

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

Submissions by the Australian
Government in response to Counsel
Assisting's Submissions in respect of
Public Hearing 18:

*The human rights of people with disability and
making the Convention on the Rights of Persons
with Disabilities a reality in Australian law, policies
and practices*

15 February 2022

Public Hearing 18: The human rights of people with disability and making the Convention on the Rights of Persons with Disabilities a reality in Australian law, policies and practices

Submissions of the Australian Government in response to Counsel Assisting's Submissions

A. Introduction

- 1 The Australian Government, represented by the Attorney General's Department (**AGD**), specifically the Office of International Law (**OIL**), and the Human Rights and Anti-Discrimination Unit (**HRU**), and the Department of Social Services (**DSS**), provides these submissions in response to the Submissions of Counsel Assisting the Royal Commission dated 14 December 2021 (**Counsel Assisting's Submissions**) following Public Hearing 18: The human rights of people with disability and making the Convention on the Rights of Persons with Disabilities (**CRPD**) a reality in Australian law, policies and practices (**Public Hearing 18**).
- 2 These submissions should be read in conjunction with the following documents, on which the Australian Government relies:
 - (a) the Australian Government's Background Paper on the CRPD, Part 1 (Exhibit 18-020, CTD.9999.0007.0001) (**Background Paper**); and
 - (b) the paper dated 1 November 2021 which was submitted by the Australian Government to the Royal Commission, titled "Response to questions in letter from the Office of the Solicitor Assisting the Royal Commission dated 6 October 2021", (Exhibit 18-021, CTD.9999.0030.0001) (**Response Paper**).
- 3 For brevity, rather than to seek to repeat matters set out in the Background Paper or the Response Paper, aspects of the Background Paper and the Response Paper are cross-referred to in these submissions.
- 4 Capitalised terms not otherwise defined in these submissions have the meaning given to them in Counsel Assisting's Submissions, unless otherwise stated.

B. Overview

- 5 Counsel Assisting's Submissions comprise five parts. Parts 1 and 2 are in essence introductory, and discuss the background to the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**) and Counsel Assisting's observations as to the relevance of the CRPD to the Royal Commission's work. Part 3 sets out Counsel Assisting's submissions as to the approach to interpretation of the CRPD and its meaning, scope, and operation. Part 4 sets out Counsel Assisting's observations of the evidence heard during Public Hearing 18 and submissions in relation to the manner and extent to which the CRPD has been implemented in Australia, and addresses the question of whether there are "gaps" in that implementation. Part 5 sets out a number of matters which Counsel Assisting submits the Royal Commission should consider in relation to the question of how existing mechanisms may be improved, together with "better or

different ways of implementing the CRPD to prevent violence, abuse, neglect and exploitation of people with disability in Australia”.

- 6 These submissions focus on paragraphs 5 and 287 of Counsel Assisting's Submissions, in which it is submitted by Counsel Assisting that it is open to the Royal Commission to find that the Australian Government has not fully implemented the CRPD into relevant laws, policies and practices and that there remain “gaps” in the implementation of the CRPD in Australia to protect, promote and ensure the CRPD rights to prevent violence, abuse, neglect and exploitation of people with disability in Australia (**Proposed Finding**).
- 7 In doing so, the Australian Government also addresses a number of matters set out in Parts 3, 4 and 5 of Counsel Assisting's Submissions, which appear to bear upon Counsel Assisting's submissions in respect of the Proposed Finding.
- 8 The Royal Commission should not construe an absence of comment or discussion in these submissions about any of the matters addressed in Counsel Assisting's Submissions as acceptance or agreement by the Australian Government with those matters.

C. The Proposed Finding

- 9 The Australian Government has acknowledged and readily accepts, as set out in Response Paper [365]-[366], that the implementation of the CRPD is an ongoing process of continuous improvement—a process to which the Australian Government remains firmly committed, is pursuing, and which remains a substantial work in progress. However, it would be erroneous, without more, to characterise opportunities for improving upon the ways in which the CRPD has been implemented in Australia either as evidence of a failure fully to implement the CRPD in Australia or as evidence of the existence of “gaps” in its implementation such as to give rise to non-compliance with the CRPD. Such a categorisation would very likely misconstrue the nature and meaning of the CRPD and the totality of the evidence relied upon as support for the Proposed Finding.
- 10 Further, it is noted that Counsel Assisting's Submissions do not identify, with precision, the alleged gaps, nor explain why they ought to be characterised as a failure by the Australian Government fully to implement the CRPD, as opposed to characterising them as potential opportunities for improving upon the ways in which Australia has implemented the CRPD as a matter of policy. It is respectfully submitted that it is plainly open to the Royal Commission to find, in the opinion of the Commissioners, that there are opportunities for the Australian Government to improve upon the ways in which the CRPD has been implemented in Australia, but that it would be inappropriate to go further and make a finding to the effect of the Proposed Finding.

