

**オーストラリア　第2・3回審査のための**

**事前質問事項前のパラレルレポート（JD仮訳）**

障害者団体オーストラリア（ＤＰＯオーストラリア）

２０１７年６月

障害者権利委員会への提出

障害者権利委員会第18会期で採択すべきオーストラリアへの事前質問事項

文書に関する情報

## 障害者団体オーストラリア（２０１７）は、障害者権利委員会にその第18会期に採択されるべきオーストラリアへの事前質問事項（案）を提出する。障害者団体オーストラリア・シドニー、障害者団体オーストラリア（DPO Australia）を代表して障害のある女性オーストラリア（WWDA）が作成した。

## この文書は、障害者団体オーストラリア（DPO Australia）のために、そしてそれに代わって障害のある女性オーストラリア（WWDA）のCarolyn Frohmader と Christopher Brophyが作成した。

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障害者団体オーストラリア（DPOオーストラリア）について

障害者団体オーストラリア（DPO オーストラリア）は、オーストラリアの4つの全国レベルの、特定の人口集団および障害横断的な障害者団体（DPO）の連合である。DPOオーストラリアは、障害のある女性オーストラリア（WWDA）、オーストラリア先住民障害ネットワーク（FPDNA）、障害者オーストラリア（PWDA）、および全国少数民族障害連盟（NEDA）によって設立され、構成されている。DPOとして、これらの4つの全国組織は、障害のある人々によって導かれ、管理され、構成された自己決定組織である**[[1]](#endnote-1)**。

DPOオーストラリアの重要な目的は、共通の利益、目的、戦略的な優先事項や機会の分野で協力して、オーストラリアの障害者の人権と自由を促進し、保護し、発展させることである。 DPOオーストラリアは、オーストラリアの障害のある人びとと協議し、関与するために認定された、政府と他の関係者との間の調整ポイントである。

DPOオーストラリアの4つの加盟組織は、人権条約の監視機関や国連の特別手続を含む、国連の機関との幅広い協力経験を持っている。DPOオーストラリアは、条約体のオーストラリア審査、女性の地位に関する委員会（CSW）、およびCRPD締約国会議（COSP）を含む、様々な国連プロセスにおいて、市民社会の代表団を調整し、導いてきた。DPOオーストラリアは、多数の国連サイドイベントを主催、実施、後援している。

DPOオーストラリアは国連専門家会議（EGM）に参加するように定期的に招待されている。最近の例は、障害を持つ少女の性的および生殖権に関するEGM（第10会期COSP会合で障害（担当）特別報告者が主催）、開発と社会における障害のある女性と少女の権利と展望の推進についてのEGM（UNDESA とECLACが主催)、「若者と障害：社会的包摂、男女平等、差別禁止、性的暴力防止の政策」に関するEGM（UNFPA）である。 DPOオーストラリア加盟組織である障害のある女性オーストラリア（WWDA）と障害者オーストラリア（PWDA）の2つは、国連経済社会理事会（ECOSOC）の特別協議団体の地位を保持している。

この報告は次の団体によって支持されている。

障害のある女性オーストラリア（WWDA）、

全国少数民族障害連盟（NEDA）、

オーストラリア先住民障害ネットワーク（FPDNA）、

障害者オーストラリア（PWDA）、

障害のある児童青年オーストラリア（CYDA）

オーストラリア障害者団体連盟（AFDO）

オーストラリア障害者権利擁護ネットワーク（DANA）

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解説

**要約**

DPOオーストラリアは、オーストラリア政府の、障害者の権利に関する条約（条約、以下CRPD）の遵守に関し、障害者の権利に関する委員会（委員会）の第18会期会合で採択されるオーストラリアへの事前質問事項を作成する同委員会が、この簡潔な文書を提出する機会を与えてくれたことに感謝する。

本文書には、オーストラリアが条約を遵守していることに関する短い最新情報と、事前質問事項の案が、条約の各条項に沿って構成され、記されている。スペースの許す範囲で、委員会や他の国連条約監視機関による過去の総括所見を参照できるようにしている。本書の末尾には詳細な説明も付記している。

DPOオーストラリアは、この文書提出に加えて、オーストラリア政府のCRPD遵守に関する正式な審査の前に、定期的報告（CRPD / C / C）に関するガイドラインに従って、障害者の権利に関する委員会への包括的なオーストラリア市民社会パラレルレポートを検討し、作成することを望んでいる。

**背景情報と事前質問事項のための推奨質問**

**一般原則および義務（第1条および第4条）**

オーストラリアはCRPDをオーストラリアの国内法に完全には組み入れておらず、人権保護のための包括的な法的枠組みはない**[[2]](#endnote-2)**。オーストラリアのCRPD義務の履行は、国家障害戦略2010-2020（NDS）**[[3]](#endnote-3)**に定められているが、NDS**[[4]](#endnote-4)**は系統的な人権侵害に対処するための行動や測定可能な成果目標を欠いている**[[5]](#endnote-5)**。NDSには、オーストラリアに関連する条約体による審査での（オーストラリア政府の）約束が反映されていない**[[6]](#endnote-6)**。これらの審査に基づく関連の勧告は、NDSの具体的な行動に組み込まれていない。

CRPD第12条、第17条、第18条に関係するオーストラリアの解釈宣言の撤回は進んでいない**[[7]](#endnote-7)**。

オーストラリアはCRPDの実施とモニタリングに関し、すべての段階で障害者およびその組織を効果的に関与させていない**[[8]](#endnote-8)**。オーストラリア政府が資金提供した障害者を代表する組織の数、多様性および資金額は、前回の報告以降、減少している。

**事前質問事項のために推奨される質問（第１条と第4条）**

締約国がCRPD第12条、第17条および第18条に関係する解釈宣言を撤回しようとしているかどうかを明示してください。そうでない場合は、理由を説明してください。

「レッドファーン声明」**[[9]](#endnote-9)**、特にアボリジニとトーレス海峡諸島の人びとの障害に取り組むための6つの優先事項**[[10]](#endnote-10)**を実施するための進捗状況についてお知らせください。

オーストラリア政府が資金を提供する全国的な障害者団体（DPO）および障害者を代表する団体の数およびそれらに関する詳細な予算情報を提供してください。これには、以下への資金提供の安定性と持続可能性に関する情報を含めてください。

1. CRPDの実施とモニタリングのすべての段階に障害のある青少年を含む障害者が直接参加できるよう支援すること。
2. 政治的、社会的、経済的、文化的生活のすべての分野にわたって障害者のリーダーシップの機会を開発し、障害者の参加を促進すること。
3. 障害者、特に障害のある女性や女児に対する暴力に対処し、予防するためのあらゆる措置を講ずること。

d. 障害のある人々の人権を向上させることに関連する国際フォーラムに出席・参加すること。

国家障害擁護プログラム（NDAP）**[[11]](#endnote-11)**の改革にかかる最新情報をお知らせください。それには、すべての障害者がタイムリーで適切な個別擁護支援にどのようにアクセスできるかについての詳細を含めてください。

**平等と無差別（第5条）**

オーストラリアは条約に基づくオーストラリアの義務を取り入れた、司法的に施行可能な包括的人権法**[[12]](#endnote-12)**の制定に失敗した**[[13]](#endnote-13)**。法律は、系統的・横断的な差別から（障害者を）保護するものではない。障害者差別禁止法1992（連邦）には、その有効性を損なう免除が含まれている**[[14]](#endnote-14)**。

**事前質問事項のために推奨される質問（第5条）**

条約および関連の人権文書に基づく義務を組み込んだ、司法的に執行可能な人権法または同様の法的文書の制定に向けた進捗状況についてお知らせください。

1992年障害者差別禁止法（連邦）に基づく免除に関するものを含む、障害の差別に関して利用可能あるいは利用されている法的救済措置について詳述してください。

複合かつ横断的な差別を排除するための措置について詳述してください。それには次のような障害のある人々に関する特定のデータを含めてください；

アボリジニとトーレス海峡島民、女性と少女、文化的および言語的に多様な背景のある人、LGBTI[[15]](#endnote-15)、人道的入国者と亡命者[[16]](#endnote-16)。

**障害のある女子（第6条）**

オーストラリアにおける障害のある女性および少女に対する暴力**[[17]](#endnote-17)**は、緊急かつ未解決の問題である**[[18]](#endnote-18)**。委員会や他の国連機構の勧告**[[19]](#endnote-19)**にもかかわらず、オーストラリアでは、ジェンダーによる暴力にかかる議論、法律、政策およびサービスは、主に「家庭内および家族の」暴力および性的暴行に対処することに焦点を当てている**[[20]](#endnote-20)**。女性と子どもに対する暴力を減らすための国家計画2010-2022**[[21]](#endnote-21)**は、女性に対する暴力を防ぐためのものである。しかし、障害のある女性や少女に対して犯された多くの形態の暴力**[[22]](#endnote-22)**とそれが生じた環境[[23]](#endnote-23)は、国家計画の範囲外のものである**[[24]](#endnote-24)**。

**事前質問事項のために推奨される質問（第6条）**

強制治療、強制不妊措置、強制避妊、制限的慣行を含む、障害のある女性および女児に対するあらゆる形態の暴力を排除するために採用されている立法上、行政上およびその他の措置について委員会に最新情報をください。

効果的で統合された、暴力に対するサービスとシステムへのアクセスの平等を確保するための具体的な措置についてお知らせください。次のような障害のある女性の詳細を含めてください；

アボリジニとトーレス海峡の島民、文化的および言語的に多様な人びと、LGBTI、刑務所**[[25]](#endnote-25)**を含む入所施設やその他のケアとサービス施設で生活している人びと。

オーストラリアの女性とその子どもに対する暴力の一次予防のための国内フレームワーク**[[26]](#endnote-26)**が、入所施設、居住施設、その他のケア環境にいる障害を持つ女性に対する暴力を特に除外している理由を説明してください**[[27]](#endnote-27)**。

オーストラリアにおける危機対応サービスの国内アクセシビリティ検査の実施に向けた進捗状況について委員会に最新情報をください。

**障害のある児童（第7条）**

オーストラリアには、すべての障害児の特定の権利を含む、子どもの権利**[[28]](#endnote-28)**を積極的に促進し、保護する包括的な枠組みが欠けている**[[29]](#endnote-29)**。現在の枠組み[[30]](#endnote-30)は、障害児の権利がどのように実施され、監視されるべきかを明確にしておらず、また、子どもの最善の利益という原則の適用が、オーストラリアの管轄区域内で首尾一貫していない**[[31]](#endnote-31)**。オーストラリアには、障害のある子供や若者のための包括的なデータ収集メカニズムがない**[[32]](#endnote-32)**。

2013年の国家児童コミッショナー**[[33]](#endnote-33)**の設置は歓迎されるが、障害のある子どもの権利を説明、調査、促進、または具体的に保護する実質的な作業は、これまでのところ完了していない[[34]](#endnote-34)。

2つの王立委員会**[[35]](#endnote-35)**を含む、子どもに関する上院での諮問会議**[[36]](#endnote-36)**がいくつか現在、オーストラリアで進行中である。オーストラリア政府は、子ども**[[37]](#endnote-37)**を含む障害者に対する暴力に関係する王立委員会の設置を妨げてきた**[[38]](#endnote-38)**。

**事前質問事項のために推奨される質問（第7条）**

立法上およびその他の枠組みにおいて、障害のある子どもや若者の権利の促進と保護を強化するための進捗状況についてお知らせください。

次の障害のある子どもや若者（の状況）について詳述してください。

アボリジニとトーレス海峡島嶼国の人びと、文化的および言語的に多様な人びと、 LGBTI、人道的支援による入国者および亡命者。

障害のある子どもを含む、すべての子どもおよび若者の分類された**[[39]](#endnote-39)**データを収集する全国的に一貫したアプローチに向けての進展状況について詳述してください。

現在継続中の上院の諮問会議**[[40]](#endnote-40)**および王立委員会**[[41]](#endnote-41)**の勧告を実施するための調査結果、成果および進捗状況に関する詳細な情報を提供してください。特に、障害児を中心に説明してください。

**意識の向上（第8条）**

障害のある人々の権利に対する意識を高めるための全国をターゲットとした戦略はまだない。前回の報告以降、いくつかのイニシアティブへの資金供与が停止された**[[42]](#endnote-42)**。国家障害戦略（NDS）第2次実施計画（2015-2018）**[[43]](#endnote-43)**は、2年遅れの2016年12月に発表され、「国家努力の強化」の4つの分野の1つとして「コミュニケーション活動」が優先されている**[[44]](#endnote-44)**。しかし、NDSには十分に資金が供与されておらず、今日まで「コミュニケーション活動」の発展に向けた行動の証拠もない。

**事前質問事項のために推奨される質問（第8条）**

障害者の権利に関する意識を高めるための措置に関する情報を提供してください。その成果、監視、評価に関する情報を含めてください。

障害者がどのように意識向上キャンペーンや戦略の設計、実施、監視、評価に直接関わっているかを説明してください。

「コミュニケーション活動」の優先分野を含め、NDS第二次実施計画2015-2018の実施に関する最新情報を提供してください。

**施設及びサービス等の利用の容易さ（第9条）**

国家障害戦略2010-2020（NDS）は、依然として障害者のアクセスの平等を高めるために設計された主要な政策枠組みである**[[45]](#endnote-45)**。NDSの下で、とりわけ国家障害保険スキーム（NDIS）**[[46]](#endnote-46)**の実施を中心に重大な改革が行われているが、NDSは政府の所管領域全体で一貫して推進されているわけではなく、また、その政策成果をもたらすのに必要な投資や具体的な措置もない**[[47]](#endnote-47)**。

**事前質問事項のために推奨される質問（第9条）**

包括的かつアクセス可能なコミュニティを構築するための「国家障害戦略2010-2020の結果に関する上院調査」からの勧告を実施するための調査結果、成果および進捗状況についての最新情報をください**[[48]](#endnote-48)**。

以下の2013年障害者サービス基準（連邦）**[[49]](#endnote-49)**の遵守を強化し、促進するための対策についてお知らせください；

アクセシブルな公共交通機関のための障害基準2002（連邦）**[[50]](#endnote-50)**; 連邦および各州および準州の管轄区域における障害（施設へのアクセス - 建物）基準2010（連邦）**[[51]](#endnote-51)**。

通信アクセスのための全国的な原則および基準の採用を含む、条約におけるすべてのアクセシビリティ措置を監視および実施するための措置について委員会に通知してください。

**生命に対する権利（第10条）**

オーストラリア国内法は、生命に対する権利を認めたり、保証したりはしてはいない。介護施設における障害者の早すぎる、避けられない死の割合は非常に高い。2009年から2014年の間にクイーンズランド州のケア施設で亡くなった障害のある73人の死亡**[[52]](#endnote-52)**について調査したところ、調査対象の死亡者全体の半数以上が予期せぬものと判断された**[[53]](#endnote-53)**。そして、死亡全体の半数以上は、潜在的には避け得るものと見なされた**[[54]](#endnote-54)**。

**事前質問事項のために推奨される質問（第10条）**

連邦、州および準州におけるすべての形態の収容施設およびその他のケア施設の、障害のある人の早過ぎる、および避けることの可能な死亡率に関する情報と分類化されたデータを提供してください。

障害者のいのちの権利に関して、医療従事者やその他のサービス提供者に実施される人権に基づく教育と訓練について詳述してください。

**危険な状況及び人道上の緊急事態（第11条）**

オーストラリアには、障害者のアクセスと参加を確保するための、または緊急時の障害特性に対応した支援へのアクセスを確保するための、全国統一の緊急管理基準がない**[[55]](#endnote-55)**。

