

PEOPLE WITH DISABILITIES (WA) INC.

SUBMISSION IN RESPONSE TO AUSTRALIA'S HUMAN RIGHTS ACTION PLAN EXPOSURE DRAFT FEBRUARY 2012

People with Disabilities (WA) Inc. (PWdWA) would like to thank the Australian Government's Attorney-General's Department for the opportunity to comment on Australia's Human Rights Action Plan - Exposure Draft.

This submission focuses on the actions aimed to uphold and safeguard the rights of people with disabilities.

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1. ORGANISATION PROFILE

People with Disabilities (WA) Inc. (PWdWA) is the peak disability consumer organisation representing the rights, needs and equity of all Western Australians with disabilities via individual and systemic advocacy.

PWdWA is run BY and FOR people with disabilities and as such, strives to be the voice for all people with disabilities in Western Australia.

Vision

A community where all people have a full and valued life with the freedom to make their own choices.

Mission

Empowering the voices of people with disabilities in WA.

Values

We embrace diversity and participation to ensure inclusion for all.

We believe respect is fundamental to all positive relationships.

We seek to enhance opportunity and remove barriers to ensure real choice.

We are committed to every citizen's right to equality.

2. METHODOLOGY

This submission is based on a collation of information from the following sources:

1. [Australian National Human Rights Action Plan - Exposure Draft \(Dec 2011\)](#)
2. [A new national Human Rights Action Plan for Australia - Background Paper \(Dec 2011\)](#)
3. [National Human Rights Action Plan - Baseline Study Report \(Jul 2011\)](#)
4. [Submissions to the Draft Baseline Study \(Aug 2011\)](#)
5. [Australia's Human Rights Framework \(Apr 2010\)](#)
6. [The Convention on the Rights of Persons with Disabilities \[CRPD\]](#)
7. [Australia's Initial Report under the CRPD \(Dec 2010\)](#)

8. [National Disability Strategy 2010 - 2020 \(NDS\)](#)
9. National Disability Strategy: Laying the Groundwork 2011-14 Implementation Plan (not available for public distribution)
10. [Review of the Disability Standards for Accessible Public Transport 2002 - Commonwealth Government Response \(Jun 2011\).](#)
11. [Enabling Australia - Inquiry into the Migration Treatment of Disability \(Jun 2010\)](#)
12. [Review of the Disability Standards for Education 2005 Discussion Paper \(Feb 2011\)](#)
13. [Review of Funding for Schooling Final Report \(Dec 2011\)](#)
14. [Draft Report of the Working Group on the Universal Periodic Review - Australia \(Feb2011\)](#)
15. [Australia's Formal Response to the UPR Recommendations \(Mar 2011\)](#)
16. [Draft Mental Health Bill \(WA\) 2011](#)

3. TABLE 1: THE HUMAN RIGHTS ACTION PLAN AND CRPD

Table 1 (Appendix 1) forms the basis of this submission and matches the Exposure Draft actions with the priority areas listed in the Baseline Study and the Convention on the Rights of Persons with Disabilities (CRPD). Presenting the key Articles from the CRPD in Table 1 assisted us in understanding the extent to which the actions set out in the Exposure Draft comply with the CRPD in upholding and safeguarding the human rights of people with disabilities. Note that Table 1 does not include all articles listed in the CRPD, and not all parts of each article will be directly relevant to the related priority area.

PWdWA recommends that the reader reviews the CRPD in full when considering the content of the Human Rights Action Plan in upholding and safeguarding the rights of people with disabilities.

3.1 Why focus this submission on the CRPD?

Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2008, and the Optional Protocol in 2009. The CRPD "is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced." (UN Enable).

3.2 What is the relationship between the CRPD and NDS?

The Australian National Disability Strategy 2010-2020 (NDS) is a ten year plan that sets out priority areas for action and policy directions to improve the lives of people with disabilities, their families and carers.

"The Strategy will play an important role in protecting, promoting and fulfilling the human rights of people with disability. It will help ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers. It will contribute to Australia's reporting responsibilities under the Convention". (NDS, p. 9)

"The purpose of the National Disability Strategy is to:

- establish a high level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy
- drive improved performance of mainstream services in delivering outcomes for people with disability
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability
- provide national leadership toward greater inclusion of people with disability." (NDS, p. 9)

PWdWA supports the inclusion of the NDS actions in the Exposure Draft. However, we believe that the Exposure Draft does little to add to the NDS and the initiatives outlined in the draft of the 'National Disability Strategy Laying the Groundwork 2011-14 Implementation Plan'. As a human rights instrument, we suggest that the Human Rights Action Plan includes clearer safeguards to ensure that the NDS is meeting its human rights obligations. We are disappointed that the Australian Government is already under scrutiny for failing to meet its obligations to people with disabilities, their families and carers; where the draft NDS Implementation Plan was marked confidential and was not made publicly available. In response to PWdWA's enquiry as to when the draft Implementation Plan was to be released for public comment, The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) reported that "no public consultation on the draft has been planned". We view this response from FaHCSIA as being contrary to the human rights principle that states "persons with disabilities should have the

opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them" (CRPD, Preamble).

We note that the Exposure Draft states that " draft indicators will be subject to consultations in the first year of the Strategy with people with disability, their families and carers, organisations, experts and governments to ensure the measures reflect areas that really matter in improving outcomes for people with disability." (section 154, p. 34). We view the monitoring of the implementation of the NDS as a continuous process and we are concerned that the annual and biennial reporting requirements as identified in Section 154 are not sufficient in safeguarding the rights of people with disabilities. Accordingly, we see the role of the Human Rights Action Plan in clearly identifying the ongoing safeguards and complaints mechanisms that will be put in place to ensure that people with disabilities, their families and carers will be consulted at every stage of the implementation of the NDS.

Note that these safeguards also apply to the implementation of other strategies and schemes including the National Disability Insurance Scheme. We stress that governments have a responsibility to consult the public throughout the implementation of the scheme and respect the role of people with disabilities in the governance of the scheme - nothing about us without us!

3.3 Why does Table 1 exclude the actions from State and Territory governments?

PWdWA believes that references to State or Territory government actions have no place in a National Action Plan unless these actions are intended to be applicable across all States and Territories. Below is a list indicating the number of times each State or Territory government is mentioned in the 'full version' of the Exposure draft:

STATE OR TERRITORY	EXPOSURE DRAFT SEARCH HITS
Australian Capital Territory	0
New South Wales	0
Northern Territory	18
Queensland	0
South Australia	0
Tasmania	0
Victoria	96
Western Australia	0

Accordingly, the Exposure Draft could be criticised as favouring the implementation of initiatives from the Victorian and Northern Territory Governments, thereby not meeting its national obligations.