- 11 As noted above, the Proposed Finding would very likely misconstrue the nature and meaning of the CRPD and the totality of the evidence. This is evident from the fact that the Proposed Finding is at odds with a number of aspects of Counsel Assisting's Submissions as to the meaning, scope and operation of the CRPD. Counsel Assisting recognises in Part 3, and the Australian Government agrees, and the evidence given by the Australian Government's witnesses and other witnesses supports, that the CRPD is a dynamic document, which means that approaches to implementation will necessarily evolve as circumstances change;¹ that it contains rights which are immediately realisable as well as rights which are progressively realisable;² that it contains provisions which are expressed in non-prescriptive language (for example, obligations which require the taking of "appropriate" steps, which may vary according to national and local context);³ that a "margin of appreciation" or "margin of discretion" is afforded to States Parties as to how they implement their obligations under the CRPD in their domestic contexts, including as regards the concept of "reasonable accommodation" and as regards progressively realisable rights;⁴ that, uniquely among UN human rights treaties, the CRPD contains, in Article 3, a set of "general principles" which are expressed at a level of generality and not in terms capable of giving them direct normative force, but which can help in identifying its object and purpose, and bear upon the interpretation of the CRPD;⁵ that Article 4 of the CRPD contains obligations which are of general effect;⁶ and that, with few exceptions,⁷ the rights under the CRPD are not absolute nor required to be achieved irrespective of any other cost.⁸ These matters will combine, at any given point in time, to permit a range of different perspectives and subjective opinions on the extent to which the measures which a given State Party has taken to implement the CRPD are adequate and whether there exists opportunity for improvement. A brief acknowledgement of this fact is made by Counsel Assisting at [285]-[286]. With the exception of what is stated in those paragraphs, no attempt is made to grapple with the extent to which these matters impact upon the proper characterisation of the alleged "gaps" or the availability of the Proposed Finding.
- 12 Moreover, a finding along the lines of the Proposed Finding is at odds with the content of the CRPD Committee's Concluding Observations, the Shadow Report and communications under the Optional Protocol, being the principal documents on which Counsel Assisting specifically relies (see Counsel Assisting's Submissions, [273]) in support of the submission that it is open to

¹ See Counsel Assisting's Submissions, [81]-[82], [267]-[268].

² See Counsel Assisting's Submissions, [83]-[95].

³ See Counsel Assisting's Submissions, [115]-[116], [118]-[125]. See further, Background Paper, [6]-[7], [10].

⁴ See Counsel Assisting's Submissions, [108]-[114], [118]-[125]. See further, Background Paper, [26]-[32].

⁵ See Counsel Assisting's Submissions, [126]-[128].

⁶ See Counsel Assisting's Submissions, [129]-[134].

⁷ The Australian Government considers that absolute rights include the rights to freedom from torture or cruel, inhuman or degrading treatment or punishment (CRPD Art. 15(1)), freedom from slavery and servitude (CRPD Art 27(2)) and the right to recognition before the law (CRPD Art 12(1)). These exceptions are not expressly identified in Counsel Assisting's Submissions, [139]-[151].

⁸ See Counsel Assisting's Submissions, [139]-[151].

the Royal Commission to make the Proposed Finding. For the following reasons, it may be accepted that, properly viewed, those documents identified that there existed, at the times those documents were delivered, room for improvement in the ways in which the CRPD has been implemented in Australia. It would be a mischaracterisation to view those documents as asserting that the CRPD had not fully been implemented in Australia.

- 13 The combined second and third periodic reports submitted by Australia under article 35 of the CRPD and dated 7 September 2018 (**2018 Report**) (EXP.0003.0001.0017) dealt in detail with the manner in which the CRPD had been implemented in Australia up to that point in time. The concluding observations of the CRPD Committee, which were delivered in October 2019 following the Committee's review and consideration of the 2018 Report, as well as the Shadow Report, and Australia's appearance before the Committee in September 2019 (**Concluding Observations**) (EXP.0003.0001.0001), observed that Australia had, since its first periodic report (DRC.1000.0003.4628), taken a number of positive steps to improve upon the way in which the CRPD has been implemented in Australia, and also listed a number of areas of concern and general recommendations.⁹ Properly viewed, those concerns and recommendations were matters of opinion that were directed at further improving upon the manner in which the CRPD had been implemented in Australia (at that time), and did not rise to the level of a conclusion that the CRPD had not been implemented in Australia. They echoed a number of the issues identified in the Shadow Report.¹⁰ Several of the CRPD Committee's recommendations were directed to the content and implementation of a new national disability strategy to replace the existing *National Disability Strategy 2010-2020* when it expired, and it should be noted that the replacement to the *National Disability Strategy 2010-2020*, titled *Australia's Disability Strategy 2021-2031*, has since been released (see further, paragraph 15 below). The balance of the CRPD Committee's recommendations were directed to other areas for improvement upon measures which had been taken pursuant to, or which were reflective of rights recognised in, the CRPD, and measures to give effect to the CRPD Committee's General Comment No.7 (2018). None of the CRPD Committee's concerns or recommendations were expressed in language to the effect that Australia had not fully implemented the CRPD or that there were gaps in its implementation. If the CRPD Committee had had such concerns about Australia, those concerns could have been stated as such in the Concluding Observations.
- 14 Similarly, the views adopted by the CRPD Committee in respect of each of the complaints under the Optional Protocol regarding alleged violations of the CRPD by Australia referred to in Counsel Assisting's Submissions at [236]-[240] were views expressed as to whether Australia, at the relevant point in time for each of the complaints, had failed to fulfil obligations under the CRPD in respect of the specific individuals who had raised their respective complaints. Australia engages

⁹ See Counsel Assisting's Submissions, [215]-[217].