**事前質問事項のために推奨される質問（第11条）**

緊急事態の前、最中および後の障害特性に対応した支援を含む、主流の災害管理計画、運営および復旧の全段階にわたって、障害者の平等なアクセスと参加を確保する、全国統一の緊急管理基準の実施に向けた進捗状況についてお知らせください。

**法の前に等しく認められる権利（第12条）**

多くのオーストラリアの法律、政策、実践は、法の前の平等な一人の人間としての障害のある人々の承認や、法的能力が認知される権利を拒否したり、けなしている**[[56]](#endnote-56)**。

2014年11月、オーストラリアの法改革委員会（ALRC）**[[57]](#endnote-57)**は、法の前の平等を承認することと障害のある人々の法的能力を擁護するための障壁にかかる調査の「最終報告書」**[[58]](#endnote-58)**を国会に提出した**[[59]](#endnote-59)**が、CRPD第12条に対するオーストラリアの解釈宣言を含め、調査は限られていた**[[60]](#endnote-60)**。オーストラリア政府は、勧告が「現在政府により検討中である」とのみ述べ、報告書にはまだ回答していない**[[61]](#endnote-61)**。

**事前質問事項のために推奨される質問（第12条）**

障害のある人々が他の人と平等に法律に基づいて保護されることを確保するための、すべての措置に関する詳細な情報を提供してください。

すべての障害者が生活のあらゆる面で他者と平等に法的能力を享受できるようにするために取られた、次の措置について詳しく述べてください；

障害者の平等な権利を確保するため身体的、精神的インテグリティを維持すること、市民として完全に参加すること、 財政問題を自分で管理すること、 法的拘束力のある意志決定をすること、 投票、 そしてケアの指示書を事前に自立して作成すること。

障害者の法的能力を促進する、優先順位を付ける、支援するなどについて、全国的に一貫した「支持された意思決定の枠組み」を確立するためにとられた措置について委員会に最新情報をください。

法の前に等しく認められるための平等な承認に関する障壁についてのオーストラリア法改革委員会（ALRC）2014のレビューからの勧告の実施に向けた進捗状況について委員会に最新情報をください。

**司法手続きの利用の機会（第13条）**

司法制度にかかわる障害のある人びとの多くは、司法へのアクセスを困難で、敵対的、かつ効果的ではないと感じる等、大きな障壁に直面している[[62]](#endnote-62)。その結果として、彼らはしばしば法的に救済されないままとなっている[[63]](#endnote-63)。

障害のある人びと、特にアボリジニとトーレス海峡島民の障害のある人びと[[64]](#endnote-64)は、成人、青少年の司法制度のいずれでも、全体に占める割合が多いままとなっている[[65]](#endnote-65)。

（国連人権理事会の）「普遍的・定期的レビュー」（2016）で、オーストラリアは、刑事司法制度が、精神障害故に不起訴になったり、あるいは有罪とは見なされない認知障害のある人びとを治療する方法を改善することを自発的に約束した[[66]](#endnote-66)。

**事前質問事項のために推奨される質問（第13条）**

原告、訴訟当事者、被告、犠牲者、証人としての司法制度における障害者の多さに対処するための措置について、障害の詳細、性別、文化特有の支援や転換のためのプログラムなどを記述してください。「正義回復」（Justice Reinvestment）プログラム（いわゆる回転ドア現象らすため、刑務所にかける費用の一部を地域サービスに振り向ける政策。訳者注）の導入と実施に関する情報を含めてください。

オーストラリアのどの刑務所に何人の障害者が収容されているか説明してください。障害を持つアボリジニとトーレス海峡島民の特定のデータも含めてください。投獄されている間に障害のある人々に提供される支援について詳細に明らかにし、障害のある人々が刑務所を出所する際にはどのような支援が行われるのかも含めてください。

刑事司法制度に関係する障害を持つアボリジニとトーレス海峡島民の人びとを支援するための「トラウマ告知アプローチ」を、オーストラリア政府がどのようにして概念化し、適用しているのか、詳細に教えてください。

多くのアボリジニとトーレス海峡諸島の障害を持つ若者で、少年院に収容されることがしばしばある人たちの不利な生活状況に対処するためのすべての措置についてお知らせください。

青少年司法制度に関わる子供や青少年を含む、障害を持つすべての人びとの法的代理、助言、支援[[67]](#endnote-67)を強化するための措置を委員会にお知らせください。

前回の審査以降、裁判に適さない、または有罪判決を下すことのできないと宣告された障害のある人の数に関する情報を提供してください。これには精神障害のために罪に問われない、または無罪であると判断された、認知および/または心理社会的障害を有する人びとを刑事司法制度で扱う方法の改善に向けての取り組みの進捗状況についての詳細情報も含む。

**身体の自由及び安全（第14条）**

障害のある人びとは、合法的な権限なしに自由と安全を奪う多くの形態を経験し[[68]](#endnote-68)、一般の人よりも自由を奪われる率が高い[[69]](#endnote-69) [[70]](#endnote-70)。立法、政策、実践の枠組みに大きな問題が残っている[[71]](#endnote-71)ために、その結果として、障害のあるアボリジニとトーレス海峡島民が不釣り合いに高い率で経験している[[72]](#endnote-72)。

**事前質問事項のために推奨される質問（第14条）**

アボリジニとトーレス海峡島民の障害者や障害のある女性を含む、有罪判決がないにもかかわらず、恣意的に拘留されている、障害者の管理のための刑務所の不当な使用を終了させるための措置について、委員会に最新情報をください。

「オーストラリアにおける認知・精神障害のある人びとの無期限の拘禁に関する上院調査」[[73]](#endnote-73)による調査結果およびあらゆる勧告の実施に向けての進捗状況について委員会に最新情報をください。

前回の審査以降、代替の意思決定の下で医学的介入の対象となった、および自由で、独立したインフォームドコンセントなしに医療介入を受けた、障害のある人の数に関する分類化されたデータを提供してください。

障害に基づいて自由を奪うことを可能にする法律の廃止に向けての進捗状況をお知らせください。とくに、精神保健施設や非自発的地域治療命令（CTO）をともなうコミュニティでの、明らかであるか、または診断された障害に関連した、非自発的収容を認可する規定の廃止について。

**拷問又は残虐な、非人道的で若しくは品位を傷つける取扱い若しくは刑罰からの自由（第15条）**

オーストラリアでの大きな懸念は、「行動管理」政策と実践[[74]](#endnote-74)の名の下で、向精神薬を投与されたり、精神科多剤療法[[75]](#endnote-75)を受けたり、身体拘束あるいは隔離されている障害児や障害者が数多く存在することである[[76]](#endnote-76)。

近年、精神保健障害または心理社会的障害を有する人びとに対する強制精神医学的治療の使用が急激に増加している[[77]](#endnote-77)。

障害サービス分野における制限的行為の実施を削減および廃止するための全国的枠組み[[78]](#endnote-78)には重大な制約[[79]](#endnote-79)があり、州および準州は、障害者サービス施設が障害を持つ人びとに制限的行為の実施を許可することができる。

**事前質問事項のために推奨される質問（第15条）**

障害児を含む障害者が、拷問や虐待、非人道的または虐待的な扱いや処罰[[80]](#endnote-80)を受けることを確実になくすために、法律や実際に採られたすべての措置についてお知らせください。

障害者が生活したり、またはサービスを利用する、拘留、教育、就労および介護の場を監視するための、国の独立した予防メカニズムを設置するために採られた措置について委員会に最新情報をください。

オーストラリアの拷問禁止条約（CAT）遵守に関する2014年の審査の勧告**[[81]](#endnote-81)**を実行するために講じられた措置に関する情報を提供してください。

**搾取、暴力及び虐待からの自由（第16条）**

オーストラリアの上院[[82]](#endnote-82)は2015年、入所施設や居住環境における障害のある人びとに対する暴力、虐待、およびネグレクトについて全国調査を実施した[[83]](#endnote-83)。この調査から、障害者に対する暴力や虐待[[84]](#endnote-84)がオーストラリアの「トレンド」であることが判明した、これは「入所施設」に限るものではなく、あまりにも多く、かつ、系統的であり王立委員会[[85]](#endnote-85)（設置）の緊急性を正当化するものである[[86]](#endnote-86)。2017年3月、オーストラリア政府は上院の調査報告書に対する回答[[87]](#endnote-87)を提出したが、王立委員会の必要性を排除し、NDISの「質とセーフガード枠組み」[[88]](#endnote-88)及び「委員会」[[89]](#endnote-89)が「障害者の権利を保護する」と主張した[[90]](#endnote-90)。

NDIS「質とセーフガード委員会」は、2020年には計画全体でNDIS参加者46万人の保障措置を監督することになる**[[91]](#endnote-91)**が、これはオーストラリアの障害者人口の10％未満に相当する。

2017年5月、120人以上のオーストラリアの学者が、障害者に対する暴力行為に関する王立委員会を設立するよう首相に求めた公開書簡に署名した[[92]](#endnote-92)。

2017年5月、DPOオーストラリアが調整し、163のCSOとほぼ400人の個人が参画・支持した、障害者に対する暴力と虐待に関する王立委員会の設置を求める、市民社会声明[[93]](#endnote-93)が、首相に手渡された[[94]](#endnote-94)。

**事前質問事項のために推奨される質問（第16条）**

オーストラリアでの障害者に対する多面的かつ系統的な暴力の圧倒的な証拠に関連して、政府が障害者に対する暴力および虐待への国の独立した調査機関[[95]](#endnote-95)を設置するかどうかをお知らせください。

そのような調査機関は、証言を強要し、あらゆる形態の暴力の包括的な調査を行い、問題を法執行機関に照会する、具体的で広範な権限を持つかどうかお知らせください。

「入所施設や居住施設における障害者への暴力、ネグレクトおよび虐待に関する上院の調査」からのすべての勧告の実施に向けての進捗状況についてお知らせください。

NDISに参加していない人々を含む、障害を持つ人々が経験するあらゆる形態の暴力に関連する調査結果を保護、調査、訴追および執行するためのすべての措置を説明してください[[96]](#endnote-96)。

障害児に対するあらゆる形態の暴力を予防し、対応するための包括的なアプローチを確保するために、オーストラリアの子どもを保護する国家枠組み2009-2020**[[97]](#endnote-97)**を見直し、是正するための措置についてお知らせください。

**個人をそのままの状態で保護すること（第17条）**

障害のある人、特に障害のある女性や少女の強制的な不妊手術は、オーストラリアの政府によって合法とされ、認可された継続的な慣行である[[98]](#endnote-98)。 2005年以降、国連の人権条約機関、国連の特別手続、国際医療機関[[99]](#endnote-99)は、強制的不妊手術を禁止する国内法を制定するようオーストラリアに勧告している。これらの勧告に対するオーストラリアの対応[[100]](#endnote-100)は、禁止ではなく、規制および拘束力のないガイドラインに焦点を当てている。オーストラリア政府は、第三者の判断で障害のある人が「能力不足」であり、その手続きが「最善の利益」であるという前提で、障害のある子どもや大人に不妊手術をすることは許容できる慣行である、という見解を依然としてとっている[[101]](#endnote-101)。

月経抑止剤[[102]](#endnote-102)を使用して障害のある人々を強制避妊することは、現在オーストラリアで広く行われている。特に、障害のある女児や女性に影響を及ぼしているが、このような状況が独立した監視やレビューの対象となることはめったにない[[103]](#endnote-103)。

**事前質問事項のために推奨される質問（第17条）**

締約国が強制的不妊手術に反対する立法をしなかった理由を委員会に知らせてください。

　障害のある人を身体的および精神的にそのままの状態で他の人々と平等に保護するために講じられた措置について詳しく述べてください、特に月経抑止剤の使用を含む、障害のある人に対して事前の自由で十分なインフォームドコンセントなしでの医療やその他の治療についても詳述してください。

**移動の自由及び国籍についての権利（第18条）**

第18条に関する解釈宣言は、ビザ申請を処理するための、現在のオーストラリアの立法上および行政上のアプローチを維持するためのものである[[104]](#endnote-104)。

1992年障害者差別禁止法（連邦）は、1958年移民法（連邦）内の特定の条項、および本法に基づく下位の法律、ならびにこの法律で要求される行動を免除している。

これには、移民法にある健康要件が含まれる。ほとんどすべてのビザ申請者は、ビザを取得するために[[105]](#endnote-105)、健康上の必要条件を満たす必要があるが、それは障害のある人を間接的に差別することがわかってきた[[106]](#endnote-106)。

**事前質問事項のために推奨される質問（第18条）**

2013年以来、障害に関連する理由で移民ビザを拒否された障害者の数について、分類化された情報を提供してください。

オーストラリアのビザを申請する障害のある移住者および亡命者のための一貫性、透明性および管理上の公平性を改善するために取られた措置について委員会に最新情報をください。特に、移民規則1994（連邦）の健康基準を修正するためにとられた措置を含む、条約に基づく義務の遵守について最新情報をください。

**自立した生活及び地域社会への包容（第19条）**

オーストラリアの障害のある人びとは、自分が住む場所や誰と一緒に住むかを自由に選択する権利を含め、自立して生活する権利を制限されている。彼らの多くは、社会的および個人的ケアの支援を受けるために、入所施設、居住施設、および高齢者ケア施設[[107]](#endnote-107)で生活することを余儀なくされている。国家障害保険制度NDISは、適格な参加者[[108]](#endnote-108)が自立して生活し[[109]](#endnote-109)、コミュニティに参加する権利を実現するために必要な支援を選択できるようにするための重要な投資である。生産性委員会による最近の国家障害保険制度NDISコストに関する中間レビューでは、「国家障害保険制度NDISの本格展開のスピードが、このスキームの成功と財政的な持続可能性を危険にさらしている」[[110]](#endnote-110)と結論づけた。さらに、国家障害保険制度NDISの成功は、国家障害戦略2010-2020（NDS）[[111]](#endnote-111)の他の5つの政策分野における平行した成功に左右されるとし、障害者支援市場[[112]](#endnote-112)を発展させるニードの緊急性を指摘した。

適切で、利用可能で、手頃な価格の住宅へのアクセスは、オーストラリアの障害者[[113]](#endnote-113)にとって依然として大きな問題であり、国家障害保険制度NDISの本格展開[[114]](#endnote-114)によってますますそれが明らかになっている。

**事前質問事項のために推奨される質問（第19条）**

国家障害保険制度（NDIS）の実施に関する詳細な最新情報を提供してください。生産性委員会の国家障害保険制度（NDIS）の費用に関する中間報告での勧告に対する回答を含めてください。

障害者が居住する入所施設および居住施設の閉鎖のための国家枠組みを策定するためにとられた措置について委員会に最新情報をください。

高齢者介護施設、集合介護施設、支援付き宿泊施設など、あらゆる形態の施設で生活する障害者の数に関する現在の分類化された情報を提供してください。

**個人の移動を容易にすること（第20条）**

国家障害保険制度（NDIS）の展開は、現在多くのNDIS参加者が移動とアクセシビリティの支援を得るのに、改善をもたらしている。しかし、生産性委員会による2016年6月の暫定レビューでは、NDISの本格展開期以降の成功と持続可能性に対するいくつかの重要なリスクが確認された。それらには、たとえば、「合理的かつ必要な」支援の定義、NDIS規則の変更、市場準備性および障害者ケアおよび主流サービスに対する州および準州政府の責任が含まれる[[115]](#endnote-115)。

