



Australian
Human Rights
Commission

everyone, everywhere, everyday

Inquiry into Long Term Disability Care and Support

.....
Australian Human Rights Commission Submission
to the Productivity Commission

29 June 2010

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Productivity Commission in its Inquiry into long term disability care and support.

2 Summary

2. This submission responds to the Productivity Commission's request, in its Issues Paper, for comment on the design implications of the Convention on the Rights of Persons with Disabilities for a National Disability Insurance Scheme (NDIS) or similar scheme.
3. The Australian Human Rights Commission commends the recognition by the Productivity Commission of the central relevance of the Convention on the Rights of Persons with Disabilities ("the Convention") to the design of a NDIS or similar scheme.
4. The Australian Human Rights Commission considers that an NDIS and supporting institutional arrangements as recommended by the Disability Investment Group would make a major contribution to implementation of Australia's obligations under the Convention.
5. The Australian Human Rights Commission endorses the Disability Investment Group's view that an Australian Disability Research Institute or similar institution should be considered for early implementation ahead of implementation, or even final determination, of other scheme elements.
6. The Australian Human Rights Commission recommends that consideration by the Productivity Commission should commence from the perspective that scheme design, including the purposes for scheme funds and the roles of institutional arrangements, should
 - encompass the full range of human rights and obligations recognised by the Convention (thus for example addressing participation in and reasonable adjustments to mainstream activities rather than only specific disability services and supports)
 - include measures to remove disabling barriers on societal and institutional as well as individual levels (noting the social model of disability adopted by the Convention)

- enhance capacity for effective participation in decision making by people with disabilities, including through support for and recognition of the roles of advocacy and representative organisations.

3 Recommendations

7. A full list of recommendations made in this submission is provided as Appendix 1.

4 Implications of the Convention on the Rights of Persons with Disabilities for scheme design

8. Implications of provisions of the Convention for scheme design are discussed below. For convenience relevant Convention text is inserted followed by comments and recommendations.

4.1 Article 1 - Purpose

Convention text:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

9. The purpose of the Convention as indicated in article 1 is to promote full and equal enjoyment of “all” human rights by persons with disabilities rather than a more restricted set of services and opportunities. In the context of an NDIS this implies that consideration should commence from as wide a set of choices for people with disability and their families as possible.
10. For example, while the Convention requires measures to ensure that people with disability can enjoy an adequate standard of living it is not restricted to this. While the Convention recognises (in its preamble) that the majority of people with disability worldwide live in poverty, a scheme directed solely towards preventing or alleviating poverty without measures to facilitate equal participation in employment, education, and other aspects of civil, political, economic, social and cultural life would not be a sufficient response to the Convention.
11. **Recommendation:** The Australian Human Rights Commission recommends that the Productivity Commission’s consideration of an NDIS or similar mechanism commence from the basis that the scope of the scheme should

facilitate full and equal enjoyment of the full range of human rights for people with disability.

Convention text:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

12. The definition of disability in article 1 is inclusive, not exhaustive. In particular the list of types of disability (physical, mental, intellectual or sensory) is not exhaustive; and reference to “long term” impairments is not exclusive – and does not exclude impairments which are long term but episodic, or long term but not necessarily lifelong.
13. This definition clearly adopts a social / environmental model. As noted by the Preamble to the Convention “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. In the context of a National Disability Insurance Scheme this implies that
 - while threshold eligibility criteria may include reference to medically based assessment of impairment, entitlements within the scheme will appropriately require reference to other factors determining the disabling effect associated with a person’s impairment;
 - while one purpose of an NDIS is to compensate for and meet the costs of disabling effects resulting from interaction between impairment and social and environmental barriers, another purpose is to reduce or eliminate those barriers (for individual scheme beneficiaries and more broadly).

A National Disability Commission and Australian National Disability Research Institute as recommended by the Disability Investment Group would have important roles in this respect.

14. An appropriate definition of disability for the purposes of an NDIS may not necessarily be identical with either that in article 1 of the Convention or in Australia’s Disability Discrimination Act. As noted by the Productivity Commission’s Issues Paper, not all persons with disability require any significant support.
15. It may however be appropriate to take into account in development of an NDIS the approach taken to this issue of definitions in the development of the DDA: briefly, that the definition of disability should be broad so as to avoid unnecessary exclusion, with the principal limiting factor being rather whether a

person has been discriminated against. Consideration might be given to whether a similar approach would be workable for an NDIS with the major decisions being not about what instances of disability are covered but rather what costs are insured.

16. It is also relevant to note that

- some people with disability who would not require significant care or support nonetheless do require significant measures of barrier removal to ensure their full and equal enjoyment of human rights and social and economic participation;
- disabling barriers to equal participation in mainstream services, facilities and opportunities are a significant source of needs for services and support directed specifically to people with disability; and that
- a scheme which reduces disablement and the social and individual costs of disablement over time accordingly needs to have sufficient scope to address disabling barriers in society.

17. **Recommendation:**

18. The Australian Human Rights Commission recommends that the Productivity Commission:

- base its work on a social model of disability;
- take into account the effect of disabling environments in considering appropriate eligibility criteria and levels of benefits or entitlements;
- in particular take into account the particular impacts in this respect of disadvantage affecting Indigenous people in Australia; and
- consider roles for institutions administering an NDIS or similar scheme in achieving reduction in or removal of social and environmental barriers which result in disability for people with impairments.

