



Australian  
Human Rights  
Commission

# Information concerning Australia and the *Convention on the Rights of Persons with Disabilities*

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

11 MARCH 2013

ABN 47 996 232 602  
Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001  
General enquiries 1300 369 711  
Complaints info line 1300 656 419  
TTY 1800 620 241

Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

## Table of Contents

1	Introduction.....	3
2	Summary .....	3
3	Legal framework for human rights protection (article 4).....	4
3.1	<i>National Human Rights Consultation</i> .....	4
3.2	<i>National Human Rights Framework</i> .....	4
3.3	<i>National Human Rights Action Plan</i> .....	5
3.4	<i>Disability Discrimination Act 1992 (Cth)</i> .....	6
(a)	<i>Public transport</i> .....	7
(b)	<i>Access to premises</i> .....	7
(c)	<i>Access to services</i> .....	8
(d)	<i>Education</i> .....	8
3.5	<i>Consolidation of Australia’s discrimination laws</i> .....	9
3.6	<i>National Disability Strategy</i> .....	9
3.7	<i>National Disability Insurance Scheme</i> .....	10
4	Discrimination on the basis of disability.....	11
4.1	<i>Violence against people with disability in institutional settings (articles 3, 4, 5, 15, 16, 17)</i> .....	11
4.2	<i>Access to justice (articles 3, 4, 5, 13, 14)</i> .....	12
4.3	<i>Involuntary and non-therapeutic sterilisation (articles 3, 4, 5, 6, 7, 12, 15, 16, 17, 23)</i> .....	13
4.4	<i>Employment of people with disability (articles 3, 4, 5, 27)</i> .....	13

## 1 Introduction

1. This submission is made by the Australian Human Rights Commission, Australia's national human rights institution. It outlines a number of issues that the Commission suggests should be considered by the Committee on the Rights of Persons with Disabilities as it develops a List of Issues Prior to Reporting ahead of the consideration of Australia's initial report regarding the implementation of the Convention on the Rights of Persons with Disabilities (Disability Convention).
2. In these comments, the Commission aims to provide the Committee with information on a number of key issues that the Commission believes may be relevant to the Committee in considering Australia's implementation of the Disability Convention. This submission does not provide a complete assessment of Australia's compliance with the Disability Convention, but rather draws on the relevant recent and current areas of Commission work.
3. The Commission notes the Civil Society Shadow Report to the Committee, and urges the Committee to give due consideration to the issues contained within the report in accordance with article 33 of the Disability Convention.<sup>1</sup>
4. The Commission thanks the Committee for inviting it to submit information pursuant to Rule 51 of the Rules of Procedure and looks forward to further engagement in the Committee's review of Australia's initial report.

## 2 Summary

5. The legal framework for the protection of human rights of people with disability in Australia is the *Disability Discrimination Act 1992* (Cth), (Disability Discrimination Act) supplemented by State and Territory legislation and a combination of the National Human Rights Framework, the National Human Rights Action Plan, and the National Disability Strategy. The National Disability Insurance Scheme, when implemented, will also contribute to the protection of human rights.
6. March 1<sup>st</sup> 2013 marked the twentieth anniversary of the Disability Discrimination Act. The Commission acknowledged the occasion with the launch of *Twenty Years: Twenty Stories* by Governor-General, Ms Quentin Bryce AC CVO.
7. Through the Disability Discrimination Act definite areas of achievement include accessible public transport, access to premises, access to services and education.
8. The Commission notes however, that there is less evidence of progress in areas not addressed by the Disability Discrimination Act such as violence against people with disability in institutional settings, access to justice and involuntary and non-therapeutic sterilisation of people with disability and in the protected area of employment.

### **3 Legal framework for human rights protection (article 4)**

9. Australia's federal Disability Discrimination Act commenced on March 1st 1993. Protection against discrimination on the basis of disability is also available at state level.<sup>2</sup> In recent years, the Act has been supplemented by the National Human Rights Framework, the National Human Rights Action Plan and the National Disability Strategy. The National Disability Insurance Scheme, when implemented, will also contribute to the legal framework for human rights protection.

#### **3.1 National Human Rights Consultation**

10. Many of the international human rights standards agreed to by the Australian Government, including those set out in the Disability Convention, have not been fully incorporated into Australian law. People with disability who experience human rights violations can be left without legal remedies.
11. During 2009, the Australian Government undertook a National Human Rights Consultation, seeking a broad range of views regarding the protection and promotion of human rights. The Commission, and thousands of other individuals and organisations, contributed to the Consultation. The Consultation Committee report, released in October 2009, recommended, among other things, that the federal Parliament adopt a Human Rights Act.
12. In April 2010, the Australian Government responded to the national Human Rights Consultation report by announcing that it would not introduce a Human Rights Act. Instead, it announced Australia's Human Rights Framework, which commits to a variety of measures to strengthen the protection and promotion of human rights in Australia. While the Commission strongly welcomed the measures included in the Framework, these measures alone are not sufficient to address all of the weaknesses in Australia's system of human rights protection for people with disability.

