
Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Australian Government's Background Paper on
the United Nations Convention on the Rights of
Persons with Disabilities

Part 1 – Australia's position and interpretive
approach

16 June 2020

Introduction

- 1 The Australian Government recognises the important work of the Royal Commission. In particular, the Australian Government appreciates the human rights-based approach that the Royal Commission has taken and the priority it has placed on the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**) when inquiring into violence, abuse, neglect and exploitation of people with disability. This is consistent with the Royal Commission's terms of reference, which refer to the CRPD and the obligations Australia has to promote the human rights of people with disability. To assist the Royal Commission, the Australian Government has prepared this background paper addressing Australia's international human rights obligations. In particular, this paper focuses on the Australian Government's interpretation of Australia's obligations under the CRPD and the Australian Government's position with respect to a number of cross-cutting concepts under the CRPD. Throughout the course of the Royal Commission's inquiries, the Australian Government may wish to provide more detailed views on aspects of Australia's obligations under the CRPD following on from this background paper.

Australia's international human rights obligations

- 2 Australia is party to the seven core international human rights treaties.¹ Of the seven core treaties, the *International Covenant on Civil and Political Rights (ICCPR)* is the primary source of all civil and political rights and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* is the primary source of economic, social and cultural rights.
- 3 The steps that States Parties are required to take to fulfil their obligations under the ICCPR and ICESCR reflect the nature of the rights that they respectively deal with. The rights in the ICCPR are largely rights of immediate effect, that is, States Parties are required 'to adopt such laws or other measures as may be necessary to give effect to the rights'.² For rights of immediate effect, States have an obligation to provide for the enjoyment of, or access to, such rights immediately, regardless of resource limitations. On the other hand, the rights in the ICESCR are largely progressively realisable, that is, States Parties are required 'to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means'.³ That is, States are required to take steps toward the full realisation of such rights over time, subject to available resources, and such steps ought to be effective and expeditious.
- 4 Implicit in the concept of progressive realisation is that States Parties are obliged to achieve continuous improvement of conditions over time, without backward movement. Any retrogressive measures require careful consideration and full justification with reference to the totality of the rights provided for in the relevant Convention and in the context of the full use of the maximum available resources.

¹ *International Covenant on Civil and Political Rights (ICCPR)*, opened for signature 19 December 1966, 999 UNTS 171; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, opened for signature 19 December 1966, 999 UNTS 3; *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, opened for signature 21 December 1965, 660 UNTS 195; *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* opened for signature 1 March 1980, 1249 UNTS 13; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)*, opened for signature 10 December 1984, 1465 UNTS 85; *Convention on the Rights of the Child (CRC)*, opened for signature 20 November 1989, 1577 UNTS 3; and *Convention on the Rights of Persons with Disabilities (CRPD)*, opened for signature 30 March 2007, 2515 UNTS 3.

² ICCPR, article 2(2).

³ ICESCR, article 2(1).

Convention on the Rights of Persons with Disabilities

- 5 Australia is a party to the *Convention on the Rights of Persons with Disabilities (CRPD or the Convention)*. The CRPD entered into force for Australia on 16 August 2008. The CRPD reflects the obligations in the ICCPR and the ICESCR, taking into account the specific circumstances of persons with disability. Consistent with this, Australia interprets its obligations under the CRPD in conformity with its positions on comparable rights in the ICCPR and the ICESCR and, where applicable, other international human rights treaties.
- 6 Article 4(1) of the CRPD sets out the general obligation on States Parties to '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'. Article 4(1)(a) further provides that, to this end, States Parties undertake 'to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Covenant'. This is analogous to the comparable provisions in article 2(2) of the ICCPR, which requires State Parties to 'adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant' and article 2(1) of the ICESCR, which requires States Parties to achieve realisation of the rights in the ICESCR 'by all appropriate means, including particularly the adoption of legislative measures'.
- 7 For example, in relation to article 2(1) of the ICESCR, the Committee on Economic, Social and Cultural Rights (the **ICESCR Committee**) has stated that, while legislation may often be important, the adoption of legislative measures 'is by no means exhaustive of the obligations of States parties'. Rather, the ICESCR Committee has stated that 'each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights' and has referred to States Parties' 'margin of appreciation within which to set national economic, social and cultural policies that respect, protect and fulfil the Covenant'.⁴
- 8 As the CRPD reflects the obligations in the ICCPR and the ICESCR, it contains both rights of immediate effect and others which are progressively realisable. For example, rights to equality and non-discrimination (e.g. articles 3, 4, 5 and 12(1)) and article 8, which requires the immediate adoption of awareness raising measures, are rights of immediate effect. In contrast, the CRPD imposes an obligation of progressive realisation in relation to certain economic, social and cultural rights included in the Convention.
- 9 The relationship between rights of immediate effect and progressively realisable rights within the CRPD is reflected in article 4(2) of the CRPD. Article 4(2) provides that, with regard to economic, social and cultural rights in the Convention, each State Party 'undertakes to take measures to the maximum of its available resources...with a view to achieving progressively the full realization of these rights, without prejudice to those obligations...that are immediately applicable according to international law'.
- 10 There is a reasonable margin of discretion for States Parties in choosing methods to implement the progressively realisable rights, taking into account resource considerations, and States Parties may achieve the full realisation of these obligations over time. Having said this, the Australian Government accepts that there are certain obligations that must be realised immediately.