¹⁰ See Counsel Assisting's Submissions, [222]-[223].

in good faith with the individual complaints mechanism under the CRPD and considers the CRPD Committee's views in each case. Further each of the complaints referred to in Counsel Assisting's Submissions relates to events that occurred several years ago and that the most recent of the complaints was made some 6 years ago and predates the 2018 Report by more than 2 years. The public hearing did not seek to consider the question of whether and to what extent the laws and practices the subject of each complaint (including the laws and practices of the relevant states and territories) have, in the time since each complaint was addressed by the CRPD Committee, changed in response to the views adopted by the CRPD Committee in respect of each of the complaints. Accordingly, limited (if any) weight can be placed on the facts and matters the subject of those complaints in order to determine whether, in 2022, the Australian Government has not fully implemented the CRPD into relevant laws, policies and practices or whether, in 2022, there remain gaps in Australia's implementation of the CRPD.

- 15 The Australian Government has acknowledged the CRPD Committee's concerns and recommendations and has pursued, in the period since the Concluding Observations were delivered in 2019, a number of initiatives directed towards improving upon the ways in which the CRPD had been implemented in Australia and at addressing the CRPD Committee's concerns. Most recently and significantly, this has included the release of the new *Australia's Disability Strategy 2021-2031 (Strategy)*, which is Australia's new national disability policy framework and plan for continuing to improve the lives of people with disability in Australia over the next ten years, building and improving upon its predecessor, the National Disability Strategy 2010-2020. Further details of the new Strategy and a number of other significant recent initiatives are set out below.

D. CRPD meaning, scope and operation, and its implementation in Australia

- 16 In addition to the above, we respond to six matters set out in Parts 3, 4 and 5 of Counsel Assisting's Submissions, which appear to bear upon Counsel Assisting's submissions in respect of the Proposed Finding.
- 17 The first matter concerns Counsel Assisting's Submissions at [47]-[52] regarding Article 31(3) of the *Vienna Convention on the Law of Treaties (VCLT)*. While it is correct to say, as acknowledged above, that the CRPD is a dynamic document, such that approaches to implementation will necessarily evolve as circumstances change, it is a separate matter to say that Article 31(3) of the VCLT operates such that the meaning of a treaty can evolve over time in accordance with subsequent practice, generally. The starting point for treaty interpretation is always Article 31(1) of the VCLT, which provides 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". Together with its context, as defined in Article 31(2) of the VCLT, Article 31(3) of the VCLT provides that a subsequent agreement between the parties to a

treaty regarding its interpretation is to be taken into account. Subsequent practice in the application of the treaty can be taken into account if, and only if, that practice establishes an agreement between the parties regarding its interpretation. This is a subtle but important distinction which underlines an error in the approach to interpretation which underpins Counsel Assisting's submissions, including in giving undue legal weight to theories and models for more progressive implementation of the CRPD,¹¹ in the absence of any agreement or common practice establishing any agreement between the parties to the CRPD to interpret the CRPD in those ways.

- 18 Secondly, Counsel Assisting's summation of the evidence given by the Australian Government in [3]-[6] of the Response Paper in relation to immediately realisable and progressively realisable rights should be evaluated with care. It is not the case, as Counsel Assisting appears to submit at [93], that the Australian Government considers there to be a "distinction" in the CRPD between economic, social and cultural rights, on the one hand, and civil and political rights, on the other hand. Rather, as is clearly noted in paragraph 6 of the Response Paper, the Australian Government's view is that the CRPD reflects the obligations in ICCPR and the ICESCR, and contains both rights of immediate effect and others which are progressively realisable, and that single Articles of the CRPD can and do contain both types of rights.
- 19 Thirdly, it is not the case, as Counsel Assisting submits at [212], that the Australian Government holds or expressed in its 2018 Report the view "in effect that the primary legislative mechanism by which the CRPD was incorporated into Australian law was via the Commonwealth, State and Territory anti-discrimination statutes and also via the (then) two State and Territory human rights statutes." Such a statement misconstrues paragraphs 12 to 14 of the 2018 Report, which merely mention the Commonwealth, state and territory anti-discrimination statutes and the (then) two state and territory human rights statutes. Nowhere in those paragraphs or elsewhere in the 2018 Report is that legislation described as the "primary legislative mechanism by which the CRPD was incorporated into Australian law". Further, Counsel Assisting's submission sets aside the many references to other legislation in several other paragraphs of the 2018 Report.
- 20 The fourth matter concerns Counsel Assisting's Submissions at [242]-[249], which contain a brief acknowledgement of the fact that many of the CRPD rights and obligations "call for action by the states and territories", and of the role of state and territory implementation (including, as noted above, in respect of the matters which were the subject of the majority of the complaints referred to in Counsel Assisting's Submissions at [236]-[240]). However, Counsel Assisting's Submissions also acknowledge (at [242]) that the "public hearing did not address how the States and Territories engaged with the CRPD or its relevance to their laws, practices and policies". With the exception of two witnesses from the ACT Human Rights Commission, no state or

¹¹ See e.g. Counsel Assisting's Submissions, [96]-[107] regarding intersectional discrimination and transformative equality,

territory witnesses were called to give evidence at the public hearing about the steps that have been taken to implement the CRPD in each state and territory, and the public hearing did not otherwise seek to consider, in any detail, the question of state and territory implementation. No attempt is made in Counsel Assisting's Submissions (including in [285]-[287]) to grapple with the extent to which the failure to lead evidence on these matters, or to put to the states and territories any particular allegations of gaps in their respective implementation and afford the states and territories a right to be heard in respect of any such particular allegations, impacts upon the availability of the Proposed Finding.