3.4 Are all the priority areas listed in the Baseline Study addressed in the Exposure Draft?

NO

The Baseline Study "draws on the findings of the report of the National Human Rights Consultation, parliamentary inquiries, papers and reports prepared by the Australian Human Rights Commission and various United Nations treaty bodies, the report of Australia's Universal Periodic Review, and data sets maintained by the Australian Bureau of Statistics and other research institutions and non-government organisations" (Baseline Study, p. 1).

The Attorney-General's Department states that "While not all issues raised in the Baseline Study can be addressed in the new Action Plan, the Baseline Study will continue to be a useful resource for identifying future human rights priorities." (Attorney-General's Department Website). PWdWA understands that not all areas can be addressed, though we question why two priority areas, 'Transport' and 'The exemption of the Migration Act and the Social Security Act from certain aspects of the Disability Discrimination Act', were not included in the Exposure draft. In addition, PWdWA considers that there are other priorities identified in the Exposure Draft that could be more effectively addressed; these include education, sterilisation and mental health.

The following section of this submission considers these areas in greater detail. Please note that the information presented in Section 4 is not exhaustive of all priority areas but represents some of the key areas that have been brought to the attention of PWdWA in our systemic work.

4. ADDRESSING THE GAPS IN THE EXPOSURE DRAFT

4.1 Transport

Among other actions, the Baseline Study made specific reference to the recommendations for the review of the Disability Standards for Accessible Public Transport 2002, though there was no reference to transport in the Exposure Draft.

"The Disability Standards for Accessible Public Transport 2002 came into effect on 23 October 2002. They specify levels of service and measures and actions that public transport operators must take to meet their obligations under the Disability Discrimination Act. An independent review of the first five years of the standards' operation was finalised in late 2009. The review found the introduction of the standards has significantly changed the way government and public transport operators and providers deliver access to public transport for people with disability. The report contained 15 recommendations designed to improve accessibility and the operation of the standards. Through the Australian Transport Council, the peak ministerial council for transport matters in Australia, the Government is progressing the outcomes of the review with the States and Territories." (Baseline Study, p.119)

See Appendix 2 for the list of recommendations, released to the public in June 2011.

PWdWA suggests that the Human Rights Action Plan refers to the recommendations made in response to the review of the Disability Standards for Accessible Public Transport, outlining the mechanisms that will be put in place to safeguard the rights of people with disabilities when accessing public transport.

4.2 Migration and Social Security

The Baseline Study highlighted the concerns surrounding the exemption of the Migration Act and the Social Security Act from the operation of certain aspects of the Disability Discrimination Act, though there is no mention of the Migration Act or Social Security Act in the Exposure Draft.

"Submissions to the Baseline Study expressed concern about the potentially discriminatory effects of exempting the *Migration Act 1958* (Cth) and the *Social Security Act 1991* (Cth) from the operation of certain aspects of the *Disability Discrimination Act 1992* (Cth). The submissions noted PWdWA HRAP Submission (AA) Feb 2012

that the Migration Act exemption effectively excludes people with disability, or with disability in their family, from migrating to Australia. Further, some migrants are required to wait 10 years before they become eligible for the Disability Support Pension." (Baseline Study, p. 120).

With reference to the Migration Act, PWdWA suggests that the Human Rights Action Plan takes into account a review of the recommendations made by the Joint Standing Committee on Migration (see Appendix 3), and outlines the actions that will be taken to implement the recommendations that comply with Australia's national and international human rights obligations.

4.3 Education

In December 2010, Australia released its 'Initial Report under the Convention on the Rights of Persons with Disabilities'. Article 39 of this response states that under the Human Rights Framework "the Australian Government has committed to undertaking a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community, including a community education grants program."

PWdWA supports the key actions proposed by the government to improve education access for people with disabilities, including the establishment of the Schools Disability Advisory Committee and the Leaders for Tomorrow Program, though we believe there are still significant gaps in provision of a "comprehensive suite of education".

In accordance with information reported in the Baseline Study, PWdWA suggests the following actions could be incorporated into the Human Rights Action Plan.

- I. An evaluation of the outcomes of the review of the Disability Standards for Education 2005 to ensure compliance with Australia's national and international human rights obligations.
- II. The inclusion of actions that address the rights of people with disabilities accessing further and higher education and the right to life-long learning.
- III. A review of policies and legislation including the Higher Education Support Act 2003 that excludes students with disabilities who attend private education from accessing government funded programs that promote equality of opportunity in higher education.

These areas are addressed below in further detail:

- I. The Baseline Study makes clear reference to the Disability Standards for Education 2005 (Standards), though there is no mention of the Standards in the Exposure Draft. PWdWA is aware that a report made in response to the discussion paper submissions was due to be sent to the Minister for Education and the Attorney General by the end of 2011. PWdWA suggests that the Human Rights Action Plan outlines the procedures that will be put in place to address the outcomes and recommendations from this Report to ensure that the rights of people with disabilities accessing education are upheld.

"The Disability Standards for Education 2005 set out the right of students with disability to comparable access, services and facilities and the right to participate in education and training without discrimination. Education providers have an obligation to make changes to reasonably accommodate the needs of a student with disability and to implement strategies and programs to prevent harassment and victimisation. Individuals can make a complaint to the Australian Human Rights Commission if they consider the standards have been breached. The standards are currently under review by the Department of Education, Employment and Workplace Relations and the Attorney-General's Department, to determine whether they have been effective and are the most effective mechanism for achieving their objectives." (Baseline Study, p. 118).
- II. The actions outlined in the Exposure Draft tend to focus on school education and we suggest that actions that address the rights of people with disabilities as life-long learners are included in the Human Rights Action Plan . As stated in Article 24 of the CRPD, "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."
- III. We are aware that children and adults attending private / non-government education institutions are not eligible for some programs designed to improve access to education for people with disabilities. For instance, as stated in the Higher Education Support Act 2003, students with disabilities attending private higher education institutions (Table B providers)

are not eligible for funded programs to "promote equality of opportunity in higher education" (section 41-10). We are aware that in previous years this has meant that students with disabilities attending non-government education have not been eligible for funding through 'The Higher Education Disability Support Program', for services including note taker assistance and the provision of assistive technology.

Furthermore, the final report on the 'Review of Funding for Schooling' published in December 2011 confirmed that "students with disability in non-government schools receive substantially less public funding than their counterparts in government schools" (Finding 22). The report also found that "The majority of funding for students with disability in the government sector is from state and territory resources. The Australian Government provides only what could be considered top-up funds... The funding state and territory governments provide for students with disability in the non-government sector varies considerably." (p. 134).