4.2 Article 2: Definitions

Convention text:

For the purposes of the present Convention:

- *"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;*
 - *"Language" includes spoken and signed languages and other forms of non spoken languages;*
 - *"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;*
 - *"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;*
 - *"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.*
19. The definitions in article 2 (including reference to universal design and reasonable accommodation and the breadth of the definition of discrimination) give an early indication of the breadth of disability related adjustments which an NDIS could appropriately seek to address: both on an individual and social basis. Roles for institutions administering an NDIS emerge still more clearly from subsequent articles including articles 4, 9, 32 and 33. Recommendations are made below by reference to these articles.

4.3 Article 3 - General principles

Convention text:

The principles of the present Convention shall be:

- a. *Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- b. *Non-discrimination;*
- c. *Full and effective participation and inclusion in society;*
- d. *Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*

- e. *Equality of opportunity;*
 - f. *Accessibility;*
 - g. *Equality between men and women;*
 - h. *Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*
20. The General Principles set out in article 3 of the Convention may be appropriate to reflect in legislation providing for a NDIS in a “principles and objectives” section or similar provision. More substantive issues of how these principles should be reflected in scheme design emerge from consideration of the substantive provisions of the Convention including both those provisions which are stated in the form of recognising rights and those provisions which are stated in the form of specifying obligations.
21. **Recommendation:** The Australian Human Rights Commission recommends that the Productivity Commission ensure that at all stages its consideration of the implications of the Convention on the Rights of Persons with Disabilities for scheme design include the implications of the substantive provisions of the Convention in addition to its general principles and purpose.

4.4 Article 4 - General obligations

Convention text:

4.1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- a. *To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;*
- b. *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;*
- c. *To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;*
- d. *To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;*
- e. *To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;*
- f. *To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present*

Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

- g. To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;*
 - h. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;*
 - i. To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.*
22. The obligations provided for by article 4.1 clauses (f) to (j) appear to indicate core activities for institution/s administering an NDIS, including through individual and systemic measures. There may be overlapping roles in these respects for institutions such as the National Disability Commission and Australian National Disability Research Institute proposed by the Disability Investment Group report.
23. While obligations under clauses (a) (b) and (d) may be less obviously part of the responsibilities of a National Disability Commission or an Australian National Disability Research Institute, there would also be important advocacy and policy roles to perform in these respects.
24. Obligations under clause (c) are directly applicable to the functions and functioning of institutions administering an NDIS, as well as these institutions potentially having important policy and advocacy roles in promoting compliance with these obligations by other areas of government.
25. These roles may be seen as overlapping with the statutory functions of the Australian Human Rights Commission. Institutions such as a National Disability Commission and/or an Australian National Disability Research Institute as proposed by the Disability Investment Group would complement and add value to existing Australian Human Rights Commission functions and activity (and equivalent statutory roles of State and Territory equal opportunity bodies) through
- having a significantly greater resource base for disability rights activities
 - working in co-operation with Australian Human Rights Commission policy, educational and other activities

- potentially resourcing the use by individuals and organisations of complaint and other processes under the Disability Discrimination Act.
26. These roles do not appear closely dependent on other major elements of scheme choice and design. The Disability Investment Group recommended that its proposed Australian National Disability Research Institute be established and receive initial funding in advance of commencement of an NDIS (while also recommending that substantially expanded funding be provided through an NDIS once commenced).
27. Article 4.1 comprises a wider range of roles than research but pending final determination and commencement of all elements of an NDIS or other scheme these roles could be commenced through
- Establishment of an institute with a wider mandate than research or
 - Allocation on an interim basis of additional resources to existing institutions (including the Australian Human Rights Commission and other relevant government and non-government organisations).
28. The Australian Government bears international responsibility for implementation of obligations under the Convention. If institutions as recommended by the Disability Investment Group are established as part of Australia's response to its obligations under the Convention, the Government might consider providing these institutions with a similar combination of independence and responsiveness as applies to the Australian Human Rights Commission:
- Independence in being able to identify and pursue priority issues without direction or veto from government; but
 - Responsiveness through a responsible Minister being able to issue references requesting work on particular issues (generally accompanied by specific purpose resourcing to conduct this work).
29. **Recommendation:** The Australian Human Rights Commission recommends that the Productivity Commission's consideration of institutional arrangements supporting an NDIS or similar scheme include allocation and resourcing of roles addressing the obligations specified in Convention article 4.1 .
30. **Recommendation:** The Australian Human Rights Commission recommends that the Productivity Commission consider establishment of institutional arrangements to address Convention article 4.1 as an item for early implementation which do not need to await determination and commencement of other scheme elements.

Convention text:

4.2. With regard to economic, social and cultural rights, each State Party undertakes

to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

31. Clearly an NDIS provides a major mechanism for applying resources to the realisation of human rights consistently with article 4.2 of the Convention. It is not clear that a distinction between economic social and cultural rights on the one hand, and civil and political rights on the other, would be highly relevant for an NDIS given that
- as emphasised in the Preamble to the Convention, human rights are indivisible
 - all rights require the application of resources (for example civil and political rights in the justice system or in access to democratic processes).
32. In particular it does not appear
- that actions under an NDIS to promote achievement of rights categorised as civil and political rights can or should be excluded , or
 - that these actions should receive automatic priority over actions to promote achievement of rights categorised as economic, social and cultural.
33. An example of the importance of the indivisibility of human rights can be seen by reference to the position of people affected by mental illness. Failure to ensure full and equal enjoyment of the rights to equality in employment, to the highest achievable standard of health care and to appropriate housing (classed as economic social and cultural rights) can and frequently does lead directly to failure to enjoy civil and political rights including rights to liberty and security of the person, to privacy, and in some instances to life.