- 21 Fifthly, Counsel Assisting's Submissions at [387] misstates the evidence of Mr Walter, as recorded in the transcript of 9 November 2021 at P-161.21-46. As the transcript shows, Counsel Assisting put to Mr Walter the proposition that, around or immediately prior to the time of Australia's ratification of the CRPD, no steps were taken for a national review of laws, policies and programs, and Mr Walter clearly disagreed with that proposition. Mr Walter went on to say that there was an assessment process before ratification, part of which involved the Attorney-General's Department engaging with the states and territories, including through the form of a survey, to ascertain whether or not state and territory laws, practices and programs were in conformity with the CRPD, and that there were also a number of discussions that were engaged in, through what was then the Council of Attorneys-General, on that point. Mr Walter also states that all states and territories joined in that process, and the ultimate assessment at the time, which is reflected in the National Interest Analysis, was that for those immediately realisable rights, Australia and all states and territories were already in conformity, and for those that required progressive implementation, Australia and all states and territories were substantially in conformity.
- 22 Finally, it should not be understood that the "positive aspects" identified by the CRPD Committee in its Concluding Observations, as referred to in Counsel Assisting's Submissions at [214] to [215], are an exhaustive list of the positive steps that the Australian Government has taken to implement the CRPD. Rather, the matters listed in paragraph 4 of the Concluding Observations reflect significant improvements in the manner in which the CRPD has been implemented in Australia, being improvements which were made between Australia's first periodic report and its 2018 Report to the CRPD Committee. Significant other steps to implement and improve upon the way in which the CRPD has been implemented in Australia have been taken, relevantly including a number of significant steps which have been taken in the years which have followed the Concluding Observations on the 2018 Report. The most notable of these are listed below, which is not an exhaustive list.

Australia's Disability Strategy 2021-2031

- 23 Between 2010 and 2021, the *National Disability Strategy 2010-2020* was Australia's overarching policy framework for disability reform and a key mechanism for driving more inclusive policy and

program designs across all levels of government, aligned with the CRPD principles. Following a review and consultation with the disability sector and all levels of government, it has now been superseded by the new Strategy. The new Strategy builds and expands on its predecessor and adds new key features to drive action and accountability.¹²

- 24 Both strategies have promoted an inclusive approach to the design of policies, programs and infrastructure so that persons with disability can participate in all areas of Australian life,¹³ a purpose which is aligned with Article 1 of the CRPD. Further information in relation to the content of the new Strategy is set out in **Appendix A** to these submissions.

Disability advocacy programs

- 25 The Australian Government funds a number of disability advocacy programs, which provide people with disability access to effective disability advocacy. In 2021-2022, the Australian Government committed:
- (a) \$23.7 million under the National Disability Advocacy Program to fund 59 organisations across Australia;
 - (b) \$2.1 million for disability representative organisations; and
 - (c) \$13.2 million to the NDIS Appeals program.

Council of Australian Governments Disability Reform Council and Disability Ministers' meetings

- 26 Between 2013 and 2020, the Council of Australian Governments Disability Reform Council met regularly to provide a forum for the Commonwealth, State and Territory ministers responsible for disability policy to drive national reform in disability policy and implementation, including through the *National Disability Strategy 2010-2020* and the National Disability Insurance Scheme (**NDIS**). Meetings between Disability Ministers occurred in March, April, May, July and December 2020 and multilateral meetings were held in April, July, August, October and December 2021.¹⁴

NDIS reforms

- 27 The Australian Government introduced the *National Disability Insurance Scheme (Participant Service Guarantee and Other Measures) Bill 2021 (Bill)* into Parliament on 28 October 2021. If passed, the Bill will amend the NDIS Act to implement a Participant Service Guarantee and the Australian Government's responses to a number of other recommendations of the Tune Review undertaken in 2019.

¹² See <https://www.disabilitygateway.gov.au/ads>.

¹³ Combined Second and Third Periodic Reports, paragraph 130.

¹⁴ See <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/government-international/disability-reform-council>.

- 28 The amendments will implement significant improvements for participants, their families and carers by reducing red tape, increasing flexibility and clarifying timeframes for decision-making.

Continuity of Support

- 29 In 2018-19, the Australian Government announced a \$92 million package as part of an ongoing commitment to provide continuity of service to people with disability currently receiving support from Commonwealth services, who were ineligible for the NDIS. This initiative was to ensure such people would not be disadvantaged by the transition to the NDIS, and to assist them in achieving outcomes similar to those they sought prior to the NDIS, in line with the principles of the CRPD.¹⁵ Continuity of Support arrangements commenced from 1 April 2021.

NDIS Quality Safeguards Commission (NDISQSC)

- 30 The national roll out of the NDISQSC began with New South Wales and South Australia on 1 July 2018, followed by Queensland, the Australian Capital Territory, the Northern Territory, Victoria and Tasmania on 1 July 2019, and was completed in Western Australia on 1 December 2020. The NDISQSC regulates NDIS providers, provides national consistency, promotes safety and quality services, resolves problems and identifies areas for improvement in the NDIS. It receives and reviews complaints and reportable incident notifications, and works with NDIS participants, service providers, workers and the community to implement a nationally consistent approach so that across Australia, NDIS participants can access services and supports that promote choice, control and dignity. This is in line with the rights provided for under the CRPD and the progressive realisation of economic, social and cultural rights.