In accordance with human rights principles and in line with international policies, PWdWA believes that access to government funded programs and services should be based on the eligibility of the student and not the education provider. Accordingly, we recommend the Human Rights Action Plan outlines the procedures that will be put in place to assess the effectiveness of education policies and legislation, including the Higher Education Support Act 2003, to safeguard the rights of people of all ages in accessing education.

4.4 Mental Health and Non Therapeutic Sterilisation

PWdWA supports the establishment of a "National Mental Health Commission to increase accountability and transparency" (Exposure Draft, section 173, p.40), and the "parliamentary scrutiny of Bills to ensure they are consistent with Australia's human rights obligations." (Background Paper, p.2). Furthermore, Section 170 of the Exposure Draft states that "The Australian Government will work with States and Territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability." (p. 39).

PWdWA suggests that the Human Rights Action Plan lists some of the legislative instruments that will be reviewed, including associated timelines and performance indicators. We are concerned that, in relation to mental health, there are inconsistencies between state and territory policies to

the extent they comply with Australia's national and international human rights obligations. The Western Australian Government recently released the Mental Health Bill (WA) 2011 for review. Since its release the Bill has been strongly criticised for the inclusion of Division 3, Sterilisation Procedures, where it has been viewed as not complying with human rights principles that protect women, children and people with disabilities.

Division 3 is presented below and allows a child under the age of legal sexual maturity to consent to sterilisation, where the chief psychiatrist must only be notified after the sterilisation procedure has been performed. Not only is the inclusion of Division 3 seen as contrary to human rights principles, but we found that the content of the Bill was inconsistent with Mental Health legislation and regulations from other jurisdictions that include no reference to sterilization.

MENTAL HEALTH BILL (WA) 2011

Division 3 — Sterilisation procedure

208. Sterilisation procedure: meaning of

- (1) A sterilisation procedure is the provision of medical or surgical treatment that is intended to make a person, or to ensure a person is, permanently infertile.
- (2) A sterilisation procedure does not include the provision of medical or surgical treatment that is not intended to make a person, or to ensure a person is, permanently infertile but incidentally has or may have that result.

209. Requirements for sterilisation procedure

A person must not perform a sterilisation procedure on a person who has a mental illness unless —

- (a) if the person is a child who does not have sufficient maturity or understanding to make reasonable decisions about matters relating to himself or herself — the Family Court has authorised the sterilisation procedure to be performed; or
- (b) if the person —
 - (i) is a child who has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself; or
 - (ii) has reached 18 years of age and has the capacity required by section 12 to give informed consent to the sterilisation procedure being performed, the person has given informed consent to it being performed; or
- (c) if the person has reached 18 years of age but does not

have the capacity required by section 12 to give informed consent to the sterilisation procedure being performed — the person's enduring guardian or guardian has given consent in accordance with the Guardianship Act Part 5 Division 3 to it being performed.

Penalty: imprisonment for 5 years.

210. Chief Psychiatrist and Mentally Impaired Accused Review Board: report

As soon as practicable after a sterilisation procedure is performed on a person who has a mental illness, the treating psychiatrist must report to —

- (a) the Chief Psychiatrist; and
 - (b) if the person is a mentally impaired accused, the Mentally Impaired Accused Review Board,
- that the procedure was performed.

We also noticed that the action stated in Section 170 of the Exposure Draft makes no direct reference to 'non-therapeutic sterilisation'; an action identified as a priority area in the Baseline Study. Addressing the concerns surrounding non-therapeutic sterilisation is important for the government in not only upholding and safeguarding the rights of people with disabilities but also in meeting Australia's international human rights obligations.

In January 2011, the Australian Government appeared before the United Nations Human Rights Council, as part of the United Nations Periodic Review. Australia received a total of 145 recommendations from member states to assist the government in meeting its human rights obligations. Recommendation 39, highlighted the Australian Government's responsibilities to "Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women concerning the sterilization of women and girls with disabilities (Denmark); Enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent (United Kingdom); Repeal all legal provisions allowing sterilization of persons with disabilities without their consent and for non-therapeutic reasons (Belgium); Abolish non-therapeutic sterilization of women and girls with disabilities (Germany)." (Draft report, Universal Periodic Review, p .15, Feb 2011).

In Jun 2011, Australia's Permanent Representative to the United Nations, HE Mr Peter Woolcott, made a formal response to the recommendations, stating that Recommendation 39 would be PWdWA HRAP Submission (AA) Feb 2012

accepted in part and that "The Australian Government considers that the 'best interests' test as articulated and applied in Australia is consistent with Australia's international obligations. In response to concerns expressed internationally and domestically, the Attorney-General intends to initiate further discussions with State and Territory counterparts." (Australia's Formal Response to the UPR Recommendations, p. 3).

Accordingly, PWdWA recommends that the Human Rights Action Plan includes direct reference to non-therapeutic sterilisation, and includes timelines and performance indicators for any planned discussions with State and Territory governments to address this priority area.

4.5 Restrictive Practices

PWdWA understands that it would be difficult for the Human Rights Action Plan to address all areas that require human rights intervention, and as time goes by there are other priority areas that are likely to arise. An area that has received much attention by peak disability organisations in the past few months is the 'restraint and seclusion' of people with disabilities. One concern is whether acts of restraint and seclusion are a breach of a person's human rights or taken to protect a person from harm to themselves or others.

Note that restrictive practices were also highlighted as a key priority area in the responses to the draft baseline study made by Queensland Advocacy Incorporated and the NSW Disability Discrimination Legal Centre (Inc.).

Appendix 4 presents the draft 'Summary of recommendations from the Restrictive Practices Cross-Jurisdictional Reference Group'. This Reference Group was formed in November 2009 by the Disability Policy and Research Working Group to provide information on the establishment of a national strategy to improve practice and protect the rights of people with disabilities. The Reference Group are currently seeking submissions in response to their recommendations and discussion papers. The closing date for Submissions is 2 march 2012. Enquiries regarding the recommendations are being directed to Ms Maree Skiadas, Tel: (03) 9096 8427, Email: Maree.Skiadas@dhs.vic.gov.au.

PWdWA recommends that the Human Rights Action Plan includes actions that will be taken to ensure that the recommendations proposed by the Restrictive Practices Cross-Jurisdictional Reference Group comply with human rights policies and that the concerns expressed by people with disabilities, their families, carers and representative organisations are given appropriate consideration.

5. CONCLUSION

PWdWA would like to thank the Australian Government for putting together a Human Rights Action Plan. The Exposure Draft lists some very worthy initiatives and mechanisms to promote the rights of people with disabilities, though we are left slightly confused about the overall purpose of the plan.