This analysis supports the recommendation made by reference to Convention article 1 above, that design of an NDIS should be undertaken with a view to the enjoyment of the full range of human rights.

Convention text:

4.3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

34. Clearly the obligation under article 4.3 to consult with and involve people with disability through their representative organisations is highly relevant to

appropriate governance arrangements for, and operations of, institutions administering an NDIS.

35. The Convention does not specify in any detail how consultation with and involvement of representative organisations should occur. One essential point however would appear to be the need for financial support from the scheme also to enable representative organisations to perform their roles effectively in relation to scheme operation (including not only minimum funding to enable participation in advisory structures and the like, but also provision of technical support and capacity building measures to ensure that participation can be effective.)
36. Consideration could also be given to the possible role of an NDIS in providing a sustainable and adequate funding base for representative organisations to enable them to engage in systemic advocacy in support of identification and elimination of barriers in Australian society and to participate in and contribute to monitoring of progress in implementation.
37. **Recommendation:** The Australian Human Rights Commission recommends that in considering mechanisms to include involvement of and consultation with disability representative organisations in scheme governance and operation, the Productivity Commission consider
- needs for funding, technical support and capacity building measures to enable disability representative organisations to participate effectively;
 - the role of an NDIS or similar scheme in providing a sustainable and adequate funding base for disability representative organisations to enable them to engage in systemic advocacy in support of identification and elimination of barriers in Australian society and to participate in and contribute to monitoring of progress in implementation.

Convention text:

4.4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

38. The “no disadvantage test” provided by article 4.4 indicates that

- the Convention itself does not displace any more favourable domestic and international law provisions applicable and
- the Convention cannot be relied on to derogate from any human rights or fundamental freedoms.

These are important provisions but clearly do not have the effect of requiring a Pareto-optimal (no individual is worse off) solution in comparing an NDIS with existing provisions. Compensation lawyers would be expected to be, and some individual beneficiaries of fault based compensation schemes might be, worse off under a comprehensive social insurance scheme, without this involving any violation of article 4.4. No specific recommendation is made arising from this provision at this point.

Convention text

4.5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

39. Like the other principal human rights instruments the Convention recognises the existence of federal systems. Article 4.5 confirms that obligations accepted internationally have to be complied with across the nation. This does not however mean that domestic measures need to be taken solely at the national government level or be entirely uniform, so long as they are consistent with and fulfil the requirements of the Convention. No specific recommendation is made arising from this provision at this point.

4.5 Article 5 - Equality and non-discrimination

Convention text:

5.1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

5.2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

40. Legal prohibition of discrimination is necessary but not sufficient to fulfill obligations under clauses (1) and (2) of article 5 of the Convention. Effective protection of the law and equal benefit from legal protections would clearly be advanced by funding and other roles recommended in this submission for institutions administering an NDIS.

Convention text:

5.3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

41. A requirement for reasonable accommodation to be provided is now expressly specified in Australian law through the DDA. A legal requirement alone however is clearly not all that is required to fulfil the obligation to take “all appropriate steps” to ensure provision of reasonable adjustment.
42. An NDIS and roles for administering institutions would be expected to have major impacts on reasonable accommodation on individual and systemic levels both on issues covered by the DDA and more broadly.
43. The Productivity Commission has previously considered issues of reasonable adjustment in its review of the DDA. While the review concluded that overall the DDA had been reasonably effective in achieving benefits in excess of its costs, the PC also pointed to limited progress in a number of areas, notably employment, including in securing effective and efficient provision of reasonable adjustment.
44. It appears clear that current legislative and funding arrangements are insufficient to ensure provision of reasonable adjustment to a level consistent with human rights or to the level which would be economically efficient. Current arrangements feature
 - a very general and briefly (yet not clearly) stated requirement to make reasonable adjustments under the DDA
 - fragmented information on practical measures for making reasonable adjustment
 - a lack of systematic research on innovation in making reasonable adjustments
 - limited funding and other support for making reasonable adjustments (outside of the coverage of existing compensation schemes).
45. The Productivity Commission review of the DDA provides some discussion of economic reasons why current arrangements would be expected to deliver less in achieving reasonable adjustment and other aspects of equality and inclusion than would be economically efficient. Issues include:
 - *Information search costs:* An adjustment which might be low or no cost to make will nonetheless not be expected to occur (in particular but not only in small business environments) if practically useful information and authoritative information on regulatory requirements takes too much time or expertise to find

- *Transaction costs in current compliance arrangements:* A compliance approach principally relying on individual complaints while inexpensive in any individual instance will not always provide the most efficient means of achieving widespread social change without additional accompanying and supporting measures
 - *Externalities:* Current costs of adjustment fall principally on employers and other enterprises expected to make them, and costs of failure to make adjustments fall most directly on people with disability, while a significant stream of benefits from adjustments would be anticipated to accrue to government in reduced welfare costs and increased tax revenue (through increased employment) and costs of specialised support (for example when a private bus operator provides an accessible service there will be reduced demand for government taxi subsidy schemes).
46. An NDIS featuring appropriate roles for institutions such as a National Disability Commission and Australian National Disability Research Institute as proposed by the Disability Investment Group should be considered as a means of addressing these issues. These roles could include
- providing access to practical information
 - conducting, co-ordinating or funding research on technical and other innovations
 - roles in development of technical and/or regulatory standards
 - funding for making of adjustments – to people with disability and to people required to make adjustments.
47. On the issue of funding to assist people responsible for making reasonable adjustments (such as employers), NDIS scheme design might either
- Seek to specify from the outset what adjustments will and will not be funded; or
 - Provide decision-making criteria but allow room for negotiation and flexibility (for example regarding whether adjustments should be fully funded by the NDIS, or continue to be wholly the responsibility of an employer or educational institution for example, or be made by mixed sources of funding).