#### **3.2 National Human Rights Framework**

13. As noted above, in April 2010, the Australian Government responded to the national Human Rights Consultation report by announcing Australia's Human Rights Framework. The Framework is informed by seven core human rights treaties, including the Disability Convention,<sup>3</sup> and outlines the key measures to guide the Governments human rights work.<sup>4</sup> These key measures include:
- human rights education for the community
  - establishing a federal Parliamentary Joint Committee on Human Rights to scrutinise existing and new legislation for compliance with Australia's human rights obligations
  - requiring that all new federal legislation be accompanied by a statement of compatibility with Australia's human rights obligations
  - developing a consolidated federal anti-discrimination law

- a National Action Plan on Human Rights.
14. The Australian Government has invested over \$12 million in a range of education initiatives to promote a greater understanding of human rights across the community. This has included an education and training program for the Australian Government public sector which has comprised the development of resources and materials and the training of over 700 public sector employees on human rights principles. Tailored and targeted human rights training to specific sectors of the public service will also take place in 2013.
  15. The Commission welcomes the above initiatives, however notes that such training needs to be comprehensive across agencies and embedded into public service practice. In particular, the Commission encourages the Australian Government to ensure that specific Disability Convention training be undertaken with the National Disability Insurance Scheme (NDIS) Launch Transition Agency (section 3.7 below).<sup>5</sup>
  16. The Commission believes that the Human Rights Framework would be significantly strengthened by a greater integration of human rights in primary and secondary education. The Commission has been working with the Australian Curriculum, Assessment and Reporting Authority to ensure:
    - human rights are reflected in the national school curriculum, and
    - the adoption of language in the national school curriculum, which includes the learning needs of all students with disability as part of the diverse learning needs of all students.
  17. The Commonwealth Parliament passed the Human Rights (Parliamentary Scrutiny) Act 2011 (the Scrutiny Act), which came into force on 4 January 2012. The Scrutiny Act provided for the establishment of a Parliamentary Joint Committee on Human Rights. This Committee was established on 13 March 2012, and has been very active in its scrutiny of the compatibility of bills and legislative instruments with Australia's human rights obligations. The requirement that all bills and disallowable legislative instruments be accompanied by a statement assessing their compatibility has largely been complied with. The most recent example of this is the Statement of Compatibility that accompanied the draft National Disability Insurance Scheme Bill 2012 (section 3.7 below).

### **3.3 National Human Rights Action Plan**

18. The Australian Government released the country's third National Human Rights Action Plan on 10 December, 2012. Although Australia was the first nation to develop a Human Rights Action Plan (in 1994, following the 1993 World Conference on Human Rights), the 1994 Action Plan and its 2004 update have been widely acknowledged as having had very limited impact. In the development of a new Action Plan, the Australian Government has followed a much improved process, with substantially increased conformity

with the Handbook on National Human Rights Action Plans available from the Office of the High Commissioner for Human Rights.

19. The Action Plan contains specific actions to address the human rights of people with disability and indicates that '[a] key priority for the Australian Government will be continuing work on implementing the National Disability Strategy.'<sup>6</sup> The Commission noted in its submission to the Consultation on the exposure draft of the National Human Rights Action Plan that it may be possible to update the National Human Rights Action Plan in relation to people with disability when the initial annual report to the Council of Australian Governments on implementation of the National Disability Strategy became available (then scheduled for February 2012) (section 3.6 below).<sup>7</sup>

### **3.4 Disability Discrimination Act 1992 (Cth)**

20. The Disability Discrimination Act provides that it is unlawful to discriminate, directly or indirectly, against a person with a disability in the protected areas of public life, including employment, education, the provision of goods, services and facilities, and accommodation.<sup>8</sup> It further provides that it is unlawful, in certain circumstances, to fail to make reasonable adjustments for a person with a disability.<sup>9</sup> In addition, it is unlawful to discriminate against an associate of a person with a disability.<sup>10</sup>
21. The Disability Discrimination Act also provides for the appointment of a Disability Discrimination Commissioner. The present incumbent is Commissioner Graeme Innes AM.<sup>11</sup>
22. Disability is defined broadly in the Disability Discrimination Act.<sup>12</sup> The definition of disability includes 'the malfunction, malformation or disfigurement of a part of the person's body' and 'a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour'. The Disability Discrimination Act covers a disability that presently exists, previously existed but no longer exists, may exist in the future, and is imputed to a person.
23. If a person is discriminated against because of a disability that exists, previously existed, may exist in the future, or is imputed to him or her, however that disability was caused, that person may lodge a complaint with the Commission.<sup>13</sup> On an annual basis the largest number of complaints received by the Commission have consistently been in the area of disability (average 951 per annum over the last 4 years), with the majority of these complaints in the protected areas of employment and the provision of goods, services and facilities.<sup>14</sup> The Commission notes that these statistics indicate that there remains substantial disability education and awareness to be undertaken in the broader community in addition to government, business and service provision.
24. March 1<sup>st</sup> 2013 marked the twentieth anniversary of the Disability Discrimination Act. The Commission marked the occasion with the launch of *Twenty Years: Twenty Stories* by Governor-General, Ms Quentin Bryce AC CVO.<sup>15</sup> This collection of twenty short films demonstrates how the lives of

those with disability have changed under the Act and in some cases, how change has not eventuated. These twenty short films are available [here](#).