PWdWA questions whether the Exposure Draft:

- clearly reflects the 5 key principles set out in the Human Rights Framework; to reaffirm, educate, engage, protect and respect.
- fully demonstrates Australia's on-going commitment to international human rights obligations, as outlined in the CRPD;
- meets its objectives to 'uphold' and 'safeguard' the rights of people with disabilities;
- goes beyond the actions addressed in related action plans, such as the NDS Laying the Groundwork 2011-14 Implementation Plan;
- is an inclusive response to the priority areas identified in the Baseline Study;
- is accurately termed as a 'national' action plan when it clearly favours the implementation of initiatives from the Victorian and Northern Territory Governments.

APPENDIX 1: TABLE 1: THE HUMAN RIGHTS ACTION PLAN AND CRPD

BASELINE STUDY PRIORITY AREAS	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)	HUMAN RIGHTS ACTION PLAN - EXPOSURE DRAFT PROPOSED ACTIONS & COMMENTS
<p><u>Freedom from discrimination</u></p> <p>Employment</p>	<p>Article 27 - Work and employment</p> <p>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:</p> <p>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;</p> <p>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;</p>	<p>The Australian Government is working through the Australian Public Service Commission to increase the number of people with disability employed in the Australian Public Service.</p> <p>The Australian Government is overhauling key elements of the Disability Support Pension (DSP) to ensure it supports people with disability into work wherever possible, while continuing to provide essential income support for people unable to fully support themselves, including:</p> <ul style="list-style-type: none"> ▪ fast tracking claims for manifestly and severely disabled applicants so they get support quicker ▪ ensuring eligibility for the DSP is now assessed by experienced Senior Job Capacity Assessors using updated guidelines ▪ improving the adequacy of the base pension, especially for singles, including improved indexation that will continue into the future, and ▪ increased incentives to give work a try by removing punitive rules that discouraged people with disability to get help from employment services. <p>From 1 January 2012 new Impairment Tables will be introduced to bring DSP assessments into line with contemporary medical and rehabilitation practice. This is informed by the World Health Organisation's International Classification of Functioning,</p>

	<p>c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;</p> <p>d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;</p> <p>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;</p> <p>f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;</p> <p>g) Employ persons with disabilities in the public sector;</p> <p>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;</p> <p>i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;</p> <p>j) Promote the acquisition by persons with disabilities of work experience in the open labour market;</p> <p>k) Promote vocational and professional rehabilitation, job</p>	<p>and the Convention on the Rights of Persons With Disabilities.</p> <p>Several other measures will commence from 1 July 2012:</p> <ul style="list-style-type: none"> ▪ new participation requirements for some DSP recipients under the age of 35 with some capacity to work, to help ensure people are accessing the support that is available to them ▪ generous new rules to support DSP recipients to enter work or increase their working hours, and <p>new wage subsidies to help employers take on people with disability.</p> <p>The Australian Government has strategies in place to enable people with disability to have access to employment options. To ensure people get the support they need, the Government is:</p> <ul style="list-style-type: none"> ▪ investing over \$3 billion in uncapping access to Disability Employment Services over the next four years ▪ investing in the Employment Assistance Fund, which provides financial assistance for workplace modifications, special work equipment, Auslan interpreting and Disability Awareness Training, and <p>supporting the Job Access Advisory Service, which provides individualised information to employers and individuals about the employment of people with disability.</p>
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	<p>retention and return-to-work programmes for persons with disabilities.</p> <p>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</p>	
Education	<p>Article 24 - Education</p> <p>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 lifelong learning directed to:</p> <ol style="list-style-type: none"> 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. <p>2. In realizing this right, States Parties shall ensure that:</p> <ol style="list-style-type: none"> a) Persons with disabilities are not excluded from the 	<p>The Australian Government is establishing a Schools Disability Advisory Committee, which will provide expert advice to the Australian Government on how to better support students with disability. The Australian Government will continue to support a Schools Disability Advisory Council, which will provide expert advice to the Australian Government on how to provide more support and better services for students with disability.</p> <p>NDS Accessibility Package:</p> <ul style="list-style-type: none"> • Leaders for Tomorrow - assisting up to 200 people with disability become leaders in the community through mentoring and leadership development

	<p>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;</p> <p>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;</p> <p>c) Reasonable accommodation of the individual's requirements is provided;</p> <p>d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;</p> <p>e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.</p> <p>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:</p> <p>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;</p> <p>b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;</p>	
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	<p>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.</p> <p>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.</p> <p>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.</p>	
<p>Transport</p>	<p>Article 9 - Accessibility</p> <p>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</p>	

	<p>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:</p> <p>a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;</p> <p>b) Information, communications and other services, including electronic services and emergency services.</p> <p>2. States Parties shall also take appropriate measures:</p> <p>a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;</p> <p>b) To 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;</p> <p>c) To provide training for stakeholders on accessibility issues facing persons with disabilities;</p> <p>d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;</p>	
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	<p>e) To 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;</p> <p>f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;</p> <p>g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;</p> <p>h) To 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.</p>	
<p>Exemption of the Migration Act and the Social Security Act from the operation of certain aspects of the Disability Discrimination Act</p>	<p>Article 5 - Equality and non-discrimination</p> <p>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.</p> <p>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</p>	

	<p>grounds.</p> <p>3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.</p> <p>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.</p>	
<p>Accessible Information</p>	<p>Article 21 - Freedom of expression and opinion, and access to information</p> <p>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:</p> <p>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;</p> <p>b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and</p>	<p>NDS Accessibility Package:</p> <ul style="list-style-type: none"> • Ramp Up – a new disability website launched in 2010 to raise awareness of people with disability with disability issues • Digital playback devices and improved access to digital content in public libraries around the country to increase accessibility of print material for people with vision and physical impairments and learning disabilities <p>The Australian Government will monitor the effectiveness of The National Forum on Emergency Warnings to the Community best practice guidelines considering the communication needs of people with a disability across the prevention, preparedness, response and recovery phases of emergencies, including emergency warnings. Initiatives include:</p> <ul style="list-style-type: none"> ▪ a website update to assist screen readers identify and interpret Triple Zero information

	<p>all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;</p> <p>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;</p> <p>d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;</p> <p>e) Recognizing and promoting the use of sign languages.</p>	<ul style="list-style-type: none"> ▪ information on how to use the 106 Text Emergency Relay for people with hearing and speech impairments ▪ a Triple Zero Kids Challenge safety computer game available in seven languages and with closed captioning ▪ Triple Zero posters available in twelve language ▪ radio commercials reinforcing the Triple Zero campaign message in nine languages ▪ an updated Recovery Manual to be used by Commonwealth, state and local government recovery workers (including policy and field workers), NGOs and professionals that includes a chapter on ‘vulnerable’ people, and <p>Emergency Alert, which sends voice messages to fixed-lines and text messages to mobile telephones.</p>
<p><u>Care and support</u></p> <p>National Disability Insurance Scheme</p>	<p>Article 19 - Living independently and being included in the community</p> <p>States Parties to the present 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:</p>	<p>Australian Governments will develop a National Disability Research and Development Agenda, setting out national priorities, focus and direction for disability related research aimed at improving the lives of people with disability, their families and carers.</p> <p>The Australian Government will continue to work on preparing a national action framework for implementing the National Disability Strategy (NDS): This involves:</p> <ul style="list-style-type: none"> ▪ identifying priority areas for action through consultation with State and Territory Governments, disability advisory