Given the range of adjustments and circumstances in which a need for adjustments may arise an approach which provides for flexibility and further specification case by case may be preferable.

48. **Recommendation:** The Australian Human Rights Commission recommends that the Productivity Commission consider how NDIS or similar scheme funding might be applied, and institutional roles assigned, for achieving reasonable adjustments, in all of the areas of life covered by the Convention, including

- provision of access to practical information
- conducting, co-ordinating or funding research on technical and other innovations
- roles in development of technical and/or regulatory standards
- funding for making of adjustments – to people with disability and to people required to make adjustments.

Convention text:

5.4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

49. People who do not have a disability, or a particular disability which is the target of beneficial measures, do not have any capacity under the DDA to validly complain of discrimination through not being eligible for such beneficial measures. The special measures provision in article 5.4 has less work to do accordingly than special measures provisions in racial discrimination or sex discrimination legislation. It does provide a ready response to any claim that might be made that special entitlements based on disability violate the principle of equality. Special measures (including a beneficial program such as an NDIS) are still required however to be consistent with all the other rights and obligations set out in the rest of the Convention.
50. No specific recommendation is made arising from this provision at this point.

4.6 Article 6 - Women with disabilities

Convention text:

6.1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

6.2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

51. As indicated by article 6, design of a social insurance scheme should take into account particular disadvantage experienced by women with disability including as primary carers and in relation to lifecycle earnings and retirement incomes.

52. The Preamble to the Convention recognises that “women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”. Multiple disadvantage experienced by women with disability applies in Australia in a range of areas dealt with by the Convention.
53. It is important to recall for example that “situations of risk” - in relation to which parties to the Convention are obliged to ensure effective protection for people with disability – are not confined to natural disasters, armed conflicts and similar events relatively infrequent in Australia, but include the daily experience of many women in exposure to domestic violence or sexual harassment. Women with disabilities experience particular vulnerabilities to these risks and are inadequately served by protective and remedial measures.
54. As well as imposing personal costs for women with disabilities and their families these realities are likely to involve substantial social costs (including health and other support system costs and lost productivity and participation).
55. **Recommendation:** The Australian Human Rights Commission recommends that
- the Productivity Commission include a gender analysis in its consideration of proposed schemes
 - gendered impacts be able to be taken into account in considering scheme eligibility and benefits
 - gender representation and inclusion be taken into account in scheme governance arrangements including through involvement of and consultation with representative organisations.

4.7 Article 7 - Children with disabilities

Convention text:

7.1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

7.2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

7.3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

56. **Recommendation:** The Australian Human Rights Commission recommends that provision in accordance with article 7 of the Convention for children to be able to express their views and to be provided with assistance where necessary for this purpose should be

- a feature of the operation of institutions administering an NDIS and
- within the scope of funding and other actions by these institutions.

4.8 Article 8 - Awareness-raising

Convention text:

1. States Parties undertake to adopt immediate, effective and appropriate measures:

- a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;*
- b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;*
- c. To promote awareness of the capabilities and contributions of persons with disabilities.*

Measures to this end include:

- a. Initiating and maintaining effective public awareness campaigns designed:*
 - i. To nurture receptiveness to the rights of persons with disabilities;*
 - ii. To promote positive perceptions and greater social awareness towards persons with disabilities;*
 - iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;*
- b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;*
- c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;*
- d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.*

57. The social model of disability adopted by the Convention emphasises the disabling effects of lack of awareness and stereotypical attitudes.

58. For example, organisations in the mental health area have described a large scale awareness program comparable with road safety campaigns as a necessary equivalent in providing community inclusion for people affected by mental illness to processes of installing level or ramp access in providing for participation by people with physical disability.
59. There would clearly be roles for institutions administering a NDIS in relation to awareness raising and attitude change pursuant to article 8 comparable to roles of other social insurance agencies such as OHS and motor accident authorities.
60. Awareness campaigns regarding disability in Australia to date have not been conducted from a particularly rigorous evidence base or included
- a strong impact evaluation framework;
 - a close connection with other policy tools; or
 - a sufficient resource base for large scale and sustained effort.

Institutions administering an NDIS or similar scheme would be expected to be in a position to do better in each of these respects (directly and through funding of and co-operation with activity by disability organisations and other relevant government and non-government organisations).

61. **Recommendation:** The Australian Human Rights Commission recommends that institutions administering an NDIS or similar scheme be empowered to undertake and fund awareness raising measures in accordance with article 8 to address attitudinal barriers.