**事前質問事項のために推奨される質問（第20条）**

以下の人達に関する、全国的に一貫性があり、公平で、十分に資金を供給された移動とアクセシビリティのサポートを確保するための措置について委員会に知らせてください。

a．NDISに参加している障害者。

b．NDISが給付する支援にアクセスする資格がない障害のある人びと。

**表現及び意見の自由並びに情報の利用の機会（第21条）**

障害のある人びとの多くは、表現の自由や意見の自由、そして情報への公平なアクセスを享受することができない[[116]](#endnote-116)。

オーストラリアは、オーストラリアの公認手話としてオーストラリア手話（Auslan）を認めていないし、聴覚障害者がAuslanを使用する権利の法的承認も保証していない。

**事前質問事項のために推奨される質問（第21条）**

オーストラリアの公認手話としてオーストラリア手話（Auslan）を承認し、さらに聴覚障害者がAuslanを使用する権利を法的に承認することへの進捗状況についてお知らせください。

以下の措置について詳しく説明してください、

1. 選択した言語および協議プロセスや公の行事を含む、すべての情報およびコミュニケ

ーションのアクセシビリティのための基準を開発し、実施する。

ｂ．音声による説明、点字、やさしい英語、キャプショニング（字幕をつけること）など、すべてのコミュニケーションをアクセスしやすい形式で提供する。

ｃ．政府および非政府部門におけるアクセシブルなフォーマットの開発、促進および使用への十分な資金提供。特に、完全にアクセシブルなフォーマットで作品を開発・公表するための障害者団体（DPO）への十分な資金提供。

**プライバシーの尊重（第22条）**

1988年プライバシー法（連邦）[[117]](#endnote-117)、1982年情報開示法（連邦）[[118]](#endnote-118)、2010年オーストラリア情報局法（連邦）[[119]](#endnote-119)、2013年国家障害者保険制度（連邦）[[120]](#endnote-120)は、障害のある人びとを含め、オーストラリアに住むすべての人びとのプライバシーにかかわる法律である[[121]](#endnote-121)。

NDIS「行動規範」[[122]](#endnote-122)は、現在NDISの「質とセーフガードの枠組み」[[123]](#endnote-123)の一部として策定されており、NDIS支援を提供するワーカーと事業者に、「障害のある人々のプライバシーの尊重」を含む、9つの中核的義務を遵守することを求めている。

**事前質問事項のために推奨される質問（第22条）**

NDISの参加者を含め、障害のあるすべての人びとのプライバシー保護のための措置について詳述してください。

障害者にプライバシーの権利に関する情報や教育が提供されることを確保するための措置について詳細情報をください。

**家庭及び家族の尊重（第23条）**

オーストラリアの障害のある親は、子どもを持つ他の親と比べ、子どもと引き離される率が10倍も高い可能性がある[[124]](#endnote-124)。子どもは、ネグレクトあるいは虐待の証拠よりも、親の障害を理由に両親から離される[[125]](#endnote-125)。オーストラリア人権機関評議会（ACHRA）は、これを緊急の人権問題として、障害のある両親に対する差別と認め、オーストラリア政府に対し緊急の対応を求めた[[126]](#endnote-126)。

オーストラリアの障害のある人々は、性的および生殖的権利を大きく侵害され続けており、その危険にさらされている[[127]](#endnote-127)。障害のある女性は、生殖技術支援（例えば体外受精、IVF）へのアクセス上、重大な差別を受け続けている[[128]](#endnote-128)。

**事前質問事項のために推奨される質問（第23条）**

障害に基づいて、または障害に関連して子どもを世話できないように引き離された障害のある親への差別を終らせ、救済するための措置について詳細情報をください。子どもが引き離された状況について、詳細かつ分類化されたデータを提供してください。

性的・生殖的自律、自己決定、性的表現に対する権利の否定を含む、障害のある人びとおよびインターセックスの特徴を有する人びとの性的および生殖に関する権利の侵害に締約国がどのように対処するつもりかについてお知らせください。

　社会的に不妊であると判断された人、独身者、同性カップルを含む、障害のある人に対して、他の者と平等にオーストラリアの普遍的な医療制度が、平等かつ差別なく生殖支援サービスにアクセスできるようにしているかどうか、どのようにそれを行っているかについて詳述してください。

**教育（第24条）**

現在の教育制度は、障害のある学生の権利に対処できていない[[129]](#endnote-129)。利用可能なデータによれば、障害のある生徒の90.2％が通常学校または主流の学校に通っている一方、15〜64歳の障害者のうち36％のみが中等教育を修了しており、それに比べて障害のない人の場合には60％が中等教育を修了していることが、示されている[[130]](#endnote-130)。

障害のある学生は、差別、リソースとサポートの不足、適切な研修を受けていない教師、専門知識の欠如、低い期待という深く根深い系統的な文化を日常的に経験している[[131]](#endnote-131)。学校における障害のある子どもや若い人たちへの深刻な人権侵害を示す説明する証拠（ベース）が急速に増加している[[132]](#endnote-132)。

**事前質問事項のために推奨される質問（第24条）**

インクルーシブ教育に対する障害のある学生の権利の承認が確保されるように、教育システム全体にわたる政策と実践の改革に向けた進捗状況について委員会に最新情報をください。

政府の同レビューでも提起された、とくに教育における障害基準（2005）[[133]](#endnote-133)に関連する判例法に関して受けたフィードバックに関連して、同基準が、法的関係でDDA(障害者差別禁止法)に規定された目的を達成すべく障害者を援助することを確保するためにとられた、すべての措置について詳細な情報をください。

あらゆるレベルの教育と訓練にわたる、障害のある学生の参加、修了率、拘束および隔離に関する分類化されたデータを提供してください。前回の審査以降、これらの割合は増減しましたか？

**健康（第25条）**

オーストラリアでは障害のある人々[[134]](#endnote-134)は、健康に対する権利の実現を妨げる幅広い障壁[[135]](#endnote-135)と差別的行為[[136]](#endnote-136)を経験し続けている[[137]](#endnote-137)。彼らは病気[[138]](#endnote-138)につながる直接的な人権侵害を経験している。健康に必要な社会的決定要因[[139]](#endnote-139)に重大な不利益を経験しているが、ほとんど健康促進の取り組みの課題とはなっていない[[140]](#endnote-140)。 NDISの導入にもかかわらず、障害のある人々は、彼らが最適なレベルの健康を維持するためのサービスとサポート[[141]](#endnote-141)に対するニーズはほとんど充たされていない。

**事前質問事項のために推奨される質問（第25条）**

民間および公的施設における、福祉機器と適合技術、および性と生殖に関する保健、精神保健および心理社会的支援領域を含め、障害のあるすべての人びとが他の人びとと平等に手頃な価格でアクセス可能で、質の高い文化的に配慮された医療サービスを確保するために採用されるすべての措置についてお知らせください。

あらゆる種類の保健サービスおよび治療、特に性的および生殖に関する保健サービスが、事前の、自由なインフォームドコンセントに基づいて障害のある人びとに提供されることを確保するために採用された、立法上およびその他の措置について詳しく述べてください。

二次的障害および未診断の健康状態の発生を予防および最小化するために、保健サービス、早期発見および介入プログラムが利用可能、かつ適切であることを確保するための措置についてお知らせください。それには次のような障害を持つ人びとの詳細を含めてください；

アボリジニとトーレス海峡の島民、女性、文化的および言語的に多様な人々、LGBTI、 子ども、人道援助による入国者、亡命者、知的障害者、心理社会的障害者。

**ハビリテーション及びリハビリテーション（第26条）**

NDISの実施は、障害のある人々がサービスにアクセスする方法を大きく変えている。資金と持続可能性に関する懸念が残っている[[142]](#endnote-142)。DPOオーストラリアとその他の団体は、継続的にNDIS資金と福祉支出の削減を結びつけることを含む、連邦予算サイクル内でのNDIS資金の政治化に懸念を表明している[[143]](#endnote-143)。

**事前質問事項のために推奨される質問（第26条）**

最大限の自立、十分な身体的、精神的、社会的、職業的能力、生活のあらゆる側面での完全な包摂と参加を達成し維持するために、障害者のための訓練やリハビリサービスとプログラムの設計・実施を確保するために取られたすべての措置についてお知らせください。

これらのサービスやプログラムが、どの程度手頃な価格で入手可能であり、年齢、性別、文化的な配慮の視点を統合し、適切な福祉機器や適合技術を含めているかについてお知らせください。

**労働及び雇用（第27条）**

オーストラリアでは、障害のある人びとは、障害のない人びとの約2倍の失業率である[[144]](#endnote-144)。他のOECD[[145]](#endnote-145)諸国と比較して、オーストラリアの障害者の就労率は最も低い国のひとつである[[146]](#endnote-146)。

雇用における差別の苦情は、障害差別に関する苦情のかなりの割合を占めている[[147]](#endnote-147)。オーストラリア障害企業（ADE's）による障害者の分離雇用は、続いている。

2015年ビジネスサービス賃金評価ツール（BSWAT）支払いスキーム法[[148]](#endnote-148)は、2004年から2014年の間、一定の状況下で、さまざまな基準を満たし、BSWATを使用して評価および支払いを受けた知的障害のある適格ADE従業員に100ドル以上の一時支払いを行った。

**事前質問事項のために推奨される質問（第27条）**

「仕事への意欲」の調査[[149]](#endnote-149)からの勧告の実施に向けた調査結果と進捗状況について委員会に最新情報をください。

障害のある人々、特に障害のある女性、アボリジニとトーレス海峡島民の障害者の雇用参加の増加に向けた進捗状況について詳細を教えてください。 労働力参加への根底にある構造的障壁を特定し、対処するためにとられた措置を詳しく説明してください。

以下の内容に関して、委員会に詳細情報をください；

a。 BSWATの状況

b。支援付き雇用者の権利を確保するための措置、他の者と同等の基準で報酬を受けること。

c。オーストラリア障害者企業（ADE）を閉鎖するための措置を含め、障害者の分離雇用を終了させるための措置。

d。障害のある人のための「シェルタード・ワークショップ（保護工場）」または同様の隔離された就労（支援）施設の数と場所。前回の審査以降にそれらの数が増減しましたか？

e。国家障害者雇用枠組の開発に関する進展。

**相当な生活水準及び社会的な保障（第28条）**

オーストラリアの障害のある人びとの45％は、相対的貧困またはその近くで生活しており、OECDの平均22％を2倍以上上回り[[150]](#endnote-150)、一般人口の貧困率の2.5倍を超えている[[151]](#endnote-151)。オーストラリアの所得、福祉および課税システムは、障害のある人びとが生涯を通して負う大きな障害コストを認識していない[[152]](#endnote-152)。前回の報告期間以降、ホームレスが増加し、住宅の入手可能性が悪化し、社会的住宅の不足と政策が続いている[[153]](#endnote-153)。家庭内暴力は現在、オーストラリアのホームレスの最も一般的な原因である[[154]](#endnote-154)。

**事前質問事項のために推奨される質問（第28条）**

2012年のILO「社会保護の土台に関する勧告」（第202号）[[155]](#endnote-155)を実施するために取られた措置に関して委員会に詳細情報をください。

社会保障給付、特にDSPの適格基準に関する詳細情報を提供してください。 DSP、「若年求職者手当（Newstart Allowance）」、および「若年者手当（Youth Allowance）」といった所得支援の基本額が、雇用機会を妨げるアクセス問題、障壁、および一般的な労働市場の状況、ならびに障害者支援の費用が考慮に入れられているかについて詳しく説明してください。

障害のある移民がDSPにアクセスするのに求められる新入国者の10年の待機期間（NARWP）を廃止するためにとられた手順についてお知らせください[[156]](#endnote-156)。

**政治的及び公的活動への参加（第29条）**

市民としての障害者[[157]](#endnote-157)の参加は、彼らの尊厳の承認の基礎で~~と~~ある[[158]](#endnote-158)。しかしながら、侮辱、おとしめ、抑圧および制限するような、広範囲にわたる差別、系統的な偏見、父性主義的および能力主義的態度は、オーストラリアの障害者の参加権に悪影響を与え続けている[[159]](#endnote-159)。

**事前質問事項のために推奨される質問（第29条）**

すべての選挙プロセスで投票することができないすべての人びとの権利を確保するために採られた措置を詳述してください。

障害のあるすべての人びと、特に障害のある女性および子ども、アボリジニおよびトーレス海峡島民の障害のある人びと、文化的および言語的に多様な障害を持つ人びとが、国際、全国、地方およびコミュニティレベルにおいて、公的問題での意思決定プロセスに有意義な参加を促進するための、肯定的行動措置を含む、すべての措置について、お知らせください。

コミュニティ、地方、全国および国際レベルで障害者の権利と利益を代表する組織の設立と維持のために、締約国が障害者に対して、財政支援を含めどのような支援が行われているかを詳しく教えてください。

**文化的な生活、レクリエーション、余暇及びスポーツへの参加（第30条）**

オーストラリアの障害を持つ多くの人びとは、文化的な生活、レクリエーション、レジャー、スポーツに完全かつ平等に参加することから除外されている[[160]](#endnote-160)。 NDIS「情報、リンケージ、能力構築（ILC）プログラム」[[161]](#endnote-161)は、障害を持つ人びとのための真のコミュニティ包摂を促進するための重要なメカニズムを提供している。

**事前質問事項のために推奨される質問（第30条）**

ICTの使用と促進を通じたものを含め、文化的生活、レクリエーション、レジャー、およびスポーツへの障害のある人びとの公平なアクセスを確保するために講じられている、あらゆる措置についてお知らせください。

NDIS ILCプログラムの詳細を教えてください。

移行期間中、ILCの予算が各年の計画額上限にまで増額され、かつ、NDIS費用の2023年レビューまでこの上限額が維持されるかどうかについて詳細情報をください[[162]](#endnote-162)。

**統計および資料の収集（第31条）**

CRPDに含まれる全範囲の義務にまたがる、分類化されたデータの収集および公的報告に関する全国的に一貫した措置はない。

オーストラリアは、いまだ障害のある女性と女児の状況の包括的な評価、ならびに障害のある子どもと若者の状況についての包括的な評価を委託したり、そのための資金を提供していない[[163]](#endnote-163) [[164]](#endnote-164)。

全国的に一貫した、分類化されたデータの不足[[165]](#endnote-165)は、オーストラリアがCRPDを遵守し、国家障害戦略（NDS）の実施を監視し、評価する能力に重大な懸念を生じさせる。

**事前質問事項のために推奨される質問（第31条）**

CRPDに含まれている全範囲の義務にわたる、分類化されたデータの収集および公的報告のための全国的に一貫した措置を開発するための進捗状況についてお知らせください。

以下の状況の包括的評価を依頼し、資金を提供するために講じられている措置について委員会に通知してください。

a.　障害のある女性と女児;

b．アボリジニとトーレス海峡島嶼国を含む、障害のある子どもや若者、文化的および言語的に多様な人びと、 LGBTI、人道支援による入国者、亡命者、自宅外のケア施設[[166]](#endnote-166)で生活している人びと；

c. 特定の種類の障害の発生率の詳細分析を含む、アボリジニとトーレス海峡諸島のコミュニティにおける障害の発生率。

**国際協力（第32条）**

オーストラリア政府は2013年、オーストラリア国際開発庁（AusAid）を廃止した。国際協力は現在、外交通商部[[167]](#endnote-167)を通じて行われている。「普遍的・定期的審査」（2016年）において、オーストラリアは持続可能な開発のための2030アジェンダ[[168]](#endnote-168)およびそのすべての人のための開発：2015－2020戦略[[169]](#endnote-169)、ならびにその国際先住民戦略2015－2019[[170]](#endnote-170)を推進する自発的な約束[[171]](#endnote-171)をしている。