	<p>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;</p> <p>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;</p> <p>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.</p>	<p>bodies and the National People with Disabilities and Carer Council</p> <ul style="list-style-type: none"> ▪ measuring progress across the Strategy’s 10-year lifespan using national trend indicator data based on the six outcome areas of the NDS, and ▪ developing more comprehensive performance indicators, by improving the reporting of people with disability assisted through mainstream services, through the inclusion of disability specific questions in mainstream data collections. <p>The draft indicators will be subject to consultations in the first year of the Strategy with people with disability, their families and carers, organisations, experts and governments to ensure the measures reflect areas that really matter in improving outcomes for people with disability.</p> <p>The Australian Government is supporting the NDS with an \$11 million accessibility package to support people with disability and their carers to participate in community life.</p> <p>NDS Accessibility Package:</p> <ul style="list-style-type: none"> • Accessible Communities - grants of up to \$100,000 to local governments who match the funding to make local buildings and public spaces more accessible for people with disability so they can fully participate in the community • improving cinema access for people with vision impairment (\$0.5 million over four years) • Cinema Access Implementation Plan – a partnership with cinema operators and the disability sector which aims to make cinemas more accessible for people with disability.
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		<p>The Australian Government will develop more appropriate performance indicators under the current National Disability Agreement (NDA) for those people with disability accessing specialist disability services under the NDA.</p> <p>The Australian Government has commenced work with State and Territory Governments to build the foundations for a National Disability Insurance Scheme.</p> <p>The Australian Government supports more frequent and improved content and sample size for the Survey of Disability, Ageing and Carers and is considering development options for the Disability Services National Minimum Data Set in consideration of foundation work being progressed on a National Disability Insurance Scheme.</p>
Housing	<p>Article 28 - Adequate standard of living and social protection</p> <p>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.</p> <p>2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that</p>	<p>The Australian Government is doubling funding to \$7.6 billion in funding to the State and Territory Governments under the National Disability Agreement for increased and improved specialist disability services such as supported accommodation, targeted support and respite. The growth factor for 2011-12 is estimated to be 6.3 per cent.</p> <p>In 2008 the Australian Government provided \$100 million to State and Territory Governments to construct or acquire 313 supported accommodation facilities, nationally.</p>

	<p>right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>d) To ensure access by persons with disabilities to public housing programmes; (e)</p> <p>e) To ensure equal access by persons with disabilities to retirement benefits and programmes.</p>	<p>The Australian Government has allocated \$60 million over three years to build innovative, community-based supported accommodation places for people with disability as part of the Supported Accommodation Innovation Fund (SAIF).</p> <p>NDS Accessibility Package:</p> <ul style="list-style-type: none"> • Livable Housing Design – In mid-2010, the Livable Housing Design Guidelines and Strategic Plan were launched jointly by all levels of government and the disability, aged, community, building and construction sectors. The guidelines involve six core design elements for matters such as the path of travel into dwellings, internal doors and corridors, accessible toilets and bathrooms. The Livable Housing Design Initiative includes aspirational targets for all new homes to meet silver, gold or platinum level standards by 2020. Importantly, by including the core livable housing design elements, home occupants can reduce or avoid the costs associated with retrofitting a home to improve access in future, should it be required.
<u>Legal capacity</u>	<p>Article 12 - Equal recognition before the law</p> <p>1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the</p>	<p>The Australian Government will continue to fund community legal centres that have a primary focus of providing legal information and help in relation to the Disability Discrimination Act 1992.</p>

	<p>law.</p> <p>2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.</p> <p>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.</p> <p>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.</p> <p>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</p>	
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	disabilities are not arbitrarily deprived of their property.	
Non therapeutic sterilisation	<p>Article 23 - Respect for home and the family</p> <p>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:</p> <p>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;</p> <p>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;</p> <p>c) Persons with disabilities, including children, retain their fertility on an equal basis with others.</p> <p>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</p>	The Australian Government will work with States and Territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability.

	<p>paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
<p><u>Freedom from exploitation and violence</u></p>	<p>Article 16 - Freedom from exploitation, violence and abuse</p> <p>1. States Parties shall take all appropriate legislative,</p>	<p>The Australian Government will continue to implement its National Plan to Reduce Violence against Women and their Children 2010–2022 which recognises the diversity of the needs</p>

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>of women with disabilities—including targeting local community action grants to organisations that assist with primary prevention of violence against women with disabilities; and commissioning work to investigate and promote ways to improve access and service responses for women with disabilities who have experienced violence.</p>
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	<p>and takes into account gender- and age-specific needs.</p> <p>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.</p>	
<p><u>Mental illness</u></p>	<p>Article 25 - Health</p> <p>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:</p> <p>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;</p> <p>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;</p>	<p>As part of the 2011-12 Budget the Australian Government is investing \$2.2 billion over five years in its National Mental Health Reform package including:</p> <ul style="list-style-type: none"> ▪ expanding services and improving their delivery for people with severe mental illness ▪ prevention and early intervention mental health services for children and young people ▪ improving access to the primary health care system for people with mental illness, and ▪ creating a National Mental Health Commission to increase accountability and transparency.

	<p>c) Provide these health services as close as possible to people's own communities, including in rural areas;</p> <p>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;</p> <p>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;</p> <p>f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.</p>	
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APPENDIX 2:

RECOMMENDATIONS IN RESPONSE TO THE REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002

The Government's Response to Individual Recommendations

Recommendation 1

Establish a national framework for Action Plan reporting and require annual reporting by each State and Territory government

The Government supports this recommendation in principle, noting that it calls for the development of a common reporting framework and reporting timeline.

The Government agrees that establishing a national framework for the consistent reporting of public transport Action Plans¹ would benefit all stakeholders, in particular through improved understanding of current service provision and enhanced capacity for future reviews to have more consistent data on progress.

The Government proposes that such a national reporting framework, consistent with the objectives of the National Disability Strategy and COAG's regulatory impact assessment processes, be progressed through the ATC.

Recommendation 2

Request the ABS include questions on public transport patronage in their Disability surveys

The Government agrees in principle with this recommendation and will ask the Australian Bureau of Statistics (ABS) about obtaining patronage data, consistent with its budget and technical constraints.