Women's Safety Package

- 31 In the 2021-22 budget, the Australian Government has committed \$9.3 million over three years (2021-22 to 2023-24) to develop resources that aim to reduce violence against women and girls with disability, and improve service responses when violence occurs.

Children with Disabilities

- 32 As of February 2019, the National Principles for Child Safe Organisations have been endorsed by members of the Council of Australian Governments, including the Prime Minister and state and territory First Ministers. They reflect ten child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and are the vehicle for giving effect to recommendations relating to those standards. They were refined through consultation

¹⁵ Combined Second and Third Periodic Reports, paragraph 47-51.

held between October 2017 and March 2018 with representatives from several sectors, including the disability sector.¹⁶

- 33 The National Framework for Protecting Australia's Children 2009-2020 was developed by Australian Governments and recognised child disability as a risk factor for abuse and neglect. It has been superseded by *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*, which aims to ensure children and young people in Australia reach their full potential by growing up safe and supported, free from harm and neglect.¹⁷ It seeks to achieve the best outcomes for vulnerable children and those experiencing disadvantage. The priority groups include children and families with multiple and complex needs, Aboriginal and Torres Strait Islander children and young people experiencing disadvantage or who are vulnerable, and children and young people and/or parents/carers with disability experiencing disadvantage or who are vulnerable.

Accessibility

- 34 On 30 April 2021, Commonwealth, state and territory Building Ministers met to consider next steps on options to increase Australia's stock of accessible housing. A majority of Ministers agreed to include minimum accessibility provisions for residential housing and apartments in the *National Construction Code 2022 (NCC)* based on the 'Liveable Housing Design Guidelines' silver standards. Ministers also agreed the Australian Building Codes Board will publish a voluntary gold technical standard for accessible housing.
- 35 The changes in the NCC will not come into effect until 1 September 2022. Each state and territory will determine the extent to which and how the new provisions will be applied in their jurisdiction, to manage the regulatory impact on their respective construction sectors. For those states and territories that choose to act on these new provisions, there is expected to be a significant increase in the availability of new dwellings that are suitable for people with disability.
- 36 On 29 September 2021, the Minister for Families and Social Services, Senator the Hon Anne Ruston and the Assistant Minister for Industry Development, Senator the Hon Jonathon Duniam, released the findings of the second review of the *Disability (Access to Premises - Buildings) Standards 2010 (Premises Standards)*.
- 37 The Premises Standards outline the accessibility standards for providing public access to buildings for people with disability and their family members, carers and friends and apply to new buildings or upgrades to existing buildings.
- 38 Key findings of the 2021 Premises Standards review were that:

¹⁶ See <https://childsafefhumanrights.gov.au/national-principles/about-national-principles>.

¹⁷ Commonwealth of Australia Department of Social Services, *Safe & Supported: The National Framework for Protecting Australia's Children, 2021-2031* < https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf >

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- (a) people living with disability find it easier to access premises that have been built since the Premises Standards were introduced. This indicates that the Premises Standards are achieving their objectives; and
 - (b) people living with disability identified emerging issues and areas for improvement. These included:
 - (i) inconsistent requirements for signage and luminance contrast;
 - (ii) a lack of information on emerging wayfinding solutions;
 - (iii) a lack of accessible carparks and automatic doors; and
 - (iv) a need to increase the size of openings and thoroughfares for easier access.

Housing

- 39 On 25 November 2019, in response to the Interim Report of the Royal Commission into Aged Care Quality and Safety titled "Neglect", the Australian Government announced strengthened 'Younger People in Residential Aged Care' (**YPIRAC**) targets and the intention to develop a strategy to meet those targets.
- 40 The Australian Government's YPIRAC targets seek to ensure, apart from in exceptional circumstances, that there are:
 - (a) no people under the age of 65 entering residential aged care by 2022;
 - (b) no people under the age of 45 living in residential aged care by 2022; and
 - (c) no people under the age of 65 living in residential aged care by 2025.
- 41 These commitments are framed with the intention of the targets being met by year-end.
- 42 The Australian Government also established a joint agency taskforce between DSS, the Department of Health and the National Disability Insurance Agency (**NDIA**) to develop a new strategy that builds on the 2019 YPIRAC Action Plan, extends and improves upon previous initiatives, and takes steps to ensure the new YPIRAC targets are met. The new *Younger People in Residential Aged Care Strategy 2020-2025 (YPIRAC Strategy)* was developed and released on 30 September 2020.
- 43 The Australian Government's first annual report against the YPIRAC Strategy, released on 22 December 2021, highlighted that over the period from 30 June 2020 to 30 June 2021 there was a:
 - (a) 43 per cent reduction in the number of younger people entering residential aged care (712) when compared to the prior 12-month period (1,250);

- (b) 23 per cent reduction in the number of people under the age of 45 living in residential aged care (from 130 to 100); and
- (c) 20 per cent reduction in people under the age of 65 living in residential aged care (from 4,858 to 3,899 residents).
- 44 On 22 December 2021, the Australian Government announced that it is investing an additional approximately \$35 million to continue delivering on its commitment to reduce the number of younger people entering, and living in, residential aged care, including:¹⁸
- (a) \$16 million for the Department of Health to extend the current YPIRAC System Coordinator Program to engage with younger people who are not NDIS participants. This is on top of \$10.1 million announced in the 2020-21 Budget for Health to establish a national network of up to 40 YPIRAC System Coordinators to help younger people find appropriate accommodation and supports; and
- (b) around \$18.9 million for additional NDIA staff to help younger NDIS participants, their families, carers and support coordinators to explore reasonable and necessary supports to meet their home and living goals. The new team will complement the NDIA's existing 80 YPIRAC Planners who work with NDIS participants to ensure their plans reflect their housing goals as well as all other supports.

