia.

Women with disabilities (art. 6)

Reply to the issues raised in paragraph 49 of the list of issues

211. The *National Disability Strategy 2010-2020* takes a comprehensive approach that also recognises the different needs, perspectives and interests of people with disability. Recognition of the diversity of experiences of people with disability underpins the six outcome areas of the Strategy. Area for future action 2.3 of the Strategy: “Develop Strategies to reduce violence, abuse and neglect of people with disability” includes Action 2.3.1, “Ensure that the *National Plan to Reduce Violence against Women and their Children 2010-2022* and the *National Framework for Protecting Australia’s Children* have priority action to improve the safety and wellbeing of women and children with disability”.

212. Women and girls with disability often face violence and intersectional discrimination. For example:

- In 2009, the labour force participation rate of women with disability was 49 per cent compared with 60 per cent for men with disability, and 77 per cent for women without disability. Women with disability are also more likely to have lower paid, part-time and casual jobs than these two latter groups.
- From the 2011-12 Australian Public Service Commission State of the Service Report, we know that within the Australian Public Service, people with disability (31 per cent) were almost twice as likely as other employees (16 per cent) to report experiencing harassment and bullying in the last 12 months.
- Women who have a disability experience domestic and family violence at higher rates, greater severity and over longer periods than others.² In a Victorian study, 25 per cent of women who reported sexual assault to the police had a disability, 15 per cent had an intellectual disability and 5.9 per cent had a physical disability.³
- Women and girls with disability can also experience difficulty accessing disability and mainstream government services, including health services and education. They are at increased risk of physical, emotional, sexual and psychological violence.
- In 2012, the Australian Bureau of Statistics trialled the collection of information about disability status in its Personal Safety Survey. The data will be released in late 2013.

213. Australia acknowledges the importance of acting to protect women with disability at risk of violence. The New South Wales Government is currently reforming the laws and service provision relating to domestic and family violence. The New South Wales *Domestic and Family Violence Reforms* align with the *National Plan to Reduce Violence against Women and their Children*, acknowledging that women with disabilities require a specific response. The New South Wales reforms will implement appropriate strategies to address the particular vulnerabilities and needs of women with disabilities experiencing domestic and family violence.

² S. Murray and A. Powell, “Sexual Assault and adults with a disability: Enabling recognition, disclosure and a just response” *ACSSA Issues 9*, Australian Institute of Family Studies (Canberra, 2008).

³ D. Brownridge, “Partner violence against women with disabilities”, *Violence Against Women*, vol. 12, No. 9 (2006), pp. 805-822.

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Reply to the issues raised in paragraph 50 of the list of issues

214. Australia identifies gaps in its support systems through surveys by the Australian Bureau of Statistics, reports by the Australian Institute of Health and Welfare and research into the needs of families and children with disability.

215. **Financial support.** Family Tax Benefit Parts A and B assist low and middle income families to meet the costs of raising children. Family Tax Benefit Part A is paid to families with a dependent child aged under 16, and between 16 and 19 where the children are in full-time secondary study. Exemptions are also available for young people who lack capacity to study full-time due to physical, psychiatric, intellectual or learning disability. Family Tax Benefit Part B provides additional assistance to single parent families and couple families with one parent earning the main income.

216. The Carer Payment and Carer Allowance are fortnightly payments for people who care for a person with disability or severe medical conditions in a private home. The Carer Payment is for people who, because of the demands of caring, are unable to support themselves through employment. Carer Allowance is a further payment for carers who provide daily care and attention for people who need significant additional care.

217. The Family Support Program ensures services are available to support the wellbeing and nurturing of children and families, especially those who are vulnerable and disadvantaged, including families of children with disability, to enable them to manage life's transitions, protect children and contribute to building stronger, more resilient communities.

218. The *Helping Children with Autism Package* and *Better Start for Children with Disability* initiative assists children under seven with Autism Spectrum Disorder and other disabilities to access early intervention services. The programs provide eligible children and their families with access to funding of up to \$A12,000 for direct services, as well as offering information services, websites, workshops and playgroups.

219. **Keeping children safe and well.** Australia's *National Framework for Protecting Australia's Children 2009-2020* sets out six supporting outcomes to ensure Australia's children and young people, including children and young people with disability, are safe and well. One outcome is to ensure that known risk factors for child abuse and neglect, including poverty and social isolation, are addressed. Under the *Second Action Plan, 2012-2015* of the National Framework, national priority actions were specifically developed to improve outcomes for children and young people with disability. One key action explores evidence-based models of working with families where disability of the child or adult is impacting on the safety and wellbeing of children, including those whose families live in poverty or social isolation.

220. In February 2013, Megan Mitchell was appointed Australia's very first National Children's Commissioner. It is her job to work within the Australian Human Rights Commission to advocate for children and young people at the federal level by: promoting public discussion and awareness of issues affecting children, conducting research and education programs, consulting directly with children and representative organisations, examining relevant Commonwealth legislation, policies and programs that relate to children's rights, wellbeing and development, and examining national or cross-jurisdictional matters that would benefit from national leadership.

221. *Keep Them Safe: A shared approach to child wellbeing* is the New South Wales Government's five-year (2009-14) action plan to re-shape the way family and community services are delivered in New South Wales to improve the safety, welfare, and wellbeing of

children and young people, including those with disability. The plan includes actions specific to disability and seeks to enhance the universal service system, improve prevention and early intervention services, better protect children at risk and strengthen partnerships with non-government organisations. A high-level, cross-agency committee progresses this agenda, instigating evidence-based responses to identified gaps.