The Government notes that some aspects of this Review were impeded by a lack of baseline data. Obtaining additional information on public transport patronage, through ABS surveys, potentially helps governments understand public transport needs and would better inform future reviews.

In addition, the National Disability Strategy will facilitate enhanced data collection and provision of relevant national population indicators for accessibility in the community.

¹ The DDA includes provisions relating to action plans. An action plan is a way for an organisation to plan the elimination, as far as possible, of disability discrimination from the provision of its goods, services and facilities. Developing and implementing an action plan is a voluntary, proactive approach to DDA compliance. The Review found that all state and territory government public transport operators and providers already publish some form of Action Plan through which information on accessibility is already being collected (see page 192 of the Review report).

Recommendation 3

A technical experts group be convened, with Standards Australia, to develop technical standards specifically suited to public transport conveyances and infrastructure. Once developed, these Standards should be referenced in the Transport Standards, and made available for public use.

The Government agrees in principle with this recommendation and considers there is merit in examining the development of technical standards specifically suited to public transport conveyances and infrastructure which complement the Transport Standards. The Government acknowledges the issues around referencing certain Australian Standards which are not always appropriate in a transport context, and which have subsequently been updated or replaced since the introduction of the Transport Standards.

The establishment of specific transport-focussed technical standards potentially benefits all stakeholders. Public transport operators and providers could have greater clarity as to their obligations in providing a service which is compliant with the Transport Standards. Inclusion of the technical standards with the Transport Standards could also enable people with disability to more readily determine whether discrimination has occurred.

The Review notes that further RIS analysis may be required as part of the process of finalising any new technical standards.

Further, it is important to note that Standards Australia is an independent body and has established business rules regarding the preparation of new and revised standards. The Department of Infrastructure and Transport (DIT) will need to discuss with Standards Australia its capacity and willingness to participate in such an exercise, or whether it should be developed via a separate process.

The proposal to progress such technical standards work through convening a new working group is a matter for ATC to consider. The response to Recommendation 9 discusses this theme further.

Recommendation 4

Mode specific guidelines be developed by modal sub-committees. These guidelines would be a recognised authoritative source for providers which can be used during a complaints process.

The Transport Standards Guidelines provide a measure of guidance in relation to the interpretation of the Transport Standards generally and address some mode specific issues in a limited way.

The Government supports in principle the development of mode specific guidelines, which could be useful for public transport operators and providers. In this context, guidance material may be developed for taxis, buses, coaches, trains, trams, ferries and commercial aircraft. The merits of establishing additional sub-committees to develop mode specific guidance material, is a matter for the ATC to consider. The Response to Recommendation 9 discusses this theme further.

The Government acknowledges that modal specific groups have previously been established under the APTNAC to develop guidelines. An Aviation Access Working Group is already in place, chaired by the DIT.

The Government proposes that the ATC considers the most appropriate mechanism to progress this recommendation.

Recommendation 5

A mobility labelling scheme be developed which identifies the weight of the aid and whether its dimensions fit within the dimensions for allocated spaces, boarding devices, access paths and manoeuvring areas on conveyances, as specified in the Transport Standards.

The Government supports this recommendation in principle, noting that such a scheme would operate within the dimensions for allocated spaces currently specified in the Transport Standards.

The Government agrees that a mobility labelling scheme could be beneficial to public transport operators and providers and mobility aid users. The Government recognises that operators and providers can face difficulties in determining whether a particular mobility aid is compliant with the dimensional limitations set out in the Transport Standards. The introduction of such a scheme would also give mobility aid users some assurance as to what transport conveyances they can access.

As there may be some costs for mobility aid retailers and suppliers to implement such a scheme, and administration costs for governments in developing, implementing and maintaining a scheme, further consultation and analysis will be required.

The Government proposes this recommendation be referred to the ATC for consideration, noting that, the development of such a framework should include input from the relevant state and territory agencies responsible for the provision of aids and equipment.

Recommendation 6

A best practice clearinghouse be established in a government agency or research body to collect and disseminate best practice solutions and ideas relating to accessible public transport.

The Government supports the principle of improving the gathering and dissemination of best practice solutions and ideas relating to accessible transport. This could be valuable for other public transport operators and providers in similar circumstances, and yield broader benefits in terms of improved information.

It is not clear, however, where this function might best be undertaken, or even whether such location is best established in a government agency or research body. Moreover, there would be merit in considering the objectives of this recommendation in the development and implementation of the broader work program.

The Government proposes this recommendation be referred to the ATC for further consideration.

Recommendation 7

Commonwealth, State and Territory governments provide funding for projects in regional and rural regions where local governments are unable to resource upgrades of public transport infrastructure.

The Government notes this recommendation and the Review's conclusion that regional and rural areas, in most cases, are falling behind in the provision of accessible public transport services compared to those in urban areas.

However, the provision of funding for projects is a matter for each government to consider, including in the context of existing regional infrastructure programs and budget deliberations. For its part, the Australian Government will give consideration to the eligibility criteria for existing regional and rural transport and infrastructure programs, to ensure no inappropriate exclusions apply to projects that would support compliance with the Transport Standards.

Recommendation 8

The AHRC be tasked to provide greater support for representative complaints on behalf of people with disability, reducing the legal cost burden on individuals.

The Government notes the recommendation.

As part of Australia's Human Rights Framework, the Government is reviewing and consolidating Commonwealth anti-discrimination legislation, including considering gaps in protection and an effective complaints system.

Recommendation 9

New governance arrangements be implemented to establish accountability for progressing recommendations from the five-year Review. APTJC should have coordinating responsibility for new initiatives (including modal committees and the technical experts group) in partnership with APTNAC.

The Government supports this recommendation in principle.

As discussed above, the ATC has the key policy and regulatory advisory responsibility relating to the development of possible amendments to the Transport Standards, and for overseeing the governance of transport agency working groups to deliver the various work programs.

In May 2009, the ATC finalised a streamlined structure of sub-committees of the Standing Committee of Transport². A key theme of this work was to rationalise the demands that

² ATC Ministers agreed to implement the future National Transport Policy work through a streamlined structure of Standing Sub-committees of the Standing Committee on Transport. The Standing Sub-committees will focus on Productivity, Safety, Environment, Security, Maritime and Network Performance agendas framed around ensuring transport infrastructure and operations can play their essential role in underpinning a return to economic growth. It has been further agreed that ATPJC and APTNAC work will be considered through the Network Performance Standing Sub-committee.

complex working group structures impose on all stakeholders and to ensure that available resources are targeted to the most appropriate areas.