Access to Justice

- 45 Under the *National Partnership Agreement on Legal Assistance Services 2015-2020*, the Australian Government recognised that ensuring access to justice for persons with disabilities is crucial for them to exercise their legal rights on an equal basis with others. This agreement has been updated for 2020-2025 and developed in accordance with the principles of the *National Strategic Framework for Legal Assistance*, being the overarching policy framework for all Commonwealth, state and territory legal assistance funding. The 2020-2025 agreement contributes to integrated, efficient, effective and appropriate legal assistance services, focussed on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage, within available resources including those with disability.¹⁹

Liberty and Security of the Person

- 46 In November 2015, the Law, Crime and Community Safety Council (now the Meeting of Attorneys-General) agreed to establish a cross-jurisdictional working group on the treatment of people with cognitive or mental health impairment unfit to plead or found not guilty by reason of

¹⁸ See <https://ministers.dss.gov.au/media-releases/7886#:~:text=Linda%20Reynolds%20CSC-,%2435%20million%20investment%20to%20reduce%20the%20number,people%20in%20residential%20aged%20care&text=The%20Morrison%20Government%20is%20investing,living%20in%2C%20residential%20aged%20care.>

¹⁹ See: [https://www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25.](https://www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25)

mental impairment. As part of this process, the working group developed the *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles)*. The National Principles, which were published on 9 August 2019, recognise the rights of persons with disability, cognitive or mental health impairment, and seek to identify and establish safeguards throughout legal processes and during the period in which a person who is unfit to plead or not guilty by reason of cognitive or mental health impairment is subject to orders.²⁰ The Australian Government has committed to reviewing the National Principles within five years (i.e. by 2024), in consultation with state and territory jurisdictions, to ensure they remain relevant and continue to represent best practice.

- 47 In 2021, AGD held workshops with the Australian Federation of Disability Organisations on the topic of indefinite detention of persons with disability. The workshops provided an opportunity to draw on stakeholder experience and expertise to identify key issues and potential avenues for reform. AGD understands that a paper drafted by the University of New South Wales, in conjunction with AFDO, outlining key issues for consideration in the workshops and future strategic opportunities was provided to the Royal Commission in February 2022.

²⁰ *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment (Cth)*.

APPENDIX A

Overview of Australia's Disability Strategy 2021–2031

Introduction

- 1 *Australia's Disability Strategy 2021-2031 (Strategy)* was launched on 3 December 2021.²¹ It is Australia's national disability policy framework and sets out a plan for continuing to improve the lives of people with disability in Australia over the next ten years. The Strategy builds on its predecessor, the *National Disability Strategy 2010-2020*, which saw a range of reforms introduced to better support and include people with disability.²² The Strategy's vision is for an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community.
- 2 Like its predecessor, the Strategy has several 'Outcome Areas', namely:
 - (a) Employment and Financial Security;
 - (b) Inclusive Homes and Communities;
 - (c) Safety, Rights and Justice;
 - (d) Personal and Community Support;
 - (e) Education and Learning;
 - (f) Health and Wellbeing; and
 - (g) Community Attitudes.
- 3 Collectively, the seven Outcome Areas represent the areas people with disability have said need to improve to achieve the Strategy's vision. By delivering against the Policy Priorities under each Outcome Area, governments envisage that all aspects of Australian life will become more inclusive of people with disability.
- 4 As Australia's national disability policy framework, the purpose of the Strategy is to:
 - (a) provide national leadership towards greater inclusion of people with disability;
 - (b) guide activity across all areas of public policy to be inclusive and responsive to people with disability;
 - (c) drive mainstream services and systems to improve outcomes for people with disability; and

²¹ The Strategy is publicly available at <https://www.disabilitygateway.gov.au/ads>.

²² Included among the reforms introduced under the *National Disability Strategy 2010-2020* were the establishment of the NDIS; new disability legislation, such as state disability inclusion legislation, to strengthen legal protections for people with disability; new Australian, state and territory and local government disability inclusion plans; local initiatives focused on creating inclusive communities, accessible transport, and improving access to health and education services; establishing the NSW Ageing and Disability Commissioner to investigate and protect older people and people with disability from abuse, neglect and exploitation; and significant shifts in government and social and community services towards rights-based approaches to remove barriers for people with disability.

