



**OFFICE OF THE
PUBLIC ADVOCATE**

Australia's ratification of the UN Convention on the Rights of Persons with Disabilities

March 2008

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About the Office of the Public Advocate

The Victorian Public Advocate is appointed by the Governor in Council pursuant to the *Guardianship and Administration Act 1986* (Vic).

The Office of the Public Advocate (the Office) provides advocacy, guardianship and investigation services to people with a cognitive disability. People with a cognitive disability include people with an intellectual disability, a mental illness, an acquired brain injury, dementia and people who are in a coma or otherwise lack the capacity for cognition or communication.

The Office coordinates the Community Guardianship Program and the Private Guardian Support Program, as well as the Community Visitors Program and the Independent Third Person Program. It also has a role in community education, the provision of advice and information and in undertaking research and policy.

The Office represents the interests of people with a disability in Victoria, aiming to promote their rights and dignity and to strengthen their position in society. It is a statutory office, independent of government and government services, and can highlight situations in which people with a disability are exploited, neglected or abused. It is from this perspective that the Office makes comment and suggestions on the review of the UN Convention on the rights of Persons with Disabilities.

Further material on the role of the Victorian Public Advocate can be obtained by consulting the Office's website: www.publicadvocate.vic.gov.au

Overview

The Victorian Office of the Public Advocate (the Office) strongly supports the ratification of the UN Convention on the Rights of Persons with Disabilities (the Convention). This support was indicated via a letter written to the Attorney General by the Australian Guardianship and Administration Council (AGAC) on 3 December 2008.

The Office believes the Convention presents a significant opportunity to further the rights of people with disability in the Australian community. It acknowledges that Australia has made significant inroads to addressing the rights of people with disability. In particular, at the Commonwealth level, important structures and legislation include the *Disability Discrimination Act 1992 (DDA)*, *Disability Services Act 1986 (DSA)*, Human Rights & Equal Opportunity Commission (HREOC), Commonwealth Disability Strategy (CDS). In Victoria, important legislation and policy have included the Charter of Human Rights & Responsibilities Act 2006, the Disability Act 2006, and current Victorian government policies under the Disability State Plan.

Despite these developments, however, important reviews such as the recent evaluation of the CDS and the Productivity Commission report on the DDA (2004) have revealed that people with disability are not enjoying the rights they are entitled to – they continue to be excluded from full participation in society and experience higher levels of poverty. The review of the DDA by the Productivity Commission, for example, revealed that despite the presence of Disability Discrimination legislation, many people with disabilities still experience discrimination and do not seek redress under this legislation. In particular, people with mental illness or intellectual disabilities, people with disabilities in rural regions and people with disabilities from non-English speaking backgrounds and Indigenous Australians with a disability (Productivity Commission, 2004).

Ratification of the UN Convention will enable a stronger focus on the right to equality and to live a life free of discrimination as per Preamble (c) which focuses the work on the interdependence and interrelatedness of all human rights – not specifically disability rights or disability discrimination. The UN Convention provides an important opportunity to bridge civil and political rights with economic, social and cultural rights. It tailors general human rights norms into a coherent set of norms for people with disability (rather than 6 different sets of norms that tend to leave people with disability invisible).

Ratifying the UN Convention will reinforce the three levels of obligation of human rights with specific reference to people with disability – that is, to respect, protect and fulfil rights. It will raise awareness in Australian communities about the rights of people with disabilities through government responses in areas of employment, education and civic participation.

For people with cognitive disability, the importance of protection of rights is particularly important. They frequently lack visibility in society and are often unable to protect their own

rights or strongly advocate for their own rights. OPA has a particular concern for the rights of people with a cognitive disability – which includes intellectual disabilities, psychiatric disabilities, dementia and acquired brain injuries. This is reflected in this submission.

What are the foreseeable economic, environmental, social and cultural effects of implementing the Convention

For people with disability, the Convention provides significant potential to achieve fundamental structural change, albeit over a period of time. That is, the benefits would be realised progressively over the years ahead.

Within this structural change, there lies potential to encourage a more caring and compassionate society. People with cognitive disability are often in the most vulnerable circumstances within society and not in a position to promote their own rights – thus heightening the need for community care and the promotion of rights of people in such situations.