The transport governance framework that the ATC has put in place is broadly consistent with that identified in this recommendation, that is, a framework in which APTJC leads and coordinates, in consultation with APTNAC, progressing the response to the Review's recommendations. This will continue to be a matter for ATC to decide.

Recommendation 10

The 2017 compliance milestone for tram conveyances and infrastructure be reduced from 90 per cent to 80 per cent to better reflect vehicle replacement cycles.

The Government notes this recommendation and the Review's findings that current vehicle replacement schedules do not meet future compliance targets in 2017, for trams.

The Review notes this recommendation will reduce the uncertainty for tram operators and providers and governments in the management of their obligations under the Transport Standards. However, as the recommendation represents a regulatory change, further stakeholder consultation and regulatory analysis will be required prior to any decision by ATC.

Recommendation 11

The taxi modal sub-committee be tasked with developing a staged implementation timeframe similar to that for other modes of transport, and an appropriate performance measure, to replace the 2007 milestone for WAT compliance.

The Government notes this recommendation.

The Government notes the Review's findings that the current compliance target for Wheelchair Accessible Taxis (WATs) may not be met and should be replaced with a staged implementation timeframe, similar to that for other modes of transport. The Government recognises the difficulties in determining compliance with the target schedule of the Transport Standards but acknowledges that states and territories have significantly increased the provision for WATs within their respective taxi fleets.

The Government proposes that the ATC considers the most appropriate mechanism to progress the further action flowing from this recommendation.

Recommendation 12

Government commission research into the safety of passengers travelling in conveyances whilst seated in mobility aids (including scooters). This research should make recommendations around whether there is a need for an Australian Standard addressing this aspect of safety for mobility aids.

The Government notes this recommendation and acknowledges the importance of improving safety for travelling passengers, and the potential risks associated with passengers in mobility devices travelling on conveyances without restraints. The

Government also recognises the value of appropriately targeted research and trials in achieving this safety objective.

The Government further notes that this recommendation has potential resourcing implications and the Review gives no consideration to what such research might cost or how it might compare with other transport safety research priorities.

The Government proposes that the ATC considers the most appropriate mechanism to progress the further assessment identified in this recommendation.

Recommendation 13

The Transport Standards be amended to require new community transport vehicles greater than 12 seat capacity to comply with the Transport Standards commencing in 2017, (with full compliance by 2032).

The Government supports this recommendation in principle.

The Review found that the current exclusions relating to community transport vehicles limit the current and future provision of services for people with disability. The Government supports the objective of removing the exclusions over time.

The Government proposes that the ATC considers the most appropriate mechanism to progress this recommendation, noting that the potential impact on community transport operators and providers indicates that further consultation and analysis is likely to be required.

As part of this further analysis, there would be merit in examining the experience of the Home and Community Care Program within jurisdictions, and to also consider the potential benefits and costs of accelerating the phase-in of reform under this recommendation.

Recommendation 14

Phased application of dedicated school bus services to physical access requirements in the Transport Standards, commencing in 2029 and being fully required by 2044.

The Government supports this recommendation in principle.

The Review found that the current exclusions to the physical access provisions of dedicated school buses limit the current and future provision of services for students with a disability. The Government recognises the importance of providing students with a disability every opportunity to participate in community life, including being able to travel alongside students without disability on dedicated school bus services. The Government also considers there is merit in examining the potential consequences of this recommendation on existing complaints-based mechanisms of compliance.

The Government proposes that the ATC considers the most appropriate mechanism to progress this recommendation noting that the Review concludes that a full RIS would be required in light of the potential cost impact on school bus operators and providers. As part of the further analysis, there would be merit in examining the number of second-hand accessible buses that may currently be available for purchase by dedicated school bus

operators (accessible buses have been in service since 1995) and, if possible, the scope to commence earlier or shorten the phase-in requirements.

Recommendation 15

Air travel modal sub-committee (the Aviation Access Working Group) be tasked to develop guidance on the carriage of mobility aids on aircraft.

The Government supports this recommendation.

The Government acknowledges the lack of guidance material on appropriate conditions for the carriage of mobility aids on aircraft. The introduction of such material would help to provide certainty on the carriage requirements for both mobility aid users and airline staff. To the extent that the guidance material once developed may impose costs and impose benefits, further consultation with the Office of Best Practice Regulation may be required.

The Government also notes that some smaller capacity airlines are unable to transport mobility aids above particular sizes and weights, due to significant safety risks related to the loading or carriage of these items.

The Aviation Access Working Group is currently engaged in discussions aimed at reaching a mutual understanding regarding the needs of passengers who rely on mobility aids and the operational realities of operators.

Other Recommendations – Appendix E

Review proposals for Parts requiring amendment.

The Review contains a number of proposals to make some mostly minor technical amendments to the Transport Standards, some of which are mode specific.³

The Government proposes that the ATC evaluates these proposals and considers the most appropriate mechanism to progress this recommendation.

³ Review proposals for parts requiring amendment (Table G.3 – page 311)

Enabling Australia (June 2010)

Inquiry into the Migration Treatment of Disability Joint Standing Committee on Migration

LIST OF RECOMMENDATIONS

The Migration Health Requirement

Recommendation 1

The Committee recommends that the Australian Government raise the 'significant cost threshold' (which forms part of the Health Requirement developed under the Migration Regulations 1994) to a more appropriate level. The Committee also recommends that the Department of Immigration and Citizenship quickly complete the review of the 'significant cost threshold'.

Recommendation 2

The Committee recommends that the Australian Government adopt a contemporary Health Requirement for prospective permanent and temporary migration entrants under the Migration Act 1958 (Cth).

The Committee recommends changes to the Health Requirement include changes to the assessment criteria, processes and waiver options. These are outlined in subsequent recommendations.

Recommendation 3

The Committee recommends that the Australian Government amend Schedule 4 of the Migration Regulations 1994 to allow for the consideration of the social and economic contributions to Australia of a prospective migrant or a prospective migrant's family in the overall assessment of a visa.

Recommendation 4

The Committee recommends that the Australian Government amend the Migration Regulations 1994 (in particular Public Interest Criteria 4005, 4006A and 4007) so that the assessment of diseases and medical conditions are addressed separately from the assessment of conditions as part of a disability.

Decision making processes

Recommendation 5

The Committee recommends that the Department of Immigration and Citizenship make the current 'Notes for Guidance' publicly available. It further recommends that, when such papers are revised, their updated version be placed on the Department's website as soon as possible.

'Notes for Guidance' and associated background information should also be referred to in the Department's Fact Sheets for prospective visa applicants.

Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship publish on the Department's website the cost calculation methodology used by Medical Officers of the Commonwealth in assessing the costs associated with diseases or conditions under the Health Requirement.