- (d) engage, inform, and involve the whole community in achieving a more inclusive society.
- 5 The Strategy will play an important role in protecting, promoting, and realising the human rights of people with disability, in line with Australia's obligations under the CRPD. It will achieve this through the activities which governments undertake to improve outcomes for people with disability, through focusing on the seven Outcome Areas and 31 'Policy Priorities' which sit within those Outcome Areas, outlined in more detail below.
- 6 In alignment with the CRPD, the Strategy is based on the social model of disability. It recognises attitudes, practices and structures can be disabling and act as barriers to preventing people from fulfilling their potential and exercising their rights as equal members of the community, and focuses on removing these barriers so people with disability can fully and effectively participate in and contribute to society.
- 7 To achieve the Strategy's vision, all levels of government are committed to the development and implementation of policies, programs, services, and systems which reflect the human rights principles of the CRPD. Governments have agreed to use a set of "Guiding Principles" which are set out in the Strategy, and which are based upon and reflect Article 3 of the CRPD, when developing policies, programs, services, and systems. Consistently with those Guiding Principles, governments are committed to working together alongside people with disability, communities, businesses and the non-government sector to implement the Strategy and realise its vision in a coordinated and targeted way. This includes ensuring that, over the life of the Strategy, its design and implementation is responsive to changing needs.
- 8 The Strategy will also contribute to Australia's reporting obligations under the CRPD. All levels of government have committed to delivering more comprehensive and visible reporting. Reporting under the Strategy aims to ensure accountability and build the evidence base for making informed decisions on areas of future focus. It will also drive improvements in the design and implementation of future policies and programs. Reporting under the Strategy will be an important input to reports developed to meet Australia's reporting obligations under the CRPD, and will support Australia in continuing to strengthen its response to ensure the equal rights of people with disability in line with the CRPD.

Development of the Strategy

- 9 The voices of people with disability were central to the development of the Strategy and they will continue to have a say in its implementation.
- 10 The Strategy was developed by Australian, state, territory, and local governments, through years of engagement with people with disability, their families, carers, and representatives. Consultations took place in stages over three years to enable people with disability to have a say

during all phases of developing the Strategy. Development was also guided by several reviews and inquiries that looked at how the *National Disability Strategy 2010-2020* was implemented.²³

- 11 The Australian Government notes that agreement to the Strategy has been confirmed by all first ministers and the Australian Local Government Association President.

What makes the Strategy?

- 12 There are several documents that form and support the delivery of the Strategy, as follows:²⁴
- (a) **Outcomes Framework:** The Outcomes Framework tracks, reports and measures the outcomes for people with disability across the Policy Priorities under the Outcome Areas. This includes measuring the contribution key systems such as healthcare, housing, education, and employment are making to achieve outcomes. It also tracks the changes in outcomes happening over time for people with disability.
 - (b) **Engagement Plan:** The Engagement Plan outlines how people with disability will be involved in the implementation of the Strategy over its term. This includes having a role in monitoring and reporting on its progress. The features of the Engagement Plan will give people with disability ways to influence the future direction of the policies and services that impact their lives.
 - (c) **Roadmap:** The Roadmap gives a simple overview of the key deliverables being produced under the Strategy. This provides transparency of the road ahead and accountability for delivery.
 - (d) **Evaluation Good Practice Guide Checklist (Checklist):** The Checklist will help governments to conduct evaluations for disability specific and mainstream policies and services.
 - (e) **Targeted Action Plans:** Governments have established Targeted Action Plans to make headway in achieving outcomes in specific areas of the Strategy. The five Targeted Action Plans launched with the Strategy are focused on improving:
 - (i) employment;
 - (ii) community attitudes;
 - (iii) early childhood;
 - (iv) safety; and
 - (v) emergency management.

²³ Further details regarding the development of the Strategy, including the consultation process and reviews and reports that informed the Strategy, are available at Appendix 1 of the Strategy.

²⁴ These documents are publicly available at <https://www.disabilitygateway.gov.au/ads/strategy>.

- (f) **Associated Plans:** Associated Plans are strategies, plans, roadmaps, and frameworks that focus on improving aspects of Australian life for people with disability and work to deliver the vision of the Strategy. Associated Plans were introduced to provide a more coordinated, long-term approach to how governments work to improve outcomes for people with disability. All Associated Plans clearly identify how they contribute to achieving the outcomes of the Strategy. *Employ My Ability – the Disability Employment Strategy*, is an example of an Associated Plan.
- (g) **Summary version of the Strategy:** The summary version of the Strategy is shorter and provides a simpler overview.

Implementation

Seven Outcome Areas and 31 Policy Priorities

- 13 The Strategy has seven Outcome Areas, as listed above, each with a number of Policy Priorities (31 Policy Priorities in total). As noted above, to deliver on the Policy Priorities, governments are committed to working together alongside people with disability, communities, businesses, and the non-government sector to implement the Strategy and realise its vision in a coordinated and targeted way. This includes ensuring that over the life of the Strategy, its design and implementation is responsive to changing needs.
- 14 The following key initiatives will facilitate this approach:
- (a) promoting and ensuring actions to deliver the Policy Priorities and to address issues of intersectionality;
 - (b) a clear and easy-to-locate outline of governments' roles and responsibilities;
 - (c) guiding principles for policy and program development that are based on and reflect the human rights principles of the CRPD;
 - (d) the implementation of time-limited Targeted Action Plans and longer-term Associated Plans;
 - (e) the implementation of an Outcomes Framework to track progress against the Strategy, a data strategy to support regular reporting, and improvements to evaluation and research;
 - (f) the implementation of governance arrangements, including a centralised unit to drive implementation;
 - (g) the implementation of a Strategy Engagement Plan to ensure people with disability actively participate in implementation, monitoring and evaluation (discussed further below);
 - (h) a clear roadmap to keep governments accountable for achievement of key deliverables and milestones; and

- (i) ongoing development of a Strategy website.