4.9 Article 9 - Accessibility

Convention text:

9.1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*
- b. Information, communications and other services, including electronic services and emergency services.*

9.2. *States Parties shall also take appropriate measures to:*

- a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*
- b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*
- c. Provide training for stakeholders on accessibility issues facing persons with disabilities;*
- d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;*
- e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;*
- f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;*
- g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;*
- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.*

62. While rights and obligations provided for by the Convention and requiring attention under an NDIS are not restricted to accessibility issues, article 9 (considered in conjunction with article 4 in particular) provides a very substantial work program which Australia has accepted the obligation to address.

63. Each element of this article indicates roles that could be taken up by a National Disability Commission or Australian National Disability Research Institute or both. As in other areas these roles could involve both direct activity, and funding of and co-operation with activity by disability organisations and by other relevant government and non-government organisations.

64. **Recommendation:** The Australian Human Rights Commission recommends that institutions administering an NDIS or similar scheme be empowered to undertake and fund measures in accordance with each element of article 9 of the Convention.

4.10 Article 10 - Right to life

Convention text:

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

65. An obvious issue regarding the enjoyment of the right to life for people with disability in Australia is the existence of substantial gaps or disparities in life expectancy between people who do and do not experience disability of various kinds.
66. An Australian National Disability Research Institute or similar body could have important roles in identifying and promoting action to address avoidable causes of life expectancy gaps. As indicated by the social model of disability incorporated in the Convention, issues in this area are not restricted to those concerning the inherent effects of individual impairments. In particular, disproportionately high rates of disability coincide with gaps in life expectancy for Australia's Indigenous people.
67. There may be concerns that institutions administering an insurance scheme would not have a sufficient interest in addressing issues in this area without being specifically directed to do so – since it might be argued that people dying comparatively early could be cheaper for an insurance based approach than being required to meet support costs accruing over a longer lifetime. However, insurance schemes and social insurance schemes in particular do assess life as having value, and loss of years of life as constituting compensable loss.
68. It does not appear necessary to make recommendations at this point regarding specific inclusion of the right to life within the scope of an NDIS, beyond the recommendations already made for breadth of scope regarding scheme funding and institutional competence.

4.11 Article 11 - Situations of risk and humanitarian emergencies

Convention text:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

69. Risk is clearly the core business of insurance. Institutions administering an NDIS could have significant roles in improving responses to disability within responses to situations of risk pursuant to article 11.
70. This could include development and monitoring of application of appropriate standards for disability aspects of emergency responses and safety systems in relation to the built and natural environments and also in relation to human environments such as responses to domestic violence as noted above by reference to article 6.
71. It does not appear necessary to make more specific recommendations at this point regarding specific inclusion of article 11 within the scope of an NDIS, beyond the recommendations already made for breadth of scope regarding scheme funding and institutional competence.

4.12 Article 12 - Equal recognition before the law

Convention text:

12.1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

12.2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

12.3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

12.4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

12.5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

72. As indicated by article 12, equal recognition before the law for people with disability is not confined to issues of formal legal capacity but may include requirements for support and advocacy. These issues need to be included in design of an NDIS

- in relation to interactions with the scheme itself for individuals, families and other relevant players including guardians and trustees where applicable and
- more broadly as issues within scope for scheme funding and for policy and advocacy roles for administering institutions.

73. The Australian Human Rights Commission will consider making more specific recommendations in this area after considering views which may be provided in submissions to this Inquiry by disability representative and advocacy organisations and by other relevant organisations.

4.13 Article 13 - Access to justice

Convention text:

13.1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

13.2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

74. Access to justice, as well as being a human right in itself, is one of the means for securing implementation of human rights more generally. Measures to bring the operation of justice system institutions (such as courts and tribunals, policing and corrections system facilities) into compliance with the Convention would be expected to be the financial responsibility of governments responsible rather than calling on NDIS funding.

75. There could however be roles for institutions administering an NDIS in

- Supporting development and implementation of standards and procedures to promote equal and effective access to justice
- Funding use of the justice system by individuals and representative organisations including legal and other advocacy and support.

76. It does not appear necessary to make more specific recommendations at this point regarding specific inclusion of article 13 within the scope of an NDIS, beyond the recommendations already made for breadth of scope regarding scheme funding and institutional competence.

4.14 Article 14 - Liberty and security of the person

Convention text:

14.1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person;*
- b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*

14.2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

77. Issues of liberty and security of the person under article 14 may not appear directly within the scope of an NDIS. However, a reduction in disproportionate imprisonment rates for people with intellectual disabilities and mental illness may be expected from the provision of more effective supports through an NDIS – with consequent reductions in personal and social costs. This might be considered as one set of success indicators for such a scheme.

4.15 Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

Convention text:

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

78. Implications of article 15 are discussed below together with article 16.

4.16 Article 16 - Freedom from exploitation, violence and abuse

Convention text:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and

outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

79. As noted in article 15.2 and article 16.1, legislative measures are not all that is required to prevent people with disability from being subjected to cruel or degrading treatment, exploitation, violence, and abuse.
80. There have been numerous reports of degrading treatment and abuse of people with disability in institutional or quasi institutional environments in particular.
81. Disability representative organisations have pointed to a lack of choice of living arrangements as a fundamental cause of abuse. Clearly a major purpose of an NDIS would be to expand the choices effectively available to people with disability in this respect.
82. Article 16.3 also identifies independent monitoring as necessary to prevent exploitation and abuse. This is clearly an essential element for consideration in design of an NDIS. As evidenced by the existence of consumer protection legislation and mechanisms, market forces alone are not generally relied on in Australian society to ensure appropriate outcomes for consumers.