The Convention is both political and symbolic and provides an opportunity to redress the links across poverty, social exclusion and the experience of people with disability. To achieve this, however, it is critical that government takes a lead in the development of tools that will assist in the realisation of the political and symbolic outcomes of ratification.

The Convention has the important objective of making people with disability more visible – both within society and within the treaty system. Through mainstreaming disability into the existing human rights system, there is greater potential for the visibility of people with a cognitive disability.

Research finds that people with an intellectual disability in particular are isolated from the political and social activities of the disability movement.¹ The Convention provides an opportunity to unify and strengthen the inclusiveness of the disability community.

The debate about the rights of people with disability is interlinked to the discourse on diversity / difference in society. It is also linked to the reality that every human being can experience a decrement in health and thereby experience some disability. This is not something that happens to only a minority of people – the experience of disability is a universal human experience. In recognising this, the ratification of the Convention provides the opportunity to mainstream the experience of disability.

¹ Driedger, D. (1989). *The Last Civil Rights Movement: Disabled Peoples' International*. London: Hurst & Company; Ramcharan, P., Grant, G., & Flynn, M. (2004). Emancipatory and participatory research: How far have we come? In E. Emerson, C. Hatton, T. Thompson & T. Parmenter (Eds.), *The international handbook of applied research in intellectual disabilities*. Chichester: John Wiley & Sons Ltd; Shakespeare, T. (2006). *Disability rights and wrongs*. Milton Park: Routledge.

Obligations imposed by the Convention

In signing the Convention, Australia has indicated its good faith to bind itself to the terms of the Convention at a point in the future. Through ratifying the Convention, Australia will be obliged to comply with the articles that are outlined. That is, Australia must satisfy the minimum essential level and deliberately avoid regressive measures.

The Convention – with a thematic focus on people with disability – sets out a detailed code of implementation and spells out how the rights should be put into practice.

Australia will therefore need to satisfy the civil and political rights (set out in Articles 10-23, 29), the economic, social and cultural rights (set out in Articles 24-28, 30), more general obligations regarding national laws, policies and programs (in Articles 3-9), the expectations for implementing and monitoring the Convention at national & international levels (Articles 31-40) and the operational measures (Articles 41-50).

In addition to considering the specific articles, the Commonwealth will need to consider the relationship across state and federal legislation and how to best ensure that Australia meets its obligations under the Convention.

To ensure there is clarity regarding how Australia is interpreting the Convention, OPA supports the need for statements of interpretation in regard to certain Articles in the Convention – particularly in relation to substitute decision making (and in line with HREOC). See next section.

What needs to be done to implement the Convention?

It is important to bear in mind two levels of implementation

- a) ensuring the minimum obligations are in place
- b) a strategy for achieve ‘progressive realisation’ and the broader fundamental structural change critical to ensuring:
 - participation in society (work, education, community, socially)
 - recognition of diversity and disability
 - awareness that people with disability are not the problem, society must accommodate the needs of all people through social and structural change. However there needs to be recognition that part of the issue is also a lack of appropriate specialist supports and services that provide opportunities for people with disability to participate
 - reducing poverty and recognising the link between poverty and disability
 - equitable health options / prospects for people with disability
 - eradicating abuse, exploitation and neglect

- participation of people with disability in developing the policies that will determine the progressive realisation of the Convention

Key strategies to work towards implementation

Strategy / plan to audit legislation to ensure compliance

Recommendation - The Government needs to develop a strategy for auditing legislation relating to disability to ensure it is complying with the Convention.

It needs to ensure that legislation referred to in the convention is in place. For example, legislation to protect people with disability from exploitation, violence and abuse (Article 16).

It would be important to ensure that minimum obligations are met across State and Commonwealth legislative jurisdictions.

To further the broad goals of the Convention and achieve the realisation of the political and symbolic objectives, there would be significant merit in determining a strategy for ensuring greater consistency across state jurisdictions in regard to legislation relating to disability.

Definition of disability

Recommendation - The Office supports HREOC recommendation that there be development and lodging of a policy instrument to clarify Article 1 – that is, a statement of interpretation to clarify that Australia will interpret ‘person with disability’ as a broad and inclusive term in accordance with the definition in the *Disability Discrimination Act 1992*.