25. The purpose of the twenty short films is to show that the biggest hurdle facing Australians with a disability is not disability itself but negative attitudes towards disability. The films illustrate that people with disability can make rich contributions to society if barriers in Australian schools, universities, employment, buildings and retail stores are removed.
26. Through the Disability Discrimination Act definite areas of achievement include accessible public transport, access to premises, access to services and education.<sup>16</sup>

(a) *Public transport*

27. Section 31 of the Disability Discrimination Act provides that the Attorney-General may formulate standards in relation to the provision of public transport services and facilities. The *Disability Standards for Accessible Public Transport 2002* (the Transport Standards) took effect on 23 October 2002.<sup>17</sup> The Transport Standards set out the minimum accessibility requirements that providers and operators of public transport must comply with, as well as ensuring that access to transport is consistently improved. Since October 2002, all new public transport conveyances, premises and infrastructure must comply with the transport standards. Facilities already in operation at that time have between five and thirty years to comply with the standards.
28. The Transport Standards are to be reviewed every five years. The first review, conducted in 2007 (Report released 2011) noted that the Transport Standards had significantly changed the way that governments, public transport operators and providers thought about access to public transport for people with disability.<sup>18</sup>
29. The second review of the Transport Standards was announced late 2012 and commenced with the release of the Terms of Reference on 19 October 2012.<sup>19</sup> One issue requiring review is whether the second or ten year compliance point, requiring compliance with the relevant Transport Standards by 55 per cent has been met across Australia.<sup>20</sup> It is difficult to determine if this has occurred from current reporting.
30. *Twenty Years: Twenty Stories* short films concerning accessible public transport are 'Access for All', 'Driving Change', and 'Graeme Innes v. Railcorp'. These films are available [here](#).

(b) *Access to premises*

31. Section 23 of the Disability Discrimination Act makes it unlawful to discriminate on the grounds of disability in providing access to or use of premises that the public can enter or use. From 1 May 2011, any new building open to the public, or existing buildings undergoing significant renovation, are required to comply with the Disability (Access to Premises - Buildings Standards 2010).

The Standards clarify how to ensure buildings are accessible to people with disability and meet the requirements of discrimination law.

32. The Commission prepared a *Guideline on the Application of the Premises Standards* in March 2011. The Commission has recently reviewed this Guideline and has developed a second version. The update is not a review of the Premises Standards themselves, but rather an attempt to draw on the experiences of building professionals, regulators, access experts and advocates over the first 18 months of implementation to identify any aspects of the Guideline that could be expressed more clearly. Version 2 of the Guideline is available [here](#).
33. *Twenty Years: Twenty Stories* short films concerning access to premises are 'A Grand Entrance', 'Ramped Up', and 'Room for Change'. These films are available [here](#).

(c) *Access to services*

34. The Disability Discrimination Act makes discrimination unlawful regarding access to services (section 24), except where providing non-discriminatory access would involve unjustifiable hardship. In relation to access to cinemas, captioned cinema has been in Australia since 2001 with audio description introduced in 2009.
35. In 2010, Australia's four major cinema chains jointly announced an agreement to roll-out the Cinema Access Implementation Plan that will see more than 132 cinemas and more than 242 screens around the country capable of showing accessible films. Historically, accessible movie sessions were limited to just a few a week at major city locations. The roll-out of this plan has begun ahead of schedule and as of January 2013, there are 90 cinemas in Australia that show accessible movies on a total of 170 screens.<sup>21</sup>
36. The *Twenty Years: Twenty Stories* short film concerning captioning 'Lights, Camera, Caption' is available [here](#).

(d) *Education*

37. The Disability Education Standards 2005 set out principles to be applied to ensure that students with disability are able to access and participate in education and training free from discrimination, and on the same basis as other students.<sup>22</sup>
38. The level of discrimination complaints in the area of education (average 9% per annum) indicates that the Education Standards have not had a beneficial effect similar to that of the Transport Standards. The Commission considers that this could be due in part to the infrastructural changes required for access to transport compared with the attitudinal changes required for access to education.
39. The *Twenty Years: Twenty Stories* short film concerning access to education 'A school in the bush' is available [here](#).



40. The Commission notes however, that there is less evidence of progress in the protected area of employment and in areas not addressed by the Disability Discrimination Act such as violence against people with disability in institutional settings, access to justice and involuntary and non-therapeutic sterilisation (section 4 below).