222. New South Wales acknowledges that people with a disability face challenges that can make accessing mainstream services and connecting with local social networks more difficult. Universal parenting programs, *Families New South Wales* and the *Aboriginal Child, Youth and Family Strategy* identify children with a disability and parents with a disability as client sub groups to be targeted for inclusion within the provision of universal services. The aim of these programs is to support families expecting a child or with children aged up to eight years (or five years for *The Aboriginal Child, Youth and Family Strategy*), encourage social networks, provide parenting programs, connect parents to the service system and encourage the early identification of child development issues.

223. New South Wales also provides funding and support to non-government organisations to deliver prevention and early intervention services. There are three main early intervention programs providing targeted services to children, young people and their families. These are *Brighter Futures*, *Child, Youth and Family Support Services* and *Getting It Together*. These programs support children's age-appropriate development before they become involved with the child protection system. In doing so, these programs are all available to children and young people and their families living with a disability.

224. *Brighter Futures* services are provided to families with children under nine years of age or who are expecting a child, where the child is at high risk of entering the statutory child protection system, based on an assessment of whether the impact of this vulnerability if left unaddressed places them at high risk of entering the child protection system.

225. *Child Youth and Family Support Services* services are available to children and young people and families who are experiencing low to medium risk issues that, if not addressed, may escalate to the point where more intensive services are needed or risk of significant harm is identified. Services include information, advice and referral, case management, home visiting, counselling, parenting programs and skills development groups. Similarly, *Getting It Together* services provide information, advice and referral, case management and skills focused groups for young people aged 18 years or under, with alcohol and/or drug misuse problems.

226. Where a child with disability is at significant risk of harm and is taken into foster care there are multiple services and supports available in the *Out-of-Home Care* system. In the mainstream *Out-of-Home Care* service system, children are able to access the *Out-of-Home Care Health and Education Pathways*. These pathways acknowledge the significant vulnerabilities experienced by children and young people in *Out-of-Home Care* and seek to remediate these vulnerabilities through access to timely assessment, planning, intervention and review of their health and education needs.

227. **Casework practice procedures.** The New South Wales Department of Family and Community Services departmental child protection assessment procedure covers the way Department caseworkers undertake statutory child protection assessments. It makes no specific reference to children or young people with disability. However, in working with a family to complete an assessment, standard casework practice includes responding to that issue if it is adversely affecting family functioning.

228. Child protection is the responsibility of State/Territory governments. In New South Wales, the Structured Decision Making tools recognise that children or young people with disabilities have an increased vulnerability to abuse and neglect. The Secondary Assessment framework (another assessment procedure employed by New South Wales

Department of Family and Community Services ensures that caseworkers consider the parents' unmanaged mental health issues and/or disability issues and the impacts these have on each parent/carer's provision of care and protection to children/young persons in their care.

229. **Strengthening Families Program.** This Program targets families with a child under nine or an unborn child who is the subject of a Risk of Significant Harm report. The Program does not specifically target children with a disability. One or more of the following parent vulnerabilities must be present for the Program: parental mental health issues; parent/s with significant learning difficulties or intellectual disability; domestic violence; drug or alcohol misuse; or lack of parenting skills or inadequate supervision. The following supports are provided to families in the Program: quality child care; structured home visiting; parenting programs; and casework focused on parent vulnerabilities.

230. In the Australian Capital Territory, there are services to protect and meet the needs of vulnerable children and young people. Families are referred to these services by friends, educators and health professionals as needs are identified, and self-referral also occurs. Programs such as the Child and Family Centres, Child, Youth and Family Services programs and other programs provided by Government and Community agencies provide programs such as parenting programs, nursing services, playgroups, therapy, counselling, immunisation and referrals to supports, and useful services to help protect and meet the needs of vulnerable children and young people.

231. If specific protection issues (particularly allegations of abuse or neglect) are identified for any child, including children with a disability, they can be reported to Australian Capital Territory Care and Protection Services, assessed and if appropriate appraised in accordance with the *Children and Young People Act 2008*. This may result in further referrals and supports being offered to the children and young people and their families, or if risk is identified and they are unable to live at home, the child being placed in out of home care with a kinship or foster carer or in a residential placement.

232. In Tasmania following major reforms to child, family and disability services in 2008 to streamline service access, delivery and coordination, the provision of disability and family support is structurally and organisationally integrated to avoid omission of co-presenting family risks or disability needs. Consistent with Tasmania's commitment to the *National Framework for Protecting Australia's Children*, these Gateway Services are community-based single-entry and assessment points located in each region of Tasmania, backed by an integrated network of dedicated family support and specialist disability services.

233. Gateway's intake and assessment tools prioritise the safety of and developmental environment for children, including gathering information on child and parental capacity, known barriers and risks, and providing an overview of needs for integrated service delivery planning.

234. Assessments of childhood disability and/or familiar poverty would trigger the service to make a comprehensive review of parental resources and capacity, in line with the potential risks to the child and need to provide an equitable, stable and safe home environment.

235. The Western Australian Disability Services Commission and funded disability sector organisations work closely with children with disability, their families and carers to address not only which services and supports are required, but also goals, aspirations and connections with community life. This individualised approach to planning helps build strong relationships with children with disability, their families and carers which, in turn, helps identify and address gaps in a child's life.

236. The Commission acknowledges that people with disability, especially children with disability, are vulnerable and at greater risk of abuse and neglect. The Commission's People at Risk Policy and operational guidelines provides a framework for appropriate and timely responses to concerns and incidents of abuse, neglect and exploitation affecting children. All Commission-funded services are required to have safeguards and policies to protect individuals' rights and freedom. They are also required to notify the Commission of any incident (reported or observed) involving risk or harm to a person using their services.

237. The Commission collaborates with other State Government agencies, including Education, Housing, Health and Child Protection, to ensure a structured and integrated approach when families of a child with disability are experiencing financial hardship, including accessing available financial and practical supports.