**事前質問事項のために推奨される質問（第32条）**

障害が、持続可能な開発のための2030アジェンダ[[172]](#endnote-172)を実施し、監視するための国家計画の中で（障害が）主流化されることを確保するためにとられた措置についてお知らせください。

障害インクルーシブな開発における障害者のリーダーシップを促進するために、オーストラリア政府が、オーストラリアのDPOをどのように支援しているかについての詳細を教えてください。

**国内における実施及び監視（第33条）**

社会サービス省（DSS）と司法長官省（AGD）は、CRPDの実施を調整するためのオーストラリア政府内の「フォーカルポイント（中央連絡所）」として指定されている[[173]](#endnote-173)。 DPOと障害者の代表的団体は、長い間、総理大臣省と内閣に「全国障害者局」を設置するよう求めてきた[[174]](#endnote-174)。

「普遍的・定期的審査」（2016）で、オーストラリアは、国連への人権報告の全体的な取り組みを強化するために、常設の国内メカニズムを指定することを自発的に約束している[[175]](#endnote-175)。

**事前質問事項のために推奨される質問（第33条）**

第33条（2）に従って独立したメカニズムを確立するためになされた進歩について詳しく述べてください。

DPOおよび障害者の代表的団体がCRPDの実施および監視のあらゆる側面に参加するためにどのように資金を提供され、支援されているかについてお知らせください。

（翻訳：松永千恵子・松井亮輔）

1. #### Disabled People’s Organisations Australia (DPO Australia)

 Disabled People’s Organisations (DPO’s) are recognised around the world and in international human rights law as self-determining organisations led by, controlled by, and constituted of, people with disability. The ‘will and preferences of people with disability’ are at the top of the hierarchy in decision making of DPO’s. Importantly, DPO’s are organisations “of” people with disability, as opposed to organisations “for” people with disability. See for eg: United Nations General Assembly (12 January 2016) *Report of the Special Rapporteur on the rights of persons with disabilities.* Human Rights Council, Thirty-first session. UN Doc. No. A/HRC/31/62

#### General principles and obligations (arts. 1 and 4)

 [↑](#endnote-ref-1)
2. While Australia’s domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they do not cover all rights provided for in the CRPD. [↑](#endnote-ref-2)
3. The *National Disability Strategy 2010-2020* (NDS) is a ten-year Strategy, endorsed by the Council of Australian Governments (COAG), that sets out the national policy framework to guide all Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The NDS sets out goals and objectives under six areas of mainstream and disability-specific public policy. The six areas are: 1) Inclusive and accessible communities; 2) Rights protection, justice and legislation; 3) Economic security; 4) Personal and community support; 5) Learning and skills; and 6) Health and well-being. The NDS is being delivered in three phases through the following implementation plans: *‘Laying the Groundwork’* (2011-2014) set the foundation for each State and Territory Government to have its own disability plan to improve outcomes through mainstream policies, programs, services and infrastructure. *‘Driving Action’* (2015-2018) outlines new priority actions as well as ongoing commitments to consolidate actions that are driving improved outcomes and identify where more effort is needed. *Measuring Progress* (2019-2022) will identify new and emerging outcomes to be implemented in order to ensure the objectives of the NDS are met. For iformation on the NDS, it’s implemtation plans, and progress reports to COAG, see: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy> [↑](#endnote-ref-3)
4. A significant area of reform under the NDS has been the implementation of the *National Disability Insurance Scheme* (NDIS), a universal scheme that funds ‘reasonable and necessary’ supports for Australians with permanent and significant disability, and which is currently being rolled out across Australia. However, the significant focus on the NDIS has resulted in less action on other human rights issues, including for example: systemic violations of rights in health, employment, education, violence, and forced treatments. There is a considerable lack of investment, concerted actions and evaluation for the NDS to drive reform. The second NDS implementation Plan *Driving Action 2015-2018*, focuses on actions already underway, and NDS progress reports often only describe actions rather than evaluate outcomes for people with disability. See: Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>. See also: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017), available at: <http://dpoa.org.au/icescr-review-2017> See also: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy> [↑](#endnote-ref-4)
5. Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/> [↑](#endnote-ref-5)
6. Eg: CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CAT/C/AUS/CO/4-5; A/HRC/31/14. [↑](#endnote-ref-6)
7. These Interpretative Declarations are hindering Australia’s ability to comply with the CRPD and are being used as a justification to deny people with disability their human rights. For example, the [*Final Report of the Senate Inquiry into Involuntary Sterilization of People with Disabilities in Australia*](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/First_Report) used Australia’s Interpretative Declaration to Articles 12 and 17 of the CRPD to reject the consistent recommendation from international human rights treaty bodies, UN special procedures, human rights advocates, disability advocates, and women with disability, that the Australian Government *‘adopt national uniform legislation prohibiting the use of sterilization of boys and girls with disabilities, and of adults with disability in the absence of their prior, fully informed and free consent.’* [↑](#endnote-ref-7)
8. Sands, T. (2017), *Disabled People’s Organisations Australia (DPO Australia) Submission to the 2017/2018 Federal Budget*. Available at <http://dpoa.org.au/wp-content/uploads/2017/04/DPOA_20172018Budget_Submission_FINAL.docx>. [↑](#endnote-ref-8)
9. The *Redfern Statement* was released on 9 June 2016 by a large collective of Aboriginal and Torres Strait Islander Peak Organisations and allies as an *“urgent call for a more just approach to Aboriginal and Torres Strait Islander Affairs”*. The statement lays out six key priority areas and recommendations, underpinned by the principles of participation and self-determination. The six priority areas are: Meaningful engagement; Health; Justice Preventing violence (women and children); Early childhood; Disability. See: *The* *Redfern Statement 2016: Aboriginal and Torres Strait Islander Peak Organisations Unite*; accessed online at: <http://nationalcongress.com.au/about-us/redfern-statement> [↑](#endnote-ref-9)
10. The six urgent priority areas for action to ‘address disability for Aboriginal and Torres Strait Islander people’ in the *Redfern Statement* are: 1) Work to address intersectional discrimination; 2) Equitable access to the National Disability Insurance Scheme (NDIS) by Aboriginal and Torres Strait Islander people; 3) Establish disability access targets as part of the Closing the Gap framework and the NDIS Quality Assurance and Outcomes framework; 4) Invest in research and development to build an evidence-base of data; 5) Address the imprisonment rates of Aboriginal and Torres Strait Islander people with a cognitive or psychosocial disability; 6) Fund training and community leadership initiatives. See: *The Redfern Statement* 2016; OpCit. [↑](#endnote-ref-10)
11. The *National Disability Advocacy Program (NDAP)* provides people with disability with access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation. For more information see: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>

#### Equality and non-discrimination (art. 5)

 [↑](#endnote-ref-11)
12. See for example: *Concluding observations of the Committee on the Elimination of Discrimination against Women [Australia]* (2010) at para. 25 *“The Committee further urges the State party to give due consideration, with a view to further protecting women’s human rights, to the adoption of a Human Rights Act encompassing the full range of civil, cultural, economic, political and social rights.”* UN Doc. No. CEDAW/C/AUS/CO/7. [↑](#endnote-ref-12)
13. In the absence of a federal charter of rights or human rights act, there are significant gaps in the protection of human rights for people with disability. UPR Disability Coordination Group, *‘National Disability Strategy and implementation of the CRPD’*, Factsheet for Australia’s Universal Periodic Review 2015 (November 2015), Australian Cross Disability Alliance. [↑](#endnote-ref-13)
14. The rights of people with disability to non-discrimination are limited in six key areas: (a) failure to address intersectional discrimination;(b) ineffective complaints process; (c) lack of protection for systemic discrimination;(d) a lack of protection against vilification; (e) exemption clauses that allow discrimination on grounds of disability in migration, insurance and infectious diseases, pensions and allowances and combat and peacekeeping duties; and (f) a lack of community legal education outreach regarding individuals’ rights and protections under the DDA, in particular the lack of outreach to Aboriginal and Torres Strait Islanders communities and people with disability from non-English speaking backgrounds. See: Disability Rights Now, *Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (2012) available at: <http://www.pwd.org.au/issues/crpd-civil-society-shadow-report-group.html> [↑](#endnote-ref-14)
15. Lesbian, gay, bisexual; people who are transgender; people who have an intersex variation (LGBTI). [↑](#endnote-ref-15)
16. As per CRPD/C/AUS/Q/1 at para’s B.6, and B.7.

#### Women with disabilities (art. 6)

 [↑](#endnote-ref-16)
17. Over two-million women and girls with disability live in Australia (approximately 20% of the population of women), including approximately 100,000 girls with disability aged 0-14 and two- million women with disability aged 15 and older. See: Australian Bureau of Statistics (2011) *Disability, Australia, 2009*, Cat. No. 4446.0. Accessed online July 2014 at: [http://www.abs.gov.au/ausstats/abs@.nsf/mf/4446.0](http://www.abs.gov.au/ausstats/abs%40.nsf/mf/4446.0) [↑](#endnote-ref-17)
18. Women With Disabilities Australia (WWDA) (2016), *National Forum for Women and Girls with Disability: Proceedings and Outcomes Report.* WWDA, Hobart, Tasmania. November 2016. ISBN: 978-0-9775305-4-0. Available at: <http://wwda.org.au/report-wwda-national-forum-for-women-and-girls-with-disability-proceedings-and-outcomes> See also: Women With Disabilities Australia (WWDA) *‘WWDA Position Statement 1: The Right to Freedom From All Forms of Violence’*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9. Available at: <http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_1_-_Violence_FINAL_WEB.pdf> [↑](#endnote-ref-18)
19. See for eg: CAT/C/SR.1284; CRPD/C/AUS/CO/1; CEDAW/C/AUS/CO/7; CEDAW/C/AUL/CO/5; CCPR/C/AUS/CO/5; E/C.12/AUS/CO/4; CAT/C/AUS/5; CAT/C/AUS/Q/5; CRC/C/AUS/CO/4; A/HRC/17/10; A/HRC/22/53; CRC/C/15/Add.268. [↑](#endnote-ref-19)
20. ‘Domestic’ and ‘family’ violence in Australia is typically and narrowly understood as intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners. For example: the *National Plan to Reduce Violence against Women and their Children 2010-2022* focuses only on sexual assault and domestic/family violence in the context of intimate partner violence. The Plan is only linked to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), despite the fact thatprevention of violence against women and girls with disability is equally a key obligation relating to civil and political rights; economic, social and cultural rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination. The UN Committee on Economic, Social and Cultural Rights (CESCR) has recommended that the *National Plan* *to Reduce Violence against Women and their Children 2010-2022* be fully operationalised in a comprehensive human rights framework (See: UN Doc. E/C.12/AUS/CO/4). Australia’s primary national service response to address and prevent violence against women is through its 1800RESPECT service (<https://www.1800respect.org.au>), which was established in 2010 under the National Plan, to provide a 24-hour, 7 day a week confidential telephone and online counselling, information and referral service to anyone whose life has been impacted by sexual assault, domestic or family violence. A national project undertaken by Women With Disabilities Australia (WWDA) in 2016, found that as a support program for women with disability experiencing or at risk of experiencing violence, there are significant limitations with all aspects of the 1800RESPECT Service (see: Women With Disabilities Australia (WWDA) (August 2016) *‘Improving Service Responses for Women with Disability Experiencing Violence’*; Final Report. ISBN: 978-0-9585268-5-2. Available at: <http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT_Report_FINAL.pdf>). A key limitation of the 1800RESPECT service is the fact that it is focused on ‘domestic’ and ‘family’ violence and sexual assault in the context of intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners. One of the key recommendations stemming from WWDA’s National Project, included the urgent need for the Australian Government to ensure that the 1800RESPECT Service is broadened in scope to focus on, target, include, address and respond to, all forms of violence against all women - regardless of the setting/place in which it occurs, and regardless of who perpetrates it. The Australian Government is yet to respond to the 43 recommendations stemming from WWDA’s Report. [↑](#endnote-ref-20)
21. Council of Australian Governments (2011) *National Plan to Reduce Violence against Women and their Children 2010-2022,* Canberra. Accessed online at: <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> [↑](#endnote-ref-21)
22. For example: sexual and reproductive rights violations; restrictive practices; forced treatment; seclusion and restraint; deprivation of liberty. [↑](#endnote-ref-22)
23. For example: in institutional, residential and other formal care settings, service settings, out-of-home care, prisons. [↑](#endnote-ref-23)
24. The exclusion and neglect of women and girls with disability in the *National Plan to Reduce Violence Against Women and their Children 2010-2022* has been identified in a number of reviews and inquiries at both national and international levels. For example, the report from the *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, released in November 2015, recommended that the Australian Government amend the *National Plan* to ensure that women with disability are afforded the full range of rights protections that are available to women without disability. The recommendation also specified that the *National Plan* must be updated to include institutional and disability accommodation settings, and that in order to give effect to the National Plan, there must be increased funding to support women with disability escaping domestic violence. See the Final Report of the *‘Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings’* at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report> See also: Women With Disabilities Australia (WWDA) (August 2016) *‘Improving Service Responses for Women with Disability Experiencing Violence’*, OpCit. [↑](#endnote-ref-24)
25. For eg: Between 2000 and 2016, the total number of women in prison increased by around 226% from 1,368 to 3,095 women. Aboriginal and Torres Strait Islander women are the fastest growing prison cohort in Australia, increasing by 345% between 2000 and 2016, from 308 to 1062 women. Compared with the general population, women in prison are more likely to have experienced sexual assault and domestic and family violence and have high rates of mental illness and disability. Women in prison are routinely re-traumatised by practices such as mandatory strip searches and isolation in response to self-harm. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit; See also: Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings’*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available at: <http://wwda.org.au/papers/subs/subs2011/> [↑](#endnote-ref-25)
26. *‘Change the Story’* - the *National Framework for the Primary Prevention of Violence against Women and Their Children in Australia*; Available online at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx> [↑](#endnote-ref-26)
27. See Footnote Number iii at page 19 of *‘Change the Story’ - the National Framework for the Primary Prevention of Violence against Women and Their Children in Australia*. Available at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>