83. It is important to note that the obligation under article 4.3 to involve people with disability through their representative organisations in all implementation and monitoring measures applies in this context. Funding for systemic and individual advocacy should be considered as an essential part of monitoring arrangements under an NDIS accordingly. Recommendations in this respect are made below by reference to article 33.

4.17 Article 17 - Protecting the integrity of the person

Convention text:

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

84. An NDIS could have positive impacts on enjoyment of the right to personal integrity under article 17 including through funding for information and supports to provide more effective alternative options to families considering sterilising surgery in relation to children with disability.

4.18 Article 18 - Liberty of movement and nationality

Convention text:

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;*
- b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;*
- c. Are free to leave any country, including their own;*
- d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.*

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

85. No direct implications for an NDIS have been identified to this point regarding liberty of movement and nationality under article 18. The Australian Human

Rights Commission may make further comments in this respect after considering input to the Inquiry from other organisations.

4.19 Article 19 - Living independently and being included in the community

Convention text:

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

86. Implementation of the rights to independent living including access to necessary services and supports as required by article 19 are clearly key objectives for an NDIS. Institutions responsible for implementation of an NDIS should be expected to take a major role in monitoring success against the outcome statements provided in clauses (a) (b) and (c) of this article – on a national level and on a more fine-grained basis including in relation to particularly disadvantaged groups (for example by reference to multiple disabilities and the experience of Indigenous people and culturally and linguistically diverse people).

4.20 Article 20 - Personal mobility

Convention text:

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- a. Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;*
- b. Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;*

- c. *Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;*
 - d. *Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.*
87. Agencies administering an NDIS or similar scheme should be expected to have major roles in implementing the obligations provided by article 20 on measures to ensure personal mobility.

4.21 Article 21 - Freedom of expression and opinion, and access to information

Convention text: States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a. *Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*
 - b. *Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;*
 - c. *Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*
 - d. *Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;*
 - e. *Recognizing and promoting the use of sign languages.*
88. Roles for institutions administering an NDIS in implementation of article 21 on freedom of expression and information could include
- funding for provision of interpreting
 - funding for research on technologies to facilitate communication (including for people who are Deaf or have hearing or speech impairments)
 - advocacy and/or support for advocacy by representative organisations.

4.22 Article 22 - Respect for privacy

Convention text:

22.1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

22.2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

89. An effective NDIS should be expected to have a positive impact on enjoyment of the right to privacy for people with disability – to the extent that it provides more effective access to choice of living arrangements and choice of sources of personal support.

4.23 Article 23 - Respect for home and the family

Convention text:

23.1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

- a. The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;*
- b. The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;*
- c. Persons with disabilities, including children, retain their fertility on an equal basis with others.*

23.2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

23.3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities,

States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

23.4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

23.5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

90. The Preamble to the Convention notes that “persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities”.
91. As noted by reference to article 17, an NDIS or similar scheme could have positive impacts on enjoyment of the rights recognised under article 23.1(b) and (c) regarding reproductive rights, including through funding for information and supports to provide more effective alternative options to families considering sterilising surgery in relation to children with disability.
92. An NDIS or similar scheme should be expected to have a major role in implementation of Australia’s obligations under clauses 3 to 5 of article 23 to provide support where required to people with disability in their role as parents and to families of children with disability.

4.24 Article 24 - Education

Convention text:

24.1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;*
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;*
- c. Enabling persons with disabilities to participate effectively in a free society.*

24.2. In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*
- c. Reasonable accommodation of the individual's requirements is provided;*
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*

24.3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;*
- b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;*
- c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.*

24.4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

24.5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

93. As noted by reference to article 5.3, an NDIS or similar scheme and institutions administering such a scheme could have major roles in ensuring non-discriminatory access to education including making of reasonable adjustments. These roles could include
- conducting, co-ordinating or funding research on technical and other innovations
 - funding for making of adjustments (including human and technological supports) – to people with disability and possibly to educational institutions
 - funding or coordinating training
 - conducting or funding legal and other advocacy .

4.25 Article 25 - Health

Convention text:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- a. Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
- b. Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*
- c. Provide these health services as close as possible to people's own communities, including in rural areas;*
- d. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*
- e. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*
- f. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*

94. While an NDIS is not expected to duplicate health insurance entitlements and health system funding including through Medicare, institutions administering an NDIS could have significant roles in implementation of article 25 including
- promoting and assisting in development of standards for effective access to health services
 - monitoring of outcomes
 - support for individual and systemic advocacy in relation to health and health care.

4.26 Article 26 - Habilitation and rehabilitation

Convention text:

26.1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- a. Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;*
- b. Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.*

26.2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

26.3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

95. An NDIS would be expected to assist in addressing
- gaps in access to habilitation and rehabilitation services
 - limitations and inconsistencies in availability of assistive technologies; and
 - breadth of scope of habilitation and rehabilitation services and programs, and inclusiveness of these services and programs including in relation to people

with multiple disabilities, culturally and linguistically diverse people and Indigenous people.

4.27 Article 27 - Work and employment

Convention text:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*
- b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
- c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;*
- d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*
- e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*
- f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*
- g. Employ persons with disabilities in the public sector;*
- h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*
- i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;*
- j. Promote the acquisition by persons with disabilities of work experience in the open labour market;*
- k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.*

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

96. As noted by reference to article 5.3 an NDIS and institutions administering such a scheme could have major roles in ensuring equal employment opportunity including making of reasonable adjustments. These roles could include

- providing access to practical information
- conducting, co-ordinating or funding research on technical and other innovations
- roles in development of technical and/or regulatory standards
- funding for making of adjustments – to people with disability and possibly to employers
- conducting or funding legal and other advocacy .