⁴ ICESCR Committee, *General Comment No. 3: The Nature of States Parties' Obligations (Art 2, Para. 1, of the Covenant)*, 14 December 1990, UN Doc E/1991/23, paragraph 4 (ICESCR Committee, General Comment No. 3), and ICESCR Committee, Letter dated 16 May 2012 addressed by the Chairperson to States Parties to the International Covenant on Economic, Social and Cultural Rights.

- 11 Australia is also party to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities (Optional Protocol)*.⁵ The Optional Protocol entered into force for Australia on 20 September 2009. Under the Optional Protocol, Australia recognises the competence of the Committee on the Rights of Persons with Disabilities (the **CRPD Committee**) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the CRPD.

General principles in interpreting obligations under the Convention

Treaty interpretation

- 12 International law principles for the interpretation of treaty obligations are set out in the *Vienna Convention on the Law of Treaties (VCLT)*,⁶ which provides in article 31 that '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose'. Article 32 provides that '[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion' in order to confirm the meaning of the treaty, or to determine the meaning of the treaty when the application of article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.

Interpretative declarations

- 13 Interpretive declarations are important for understanding how States Parties interpret their obligations under a treaty.
- 14 Interpretive declarations do not purport to, or in fact, exclude or modify the legal effects of a State's obligations under a treaty. The International Law Commission sets out the definition and effect of an interpretive declaration in its Guide to Practice on Reservations on Treaties, which states that interpretive declarations simply purport 'to specify or clarify the meaning or scope of a treaty or certain of its provisions'.⁷
- 15 At the time of ratification of the CRPD, Australia made an interpretive declaration (**Attachment A**) relevant to articles 12, 17 and 18 of the CRPD. The declaration also intersects with a number of other articles in the CRPD. The declaration clarifies Australia's understanding that the CRPD:
- (a) allows for substituted decision making where necessary as a last resort and subject to safeguards;
 - (b) allows compulsory assistance or treatment where necessary as a last resort and subject to safeguards; and
 - (c) does not create a right for a non-national to enter or remain in Australia, 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.
- 15 Australia's declaration sets out in more detail Australia's understanding of the content of the relevant obligations, based on the intentions of States at the time the Convention was drafted. A

⁵ *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2518 UNTS 283.

⁶ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (VCLT).

⁷ International Law Commission, *Guide to Practice on Reservations to Treaties* (2011).

number of other State Parties, including Canada, made declarations upon ratification expressing similar views on the content of articles 12, 17 and 18.

Committee on the Rights of Persons with Disabilities

- 16 Under its Rules of Procedure, the CRPD Committee can issue General Comments.⁸ General Comments issued by the CRPD Committee are 'based on the articles and provisions of the Convention, with a view to promoting its further implementation and assisting States parties in fulfilling their reporting obligations'.⁹
- 17 General Comments are not binding on States Parties and, unlike the preparatory work of the Convention, are not a supplementary means of interpreting the terms of the Convention provided for in the VCLT as per paragraph 11 above. However, General Comments can provide useful guidance and are taken into consideration by Australia in interpreting its international human rights obligations.
- 18 Similarly, views transmitted by the CRPD Committee with regards to individual communications it has considered under the Optional Protocol, as well as views expressed by the Committee in its Concluding Observations in connection with State Parties regular reporting requirements should be differentiated from legally binding obligations.¹⁰ However, as with General Comments, while not legally binding, they may assist in understanding the content of obligations under the CRPD.

Crosscutting rights in the CRPD

Non-discrimination

- 19 The prohibition on discrimination on the basis of disability is a core concept under the CRPD and appears throughout the Convention. In particular, article 5(1) sets out the right to equality and non-discrimination:

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.