Role of the Advisory Council

- 15 A key feature of the Strategy's Engagement Plan was the establishment of an Advisory Council which comprises one Chair, six members and two special advisers. All members of the Advisory Council are people with disability and at least half the members include women, First Nations people, culturally and linguistically diverse people, young people, and people with lived experience of rural and remote communities.
- 16 The role of the Advisory Council is to:
- (a) advise on the Targeted Action Plans, Outcomes Framework, Associated Plans, and Strategy reporting;
 - (b) provide advice directly to disability ministers, with the Chair and representatives attending one disability ministers' meeting each year; and
 - (c) connect with state and territory disability advisory groups and the NDIS Independent Advisory Council.

Reporting framework

- 17 Reporting under the Strategy will ensure accountability and build the evidence base for making informed decisions on areas of future focus. A range of reports will be published including annual reporting under the Outcomes Framework, annual Targeted Action Plan reports, implementation reports every two years and two major evaluations.
- 18 Information will be sourced from Australian Government agencies, state, territory and local governments, the Australian Human Rights Commission, state and territory human rights/anti-discrimination bodies and the National Disability Insurance Agency. Reporting will also capture information from people with disability, Disability Representative Organisations, and the Advisory Council. This reporting will complement the reporting already undertaken by state and territory governments, and many local governments, as part of their own disability plans.

The Strategy's focus on employment

- 19 The Strategy has a strong focus on employment, recognising that employment and financial security are central to improving outcomes for people with disability. There are three Policy Priorities focused on employment and the progress against these are measured in the Outcomes Framework. The three Policy Priorities are as follows:
- (a) **Employment and Financial Security, Policy Priority 1:** Increase employment of people with disability.
 - (b) **Employment and Financial Security, Policy Priority 2:** Improve the transition of young people with disability from education to employment.

- (c) **Community Attitudes, Policy Priority 1:** Employers value the contribution people with disability make to the workforce and recognise the benefits of employing people with disability.
- 20 One of the five Targeted Action Plans launched with the Strategy is focused on employment (**Employment Plan**). The Employment Plan sets out key actions to improve paid employment outcomes for people with disability. It details Australian, state and territory government actions to improve employment, including the \$7.6 million investment to connect people with disability to work in areas experiencing skills shortages.
- 21 *Employ My Ability – the Disability Employment Strategy*, is an Associated Plan to the Strategy. Its vision is to create inclusive workplace cultures where people with disability thrive in their careers. It is focused on four priority areas for change:
- (a) lifting employer engagement, capability, and demand;
 - (b) building employment skills, experience, and confidence of young people with disability;
 - (c) improving systems and services for job seekers and employers; and
 - (d) changing community attitudes.

The Strategy's focus on community attitudes

- 22 The Strategy has a strong focus on building positive community attitudes towards people with disability, recognising this is central to achieving an inclusive society and improving all outcomes for people with disability under the Strategy. People with disability have said changing attitudes of others will provide more choice and independence, and lead to better support, improved treatment, and more respect.
- 23 There are four Policy Priorities under the Community Attitudes Outcome Area. Progress against these are measured in the Outcomes Framework based on results that will come from Australia's Disability Strategy Survey. The four Policy Priorities are as follows:
- (a) **Policy Priority 1:** Employers value the contribution people with disability make to the workforce and recognise the benefits of employing people with disability.
 - (b) **Policy Priority 2:** Key professional workforces are able to confidently and positively respond to people with disability.
 - (c) **Policy Priority 3:** Increase representation of people with disability in leadership roles.
 - (d) **Policy Priority 4:** Improving community attitudes to positively impact on Policy Priorities under the Strategy.
- 24 One of the five Targeted Action Plans launched with the Strategy is on community attitudes (**Community Attitudes Plan**). The Community Attitudes Plan sets out key actions to improve

community attitudes towards people with disability to influence behaviour, and details Australian, state and territory government actions to improve attitudes, including the \$2.5 million investment to change pre- and post-qualifications for key professionals.

The Strategy's focus on safety

- 25 The Strategy has a strong focus on people with disability being safe and feeling safe, which recognises that people with disability are more likely to experience violence, abuse, neglect and exploitation, and fare worse in institutional contexts such as group homes and boarding houses where violence may be more common. There are three Policy Priorities focused on safety. The progress against these is measured in the Outcomes Framework. The three Policy Priorities in the Safety Rights and Justice Outcome Area are as follows:
- (a) **Policy Priority 1:** People with disability are safe and feel safe from violence, abuse, neglect and exploitation.
 - (b) **Policy Priority 2:** Policies, processes and programs provide better responses to people with disability who have experienced trauma.
 - (c) **Policy Priority 3:** Policies, processes and programs for people with disability promote gender equality and prevent violence against groups at heightened risk, including women and their children.
- 26 One of the five Targeted Action Plans launched with the Strategy is on safety (**Safety Plan**). The plan sets out key actions to strengthen system design and supports to enable people with disability to receive high quality and safe services. This Targeted Action Plan details Australian, state and territory government actions to improve safety, including the \$2.5 million investment for Commonwealth/state joint projects aimed at reducing the harm of people with disability and improving cross-sector supports.