The Office also believes the Convention provides a valuable opportunity to base the definition of disability on the WHO International Classification of Functioning – which provides a multi-perspective approach to understanding disability as an interaction between the personal and the environmental.

Equal recognition before the law (Article 12) and Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15)

Recommendation – the Office supports the HREOC and PWD Australia recommendation that a statement of interpretation be developed and lodged to clarify that Australia will interpret this article as permitting substitute decision making as a last resort in appropriate circumstances

The following section outlines specific legislation within Victoria that relates to substitute decision-making and consent to treatment.

- Age of Majority Act

In Victoria the *Age of Majority Act 1977* defines that a person who attains the age of 18 has full legal capacity. However, the law recognises that some persons who are unable to exercise this capacity may be disadvantaged unless there are ways of providing a substitute decision-maker for that person.

In relation to litigation there are provisions in the *Supreme Court Act and Rules*, the *County Court Act and Rules* and the *Magistrates' Court Act and Rules* to enable people to sue and be sued through the appointment of a litigation guardian. The appointment is made by the Court. If such appointments were not made many people who have a disability would be prevented from pursuing litigation or defending litigation because of their disability and thus their recognition before the law is compromised.

Many people who need a litigation guardian are unable to find one. There are laws that provide that a litigation guardian may be responsible for costs should the litigation be lost. Consequently people are afraid to be litigation guardians and so legitimate causes of action for people who have a disability are stymied. This frustrates the equal recognition of people with a disability before the law.

There are no formal guidelines as to how a litigation guardian should act for the person they represent. In order to fulfil the safeguards obligation in Article 12.4, such guidelines must be prepared.

There are some jurisdictions that do not have litigation guardianship rules (such as VCAT) and this effectively prevents people exercising their right to recognition before the law.

- Enduring powers of attorney

Victoria has three types of enduring powers of attorney whereby people can appoint a substitute decision-maker to act for them should they lose capacity. The three types are

- Enduring power of attorney (financial) - *Instruments Act 1958*
- Enduring power of attorney (medical treatment) - *Medical Treatment Act 1988*
- Enduring power of guardianship - *Guardianship and Administration Act 1986*.

These appointments are designed to facilitate a person to appoint a person of their choice to make decisions when they have lost capacity. Such appointments facilitate the ability of people with a disability to be recognised before the law in circumstances where they have lost the capacity to affect such recognition themselves.

There is little in the way of formal supervision of these powers of attorney. However, where an interested party considers that the attorney is not acting in the best interests of the appointor that person may apply to VCAT to revoke the power.

In the light of the Convention and the recent report of the House of Representatives' Committee on Legal and Constitutional Affairs entitled "Older people and the Law", further safeguards against abuse and the implementation of enduring powers that operate nationally should be considered alongside the obligations set out in Article 12.

- Guardianship and Administration

When the *Guardianship and Administration Act* 1986 was introduced in Victoria it was one of three 'rights-based' pieces of legislation that included the *Mental Health Act* 1986 and the *Intellectually Disabled Persons' Services Act* 1986.

The *Guardianship and Administration Act* 1986 permits the appointment of a guardian and an administrator where –

1. a person has a disability, and
2. by reason of that disability they lack capacity to make decisions about either their person and circumstances or about their financial estate, and
3. there is a need.

An appointment cannot be made where there is a way of attending to the needs of the person which is less restrictive of the person's freedom to make decisions for themselves and to act for themselves. The appointment must be in the person's best interests and the person's wishes should be given effect to wherever possible.

Each application for the appointment of a guardian or administrator is made by the Victorian Civil and Administrative Tribunal (VCAT) only after it has held a hearing. The appointments cannot be for more than 3 years and there is an entitlement to a rehearing as of right within one month of the original hearing and, where there is good cause, the appointment can be reassessed once VCAT has given leave. Appeals can only be made to the Supreme Court on a matter of law.

It is submitted that these processes meet the requirements of Article 12.4.

In relation to Article 12.5, the appointment of an administrator may result in the person with a disability being deprived of access to their own property. The *Guardianship and Administration Act* 1986 sets out some guidance for administrators who must act in the best interests of the represented person. It is submitted that the appointment of an administrator is not done arbitrarily and also that the administrator actions in relation to the person's property should not be arbitrary but grounded in a reasoned view as to the represented person's best interests.