#### Children with disabilities (art. 7)

 [↑](#endnote-ref-27)
28. See for eg: UNICEF Australia and the National Children’s and Youth Law Centre (NCYLC) (May 2016) *Australian Child Rights Taskforce CRC25 Australian Child Rights Progress Report: A report on 25 years of the UN Convention on the Rights of the Child in Australia*; Published by the Australian Child Rights Taskforce; accessed online at: <https://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>. See also: Browne, R. (10 June 2016), *Australian governments have failed children: UNICEF report*; Sydney Morning Herald, accessed online at: <http://www.smh.com.au/business/the-economy/australian-governments-have-failed-children-unicef-report-20160608-gpemvm.html> [↑](#endnote-ref-28)
29. Including the particular rights and issues concerning Aboriginal and Torres Strait Islander children and young people with disability, culturally and linguistically diverse children and young people with disability; children and young people with disability who are LGBTI; and, children and young people with disability who are humanitarian entrants or asylum seekers, among others. [↑](#endnote-ref-29)
30. Child-related policy frameworks are essentially silent on disability. Where disability receives cursory attention, if at all, it appears to be framed through a lens of risk, often focused on reducing incidence of disability. There is also a lack of consideration of the complex forms of violence that children and young people with disability experience. See for eg: *National Framework for Protecting Australia’s Children (2010-2020)*, available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>; *Healthy, Safe and Thriving: National Strategic Framework for Child and Youth Health (2015)*, available at: <http://www.coaghealthcouncil.gov.au/Portals/0/Healthy%20Safe%20and%20Thriving%20-%20National%20Strategic%20Framework%20for%20Child%20and%20Youth%20Health.pdf>; The *National Plan to Reduce Violence Against Women and Their Children (2010-2022)* and related action plans available at: <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> [↑](#endnote-ref-30)
31. See: *Disability Rights Now, Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (2012) available at: <http://www.pwd.org.au/issues/crpd-civil-society-shadow-report-group.html> [↑](#endnote-ref-31)
32. Including for example, disaggregated data in regard to the enjoyment of their human rights, educational outcomes, health outcomes, and experiences of violence. See: Children and Young People with Disability Australia (June 2016) *Submission to the Productivity Commission Issues Paper National Education Evidence Base*, accessed online at: <http://www.pc.gov.au/__data/assets/pdf_file/0013/200704/sub066-education-evidence.pdf>. See also: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-32)
33. For information on the National Children’s Commissioner, see: <https://www.humanrights.gov.au/about/commissioners/ms-megan-mitchell-national-childrens-commissioner> [↑](#endnote-ref-33)
34. Although Children’s Commissioners are also established under legislation in each Australian State and Territory, the functions and legal powers of the Commissioners vary between jurisdictions. For details of Australian State and Territory based children and young persons’ Commissioners, see: <https://aifs.gov.au/cfca/publications/childrens-commissioners-and-guardians>. [↑](#endnote-ref-34)
35. *Royal Commission into Institutional Responses to Child Sexual Abuse*. Available at: <http://www.childabuseroyalcommission.gov.au>; *Royal Commission into the Protection and Detention of Children in the Northern Territory.* Available at: <https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>. See also: Royal Commission into Institutional Responses to Child Sexual Abuse (May 2017) *Report of Case Study No 41: Institutional responses to allegations of the sexual abuse of children with disability*; accessed online at: <http://www.childabuseroyalcommission.gov.au/case-study/27150f40-1e84-4b27-9f8b-c25fc162a561/case-study-41> [↑](#endnote-ref-35)
36. Senate Education and Employment References Committee (2016) *Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support*; Available at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability> See also: Senate Community Affairs References Committee (2015) *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*; Available at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect> [↑](#endnote-ref-36)
37. Children with disability are three to four times more likely to experience violence and abuse (including sexual violence) than their peers. See: Women With Disabilities Australia (WWDA) *‘WWDA Position Statement 1: The Right to Freedom From All Forms of Violence’*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9. Available at: <http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_1_-_Violence_FINAL_WEB.pdf> See also: Robinson, S. (2013) *Enabling & Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*. Children With Disability Australia, Melbourne. Accessed online at: <http://www.cyda.org.au/enabling-and-protecting> [↑](#endnote-ref-37)
38. See information provided in this document under *Article 16* for more detailed information on the urgent need for a Royal Commission into violence against people with disability. [↑](#endnote-ref-38)
39. Where disaggregated is mentioned throughout this submission, we generally mean disaggregation by age, gender, disability, location, and ethnicity. [↑](#endnote-ref-39)
40. Specifically the Senate Inquiry into *‘Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support’*, and the Senate Inquiry into *‘Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability’*. [↑](#endnote-ref-40)
41. Specifically, the *Royal Commission into Institutional Responses to Child Sexual Abuse*; and the *Royal Commission into the Protection and Detention of Children in the Northern Territory*.

#### Awareness-raising (art. 8)

 [↑](#endnote-ref-41)
42. ‘Ramp Up’, a portal on the ABC website specifically dedicated to disability issues, was de-commissioned in late 2014. See archived site at: <http://www.abc.net.au/rampup/> [↑](#endnote-ref-42)
43. Department of Social Services (DSS) *National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018*. Accessed online at: <https://www.dss.gov.au/sites/default/files/documents/10_2016/final_-_nds_second_implementation_plan_-_pdf_final_for_web.pdf> [↑](#endnote-ref-43)
44. The four ‘priority areas’ of the *National Disability Strategy Second Implementation Plan (2015–2018)* are: 1) NDIS transition to full scheme; 2) improving employment outcomes for people with disability 3) improving outcomes for Aboriginal and Torres Strait Islander people with disability; 4) communication activities to promote the intent of the strategy throughout the community. It also prioritises the development of an ‘Australian Government Action Plan’ to drive implementation of the NDS across Commonwealth portfolios between 2015 and 2018. See: Department of Social Services (DSS) *National Disability Strategy, Second Implementation Plan: Driving Action 2015–2018*. Accessed online at: <https://www.dss.gov.au/sites/default/files/documents/10_2016/final_-_nds_second_implementation_plan_-_pdf_final_for_web.pdf>

#### Accessibility (art. 9)

 [↑](#endnote-ref-44)
45. The *National Disability Strategy 2010-2020* (NDS), its national implementation plans, and progress reports to the Council of Australian Governments (COAG) can be accessed online at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy> [↑](#endnote-ref-45)
46. The *National Disability Insurance Scheme (NDIS)* is ‘a new way of providing reasonable and necessary, person-centred supports for Australians with a permanent and significant disability to enable them to live an ordinary life.’ See: <https://www.ndis.gov.au/> [↑](#endnote-ref-46)
47. T. Sands (2017). OpCit. [↑](#endnote-ref-47)
48. Senate Community Affairs References Committee, *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*. See: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AccessibleCommunities> [↑](#endnote-ref-48)
49. *National Standards for Disability Services 2013 (Cth)*. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services> [↑](#endnote-ref-49)
50. *Disability Standards for Accessible Public Transport 2002 (Cth).* Available at: <https://www.legislation.gov.au/Details/F2005B01059>. [↑](#endnote-ref-50)
51. *Disability (Access to Premises – Buildings) Standards 2010 (Cth).* Available at: <https://www.legislation.gov.au/Details/F2011C00214>.

#### Right to life (art. 10)

 [↑](#endnote-ref-51)
52. At the time of their death, most people (89%) were living in either disability supported accommodation operated by a non-government organisation (53%), or the government-operated Accommodation Support and Respite Services (AS&RS) (36%). Only eleven percent (11%) were living in a level three accredited residential service. Office of the Public Advocate (February 2016) OpCit. [↑](#endnote-ref-52)
53. Office of the Public Advocate (February 2016) *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*. Accessed online at: <http://www.justice.qld.gov.au/public-advocate/activities/past/deaths-of-people-with-disability-in-care> [↑](#endnote-ref-53)
54. Moreover, between 2009 and 2014, there was only one inquest into a death in care of a person with disability in Queensland, out of 73 cases. Office of the Public Advocate (February 2016) OpCit.

#### Situations of risk and humanitarian emergencies (art. 11)

 [↑](#endnote-ref-54)
55. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-55)
56. #### Equal recognition before the law (art. 12)

Including guardianship, estate management and mental health laws regulate the area of legal capacity, financial management and substitute decision-making in Australia. These laws differ between States and Territories resulting in inconsistency, and primarily focus on a person’s capability to perform particular actions as opposed to looking at how a person can be supported to perform those tasks themselves. Whilst Australia does not have a plenary guardianship system these laws all breach, are inconsistent with, or fail to fulfil obligations under the Convention on the Rights of Persons with Disabilities (CRPD). Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia’s Universal Periodic Review 2015: Fact Sheet on Equality before the law and supported decision-making*. [↑](#endnote-ref-56)
57. For information on the Australian Law Reform Commission (ALRC), see: <http://www.alrc.gov.au/> [↑](#endnote-ref-57)
58. Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws: Final Report* (ALRC Report 124); available online at: <https://www.alrc.gov.au/news-media/equality-capacity-and-disability-alrc-report> [↑](#endnote-ref-58)
59. The Inquiry Report made 55 recommendations for reform aimed at providing people with disability equal recognition before the law. [↑](#endnote-ref-59)
60. The ALRC Inquiry was limited to Commonwealth legislation. It did not directly address the State and Territory financial management, guardianship and mental health laws but only had regard to how Commonwealth laws and legal frameworks interact with State and Territory laws in the areas under review. It did not provide a comprehensive review of the laws that clearly are the most fundamental ways in which people with disability have their legal capacity denied or diminished in Australia. Substantive compliance with article 12 will be difficult to assess without a thorough analysis of financial management, guardianship and mental health laws at the State and Territory levels. Consequently, the impact of the review is limited in so far as the examination of these laws is excluded. Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia’s Universal Periodic Review 2015: Fact Sheet on Equality before the law and supported decision-making.* [↑](#endnote-ref-60)
61. See page 14 of the *Australian Government Response to the Senate Community Affairs References Committee report*; accessed at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response>

#### Access to justice (art. 13)

 [↑](#endnote-ref-61)
62. People with disability are often not provided with the supports, adjustments and accommodations they require to engage effectively in all processes of the justice system, including to access protections, to begin or defend criminal matters, or to participate in criminal justice processes. Negative assumptions and attitudes, coupled with a lack of support services and programs and minimal provision of adjustments, often means that people with disability are viewed as not credible, not capable of giving evidence, make legal decisions or unable to participate in legal proceedings. The inability to access effective justice compounds the disadvantage and discrimination experienced by people with disability. This results in many people with disability being left without protection and at risk of ongoing violence, or more likely to be jailed and destined to have repeated contact with the criminal justice system. See for eg: *Disability Rights Now* (2012) OpCit.; Australian Human Rights Commission (2014) *Equal Before the Law: Towards Disability Justice Strategies*; accessed online at: <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>; [↑](#endnote-ref-62)
63. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-63)
64. Since 2004 there has been a 95 per cent increase in the number of Aboriginal and Torres Strait Islander people in custody. In 1991 the time of the [Royal Commission into Aboriginal Deaths in Custody](http://www.austlii.edu.au/au/other/IndigLRes/rciadic/), Aboriginal and Torres Strait Islander people were 7 times more likely to be in prison, that figure in 2016 is now 13 times more likely. See: *The Redfern Statement 2016: Aboriginal and Torres Strait Islander Peak Organisations Unite*; accessed online at: <http://nationalcongress.com.au/about-us/redfern-statement/> [↑](#endnote-ref-64)
65. See for eg: Frohmader, C. and Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings’*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available online at: <http://wwda.org.au/papers/subs/subs2011/> [↑](#endnote-ref-65)
66. At the *Universal Period Review* [Australia] 2016, the Australian Government gave a voluntary commitment to *“improving the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment.”* As part of this, the Government committed to *“a national effort to analyse existing data and develop best practice resources for our jurisdictions.”* See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 141]. [↑](#endnote-ref-66)
67. For example, through the use of independent advocates, communication supports (including communication facilitators, speech language therapists), assistive devices and technologies.

#### Liberty and security of the person (art. 14)

 [↑](#endnote-ref-67)
68. This includes confinement to residential and other facilities, restriction on movement within residential and other facilities, as well as practices such as seclusion and exclusionary timeout within these facilities. See: Frohmader, C. and Sands, T. (2015) OpCit. [↑](#endnote-ref-68)
69. In June 2013, the Senate Legal and Constitutional Affairs References Committee, released the Report from its Senate Inquiry into *‘Value of a justice reinvestment approach to criminal justice in Australia’*. It found that people with disability (particularly persons with psychosocial disability; cognitive impairment, intellectual disability; fetal alcohol spectrum disorders, acquired brain injury; hearing impairment; communication and language impairments) are significantly over-represented in Australian prisons. The Committee expressed its deep concern that people with disability are being *“sent to prison because there are no other options available for courts to consider.”* The Inquiry Report made 9 recommendations, including the need for the Commonwealth adopt a leadership role in supporting the implementation of justice reinvestment, through the Council of Australian Governments. See: Senate Legal and Constitutional Affairs References Committee (June 2013) *Value of a justice reinvestment approach to criminal justice in Australia*; accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index> In addition, at its 2017 meeting, the Australian Council of Human Rights Authorities (ACHRA), specifically called on all Australian Governments to *“take measures to reverse the increasingly disproportionate number of Aboriginal and Torres Strait Islander people placed in detention, and to adopt evidence-based preventative programs such as Justice Reinvestment.”* See: Australian Council of Human Rights Authorities (ACHRA) *Communiqué* (28 April 2017), accessed online at: https://www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1557-australian-council-of-human-rights-authorities-communique-28-april-2017 [↑](#endnote-ref-69)
70. For eg: Aboriginal and Torres Strait Islander people with disability are almost 14 times more likely to be imprisoned than the rest of the population. Of the significant numbers of people with disability in the criminal justice system, there are people being detained past the cessation of the supervision or custody order, for indefinite periods. Anecdotally, it appears that there are at least 100 people detained across Australia without conviction in prisons and psychiatric units under mental impairment legislation; and that at least 50 people from this group would be Aboriginal and Torres Strait Islander people with disability. See for eg: Bevan, N., and Sands, T., (2016) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia’*, Australian Cross Disability Alliance (ACDA); Sydney, Australia. Available at: <http://dpoa.org.au/acda-submission-to-senate-inquiry-into-indefinite-detention-of-people-with-cognitive-and-psychiatric-impairment-in-australia/> See also: Senate Community Affairs References Committee (2016) *Indefinite detention of people with cognitive and psychiatric impairment in Australia*; accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report> [↑](#endnote-ref-70)
71. For eg: Specific guardianship legislation exists in each jurisdiction in Australia. However, legislation in some Australian jurisdictions gives minimal guidance to tribunals in making determinations about restrictions to a person’s autonomy. All jurisdictions in Australia have mental health laws which govern the treatment of persons with psychosocial disability. However, there is no uniformity in mental health legislation across Australia, and in many respects they breach, are inconsistent with or fail to fulfil obligations under CRPD. As a result, mental health laws do not adequately protect the right to liberty and security of people with psychosocial disability. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-71)
72. See for eg: Bevan, N., and Sands, T., (2016), OpCit. See also: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-72)
73. Senate Community Affairs References Committee (2016) *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report>

#### Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)

 [↑](#endnote-ref-73)
74. For eg: In Victoria, chemical restraint is the most common form of restrictive intervention used by disability service providers, with ‘psychotropic’ pharmaceuticals being the most common chemical restraint. See: <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/277-restrictive-interventions-in-victorias-disability-sector-issues-for-discussion-and-reform-1?path>= See also: See: *‘Open letter calls for royal commission into treatment of people with disabilities’*, [Online video] Lateline, ABC TV, 17 May 2017, accessed at: <http://www.abc.net.au/lateline/content/2016/s4670932.htm> See also: Victorian Department of Human Services (2010), OpCit., See also: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-74)
75. ‘Polypharmacy’ is often defined as ‘five or more medications taken in a 24 hour period’. See: <https://www.doctorportal.com.au/mjainsight/2012/1/polypharmacy-and-its-risks-rise/> For a discussion on Psychotropic polypharmacy in people with disability, see: Victorian Department of Human Services (2010) *Disability, mental health and medication: Implications for practice and policy.* A report prepared for the Office of the Senior Practitioner by: Dr Stuart Thomas, Kaisha Corkery-Lavender, Dr Michael Daffern, Dr Danny Sullivan; Centre for Forensic Behavioural Science, School of Psychology & Psychiatry, Monash University, Australia. Accessed at: <http://www.dhs.vic.gov.au/__data/assets/pdf_file/0007/666763/osp_senior_disability_mental_health_medication_implications_for_practice_policy_1010.pdf>. [↑](#endnote-ref-75)
76. Particularly people with disability living and or receiving services in in institutional and other care settings, including schools. [↑](#endnote-ref-76)
77. For eg: Electroconvulsive Therapy (ECT) performed on involuntary patients indicates that in Australia, women are three times more likely than men to be subject to the practice, across all age cohorts. See: Frohmader, C., & Sands, T. (2015) OpCit. [↑](#endnote-ref-77)
78. The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* was adopted by all governments in 2014. See: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector> [↑](#endnote-ref-78)
79. For example, the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* focuses more on when and how to use restrictive practices rather than seeking to prevent their use, or looking at the environmental factors that may be causing an individual to behave in a way which introduces restraint as an option. The Framework is not premised on changing services, systems and environments as the starting point for changing individual behaviour, but remains focused on changing the person themselves. Secondly, the Framework is only intended to apply to disability services. In addition, not all people with disability will receive support through the *National Disability Insurance Scheme* (NDIS), and people with disability in Australia experience restrictive practices in numerous environments including schools, mental health facilities, within prisons and hospitals. Excerpt taken from: Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia’s Universal Periodic Review 2015: Fact Sheet on Restrictive Practices*. [↑](#endnote-ref-79)
80. Including but not limited to: involuntary or forced institutionalisation, the use of seclusion or physical, chemical or mechanical restraints, involuntary or forced treatment, forced sterilisation and chemical castration, or any other non-consensual medical treatment or measures, including corporal punishment, electro-convulsive therapy, and involuntary or excessive drug treatment. [↑](#endnote-ref-80)
81. See: UN Doc. No. CAT/C/AUS/CO/4-5.