### **3.5 Consolidation of Australia's discrimination laws**

41. As part of its implementation of the National Human Rights Framework the Government has made efforts to consolidate all Commonwealth anti-discrimination laws into a single Act. The exposure draft legislation for the consolidated anti-discrimination law, the draft Human Rights and Anti-Discrimination Bill 2012 (the Bill) was released in November 2012. On 21 November 2012 the Senate referred the exposure draft of the Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report. Submissions on the exposure draft were requested by 21 December 2012. The Inquiry report was released 21 February 2013.<sup>23</sup>
42. The Commission welcomes the report of the Senate Legal and Constitutional Legislation Committee on the Bill to consolidate the five existing Commonwealth anti-discrimination acts, including the Disability Discrimination Act, into a single comprehensive law.
43. The Committee made 12 recommendations to improve the Bill and to ensure that it meets the aim of providing anti-discrimination laws that reduce unnecessary overlap, address inconsistencies and provide for a more user friendly system. The Commission commends the Government for the level of stakeholder engagement that was employed in the drafting process, and encourages Parliament to ensure the Consolidation Bill is passed.
44. The Commission notes that the Bill would not diminish existing rights under the Disability Discrimination Act.
45. The Commission has sought inclusion of a range of measures to improve consistency in practice and access to justice, including in relation to standing to bring discrimination matters before the Federal Court. For example, consideration of provision for initiation of matters by representative organisations and other bodies with a sufficient interest, but only by leave of the court with regard to appropriate criteria. At the time of writing this range of measures are under consideration.

### **3.6 National Disability Strategy**

46. The National Disability Strategy 2010-2020 (National Disability Strategy),<sup>24</sup> was formally endorsed by the Council of Australian Governments (COAG) on 13 February 2011. The focus of the first year of the National Disability Strategy was to be on the development of an implementation plan, with Community and Disability Services Ministers to report on their implementation plans to COAG after the first 12 months.

47. The Commission notes that the National Disability Strategy is to play an important role in ensuring that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and their carers and play an important role in protecting, promoting and fulfilling the human rights of people with disability.<sup>25</sup>
48. The National Human Rights Action Plan (see section 3.3 above) provides that the Australian Government would continue to work on preparing a national action framework for implementing the National Disability Strategy.<sup>26</sup>
49. The National Disability Strategy 2010-2020 Report to COAG 2012 was presented to COAG on 15 January 2013.<sup>27</sup> The report incorporates *Laying the Groundwork 2011-2014*, the first of three implementation plans that establish the foundations for delivering and reporting on the National Disability Strategy. Periodic reporting on a bi-annual basis has been introduced to monitor the progress of implementation of the National Disability Strategy.
50. The Commission welcomes the release of the first implementation plan. At the same time, the Commission is deeply concerned that the delayed release of the implementation plan has placed significant delays on the National Disability Strategy.
51. The Commission notes that the draft trend indicators included in the implementation plan and identified in the initial strategy will be utilised to demonstrate change over time. The Commission acknowledges that work with respect to the draft trend indicators will be conducted in the early part of 2013. However, the Commission is concerned at the lack of development of performance indicators to demonstrate change over time in the six outcome areas of the National Disability Strategy.

### **3.7 National Disability Insurance Scheme**

52. The Commission welcomed the announcement of the first stage of a National Disability Insurance Scheme (NDIS) from July 2013 which will provide people with disability to access care and support services.<sup>28</sup> The Commission notes that it will be essential for there to be active engagement with people with disability, their families and carers in the development, implementation and monitoring of the NDIS to ensure that the scheme is comprehensive, robust and responsive to the needs of people with disability.
53. The draft legislation for the NDIS, the National Disability Insurance Scheme Bill 2012 was released on 29 November 2012.<sup>29</sup> The Bill was referred to the Senate Community Affairs Legislation Committee and submissions were requested by 25 January 2013. The reporting date is 13 March 2013.
54. The Commission welcomed the Bill and congratulated the Australian Government on the extent of consultation undertaken in the development of the Bill and of the NDIS in accordance with article 4.3 of the Disability Convention.
55. The Commission's submission focused on areas of employment of people with disability, independent review and complaints mechanisms, standard setting

by the NDIS Launch Transition Agency, and the importance of individual and systemic advocacy on the part of the Agency. A copy of the Commission's submission is available [here](#).

## **4 Discrimination on the basis of disability**

56. As noted above, there have been definite areas of achievement as a result of the Disability Discrimination Act. The Commission has noted however, that there is less evidence of progress in areas not addressed by the Disability Discrimination Act such as violence against people with disability in institutional settings, access to justice and involuntary and non-therapeutic sterilisation of people with disability. These issues are discussed below.
57. The Commission also notes that despite the presence of the Disability Discrimination Act, there has been little improvement in the area of employment of people with disability. This issue is also discussed below.