4.28 Article 28 - Adequate standard of living and social protection

Convention text:

28.1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

28.2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;*
- b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;*
- c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;*
- d. To ensure access by persons with disabilities to public housing programmes;*

- e. *To ensure equal access by persons with disabilities to retirement benefits and programmes.*
97. The role of an NDIS would include preventing or reducing poverty and ensuring an adequate standard of living as required by article 28 (although it should also go beyond this specific minimum standard to include facilitation of enjoyment of the full range of human rights).
98. Article 28 itself also reinforces the point that an adequate standard of living is not envisaged as being able to be ensured simply by provision of financial benefits alone. A National Disability Commission and/or Australian National Disability Research Institute as proposed by the Disability Investment Group could have important roles in ensuring that Australia addresses its obligations under article 28 regarding
- Access to disability related services, devices and other assistance
 - Access to public housing (including assisting in development and monitoring of implementation of appropriate standards for accessibility) and other measures for prevention of homelessness

4.29 Article 29 - Participation in political and public life

Convention text:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- a. *Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*
- i. *Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*
 - ii. *Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*
 - iii. *Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;*
- b. *Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:*

- i. *Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;*
 - ii. *Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.*
99. It would not be expected to be an appropriate role for an NDIS to meet directly the costs to governments of ensuring access to and participation in electoral processes.
100. However there could be appropriate roles in
 - meeting participation costs for individuals (whether as electors or as candidates)
 - research and technical development
 - addressing participation in non-government organisations.

4.30 Article 30 - Participation in cultural life, recreation, leisure and sport

Convention text:

30.1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- a. Enjoy access to cultural materials in accessible formats;*
- b. Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;*
- c. Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.*

30.2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

30.3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

30.4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

30.5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- a. To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;*
- b. To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;*
- c. To ensure that persons with disabilities have access to sporting, recreational and tourism venues;*
- d. To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;*
- e. To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.*

101. As emphasised by article 30, the aims and scope of a scheme for support for people with disability should not be confined to survival and subsistence, or even to issues of economic participation, but should include full and equal enjoyment of rights to social and cultural participation and contribution.

4.31 Article 31 - Statistics and data collection

Convention text:

31.1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- a. Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;*
- b. Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.*

31.2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

31.3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

102. As noted by the Disability Investment Group report, collection of data and statistics as is required by article 31 is fundamental to the operation of social insurance schemes. This would assist in providing an evidence base for implementation actions and in monitoring progress achieved.

103. Consistent with the social model of disability adopted throughout the Convention, data collection needs to go beyond data about impairment and about functioning of services and facilities specifically addressed to people with disability to also include data about social and environmental barriers and process in reducing these barriers and their impact.

104. **Recommendation:** The Australian Human Rights Commission recommends that a National Disability Commission and Australian National Disability Research Institute and/or other institutions administering an NDIS or similar scheme have functions including collection and making available of data on implementation of each element of the Convention and including benchmarking and measurement of progress over time.

4.32 Article 32 - International cooperation

Convention text:

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

- a. Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;*
- b. Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;*
- c. Facilitating cooperation in research and access to scientific and technical knowledge;*

- d. *Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.*

2. *The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.*

105. While the proposed National Disability Commission and Australian National Disability Research Institute would be expected to have roles defined principally by reference to matters within Australia such institutions would be well placed to assist in implementation of Australia's obligations under article 32 regarding international co-operation, including

- facilitating mutually beneficial sharing of knowledge and co-operation in research between Australia and foreign and international organisations; and
- as vehicles where appropriate for Australian government activities for international assistance.

4.33 Article 33 - National implementation and monitoring

Convention text:

33.1. *States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.*

33.2. *States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.*

33.3. *Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.*

106. A National Disability Commission and Australian National Disability Research Institute as proposed by the Disability Investment Group would provide an important part of Australia's framework for promoting and monitoring implementation of the Convention as envisaged by article 33.

107. These institutions would be expected to work in co-operation with, and enhance the effectiveness of, other elements of Australia's implementation

and monitoring framework including the Australian Human Rights Commission and State and Territory equal opportunity and human rights agencies.

108. As noted by reference to article 4.3:

- consideration of appropriate governance and operational arrangements for institutions administering an NDIS, including in their monitoring roles, should include consideration of appropriate means for involvement by disability representative organisations;
- consideration should also be given to the possible role of an NDIS in providing a sustainable and adequate funding base for representative organisations to enable them to engage in systemic advocacy in support of identification and elimination of barriers in Australian society and monitoring of progress in implementation.

4.34 Article 34 - Committee on the Rights of Persons with Disabilities

No relevant implications have been identified at this point from article 34.

4.35 Article 35 - Reports by States Parties

Convention text:

35.1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

35.2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

35.3. The Committee shall decide any guidelines applicable to the content of the reports.

35.4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

35.5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

109. Development of data and indicators through an NDIS would be expected to assist greatly in ensuring that reporting under article 35 is meaningful and assists in achieving effective implementation over time.

4.36 Article 36 - Consideration of reports

110. The text of this provision is not reproduced here as no relevant implications have been identified at this point from article 36.