#### Freedom from Exploitation, violence and abuse (art. 16)

 [↑](#endnote-ref-81)
82. The Senate is one of the two houses of the Australian Federal Parliament. It consists of 76 senators, twelve from each of the six states and two from each of the mainland territories. It shares the power to make laws with the other House of the Parliament, the House of Representatives. The Senate delegates a range of tasks to its committees. As committee proceedings are flexible, they are able to meet in a variety of places, receive written submissions and hear evidence on specified matters. Numerous inquiries can be held at the same time, so many different issues can be examined and reported back to the Senate. Committees provide an opportunity for organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process. See: <http://www.aph.gov.au/About_Parliament/Senate> [↑](#endnote-ref-82)
83. In January 2015, a coalition of peak disability advocacy groups renewed the campaign for a *‘National inquiry into violence against people with disability in institutional and residential settings’* by writing to the then Prime Minister. The letter was endorsed by over 95 state and territory based disability and other organisations from around Australia (available at: <http://wwda.org.au/issues/viol/viol2011>) and supported by over 11,000 signatories to a petition calling for an inquiry (See: <https://www.change.org/p/tony-abbott-to-urgently-launch-a-national-inquiry-into-violence-neglect-and-abuse-against-people-with-disability-in-residential-and-institutional-settings>). In response, a group of Senators referred the matter on 11 February 2015 to the Senate Community Affairs References Committee. The *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings* was conducted during 2015 and the final Report was published on 25 November 2016 (available at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>). [↑](#endnote-ref-83)
84. The *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, found that violence and abuse against people with disability is an ‘epidemic’ in Australia and particularly affects women and girls with disability. [↑](#endnote-ref-84)
85. A *Royal Commission* is an inquiry initiated by the executive arm of a state or federal government, to examine and report on issues of public importance or concern. The legal power to establish a Royal Commission is exercised by the Governor General on behalf of the Crown (or the Governor of a State in the case of state Royal Commission), acting on the advice of Government ministers. The Australian Parliament has made a law confirming this power (Royal Commissions Act 1902 (Cth)) and regulating, to some limited degree, how Commonwealth Royal Commissions are to be conducted. See: <http://commissionwatch.com.au/what-is-a-royal-commission/> [↑](#endnote-ref-85)
86. The critical need for a *‘Royal Commission into Violence against People with Disability’* was the headline and key recommendation from the Senate Inquiry into *‘Violence, abuse and neglect against people with disability in institutional and residential settings’*. See the Senate Committee’s Final Report at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report> [↑](#endnote-ref-86)
87. Australian Government response to the Senate Community Affairs References Committee report; accessed at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response> [↑](#endnote-ref-87)
88. The *NDIS Quality and Safeguards Framework* is ‘A framework of nationally consistent measures and requirements to minimise the risk of harm to people with disability and to ensure high quality support through the NDIS.’ For more information on the NDIS Quality and Safeguards Framework, go to: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework> [↑](#endnote-ref-88)
89. The *National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission* (the Commission) is ‘a new, independent Commonwealth body responsible for implementing the Commonwealth functions of registration; complaints and reportable incidents; and oversight of behaviour support under the Framework. Taken from: Australian Department of Social Services (DSS) (May 2017) at: <https://engage.dss.gov.au/ndis-code-of-conduct-consultation/ndis-code-of-conduct-consultation-discussion-paper/> [↑](#endnote-ref-89)
90. Australian Government response to the Senate Community Affairs References Committee report; accessed at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response> [↑](#endnote-ref-90)
91. See: *‘Guaranteeing the NDIS and providing stronger support for people with disability’*, Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability> See also: <http://theconversation.com/understanding-the-ndis-many-eligible-people-with-disabilities-are-likely-to-miss-out-61016> [↑](#endnote-ref-91)
92. See: <https://disabilityroyalcommissionnow.wordpress.com/2017/04/05/open-letter/> [↑](#endnote-ref-92)
93. The Civil Society Statement calling for a Royal Commission is available at: at: <http://dpoa.org.au/civil-society-statement-rc/> [↑](#endnote-ref-93)
94. See also: <http://www.abc.net.au/news/2017-06-09/royal-commission-into-abuse-of-people-with-disability/8602508> See also: <https://probonoaustralia.com.au/news/2017/06/civil-society-backs-calls-royal-commission-disability-violence> [↑](#endnote-ref-94)
95. A *National Independent Inquiry* (often referred to in Australia as a ‘Royal Commission’) *into Violence and Abuse Against People with Disability* (including people with disability in all forms of institutional and residential settings) is the only mechanism that can provide a comprehensive, independent, and just response to all forms of violence and abuse against people with disability. A *Royal Commission into Violence and Abuse of People with Disability* will have legal powers to:

	* enable people with disability to tell their story and give evidence in a safe and supported way, without fear of retribution or reprisal;
	* compel witnesses and representatives of service systems to appear and be cross-examined under oath;
	* thoroughly examine forms of violence that are specific to people with disability, which have been ignored in most other inquiries;
	* shed light on and respond to the incidence and prevalence of all forms of violence perpetrated against people with disability, including the range of settings in which such violence occurs;
	* refer criminal allegations to the police and hold perpetrators and systems to account;
	* interrogate legislative and service system responses to violence and abuse against people with disability;
	* provide resourcing to enable the full and meaningful participation of people with disability, including those in institutional settings;
	* travel to capital cities, regional centres and towns to hear evidence and pursue open processes;
	* commission research and inform policy development;
	* make recommendations on legal reform, policies, systems and practices to create a safer future for all people with disability;
	* ensure justice for victims through the provision of redress.See: *Civil Society Statement to the Australian Government Calling for a Royal Commission into Violence, Abuse and Neglect of People with Disability* (7th June 2017). Available at: <http://dpoa.org.au/civil-society-statement-rc/> [↑](#endnote-ref-95)
96. Currently, there are over 60,000 NDIS participants. This number is expected to grow to about 460,000 participants when the NDIS is fully implemented from 2020. The *NDIS Quality and Safeguards Commission* will oversee safeguards for 460,000 NDIS participants at full scheme. See: *‘Guaranteeing the NDIS and providing stronger support for people with disability’*, Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability> [↑](#endnote-ref-96)
97. Council of Australian Governments (2009) *‘Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009-2010’*, Commonwealth of Australia. Available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>

#### Integrity of the person (art. 17)

 [↑](#endnote-ref-97)
98. People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013. [↑](#endnote-ref-98)
99. CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*, available at: <http://wwda.org.au/wp-content/uploads/2013/12/FIGOGuidelines2011.pdf> See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilization: Press Release*, 5 September 2011, available at: <http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/> [↑](#endnote-ref-99)
100. Australian Government, Australian Government response to the Senate Community Affairs References Committee Reports (May 2015), accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Government_Response> [↑](#endnote-ref-100)
101. Frohmader, C. (2014) *Fact Sheet: Sterilization*, OpCit. Community Affairs References Committee, *Involuntary or coerced sterilization of people with disabilities in Australia*. July 2013, Available at: [http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate\_Committees?url=clac\_ctte/involuntary\_sterilization/first\_report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/first_report/index.htm) [↑](#endnote-ref-101)
102. Including long-acting, injectable contraceptives. [↑](#endnote-ref-102)
103. Forced contraception particularly affects girls and women with disability, and is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse. It is a practice widely used in group homes and other forms of institutional settings, and is often justified as a way of reducing the ‘burden’ on staff/carers who have to ‘deal with’ managing menstruation of disabled women and girls. In the case of persons with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer. See for eg: Frohmader, C. (2013). *‘Dehumanized: The Forced Sterilisation of Women and Girls with Disabilities in Australia’*. Women With Disabilities Australia (WWDA), Rosny Park, Australia., ISBN 978-0-9876035-0-0. Available via: <http://wwda.org.au/papers/subs/subs2011/> See also: See also: Women With Disabilities Australia (WWDA) *‘WWDA Position Statement 4: Sexual and Reproductive Rights’*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8; available at: <http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_4_-_Sexual_and_Reproductive_Rights_FINAL_WEB.pdf>

#### Liberty of movement and nationality (art. 18)

 [↑](#endnote-ref-103)
104. In particular, the *Migration Act 1958 (Cth)* and the *Migration Regulations 1994 (Cth)* control the entry and stay in Australia, of non-citizens and prescribe the selection criteria and processes for all visa applications. [↑](#endnote-ref-104)
105. Permanent entry into Australia requires a visa holder and their families to satisfy a ‘health criterion’. The health criterion requires that the visa applicant be ‘free of disease or condition’ which would cost a significant amount, or prevent access to health care for Australian citizens. The provisions indirectly discriminate against people with a disability. For example, submissions to the *Joint Standing Committee on Migration’s 2010 Inquiry into the treatment of Migration Treatment of Disability* (Enabling Australia) stated that the health criteria is discriminatory in that it sets ‘standards of health requirement which the disabled do not or cannot meet’. See: Australian House of Representatives, Joint Standing Committee on Migration (2010), *Enabling Australia: Inquiry into the Migration Treatment of Disability*. Accessed online at: <http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/disability/report.htm> See also: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. [↑](#endnote-ref-105)
106. Migration law and processes treat people with disability solely as a cost, and devalue the important economic and social contributions that migrants and refugees with disability and their families might make to Australia. See: National Ethnic Disability Alliance (NEDA) (2009) *No Right to Discriminate; Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability*. Accessed online at: <http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/disability/subs.htm>

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

 [↑](#endnote-ref-106)
107. For eg: In June 2015, there were 6,252 young people in nursing homes around Australia, comprising of 555 young people aged 0-49 years and 5,697 aged 50-64 years. See: Senate Community Affairs References Committee (2015) *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*. Accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Young_people_in_aged_care/Report> [↑](#endnote-ref-107)
108. As at May 2017, there were approximately 60,000 NDIS participants. This number is expected to grow to about 460,000 participants when the NDIS is fully implemented from 2020. See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position>. See also: *‘Guaranteeing the NDIS and providing stronger support for people with disability’*, Joint Media Release by Hon Christian Porter, Senator the Hon Zed Seselja, and The Hon Jane Prentice. 9 May 2017. Accessed online at: <http://christianporter.dss.gov.au/media-releases/guaranteeing-the-ndis-and-providing-stronger-support-for-people-with-disability> [↑](#endnote-ref-108)
109. It is estimated that 35,000 to 55,000 NDIS participants will not have their housing needs met in the first decade of the Scheme. See: *Joint Standing Committee on the National Disability Insurance Scheme (May 2016), Accommodation for people with disabilities and the NDIS*. Accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/JNDIS-44th/NDIS_accommodation/Report> [↑](#endnote-ref-109)
110. According to the Productivity Commission’s interim review, *“the speed of the NDIS rollout, as specified in Bilateral Agreements between governments, has put the scheme’s success and financial sustainability at risk. It has resulted in the NDIA focusing too much on meeting participant intake estimates and not enough on planning processes, supporting infrastructure and market development.”* See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position> [↑](#endnote-ref-110)
111. For example, without accessible and inclusive transport, employment, education, health services, housing, communications and information access, rights protection and access to justice, a person with disability will not be able to fully benefit from an NDIS funded package; they may have specialist disability supports but they will still have barriers to accessing all areas of community life. The significant focus on the NDIS has resulted in far less investment and action on the five other NDS policy outcome areas. This is despite a number of issues and actions relevant to these areas being consistently raised by DPOs and disability advocacy organisations, including through UN review processes, submissions to government and parliamentary inquiries, as well as submissions specific to implementation of the NDS. See: Sands, T., (2017) *Disabled People’s Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia; available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/> [↑](#endnote-ref-111)
112. According to the Productivity Commission’s interim review, *“A significant challenge is the need to develop the disability supports market, so that there are enough providers and workers to meet the increased demand for services from scheme participants. Without a sufficient supply of disability supports, the NDIS cannot function as intended. And all governments need to work together to better manage the integration of the NDIS and other services.”* See: Productivity Commission (June 2017), OpCit, (p52). [↑](#endnote-ref-112)
113. The majority of public and social housing in Australia is inaccessible to people with disability. In addition, waiting lists for public and social housing is extremely long, with currently more than 200,000 people on waiting lists across the country. Many people with disability are forced to live in inappropriate and inaccessible public and social housing with little chance of being moved to housing that suits their needs. Others are forced to live in clusters of accessible public and social housing, which results in further isolation and segregation from the rest of the community. Many people with disability do not have an adequate standard of living to be able to rent on the private market or to buy their own homes. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-113)
114. Eg: the Joint Standing Committee on the NDIS recommended greater regulation to ensure all new housing is compliant with an updated Building Code of Australia. See: *Joint Standing Committee on the National Disability Insurance Scheme* (May 2016), OpCit.