- 20 'Discrimination on the basis of disability' is defined in article 2 of the CRPD as:

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;

- 21 The Australian Government acknowledges that article 5 encompasses a prohibition on both 'direct' and 'indirect' discrimination. Direct discrimination occurs when individuals who are similarly situated are unjustifiably treated differently for a reason related to a prohibited ground, while indirect discrimination may occur when a law, policy or practice is neutral on its face but

⁸ Committee on the Rights of Persons with Disabilities, *Rules of Procedure*, UN DOC CRPD/C/1/Rev.1 (10 October 2016), rule 47.

⁹ *Ibid*, rule 47.

¹⁰ *Ibid*, rule 73.

- has an unjustified disproportionate impact on certain individuals for reasons related to prohibited grounds.¹¹
- 22 As noted above, the right to non-discrimination in the CRPD is an obligation of immediate effect. According to the ICESCR Committee with respect to the equivalent right to non-discrimination in the ICESCR: 'while the Covenant provides for progressive realization and acknowledges the constraints due to limits of available resources, it also imposes obligations which are of immediate effect... (including) undertaking to guarantee that relevant rights will be exercised without discrimination.'¹² This has been confirmed by the CRPD Committee itself in General Comment 6, in which the Committee stated '[p]romoting equality and tackling discrimination are cross-cutting obligations of immediate realization. They are not subject to progressive realization'.¹³
- 23 In the Australian Government's view, article 5 of the Convention should be interpreted consistently with the established approach at international law that legitimate differential treatment does not constitute discrimination. Although legitimate differential treatment is not explicitly referred to in international human rights treaties, Australia notes that the principle has been endorsed in the General Comments, Concluding Observations and views of many UN treaty bodies and that the principle is well established at international human rights law. For example, the Human Rights Committee (**HRC**) makes clear in General Comment 18 that certain types of differential treatment do not constitute discrimination. It states: '[n]ot every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.¹⁴ During the negotiations of the CRPD, the Working Group acknowledged the application of the legitimate differential treatment test to the CRPD, as established by the HRC in General Comment 18.
- 24 In the Australian Government's view, the test for legitimate differential treatment requires that the differential treatment is:
- (a) aimed at achieving a purpose which is legitimate
 - (b) based on reasonable and objective criteria, and
 - (c) proportionate to the aim to be achieved.¹⁵
- 25 An example of legitimate differential treatment in the context of the CRPD is a regulation providing for accessible parking spots for persons with disabilities. While the measure treats persons with disabilities differently to the general population, it is aimed at a legitimate purpose (enabling close access to shops for persons whose disability may impair their movement) is based on reasonable and objective criteria (for example, persons must generally have a particular permit in order to use such parking spots) and is proportionate (in that while persons

¹¹ See, for example, ICESCR Committee, General Comment No. 20, 2 July 2009, 'Non-discrimination in Economic, Social and Cultural Rights', paragraph 10; HRC, *Althammer et al. v Austria*, Communication No. 998/01, views of 8 August 2003, paragraph 10.2.

¹² ICESCR Committee, General Comment No. 3, paragraph 1.

¹³ CRPD Committee, General Comment No. 6, paragraph 12.

¹⁴ Human Rights Committee, *General Comment No. 18*, 37th session, UN Doc HRI/GEN/1/Rev.7 (10 November 1989), paragraph 13 (HRC General Comment No. 18).

¹⁵ See, for example, and as outlined above CERD Committee, *General Recommendation No. 14*, 42nd session, UN Doc A/48/18 (22 March 1993), paragraph 2; Human Rights Committee, *General Comment No. 18*, 37th session, UN Doc HRI/GEN/1/Rev.7 (10 November 1989), paragraph 13; ICESCR Committee, *General Comment No. 20*, 42nd session, UN Doc E/C.12/GC/20 (2 July 2009), paragraph 13.

without disabilities cannot park in the parks closest to the shops, they can still access the shops by parking slightly further away, and having the ability to do so).