Recommendation 7

The Committee recommends that the Department of Immigration and Citizenship provide each applicant with a detailed breakdown of their assessed costs associated with diseases or conditions under the Health Requirement.

Recommendation 8

The Committee recommends that the Australian Government remove from the Migration Regulations 1994 the criterion under Public Interest Criteria 4005, 4006A and 4007 which states that costs will be assessed 'regardless of whether the health care or community services will actually be used in connection with the applicant'.

The Committee also recommends that the Australian Government revise the approach which assesses visa applicants' possible health care and service needs against 'the hypothetical person test'. This test should be revised so that it reflects a tailored assessment of individual circumstances in relation to likely healthcare and service use.

Recommendation 9

The Committee recommends that the Australian Government amend Regulation 2.25A of the Migration Regulations 1994 in a manner which does not bind the Minister of Immigration and Citizenship to take as final the decision of a Medical Officer of the Commonwealth in relation to 'significant cost' and 'prejudice to access' issues, and provides scope for Ministerial intervention.

Recommendation 10

The Committee recommends that visa decision-makers in the Department of Immigration and Citizenship be provided with the discretion to consider mitigating factors for any visa stream once a 'does not meet' the Health Requirement decision is received from a Medical Officer of the Commonwealth. These factors may be used to mitigate the 'significant cost threshold'.

Family, humanitarian and refugee migration

Recommendation 11

The Committee recommends that the Australian Government review the operation of the 'one fails, all fails' criterion under the Migration Regulations 1994 to remove prejudicial impacts on people with a disability.

Recommendation 12

The Committee recommends that the Australian Government amend the criterion for assessing waivers to the Health Requirement to include recognition of the contribution made by carers within the family as an offset to health care or community services costs identified in the process.

Recommendation 13

The Committee recommends that the Australian Government review the requirements for health inspections for short term visas under the Family Visits program.

Recommendation 14

The Committee recommends that the Australian Government amend the Migration Regulations 1994 to provide access to consideration of a waiver to offshore refugee visa applicants involving disability or health conditions on compelling and compassionate grounds.

Consideration should also be given to extended family members for the same treatment in the same circumstances.

Recommendation 15

The Committee recommends that the Department of Immigration and Citizenship create a priority visa category for refugees who have sustained a disability or condition as a result of being a victim of torture and trauma. The Committee recommends that similar visa consideration is provided to immediate family members within the offshore refugee program.

Skilled migration and disability

Recommendation 16

The Committee recommends that the Australian Government work with State and Territory Governments to expand the waiver option to the Health Requirement for skilled migration visa classes to a broader range of skilled visa categories, targeting areas of skill shortages and rural and regional development schemes.

Recommendation 17

The Committee recommends that the Australian Government investigate the introduction of a voluntary bond or other scheme for visa applicants to indemnify against, or manage health care or community services costs assessed under the Health Requirement of the *Migration Act 1958* (Cth).

The Committee recommends that any introduction of such a bond or other scheme should not prejudice those applicants that are unable to provide a surety.

Australia's international obligations and domestic exemptions

Recommendation 18

The Committee recommends that as part of its proposal to amalgamate Australian discrimination law, the Australian Government review the *Disability Discrimination Act 1992* (Cth) with particular reference to the section 52 migration exemption, to determine its legal implications for migration administration and conduct expert consultations on its impact on people with a disability.

APPENDIX 4

Summary of recommendations from the Restrictive Practices Cross-Jurisdictional Reference Group for a national strategy on restraint and seclusion prevention in disability services

Background. The Restrictive Practices Cross-Jurisdictional Reference Group was established in November 2009 by the Disability Policy and Research Working Group to provide information on the feasibility of a national strategy that could improve practice and protect the rights of people with disability who are at risk of being subjected to restrictive practices.

To achieve this broad aim the reference group has developed a series of discussion papers that were based on worldwide best practice both in Australia and other countries such as UK and USA. These findings suggest a national strategy to improve practice and protect the rights of people with a disability who are at risk of being subjected to restraint and seclusion should include the following.

Recommendations.

1. Nationally accepted definitions of restraint and seclusion. Discussion paper 1.2 proposes definitions for chemical restraint, mechanical restraint, physical restraint, seclusion and “other” restrictive practices (including being locked out of parts of one’s house).
2. A systemic way to collect data about the use of restraint and seclusion. Currently Victoria is the only jurisdiction that uses a systemic way to collect data from service providers called the Restrictive Intervention Data System (see Discussion paper 1.3). A system similar to this is proposed for consideration by other jurisdictions.
3. Evidence-based strategies for reducing the use of restraint and seclusion. Research shows that restrictive practices will not decrease unless specific strategies are put in place. There is good evidence from USA that at least for reducing the use of mechanical, physical restraint and seclusion can be reduced significantly when 6 core strategies are in place: (1) Strong leadership at the service level; (2) Systemic data collection; (3) Workforce development; (4) restraint reduction tools; (5) Vigorous debriefing and (6) client empowerment (see Discussion papers 2.0 and 3.1).
4. Working with other sectors. Chemical restraint is prescribed by general practitioners and the majority of people in Victoria (97%) who are subjected to restraint and seclusion are chemically restrained. Any restraint prevention strategy will need to include strong working links to other sectors such as Health and Education (see Discussion papers 1.4 and 3.2).

5. Need for rigorous evaluation of pilot or beacon projects. The National Mental Health Seclusion and Restraint Project established a number of beacon sites to examine the impact of strategies on restraint and seclusion use within hospitals throughout Australia. Due to the lack of adequate research design of these projects, it is not possible to determine which factors have an impact on changing practice. This needs to be addressed in undertaking any pilot project in disability (see Discussion paper 1.0).
6. Consultation with the sector. Service providers will ultimately be responsible for implementing the above recommendations and therefore it is imperative that this sector has buy-in as soon as possible. A consultation strategy has been developed to include (1) first tier to peak bodies for consultation and feedback and (2) second tier consultation to the entire sector (see Discussion papers 3.3 and 4.0). questions to stakeholders in the first tier would include: whether they support these conclusions; whether there is anything else that has been considered; what barriers there might be to implementing these recommendations.

Number of discussion paper	Brief title of paper
1.1	Preliminary analysis of findings from National Mental Health Seclusion and Restraint Project and its applicability and/or adaptability to the disability sector
1.2	Definitions for restraint and seclusion
1.3	Recommendations on an approach to capture a more robust and consistent data on restrictive practices.
1.4	A series of strategies that could be used to engage and influence other sectors
2.0	Innovative policies, practices and projects in use in Australia that may lead to best practice
3.1	Barriers to reducing the use of restrictive practices and development of positive behaviour support strategies.
3.2	Strategic linkages with other national strategies
3.3	Consultation with stakeholders