4.37 Article 37 - Cooperation between States Parties and the Committee

111. The text of this provision is not reproduced here as no relevant implications have been identified at this point from article 37.

4.38 Article 38 - Relationship of the Committee with other bodies

112. The text of this provision is not reproduced here as no relevant implications have been identified at this point from article 38.

4.39 Article 39 - Report of the Committee

113. The text of this provision is not reproduced here as no relevant implications have been identified at this point from article 39.

4.40 Article 40 - Conference of States Parties

114. The text of this provision is not reproduced here as no relevant implications have been identified at this point from article 40

4.41 Article 41 - Depositary

115. The text of this provision is not reproduced here as no relevant implications are envisaged to arise from article 41.

4.42 Article 42 - Signature

116. The text of this provision is not reproduced here. Australia having already signed the Convention (on 30 March 2007), no further implications arise from article 42.

4.43 Article 43 - Consent to be bound

117. The text of this provision is not reproduced here as no relevant implications have been identified.

4.44 Article 44 - Regional integration organizations

118. The text of this provision is not reproduced here as no relevant implications have been identified.

4.45 Article 45 - Entry into force

119. The Convention having already entered into force (including for Australia) no further implications appear to arise from this provision.

4.46 Article 46 - Reservations

Convention text:

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

120. Australia did not enter any reservations on ratification of the Convention and it is thus unnecessary to consider pursuant to article 46 whether any reservations made are compatible with the object and purpose of the Convention. Australia did make the following interpretive declarations:

Declaration

Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions

to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards;

Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

121. As noted by reference to article 12, resources through an NDIS for advocacy and other support should assist in ensuring that substituted decision making in fact does only occur as a last resort.

4.47 Article 47 - Amendments

122. No currently relevant implications have been identified from this provision.

4.48 Article 48 - Denunciation

123. No currently relevant implications have been identified from this provision.

4.49 Article 49 - Accessible format

124. No relevant implications have been identified at this point from this provision.

4.50 Article 50 - Authentic texts

125. No relevant implications have been identified at this point from this provision

5 Appendix 1: Recommendations

1. That the Productivity Commission's consideration of a NDIS or similar mechanism commence from the basis that the scope of the scheme should facilitate full and equal enjoyment of the full range of human rights for people with disability.
2. That the Productivity Commission
 - base its work on a social model of disability;
 - take into account the effect of disabling environments in considering appropriate eligibility criteria and levels of benefits or entitlements;
 - in particular take into account the particular impacts in this respect of disadvantage affecting Indigenous people in Australia; and
 - consider roles for institutions administering an NDIS or similar scheme in achieving reduction in or removal of social and environmental barriers which result in disability for people with impairments.
3. That the Productivity Commission ensure that at all stages its consideration of the implications of the Convention on the Rights of Persons with Disabilities for scheme design include the implications of the substantive provisions of the Convention in addition to its general principles and purpose.
4. That the Productivity Commission's consideration of institutional arrangements supporting an NDIS or similar scheme include allocation and resourcing of roles addressing the obligations specified in Convention article 4.1.
5. That the Productivity Commission consider establishment of institutional arrangements to address Convention article 4.1 as an item for early implementation which do not need to await determination and commencement of other scheme elements.
6. That in considering mechanisms to include involvement of and consultation with disability representative organisations in scheme governance and operation, the Productivity Commission consider
 - needs for funding, technical support and capacity building measures to enable disability representative organisations to participate effectively; and
 - the role of an NDIS or similar scheme in providing a sustainable and adequate funding base for disability representative organisations to enable them to engage in systemic advocacy in support of identification and elimination of barriers in Australian society and to participate in and contribute to monitoring of progress in implementation.
7. That the Productivity Commission consider how NDIS or similar scheme funding might be applied, and institutional roles assigned, for achieving reasonable adjustments, in all of the areas of life covered by the Convention, including
 - provision of access to practical information;
 - conducting, co-ordinating or funding research on technical and other innovations;
 - roles in development of technical and/or regulatory standards; and
 - funding for making of adjustments – to people with disability and to people required to make adjustments.
8. That the Productivity Commission include a gender analysis in its consideration of proposed schemes; that gendered impacts be able to be taken into account in considering scheme eligibility and benefits; and gender representation and inclusion be taken into account in scheme governance

arrangements including through involvement of and consultation with representative organisations.

9. That provision in accordance with article 7 of the Convention for children to be able to express their view and to be provided with assistance where necessary for this purpose should be both a feature of the operation of institutions administering an NDIS and within scope for funding and other actions.
10. That institutions administering an NDIS or similar scheme be empowered to undertake and fund awareness raising measures in accordance with article 8 to address attitudinal barriers
11. That institutions administering an NDIS or similar scheme be empowered to undertake and fund measures to promote accessibility in accordance with each element of article 9 of the Convention.
12. That institutions administering an NDIS or similar scheme be empowered to undertake and fund measures to promote implementation of each of the rights recognised in articles 10 to 30 of the Convention including
 - providing access to practical information
 - conducting, co-ordinating or funding research on technical and other innovations
 - roles in development of technical and/or regulatory standards
 - funding for making of adjustments – to people with disability and to persons required to make adjustments
 - funding legal and other advocacy including individual and systemic advocacy.
13. That a National Disability Commission and Australian National Disability Research Institute and/or other institutions administering an NDIS or similar scheme have functions including collection and making available of data on implementation of each element of the Convention including benchmarking and measurement of progress over time.