Reasonable accommodation

26 Article 5(3) of the CRPD provides that:

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

27 Under article 2 of the CRPD, '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.

28 The CRPD Committee has provided examples of reasonable accommodations in its General Comment 6, including: making existing facilities and information accessible to the individual with a disability; modifying equipment; reorganising activities; rescheduling work; adjusting curricula learning materials and teaching strategies; adjusting medical procedures; or enabling access to support personnel.¹⁶

29 The Australian Government's understanding is that the duty of 'reasonable accommodation' relates to *where an adjustment is needed in a particular case as it relates to an individual*. In this way, it differs from the general accessibility obligations under the Convention. The Committee has noted that, while the duties to provide reasonable accommodation and accessibility both aim to guarantee accessibility '... the duty to provide accessibility through universal design or assistive technologies is an *ex ante* duty, whereas the duty to provide reasonable accommodation is an *ex nunc* duty'.¹⁷ They have further noted that '... (b) As an *ex nunc* duty... [t]he duty to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment a request for accommodation is received...'.¹⁸

30 The CRPD Committee provides the following practical example which illustrates the difference between general accessibility as an *ex ante* duty, and reasonable accommodation as an *ex nunc* duty:

*In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed or who do not use the modes, methods or means offered to achieve accessibility (not reading Braille, for example), even the application of accessibility standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply.*¹⁹

31 The Australian Government acknowledges that the duty of reasonable accommodation is likely an obligation that applies immediately, rather than one that is progressively realisable.²⁰ This is

¹⁶ Committee of the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 26 April 2018, paragraph 23 (CRPD General Comment No. 6).

¹⁷Ibid, paragraph 24.

¹⁸ Ibid.

¹⁹ Committee on the Rights of Persons with Disabilities, *General Comment No. 2 (2014) on Article 9: Accessibility*, 22 May 2014, paragraph 25.

²⁰ The CRPD Committee has stated that '[t]he denial of reasonable accommodation constitutes discrimination and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realisation' in Committee on the

consistent with the text of the CRPD, which includes within its definition of ‘discrimination on the basis of disability’ in article 2 ‘the denial of reasonable accommodation’.

- 32 The definition of reasonable accommodation is limited by the need to ensure it does not impose a ‘disproportionate or undue burden’. The CRPD Committee has stated that ‘[t]he availability of resources and financial implications is recognised when assessing disproportionate burden’.²¹ The Committee has previously stated that when assessing the reasonableness and proportionality of accommodation measures, States Parties enjoy a certain margin of appreciation.²² However, States Parties must ensure that such an assessment is made in a thorough and objective manner, covering all the pertinent elements, before reaching a conclusion that the respective support and adaptation measures would constitute a disproportionate or undue burden for a State party.²³

Specific measures, or ‘special measures’

- 33 A number of international human rights treaties provide for ‘special’ measures which may be taken for the sole purpose of ensuring the equal enjoyment or exercise of human rights and fundamental freedoms by a person or group by correcting present disparities or preventing further imbalances from arising.²⁴ Such measures do not constitute discrimination. For example, the Committee on the Elimination of Discrimination Against Women has considered ‘positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment’ to be examples of special measures for the purposes of the *Convention on the Elimination of Discrimination Against Women*.²⁵

- 34 Article 5(4) of the CRPD provides that:

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.

- 35 In its General Comment 6, the CRPD Committee describes specific measures as ‘positive or affirmative measures’ that ‘entail adopting or maintaining certain advantages in favour of an underrepresented or marginalised group’.²⁶ They are ‘usually temporary in nature’; such that they may only operate, for example, until the objectives for which they were taken have been achieved.²⁷ However, some instances may require permanent measures ‘depending on context and circumstances, including by virtue of a particular impairment or the structural barriers of society’.²⁸ The CRPD Committee considers some examples of specific measures include ‘temporary measures for countering the low numbers of women with disabilities employed in the private sector and support programmes to increase the number of students with disabilities in tertiary education’.²⁹

Rights of Persons with Disabilities, *General comment No. 4 (2016) on the right to inclusive education* (2016) CRPD/C/GC/4, paragraph 31 (CRPD General Comment No. 4).

²¹Ibid, paragraph 27.

²² *Jungelin v. Sweden* (CRPD/C/12/D/5/2011) paragraph 10.5.

²³ Ibid, paragraph 10.6.

²⁴ See e.g. articles 1(4) and 2(2) of the CERD, and article 4 of the CEDAW.

²⁵ The Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 5: Temporary Special Measures*, UN Doc. A/43/38 (1988).

²⁶ General Comment No. 6, paragraph 28.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid, paragraph 25(c).