### **4.1 Violence against people with disability in institutional settings (articles 3, 4, 5, 15, 16, 17)**

58. Research suggests high rates of violence, abuse and neglect of people with disability in institutional settings.<sup>30</sup>
59. The Commission notes that the National Disability Strategy (section 3.6 above) identifies a key policy area as people with disability being safe from violence, exploitation and neglect. However, there are no specific actions to prevent and reduce violence against people with disability. The Commission also notes the draft NDIS Bill contains no specific measures addressed at violence against people with disability. The Commission further notes that the National Human Rights Action Plan (section 3.3 above) does not specifically address some forms of violence experienced by people with disability, for example forced sterilisation, exploitation, neglect or violence in institutional settings
60. Research indicates that women with disabilities in particular may experience violence for longer periods of time due to inadequate pathways to safety, reluctance to report incidents for fear of reprisal, or a lack of confidence in authorities and the justice system.<sup>31</sup> However, there is no *national* data on the prevalence and nature of this violence. The Commission agrees with the Committee on the Elimination of Discrimination against Women's recommendation that the Australian Government 'address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation'.<sup>32</sup>
61. The Commission welcomed the adoption in 2011 of the Australian Government's National Plan to Reduce Violence against Women and their Children, 2010–2022.<sup>33</sup> A National Plan Implementation Panel consisting of government and NGO representatives was established and the first three-year national implementation plan was released in September 2012. However, the National plan does not encompass institutional settings nor does it contain specific measures to address violence against women and girls with disability.

62. The Commission notes that issues concerning violence against women with disability in institutional settings were raised during the UN Special Rapporteur's violence against women study tour.<sup>34</sup> The issues include the heightened vulnerability of women with disability living in group homes, the perceived impunity surrounding violence by staff or other residents, the inability to report violence, and the need for appropriate accessible services and support.
63. The Committee on the Elimination of Discrimination against Women in its concluding comments on Australia in 2010, called on the State Party to undertake a 'comprehensive assessment of the situation of women with disabilities in Australia'. To date, this assessment has not been undertaken.
64. The Commission welcomes the Royal Commission into child sexual abuse in institutional settings.<sup>35</sup> The Commission notes that the terms of reference for the Royal Commission encompass past and current child sexual abuse and any related unlawful or improper treatment of children (including children with disability) in the context of institutions throughout Australia.<sup>36</sup> The Commission notes that unlawful or improper treatment of children unrelated to child sexual abuse does not come within the terms of reference of the Royal Commission.

#### **4.2 Access to justice (articles 3, 4, 5, 13, 14)**

65. The Commission is concerned about access to justice for people (suspects, offenders, victims and witnesses) with communication impairment. These people include people with an intellectual disability, people who use augmentative or alternative forms of communication, people with Acquired Brain Injury, people with cerebral palsy who have communication problems, people who are Deaf and use sign language, people who have a hearing impairment and people who have little or no speech.
66. The issues include the capacity of people with communication impairment to give evidence and to initiate or defend proceedings, and the treatment of people with communication impairment by police, judges, lawyers and other court personnel. The Commission is also concerned about the accessibility of court processes such as access to interpreters to facilitate communication.
67. The Commission is particularly concerned about access to justice for Aboriginal and Torres Strait Islander people with a cognitive impairment. This issue was highlighted in the Commission's *Social Justice Report 2012*.<sup>37</sup> The report notes that:

In some Australian jurisdictions, when people with cognitive impairment are found unfit to plead to criminal charges, they become subject to mental health legislation. In several jurisdictions, the result for some Aboriginal and Torres Strait Islander people with a cognitive impairment accused of crimes for which they are unable to plead and stand trial, has been indefinite detention.<sup>38</sup>
68. Additionally, Aboriginal and Torres Strait people with cognitive impairment, their families, and communities are not provided with appropriate support and little help, especially in remote locations.<sup>39</sup>

69. The Commission is also concerned at the lack of reliable data about the extent of the problem. The data that does exist shows that while it is difficult to quantify exact numbers, Aboriginal and Torres Strait Islander people with cognitive impairment are dramatically over-represented in criminal justice settings across Australia.<sup>40</sup>
70. The *Twenty Years: Twenty Stories* short film concerning access to justice 'Presumed Guilty' is available [here](#).

#### **4.3 Involuntary and non-therapeutic sterilisation (articles 3, 4, 5, 6, 7, 12, 15, 16, 17, 23)**

71. The Commission is concerned that non-therapeutic sterilisation of women and girls with disability continues to occur in Australia and rates of such sterilisations may be increasing. This is despite the requirement that the Family Court of Australia or a state or territory guardianship tribunal authorise the performance of such sterilisations.
72. Concerns about non-therapeutic sterilisation of women and girls with disability were highlighted during Australia's first Universal Periodic Review by the UN Human Rights Council.<sup>41</sup> The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have also expressed concern regarding non-therapeutic sterilisation, noting that forced sterilisation is a form of gender-based violence and consequently a form of discrimination against women,<sup>42</sup> and have urged the Government to enact national legislation prohibiting the practice, except where there is a serious threat to life or health.<sup>43</sup>
73. The Commission considers that the gravity and irreversible consequences of non-therapeutic sterilisation makes this a significant human rights issue. The Commission has called on the Australian Government to enact legislation prohibiting the sterilisation of women and girls with disability, except in cases of serious threat to life or health of a child, or with the informed consent of an adult.<sup>44</sup>
74. The Australian Government has recently undertaken measures to review the current legal framework. On 20 September 2012 the Senate referred the matter of involuntary or coerced sterilisation of people with disabilities in Australia to the Senate Community Affairs Committees for inquiry and report. The reporting date was to be 24 April 2013. On 26 February 2013, the Senate granted an extension of time for reporting until 19 June 2013.<sup>45</sup>
75. The Commission has provided a submission to the Inquiry which is available [here](#) and has appeared before the Senate Committee.