#### Personal mobility (art. 20)

 [↑](#endnote-ref-114)
115. See: Productivity Commission (June 2017), *National Disability Insurance Scheme (NDIS) Costs*. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position> See also: Perkins, M. (June 18 2017) Woman with disabilities scores landmark win over NDIS; *The Age Newspaper*, June 18, 2017; accessed online at: <http://www.theage.com.au/victoria/woman-with-disabilities-scores-landmark-win-over-ndis-20170615-gwrz7c>

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

 [↑](#endnote-ref-115)
116. Just some of the factors that restrict the ability of people with disability to access information and express their opinion include for eg: a) inaccessible information - including information not being provided in the format or language of choice, or there being a delay or significant cost involved in attaining information in the appropriate format or language; b) insufficient government action to promote business and media adoption of accessible formats and languages; and, c) lack of funding, provision or acknowledgement of the need for communication aids and techniques - such as augmentative communication aids required by some people with disability to provide their opinions, to access information and to participate in consultations. See *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-116)
117. The *Privacy Act 1988* (Privacy Act) is an Australian law which regulates the handling of personal information about individuals. Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable. The *Privacy Act* includes thirteen Australian Privacy Principles (APPs). The APPs set out standards, rights and obligations for the handling, holding, use, accessing and correction of personal information (including sensitive information). Accessed online at: <https://www.legislation.gov.au/Series/C2004A03712> [↑](#endnote-ref-117)
118. The *Freedom of Information Act 1982* (FOI Act) is the legislative basis for open government in Australia and covers Australian Government ministers and most agencies. Individuals have rights under the FOI Act to request access to government documents. The FOI Act also requires agencies to publish specified categories of information, and allows them to proactively release other information. Accessed online at: <https://www.legislation.gov.au/Series/C2004A02562> [↑](#endnote-ref-118)
119. The *Australian Information Commissioner Act 2010* (AIC Act) establishes the Office of the Australian Information Commissioner (OAIC). The AIC Act commenced on 1 November 2010. It provides for the appointment of the Australian Information Commissioner (Information Commissioner), the Privacy Commissioner and the Freedom of Information Commissioner (FOI Commissioner). The AIC Act sets out the three functions of the OAIC: a) freedom of information (FOI); b) privacy, and c) information policy. Accessed online at: <https://www.legislation.gov.au/Series/C2010A00052> See also: the Office of the Australian Information Commissioner (OAIC) at: <https://www.oaic.gov.au/> [↑](#endnote-ref-119)
120. The *National Disability Insurance Scheme Act 2013* (NDIS Act) is the legislation which establishes: The National Disability Insurance Scheme, and The National Disability Insurance Scheme Launch Transition Agency (known as the National Disability Insurance Agency or NDIA). Accessed online at: <https://www.legislation.gov.au/Details/C2016C00934> The *NDIS Rules* are legislative instruments made under the NDIS Act. They set out more the more detailed operation of the NDIS. Accessed online at: <https://www.legislation.gov.au/Series/C2013A00020/Enables> [↑](#endnote-ref-120)
121. In addition to the legislative instruments relating to privacy law, all Australian governments have disability services standards that are drawn from the *National Disability Services Standards*. Standard One (Rights) contains provisions relating to privacy. For more information see: Department of Social Services (DSS) *‘National Standards for Disability Services’*, accessed online at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services> [↑](#endnote-ref-121)
122. Accessed online at: <https://engage.dss.gov.au/ndis-code-of-conduct-consultation/ndis-code-of-conduct-consultation-discussion-paper/> [↑](#endnote-ref-122)
123. For more information on the *NDIS Quality and Safeguards Framework*, go to: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework>

#### Respect for home and the family (art. 23)

 [↑](#endnote-ref-123)
124. This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child’s extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*; accessed online at: <http://www.publicadvocate.vic.gov.au/research/302/> [↑](#endnote-ref-124)
125. For eg: Approximately one in six children in alternative or out of home care has a parent with disability. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. [↑](#endnote-ref-125)
126. The Australian Council of Human Rights Authorities (ACHRA), comprises the State, Territory and Federal human rights and discrimination authorities. Over 4 years ago, ACHRA identified discrimination against ‘potential and actual parents with disability’ as one of three most urgent and pressing human rights issues in Australia today. The *Communiqué* from the ACHRA 2013 annual meeting stated: *“Finally, having regard to evidence: (a) that parents with disability are significantly overrepresented in child protection systems in Australia despite having the same capacity to be effective parents; (b) that there is a lack of systematic data collection and analysis; (c) that there is a lack of appropriate supports to potential and actual parents with disability, - ACHRA calls for better data collection and better research into negative presumptions being made about people with disabilities being able to effectively parent. ACHRA calls for better support for these parents to fulfil their parenting roles and has identified that this as a priority given the discriminatory impact of negative presumptions.”* See: Australian Council of Human Rights (ACHRA) *Communiqué* from Australian Council of Human Rights Agencies meeting, 18-19 March 2013. Wednesday, 20 March 2013. Accessed online at: <http://www.humanrightscommission.vic.gov.au/home/news-and-events/item/568-communiqu%C3%A9-from-australian-council-of-human-rights-agencies-meeting-18-19-march-2013> There are few long-term and intensive parenting support programs for parents with disability, despite indications that these programs are very successful. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. See also: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*, accessed online at: <http://www.publicadvocate.vic.gov.au/research/302/> [↑](#endnote-ref-126)
127. People with disability in Australia continue to experience, and be at risk of, gross violations of their sexual and reproductive rights including denial of the right to sexual and reproductive autonomy and self-determination, and through practices such as forced sterilisation, forced abortion and forced contraception - often wrongfully justified by theories of incapacity and therapeutic necessity and often performed under the auspices of legitimate medical care or the consent of others in their name. See for eg: Women With Disabilities Australia (WWDA)(2016) *‘WWDA Position Statement 4: Sexual and Reproductive Rights’*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8; available online at: <http://wwda.org.au/papers/toolkit/position-statements/> See also: Frohmader, C. and Sands, T. (2015) OpCit., See also: Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper*. Available at: <http://wwda.org.au/wp-content/uploads/2013/12/Sterilization_Disability_Briefing_Paper_October2011.pdf>. See also: International Federation of Gynaecology and Obstetrics (2011) *Female Contraceptive Sterilization*. Available at: <http://www.wwda.org.au/FIGOGuidelines2011.pdf> [↑](#endnote-ref-127)
128. Women with disability continue to experience significant discrimination in accessing assisted reproductive technologies, including for eg: in-vitro fertilisation (IVF), assisted insemination, surrogacy, Oocyte cryopreservation. Many women with disability are deemed by fertility clinics as ineligible for assisted reproductive services. Australia’s universal health system (Medicare) covers the treatment of assisted reproduction for women who are deemed ‘medically infertile’, but not for women who are deemed to be ‘socially infertile’ (including single people and same-sex couples). See: Women With Disabilities Australia (2009): *'Parenting Issues for Women with Disabilities in Australia' - A Policy Paper* (May 2009). Available at: [www.wwda.org.au/wp-content/uploads/2013/12/parentingpolicypaper09.pdf](http://www.wwda.org.au/wp-content/uploads/2013/12/parentingpolicypaper09.pdf). See also: Fyfe, M. and Davies, J. (6 June 2015) Motherhood on ice; *Sydney Morning Herald Good Weekend Magazine*, accessed online at: <http://www.smh.com.au/good-weekend/motherhood-on-ice-20150603-ghfwga.html>. See also: Mather, A. (October 6, 2015) Motherhood a precious gift many can’t afford; *The Mercury Newspaper,* accessed online at: <http://www.themercury.com.au/lifestyle/motherhood-a-precious-gift-many-cant-afford/news-story/7b61d21e522ab4e70631d611231518bf>

#### Education (art. 24)

 [↑](#endnote-ref-128)
129. See for eg: Children with Disability Australia, *Belonging and Connection of School Students with Disability*; Prepared by Dr Sally Robinson & Julia Truscott; accessed online at: <http://www.cyda.org.au/belonging-and-connection> See also: Children with Disability Australia (August 2015) *Hear Our Voices: Submission to the Senate Inquiry into Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support’*, accessed online at: <http://www.cyda.org.au/cdasubmissions#section5> See also: Centre for Applied Disability Research (CADR), *Children with disability in Australian schools: what does the research say?*, accessed online at: <http://www.cadr.org.au/lines-of-inquiry/children-with-disability-in-australian-schools-what-does-the-research-say> [↑](#endnote-ref-129)
130. Sands, T. (2017), *Disabled People’s Organisations Australia (DPO Australia) Submission to the 2017/2018 Federal Budget*. Available at: <http://dpoa.org.au/wp-content/uploads/2017/04/DPOA_20172018Budget_Submission_FINAL.docx>. [↑](#endnote-ref-130)
131. See for eg: Children with Disability Australia (CDA) (2013) *Inclusion in education: Towards equality for students with disability*, Written by Dr Kathy Cologon for CDA, accessed online at: <http://www.cyda.org.au/inclusion-in-education> See also Centre for Applied Disability Research (CADR) OpCit. See: Australian schools failing children with disabilities, Senate report finds; *ABC TV* (15/01/2016), accessed online at: <http://www.abc.net.au/7.30/content/2015/s4389410.htm>; [↑](#endnote-ref-131)
132. The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) *Bullying and abuse of school students with disability at alarming levels; Media Release 9 August 2016,* accessed online at: <http://www.cyda.org.au/cyda-education-survey-2016>. See: Australian Broadcasting Corporation (ABC) (16 August 2016) *School investigated after claims boy with autism locked in 'cage'*, accessed online at: <http://www.abc.net.au/7.30/content/2016/s4520872.htm>. Australian Broadcasting Corporation (ABC) (31 August 2016) *School accused of leaving teen with autism outside on beanbag for whole term*, accessed online at: <http://www.abc.net.au/7.30/content/2016/s4530412.htm>. SkyNews (27 March 2017) *Teachers accused of abusing children: inquiry*, accessed online at: <http://www.skynews.com.au/news/national/nsw/2017/03/27/teachers-accused-of-abusing-children--inquiry.html>. The Canberra Times (11 August 2016) *Autism cage details emerge as United Nations investigates abuse of children*; accessed online at: <http://www.canberratimes.com.au/act-news/autism-cage-details-emerge-as-united-nations-investigates-abuse-of-children-20160809-gqo7m8.html>. The Courier-Mail (August 10, 2016), *New report highlights alarming treatment of children with disabilities in Queensland schools*, accessed online at: <http://www.couriermail.com.au/news/queensland/new-report-highlights-alarming-treatment-of-children-with-disabilities-in-queensland-schools/news-story/11657109f56ac9f0142de3c0af8014ee>

The Senate Committee undertaking the *Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, was *“very distressed by the range of evidence provided which details cases of violence, abuse and neglect of children with disability, particularly within schools. The committee is disturbed by evidence of a lack of appropriate regulation, oversight and independent reporting and investigating mechanisms within the schools framework.”* The Committee further stated: *“The committee was distressed to be presented with all too many harrowing accounts of small children suffering at the hands of the very people who should be educating them. It is hard to understand how strapping a child to furniture, or locking them alone in a room to scream themselves into exhaustion could be seen as a justifiable behavioural intervention. This is without doubt a national shame.”* Along with the headline recommendation from the Inquiry (calling for an urgent Royal Commission into violence and abuse of people with disability), the Final Report from the Inquiry made a number of specific recommendations relating to violence and abuse of children with disability in schools, including recommending the Australian Government work with state and territory governments to implement a national zero-tolerance approach to eliminate restrictive practice in all service delivery contexts (including schools) and that the of restrictive practice against children be eliminated as a national priority. See: Senate Community Affairs References Committee (November 2015) *‘Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability’*; accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report> A further recent Senate Inquiry into *‘Access to real learning: the impact of policy, funding and culture on students with disability’* made a series of recommendations relating to improving supports for students with disability in schools; including the need for the establishment of a national approach to end the bullying of students with disability. It also recommended that the Australian government work with states and territories to end restrictive practices in schools. See: Senate Education and Employment References Committee (2016) *Access to real learning: the impact of policy, funding and culture on students with disability*; accessed online at: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report> [↑](#endnote-ref-132)
133. *Disability Standards in Education (2005)*. Available at <https://www.education.gov.au/disability-standards-education-2005>. Accessed 19 June 2017.

#### Health (art. 25)

 [↑](#endnote-ref-133)
134. Particularly people with disability who are: Aboriginal and Torres Strait Islander; women, culturally and linguistically diverse; LGBTI; humanitarian entrants; asylum seekers; those with intellectual and cognitive impairments; and those living in institutional settings, including prisons. [↑](#endnote-ref-134)
135. The poor health of people with disability is due to a number of factors, such as the cost of health care, limited financial resources, barriers to health services, communication difficulties, the complexity of health problems, misconceptions as to the sexuality of people with disability, lack of adequately trained health professionals, a lack of multidisciplinary focus and specialist skill in the health care system and a lack of research into the health needs of people with disability. See: *Disability Rights Now* (2012), OpCit; Women With Disabilities Australia (May 2010): *‘Women With Disabilities and The Human Right to Health: A Policy Paper’*; accessed online at: <http://wwda.org.au/wp-content/uploads/2013/12/WWDAPolicyPaper2010.pdf> See also: Lewis, A.K. and Small, J.E. (May 2017) Australian Association of Developmental Disability Position Statement: *The Importance of Physical and Mental Health for People with Intellectual Disabilities in the Criminal Justice System*; accessed online at: <http://aaddm.com.au/wp-content/uploads/AADDM-The-Importance-of-Physical-and-Mental-Health-for-People-with-Intellectual-Disability-in-the-Criminal-Justice-System.-2017.pdf> [↑](#endnote-ref-135)
136. For eg: the Disability Discrimination Act 1992 (Cth) (DDA) has an exemption for insurance companies who may discriminate on the basis of disability so long as the discrimination is “reasonable”. People with disability are often therefore unable to obtain life insurance, income protection or disability protection insurance. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-136)
137. The ‘right to health’ is a fundamental right that encompasses both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom; the right to participate in decisions about one’s health; and the right to be free from interference, such as non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. Such entitlements encompass for example, the right to emergency medical services and to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including on sexual and reproductive health. See: Women With Disabilities Australia (May 2010) OpCit. [↑](#endnote-ref-137)
138. Through state sanctioned practices such as forced medical treatments and interventions; deprivation of liberty; restrictive practices; denial of the right to legal capacity; as well as egregious forms of violence which people with disability (particularly women and girls) who experience multiple and intersecting forms of discrimination experience, including for eg: forced sterilisation, forced abortion, forced contraception; female genital mutilation; menstrual suppression; chemical and physical restraint; restrictive practices; forced institutionalisation; deprivation of liberty, including forced isolation and segregation; withholding of medications; denial of legal capacity; indefinite detention; forced marriage; sexual slavery. See: Women With Disabilities Australia (WWDA) (August 2016) *‘Improving Service Responses for Women with Disability Experiencing Violence’*; Final Report. ISBN: 978-0-9585268-5-2. Available at: <http://wwda.org.au/wp-content/uploads/2016/09/1800RESPECT_Report_FINAL.pdf>. [↑](#endnote-ref-138)
139. For eg: The crisis in Aboriginal and Torres Strait Islander health in Australia is reflected in the life expectancy gap which remains at 10.6 years for men and 9.5 years for women. In 2010-12, life expectancy at birth was estimated to be 69.1 years for Aboriginal and Torres Strait Islander men (compared with 79.7 years) and 73.7 years for women (compared with 83.1 years for their non-Indigenous counterparts). See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. In addition, for people with intellectual disability, 42 percent of medical conditions go undiagnosed and life expectancy is reduced by up to 20 years. See: NSW Council for Intellectual Disability; Inclusion Australia & Australian Association of Developmental Disability Medicine (2015) *Position Statement On The Health Of People With Intellectual Disability*; accessed online at: <http://aaddm.com.au/wp-content/uploads/AADDM-CID-Health-Position-Statement.pdf>. Psychosocial disability is the leading cause of death for Australians under the age of 45 and the leading cause of disability in Australia, yet mental health services are significantly under-resourced and there are widespread access problems for people with psychosocial disability. See: *Disability Rights Now* (2012) OpCit; See also: Lewis, A.K. and Small, J.E. (May 2017) OpCit. [↑](#endnote-ref-139)
140. Women With Disabilities Australia (May 2010) OpCit. [↑](#endnote-ref-140)
141. According to the June 2017 Productivity Commission’s interim review into National Disability Insurance Scheme (NDIS) Costs, *“about 700,000 Australians experience a severe mental illness in any one year. However, according to the NDIA, only around 64,000 people with psychosocial disability are expected to be eligible for individual packages in the NDIS. Clearly, there needs to be support for people with mental health illnesses outside of the scheme — a responsibility that remains (largely) with State and Territory Governments. However, governments have been withdrawing their funding for a number of mental health support programs in their jurisdictions and using this funding to offset part of their contribution to the NDIS. At this stage, it is unclear what supports will be available for people with a mental illness who do not meet the NDIS eligibility criteria and this should be clarified as a matter of urgency.”* See: Productivity Commission (June 2017), National Disability Insurance Scheme (NDIS) Costs. Accessed online at: <http://www.pc.gov.au/inquiries/current/ndis-costs/position> [p.33].