- 36 The CRPD Committee also cautions that specific measures ‘must not result in perpetuation of isolation, segregation, stereotyping, stigmatisation or otherwise discrimination against persons with disabilities’.³⁰ For this reason, ‘States parties must consult closely with and actively involve representative organisations of persons with disabilities when they adopt specific measures’.³¹
- 37 The CRPD Committee distinguishes specific measures from ‘reasonable accommodation’ in its General Comment No 6 as follows:

*While both concepts aim at achieving de facto equality, reasonable accommodation is a non-discrimination duty, whereas specific measures imply a preferential treatment of persons with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights.*³²

Australia’s implementation of international conventions

- 38 In Australia, the CRPD is incorporated through legislation, policy and programs at the federal, state and territory levels. Each of these jurisdictions has a framework of laws and institutions that implement Convention rights. This is consistent with article 4(1)(a) of the CRPD, which requires States Parties to ‘adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention’.
- 39 Non-discrimination is a fundamental principle under the Convention. Commonwealth, state and territory anti-discrimination laws make discrimination on the basis of disability unlawful in a range of areas of public life.
- 40 At the federal level, the *Disability Discrimination Act 1992 (DDA)* makes direct and indirect discrimination on the basis of disability unlawful in work and employment, education, access to premises, the provision of goods, services and facilities, accommodation, disposal of an estate or interest in land, membership of clubs and incorporated associations, sport, and the administration of Commonwealth laws and programs.
- 41 A duty to make reasonable adjustments is contained within the tests of direct and indirect discrimination in the DDA. Sections 5 and 6 of the DDA provide that the refusal to make a reasonable adjustment for a person with a disability may amount to discrimination under the Act. The term ‘reasonable adjustment’ is defined to exclude any situations where requiring a person to make a reasonable adjustment would impose an unjustifiable hardship on the person.
- 42 The case of *Sklavos v Australian College of Dermatologists* [2017] FCAFC 128 concerned a doctor seeking to become a registered dermatologist without undertaking the required final written and clinical examinations. The claim was based on the doctor suffering from a psychiatric disorder, being a specific phobia of sitting the examinations. The Full Court of the Federal Court of Australia upheld the decision of a trial judge that the Australian College of Dermatologists did not directly or indirectly discriminate against the doctor by requiring him to pass the College’s final written and clinical examinations. Of note, concerns have arisen with the way that the decision interprets the reasonable adjustments requirements within the DDA. The case suggests that in order to prove direct or indirect discrimination in relation to a failure to make a reasonable adjustment, the disability of the aggrieved person must be the reason for the decision to not make a reasonable adjustment. This raises the concern that the decision creates an additional requirement that unacceptably narrows the scope of the duty to make reasonable adjustments and places an unreasonable burden on complainants to prove that they have

³⁰ Ibid, paragraph 29.

³¹ Ibid.

³² CRPD General Comment No. 6, paragraph 25(c).

experienced unlawful discrimination. This issue is being considered further by the Australian Government.

- 43 Section 45 of the DDA provides an exemption against discrimination for special measures and positive discrimination. The exemption provides that it is not unlawful to do an act that is reasonably intended to ensure that a person who has a disability has equal opportunities with other persons, or affords persons who have a disability goods, services or opportunities to meet their special needs or affords persons with disabilities a grant, benefit or program to meet their special needs.
- 44 Each state and territory has legislation which prohibits discrimination on the basis of disability. State and territory governments are responsible for delivering many of the programs and services that give effect to Australia's obligations under the Convention, including in relation to matters such as education, health, justice and child protection.
- 45 Under the *Human Rights (Parliamentary Scrutiny) Act 2011*, legislation that is introduced into the Federal Parliament must be assessed for its compatibility with the rights and freedoms recognised in the seven core international human rights treaties which Australia has ratified. All bills and disallowable legislative instruments that are introduced into the Federal Parliament are examined by the Parliamentary Joint Committee on Human Rights for compatibility with international human rights standards. The Committee reports publicly on the compatibility of new and existing legislation with human rights.
- 46 Some states and territories also have a process for scrutinising the compatibility of bills with human rights (Victoria, the Australian Capital Territory and the Northern Territory. From 1 January 2020, bills introduced into the Queensland Parliament must also meet this requirement).
- 47 The Australian Human Rights Commission is accredited as an 'A' status National Human Rights Institution. The Commission is an independent statutory body, with functions relating to education and awareness training, investigating and conciliating complaints of unlawful discrimination and conducting national inquiries and reporting on issues of human rights concern.
- 48 The Australian Human Rights Commission and the Disability Discrimination Commissioner play an important awareness-raising role with respect to the CRPD and the rights of persons with disabilities.
- 49 Dr Ben Gauntlett is the current Disability Discrimination Commissioner. He began his five year term on 7 May 2019 and has been consulting widely with the disability community and other stakeholders across Australia to hear their concerns and priorities first-hand.

ATTACHMENT A

Australia's Interpretative Declaration on the Convention on the Rights of Persons with Disabilities (CRPD)

Australia recognises 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 recognises 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 recognises 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.