#### **4.4 Employment of people with disability (articles 3, 4, 5, 27)**

76. The Commission is disappointed that the overall employment rates for people with disability remain low, with labour force participation at around 54%, compared to 83% for people without disability.<sup>46</sup> These employment rates have been stagnant since the passage of the Disability Discrimination Act.

77. The Australian Government recently released a discussion paper *Improving the employment of participation of people with disability in Australia*.<sup>47</sup> The discussion paper focuses on the identification of barriers and solutions to increasing employment of people with disability.
78. The Commission has drawn the Australian Government's attention to the National Inquiry into Employment and Disability conducted by the Australian Human Rights Commission in 2005-2006.<sup>48</sup> The inquiry identified barriers and solutions which remain relevant to increasing the employment of people with disability.
79. The Commission has urged the Australian Government to utilise the findings of the National Inquiry in the development of new measures to raise awareness of the issue and remove barriers to the employment of people with disability.
80. The Commission welcomes the initiative in the NDIS Bill requiring that the composition of the 13 member NDIS Advisory Council include at least 4 people with disability (with relevant skills, experience or knowledge), 2 carers (with relevant skills, experience or knowledge), and at least one member with skills, experience or knowledge in the supply or provision of equipment or services to people with disability.<sup>49</sup> The Commission also welcomes the 'expression of interest' process aimed at recruiting people with disability into the Agency workforce.<sup>50</sup>
81. The Commission notes that these initiatives would not only further engage Article 27 of the Disability Convention, but would also begin to address the reduction in the employment levels of people with disability in the Australian Public Service that has occurred over the last 20 years. There has been a consistent decline from 5.8% in 1992 to 3.7% in 2001 to 2.9% in 2012.<sup>51</sup>
82. The Twenty Years: Twenty Stories short film concerning people with disability and employment 'Works for me' is available [here](#).

---

<sup>1</sup> *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities 2012*, (Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations). At <http://www.disabilityrightsnow.org.au/node/15> (viewed 24 January 2013).

<sup>2</sup> See: *Discrimination Act 1991* (ACT), *Anti-Discrimination Act 1977* (NSW), *Anti-Discrimination Act 1991* (Qld), *Anti-Discrimination Act 1996* (NT), *Equal Opportunity Act 1984* (WA), *Anti-Discrimination Act 1998* (Tas), *Equal Opportunity Act 1984* (SA), *Equal Opportunity Act 2010* (Vic).

<sup>3</sup> Australia's human rights obligations are considered to be those rights set out in the following core international instruments: the *International Convention on the Elimination of all Forms of Racial Discrimination*, 1965; the *International Covenant on Economic, Social and Cultural Rights*, 1966; the *International Covenant on Civil and Political Rights*, 1966; the *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979; the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984; the *Convention on the Rights of the Child*, 1989; and the *Convention on the Rights of Persons with Disabilities*, 2006.

<sup>4</sup> For information on Australia's Human Rights Framework, see Australian Government, *Australia's Human Rights Framework*. At <http://www.ag.gov.au/humanrightsframework> (viewed 3 January 2013).

<sup>5</sup> For information on the NDIS Launch Transition Agency see <http://www.ndis.gov.au/ndis-launch/launch-transition-agency/> (viewed 23 January 2013).