#### Access to Habilitation and Rehabilitation (art. 26)

 [↑](#endnote-ref-141)
142. Productivity Commission (2017), *National Disability Insurance Scheme (NDIS) Costs*, Available at: <http://www.pc.gov.au/inquiries/current/ndis-costs/issues>. [↑](#endnote-ref-142)
143. DPO Australia (2017), *Submission to Inquiry into the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*, Available at <http://dpoa.org.au/wp-content/uploads/2017/03/DPOA_OmnibusSavingsChildCareBill_Letter_070317.docx>.

#### Right to work (art. 27)

 [↑](#endnote-ref-143)
144. In Australia, the unemployment rate for people with disability is 10%, nearly twice the rate than for people without disability (5.3%). See: Australian Bureau of Statistics (ABS), 4433.0.55.006 - *Disability and Labour Force Participation*, 2012. See also: Australian Human Rights Commission (2016), *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*; ISBN 978-1-921449-76-5. Available at: <https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_AHRC_ac.pdf> [↑](#endnote-ref-144)
145. The Organisation for Economic Co-operation and Development (OECD) was officially born on 30 September 1961. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. It works with governments to understand what drives economic, social and environmental change. It measures productivity and global flows of trade and investment. It analyses and compares data to predict future trends, and sets international standards on a wide range of things, from agriculture and tax to the safety of chemicals. The OECD has 35 Member countries that span the globe, from North and South America to Europe and Asia-Pacific. See: <http://www.oecd.org/> [↑](#endnote-ref-145)
146. For eg: Compared with other OECD countries, Australia has one of the lowest employment participation rates for people with a disability (39.8% for people with a disability compared to 79.4% for people without a disability). Men with disability (51.3%) are much more likely to be employed than women with disability (44.4%). Women with disability have lower incomes from employment; are more likely to experience gender and disability biases in labour markets; and are more concentrated than other women and men in precarious, informal, subsistence and vulnerable employment. Working-age women with disability who are in the labour force, regardless of full-time or part-time status, are much more likely to be in lower paid jobs than men with disability. Women with disability have a much higher rate of part-time employment (56% of women with disability who are employed) than men with disability (22% of men with disabilities who are employed). Many young people with disability do not enter the labour force at all over the first seven post-school years (18% compared to 5% of those without a disability) and are more likely to experience long-term unemployment (13%) than those without a disability (7%). See for eg: Price Waterhouse Coopers (PWC) (2011) *Disability expectations: Investing in a better life, a stronger Australia*; accessed online at: <https://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>. See also: Australian Bureau of Statistics (ABS), 4433.0.55.006, OpCit. See also: Australian Bureau of Statistics (ABS), 4446.0 - Disability, Australia, 2009. See also: Australian Human Rights Commission (2016), OpCit., Frohmader, C. (2014) *‘Gender Blind, Gender Neutral’: The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities.* Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1, Available at: <http://wwda.org.au/wp-content/uploads/2013/12/WWDA_Sub_NDS_Review2014.pdf> [↑](#endnote-ref-146)
147. Australian Human Rights Commission (2016), OpCit. [↑](#endnote-ref-147)
148. The scheme was established by the Australian Government following the Federal Court finding in December 2012 that the BSWAT indirectly discriminated against two Australian Disability Enterprises (ADEs) employees with an intellectual disability. See: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/for-people-with-disability/bswat-payment-scheme/questions-and-answers-bswat-payment-scheme> [↑](#endnote-ref-148)
149. Australian Human Rights Commission (2016), *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*; ISBN 978-1-921449-76-5. Available at: <https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_AHRC_ac.pdf>

#### Adequate standard of living and social protection (art. 28)

 [↑](#endnote-ref-149)
150. Price Waterhouse Coopers (PWC) OpCit. [↑](#endnote-ref-150)
151. Ibid. [↑](#endnote-ref-151)
152. The *Disability Support Pension (DSP)* provides financial support to working age Australians who are permanently blind or have a permanent physical, intellectual or psychiatric impairment that prevents or limits their capacity to work (See: Australian National Audit Office (2016) *Qualifying for the Disability Support Pension*; accessed online March 2017 at: <https://www.anao.gov.au/work/performance-audit/qualifying-disability-support-pension>.) The Disability Support Pension (DSP) is inadequate to support people with disability and consequently leads to a lower standard of living, poverty, and the inability to realise other fundamental human rights. Changes to the DSP eligibility since 2013 have already left many people with disability struggling to survive on the Newstart or Youth Allowance, payments that are below the poverty line and in no way accounts for the additional costs associated with disability. The 2016 Budget measures subject a further 30,000 disability support pensioners a year for 3 years (90,000 people) to reviews that further threaten to plunge people with disability into poverty, homelessness and ill-health. Income support pensions have fallen significantly relative to average and minimum wages over the last two decades. See: *Australian Cross Disability Alliance (ACDA)(2016) Election Platform 2016: Building a Disability Inclusive Australia*; accessed online at: <http://dpoa.org.au/dpo-australia-election-platform>. See also: Australian Human Rights Commission (2016) OpCit.; Australian NGO Coalition Submission (2017) *Review of Australia Fifth Periodic Report under the International Covenant on Economic, Social and Cultural Rights*. Available online at: <http://dpoa.org.au/wp-content/uploads/2017/05/ICESCR-Final-Submission-May17.pdf> [↑](#endnote-ref-152)
153. See: Australian NGO Coalition Submission (2017), OpCit. [↑](#endnote-ref-153)
154. See: Australia’s 2nd Universal Periodic Review, *Joint NGO Submission on behalf of Australian NGO Coalition*, March 2015, available at <http://www.naclc.org.au/cb_pages/files/Submissions/Final-UPR-Submission-for-website.pdf>. [↑](#endnote-ref-154)
155. The *ILO Social Protection Floors Recommendation, 2012 (No. 202)* provides guidance to member States in building comprehensive social security systems and extending social security coverage by prioritizing the establishment of national floors of social protection accessible to all in need. See: <http://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang--en/index.htm> [↑](#endnote-ref-155)
156. Generally, a person must be an Australian citizen or permanent resident residing in Australia to access support through the social security system. Most income support payments have a two-year waiting period, the newly arrived resident’s waiting period (NARWP). The age and disability support pensions have a 10-year qualifying residence period. The 10 year qualifying residence period must include a period of five years continuous residence in Australia. The qualifying residence period begins from the date the person starts residing in Australia as a permanent visa holder. Time spent in Australia on a temporary visa is not counted towards the qualifying residence period. Being denied access to the basic financial support of the DSP strips migrants with disabilities’ rights to independence, forcing them to be economically reliant on their families and wider community leaving them at an increased risk of poverty, homelessness and other social disadvantage. Newly arrived CALD people with disability have little knowledge about policies and service systems in Australia. See: *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. See also: Department of Social Services (DSS) *Social Security Payments - Residence Criteria*; accessed online at: <https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria>

#### Participation in political and public life (art. 29)

 [↑](#endnote-ref-156)
157. The lack of participatory rights of people with disability particularly affects women with disability, Aboriginal and Torres Strait Islander peoples with disability; culturally and linguistically diverse peoples with disability, LGBTI persons with disability, children and young people with disability, as well as people with disability living in institutional other care and service settings, including prisons. [↑](#endnote-ref-157)
158. See: Women With Disabilities Australia (WWDA) (2016) *‘WWDA Position Statement 3: The Right to Participation’*. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-8-3, available online at: <http://wwda.org.au/papers/toolkit/position-statements/> [↑](#endnote-ref-158)
159. For eg: The right of people with disability to vote independently and in secret in Federal, State and Territory and Local Government elections is not a reality for many people with disability in Australia. People with disability also experience discrimination or disqualification in other areas of civil life, Including in relation to accessing or creating a bank account, holding public office, holding the office of a director or board member, obtaining a personal violence order, creating a legal will, performing jury duty, and, acting as a witness in a court proceeding. See: Women With Disabilities Australia (WWDA) (2016) *‘WWDA Position Statement 3: The Right to Participation’*, OpCit. See also: *Disability Rights Now* (2012) OpCit.

#### Participation in cultural life, recreation, leisure and sport (art. 30)

 [↑](#endnote-ref-159)
160. See: *Disability Rights Now* (2012) OpCit. [↑](#endnote-ref-160)
161. The ILC program is a key component of the NDIS and has been set up to provide information, linkages and referrals to people with disability, their families and carers, with the appropriate community and mainstream supports. The focus of ILC is on community inclusion. See: <https://www.ndis.gov.au/communities/ilc-home> [↑](#endnote-ref-161)
162. ILC is still to be implemented and the funding for ILC will gradually increase over transition (from $33 million in 2016-17 to $131 million in 2019-20). According to the Productivity Commission (June 2017), *“the timing of ILC funding (starting with a small budget that increases over time) has prevented the NDIA investing in ILC activities and the rollout of initiatives that would allow the infrastructure of a national ILC framework.”* The Productivity Commission has recommended that: *“ILC funding should be increased to the full scheme amount for each year during the transition to allow for an accelerated national rollout of ILC activities. The effectiveness of the ILC program in improving the outcomes for people with disability and its impact on the sustainability of the NDIS should be reviewed as part of the 2023 review of NDIS costs when data on ILC activities is available……The ILC budget should be maintained at a minimum of the full scheme amount each year until results from this review are available.”* See: Productivity Commission (June 2017) OpCit.

#### Statistics and Data Collection (art. 31)

 [↑](#endnote-ref-162)
163. As recommended in the CRPD/C/AUS/CO/1 [para.54] and also recommended in CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5. [↑](#endnote-ref-163)
164. As recommended in the CRPD/C/AUS/CO/1 [para.56] [↑](#endnote-ref-164)
165. Including a comprehensive data collection mechanism for children and young people with disability. See Article 7 of this document. [↑](#endnote-ref-165)
166. Out-of-home care is defined by the Australian Government as: Overnight care, including placement with relatives (other than parents) where the government makes a financial payment. It includes care of children in legal and voluntary placements (that is, children on and not on a legal order) but excludes placements solely funded by disability services, psychiatric services, youth justice facilities and overnight child care services. There are five main out-of-home care placement types: 1) Residential care – where placement is in a residential building with paid staff. 2) Family group homes – provide care to children in a departmentally or community sector agency provided home. These homes have live-in, non-salaried carers who are reimbursed and/or subsidised for the provision of care. 3) Home-based care – where placement is in the home of a carer who is reimbursed (or who has been offered but declined reimbursement) for expenses for the care of the child. This is broken down into three subcategories: (a) relative/kinship care – where the caregiver is a relative (other than parents), considered to be family or a close friend, or is a member of the child or young person’s community (in accordance with their culture) who is reimbursed (or who has been offered but declined reimbursement) by the State/Territory for the care of the child. For Aboriginal and Torres Strait Islander children, a kinship carer may be another Aboriginal and Torres Strait Islander person who is a member of their community, a compatible community or from the same language group; (b) foster care – where the care is authorised and carers are reimbursed (or were offered but declined reimbursement) by the state/territory and supported by an approved agency. There are varying degrees of reimbursement made to foster carers; (c) other – home-based care which does not fall into either of the above categories. 4) Independent living – including private board and lead tenant households. 5) Other – includes placements that do not fit into the above categories and unknown living arrangements. This includes boarding schools, hospitals, hotels/motels and defence force. See: Productivity Commission, *Report on Government Services 2015; Chapter 15: Volume F; Child protection*. Accessed online at: <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection>

#### International cooperation (art. 32)

 [↑](#endnote-ref-166)
167. *Australian NGO Coalition Submission to the United Nations Committee on Economic, Social and Cultural Rights* (May 2017) OpCit. [↑](#endnote-ref-167)
168. *2030 Agenda for Sustainable Development*. Accessed online at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>. [↑](#endnote-ref-168)
169. *Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia’s aid program*. Accessed online at: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx> [↑](#endnote-ref-169)
170. Department of Foreign Affairs and Trade (2105) *DFAT Indigenous Peoples Strategy 2015-2019: A framework for action*; Accessed online at: <http://dfat.gov.au/about-us/publications/Pages/dfat-indigenous-peoples-strategy-2015-2019.aspx> [↑](#endnote-ref-170)
171. At the Universal Period Review [Australia] 2016, the Australian Government gave a voluntary commitment to *“supporting the protection and promotion of human rights through its foreign aid programme by promoting prosperity, reducing poverty and enhancing stability. The delegation welcomed the adoption of the 2030 Agenda for Sustainable Development and affirmed its commitment to advancing this agenda. The Government committed to applying its Development for All: 2015-2020 strategy to strengthen disability-inclusive development and its international Indigenous Peoples Strategy 2015-2019 to advance the interests of indigenous peoples in Australia and around the world.”* See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 145]. [↑](#endnote-ref-171)
172. *2030 Agenda for Sustainable Development*. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

#### National Implementation and Monitoring (art. 33)

 [↑](#endnote-ref-172)
173. The Department of Social Services (DSS) and the Attorney-General’s Department (AGD) have been designated as the ‘joint focal point’ within the Australian Government to coordinate implementation of the CRPD. However, operational responsibility for implementation of the CRPD through the *National Disability Strategy 2010-2020* (NDS) rests with DSS, and appears to be confined to a disability policy responsibility. See: Sands, T., (2017), OpCit. [↑](#endnote-ref-173)
174. For eg: DPO Australia, in its recent Submission to the *‘Senate Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities’*, strongly recommended that the Australian Government: *“Establish a high-level executive mechanism, such as a ‘National Office of Disability Policy Coordination’ within the Department of Prime Minister and Cabinet, to hold strategic operational responsibility for the NDS; and to leverage reform across Commonwealth agencies and in relation to the States and Territories. This mechanism must have built in human rights expertise, including in relation to Australia’s international human rights obligations to ensure that the recommendations from UN reviews are incorporated into concrete actions within the NDS.”* See: Sands, T., (2017) Disabled People’s Organisations Australia (DPO Australia) *Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia. Available at: <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/> [↑](#endnote-ref-174)
175. At the Universal Period Review [Australia] 2016, the Australian Government gave a voluntary commitment to *“work with the Australian Human Rights Commission, to develop a public and accessible process for monitoring progress against universal periodic review recommendations. This will include a periodic statement on progress against the recommendations on behalf of the Government. Australia will also designate a standing national mechanism to strengthen its overall engagement with United Nations human rights reporting.”* See: United Nations General Assembly, *Report of the Working Group on the Universal Periodic Review: Australia*; 2016, UN Doc. No: A/HRC/31/14 [para 146]. [↑](#endnote-ref-175)