- <sup>6</sup> Attorney-General's Department, *National Human Rights Action Plan*, December 2012, p 55. At <http://www.ag.gov.au/Consultations/Pages/NationalHumanRightsActionPlan.aspx> (viewed 15 March 2013).
- <sup>7</sup> Australian Human Rights Commission, *Submission to the Attorney-General's Department, Consultation on exposure draft National Human Rights Action Plan*, (6 March 2012), para 68. At [http://humanrights.gov.au/legal/submissions/2012/20120309\\_NHRAP.html#Heading124](http://humanrights.gov.au/legal/submissions/2012/20120309_NHRAP.html#Heading124) (viewed 15 March 2013).
- <sup>8</sup> *Disability Discrimination Act 1992* (Cth), s 3.
- <sup>9</sup> *Disability Discrimination Act 1992* (Cth), s 5(2).
- <sup>10</sup> *Disability Discrimination Act 1992* (Cth), s 7.
- <sup>11</sup> Australian Human Rights Commission, *Disability Discrimination Commissioner, Graeme Innes AM*. At [http://humanrights.gov.au/about/president\\_commissioners/innes.html](http://humanrights.gov.au/about/president_commissioners/innes.html) (viewed 15 March 2013).
- <sup>12</sup> *Disability Discrimination Act 1992* (Cth), s 4.
- <sup>13</sup> *Australian Human Rights Commission Act 1986* (Cth), Part IIB.
- <sup>14</sup> Australian Human Rights Commission, *Annual Reports*. At [http://www.humanrights.gov.au/about/publications/annual\\_reports/index.html](http://www.humanrights.gov.au/about/publications/annual_reports/index.html) (viewed 15 March 2013).
- <sup>15</sup> Australian Human Rights Commission, *Twenty Years: Twenty Stories*. At <http://humanrights.gov.au/twentyyears/index.html> (viewed 15 March 2013).
- <sup>16</sup> See the *A to Z index for Australian Human Rights Commission disability rights site* for further information on these areas. At [http://www.humanrights.gov.au/disability\\_rights/A-Z\\_index/a-z\\_index.html](http://www.humanrights.gov.au/disability_rights/A-Z_index/a-z_index.html) (viewed 15 March 2013).
- <sup>17</sup> Attorney-General's Department, *Disability Standards for Accessible Public Transport*. At <http://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Pages/Disabilitystandardsforacesiblepublictransport.aspx> (viewed 15 March 2013).
- <sup>18</sup> The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport Final Report*, October 2009, p 8. At <http://www.infrastructure.gov.au/transport/disabilities/review/2007.aspx> (viewed 15 March 2013).
- <sup>19</sup> Department of Infrastructure and Transport, *2012 Review of the Disability Standards for Accessible Public Transport*. At <http://www.infrastructure.gov.au/transport/disabilities/review/2012.aspx> (viewed 15 March 2013).
- <sup>20</sup> *Disability Standards for Accessible Public Transport 2002*, Part 34. At <http://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Pages/Disabilitystandardsforacesiblepublictransport.aspx> (viewed 15 March 2013).
- <sup>21</sup> Media Access Australia, *Access to Cinema*. At <http://www.mediaaccess.org.au/cinema-the-arts/access-to-cinema> (viewed 15 March 2013).
- <sup>22</sup> Attorney General's Department, *Disability standards for education*. At <http://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Pages/Disabilitystandardsforeducation.aspx> (viewed 15 March 2013).
- <sup>23</sup> Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (2013). At [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=legcon\\_ctte/anti\\_discrimination\\_2012/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/anti_discrimination_2012/report/index.htm) (viewed 15 March 2013).
- <sup>24</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *National Disability Strategy 2010-2020*. At <http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020> (viewed 15 March 2013).
- <sup>25</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *National Disability Strategy 2010-2020*, p 9. At <http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020> (viewed 15 March 2013).
- <sup>26</sup> Attorney-General's Department, *National Human Rights Action Plan*, December 2012, p 55. At <http://www.ag.gov.au/Consultations/Pages/NationalHumanRightsActionPlan.aspx> (viewed 15 March 2013).
- <sup>27</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The National Disability Strategy 2010-2020 Report to COAG 2012*, February 2013. At <http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012> (viewed 15 March 2013).

<sup>28</sup> National Disability Insurance Scheme, *Launch Transition Agency*. At <http://www.ndis.gov.au/ndis-launch/launch-transition-agency/> (viewed 15 March 2013).

<sup>29</sup> Prime Minister, Minister for Disability Reform, 'Legislation for a National Disability Insurance Scheme', (Media Release, 29 November 2012). At <http://www.pm.gov.au/press-office/legislation-national-disability-insurance-scheme> (viewed 15 March 2013).

<sup>30</sup> See Disability Representative, Advocacy, Legal and Human Rights Organisations, *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* August 2012. At <http://www.disabilityrightsnow.org.au/node/15> (viewed 15 March 2013); J Dillon, *Violence Against People with Cognitive Impairments: Report from the Advocacy/Guardianship Program*, Office of the Public Advocate, Victoria (2010). At

<http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf> (viewed 15 March 2013); S Price-Kelly and M Attard, *Accommodating Violence: The Experience of Domestic Violence and People with Disability Living in Licensed Boarding Houses*, People with Disability Australia (2010). At

<http://www.pwd.org.au/documents/pubs/Accommodating%20Violence%20Report.doc> (viewed 15 March 2013). More than two Department of Human Services clients were attacked every day on average in Victoria, with almost 1800 assaults, sex attacks or rape allegations reported in the period January 2009 – July 2011. In more than 500 cases (approximately 28%) state-appointed staff and carers were accused: see P Mickelborough, 'Carers prey on vulnerable children and the disabled', *Herald Sun*, 13 February 2012. At

<http://www.heraldsun.com.au/news/more-news/carers-prey-on-vulnerable-children-and-the-disabled/story-fn7x8me2-1226269125327> (viewed 15 March 2013).

<sup>31</sup> See the issues raised in the Australian Human Rights Commission, *Report of the UN Special Rapporteur on Violence against Women Australian Study Tour*, April 2012 (forthcoming 2012); J Dillon, *Violence Against People with Cognitive Impairments: Report from the Advocacy/Guardianship Program*, Office of the Public Advocate, Victoria (2010). At

<http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf> (viewed 15 March 2013).

<sup>32</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (2010), para 43. At

<http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm> (viewed 15 March 2013).

<sup>33</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence against Women and their children*. At [http://www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children](http://www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children/national-plan-to-reduce-violence-against-women-and-their-children) (viewed 15 March 2013).

<sup>34</sup> See the issues raised in the Australian Human Rights Commission *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*, and Janine Dillon, *Violence against People with Cognitive Impairments*, Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria (2010). At

[www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf](http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf) (viewed 15 March 2013).

<sup>35</sup> Prime Minister of Australia, 'Government Formally Establishes Royal Commission' (Media Release, 11 January 2013). At <http://www.pm.gov.au/press-office/government-formally-establishes-royal-commission> (viewed 15 March 2013).

<sup>36</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Letters Patent*. At <http://www.childabuseroyalcommission.gov.au/LettersPatent/Pages/default.aspx> (viewed 15 March 2013).

<sup>37</sup> Australian Human Rights Commission, *Social Justice Report 2012*, pp 60-70. At [http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport12/index.html](http://humanrights.gov.au/social_justice/sj_report/sjreport12/index.html) (viewed 15 March 2013).

<sup>38</sup> Australian Human Rights Commission, *Social Justice Report 2012*, p 63. At [http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport12/index.html](http://humanrights.gov.au/social_justice/sj_report/sjreport12/index.html) (viewed 15 March 2013).

<sup>39</sup> Australian Human Rights Commission, *Social Justice Report 2012*, p 68. At [http://humanrights.gov.au/social\\_justice/sj\\_report/sjreport12/index.html](http://humanrights.gov.au/social_justice/sj_report/sjreport12/index.html) (viewed 15 March 2013).

<sup>40</sup> Aboriginal Disability Justice Campaign, *No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment*. At <http://www.pwd.org.au/systemic/adjc.html> (viewed 15 March 2013).



<sup>41</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/17/10 (24 March 2011). At

<http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CAUSession10.aspx> (viewed 15 March 2013), as cited in Australian Human Rights Commission, *Report of the UN Special Rapporteur on Violence against Women Australian Study Tour*, April 2012 (forthcoming 2012).

<sup>42</sup> Committee on the Elimination of All forms of Discrimination against Women, *General Recommendation No. 19 adopted at the 11<sup>th</sup> session* (1992). At

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (viewed 15 March 2013); R Coomaraswamy, *Violence against Women (Addendum): Policies and Practices that Impact Women's Reproductive Rights and Contribute To, Cause or Constitute Violence against Women*, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, UN Doc E/CN.4/1999/68/Add.4 (1999), para 51. At <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4cad275a8b5509ed8025673800503f9d?Opendocument> (viewed 15 March 2013).

<sup>43</sup> See Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (20 October 2005), paras 45–46. At

<http://www.unhcr.org/refworld/publisher,CRC,,AUS,45377eac0,0.html> (viewed 15 March 2013); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (2010), para 43. At

<http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm> (viewed 15 March 2013).

<sup>44</sup> G Innes, Disability Discrimination Commissioner, Correspondence to Hon N Roxon, Australian Government Attorney-General, 19 September 2012.

<sup>45</sup> Parliament of Australia, *Senate Committee on the involuntary or coerced sterilisation of people with disabilities in Australia*. At

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_ctte/involuntary\\_sterilisation/info.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/involuntary_sterilisation/info.htm) (viewed 15 March 2013).

<sup>46</sup> Australian Bureau of Statistics (ABS), *Disability Australia 2009*, 4446.0 (2011). At

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4446.0main+features92009> (viewed 15 March 2013).

<sup>47</sup> Australian Government, *Improving the employment participation of people with disability in Australia, Discussion Paper*. At <http://deewr.gov.au/increasing-employment-opportunities-people-disability> (viewed 15 March 2013).

<sup>48</sup> Australian Human Rights Commission, *National Inquiry into Employment and Disability(2006)*. At [http://humanrights.gov.au/disability\\_rights/employment\\_inquiry/index.htm](http://humanrights.gov.au/disability_rights/employment_inquiry/index.htm) (viewed 15 March 2013).

<sup>49</sup> National Disability Insurance Scheme Bill 2012, s 147. At

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4946%22> (viewed 15 March 2013).

<sup>50</sup> Minister for Disability Reform and Parliamentary Secretary for Disabilities and Carers, 'Help launch a National Disability Insurance Scheme', (Joint Media Release, 19 September 2012).

<sup>51</sup> Australian Public Service Commission, *Workplace Diversity Report 2000-01*, p 73. At

<http://www.apsc.gov.au/publications-and-media/print-only> (viewed 15 March 2013); Australian Public Service Commission, *State of the Service Report, State of the Services Series 2011-12*, p 143. At <http://www.apsc.gov.au/publications-and-media/print-only> (viewed 15 March 2013).