- The person responsible to consent to medical and dental treatment

Under the *Guardianship and Administration Act* 1986 where a person who has a disability is unable to consent to medical or dental treatment their 'person responsible' may consent on their

behalf. This is another form of substitute decision-maker for people who have a disability. The provisions relating to the person responsible can be found in Part 4A of the Act.

It is noted that the appointment of the person responsible is not by a Court, nor is the appointment subject to regular review by an independent body. In this regard these provisions do not accord with the obligations set out in Article 12.4.

There are a number of checks in the system. Firstly, the treatment cannot proceed where the patient will regain capacity within a reasonable time. Secondly, the person responsible cannot be a person about whom the person with a disability has objected to their being in this role. Thirdly, the person is likely to be a person either appointed by the person themselves as some sort of decision maker (enduring power of attorney or guardianship) or appointed by VCAT. Otherwise it will be the patient's carer or nearest relative. Fourthly, if an interested party (usually a health professional) considers that the person responsible is not acting in the best interests of the patient they can take the matter to VCAT. Fifthly, VCAT may withdraw the authority of the person responsible and appoint a guardian to make such decisions.

- Other persons who provide medical treatment

The *Guardianship and Administration Act* 1986 has a limited definition of medical treatment. Whilst some things such as first aid or visual examinations are not included in the definition, also omitted from the definition is the provision of pharmaceutical medications.

The person in the street would include the taking of medication as medical treatment. Under this Act medications can be provided on the say so of the medical or dental practitioner. This is not subject to court oversight.

- Authorisation of treatment where there is no-one to provide consent

The *Guardianship and Administration Act* 1986 permits a medical or dental practitioner to provide medical treatment even where there is no consent so long as the practitioner complies with section 42K of that Act. Section 42K requires the provision to the Public Advocate of a notice which sets out the procedure and why the practitioner regards the procedure to be in the best interests of the patient. The Public Advocate receives this notice and checks to see if the notice meets the requirements of the section. If it does not the practitioner is advised and there is no authorisation for the procedure.

The Public Advocate may refer such a matter to VCAT if the notice raised concerns that this was not in the patient's best interests.

Section 42K is not a form of substitute decision-making but is a form of procedural authorisation.

- The provision of non-psychiatric treatment to patients subject to an involuntary treatment order

Under the *Mental Health Act 1986* if a patient, who is the subject of an involuntary treatment order, requires non-psychiatric medical treatment then there are special provisions regarding who may consent to treatment. The Act differentiates between major and non-major medical treatment and sets out a group of people who may consent. This group includes people the patient has appointed themselves to make such decisions, but it also includes the authorised psychiatrist who is treating the patient for their mental illness.

- Medical research procedures

Where a person is unable to consent to medical research procedures the person responsible may provide consent on their behalf. However, if there is no person responsible and the researcher certifies that the medical research procedure is not contrary to the best interests of the patient, the researcher may proceed to provide that procedure. The researcher must provide evidence of their certification to the Public Advocate.

As noted above with section 42K, this is a form of procedural authorisation for the medical research procedure. The procedure provides some checks and balances so that people who have a disability who do not have a person responsible may still participate in research that is not contrary to their best interests.

Such research must have been approved by a human research ethics committee which has specifically agreed that the research may be carried out on people where there is no-one able to provide consent.

It is doubtful if this procedure would comply with Article 15 of the Convention.

Compulsory Treatment (Articles 12, 14 and 15)

In Victoria a person may be subject to compulsory treatment for their mental or physical health. This treatment may be sanctioned under current law by the *Mental Health Act 1986* and the *Disability Act 2006*.

Article 15 requires States Parties to prevent a person from being subject to inhuman or degrading treatment. It may be argued that any treatment which is forced upon a person is inhuman and degrading and so compulsory treatment is outlawed by this provision. Contrary to this position is the argument that treatments that heal or ameliorate the person's condition (physical, psychiatric or psychological) are not degrading but are enabling the person to function as an integrated person within the community.

Underlying these arguments are significant philosophical considerations on the nature of the human person, the nature of health and the exercise of autonomy in circumstances where a person is judged by others as deviating from normative understandings of health and wellness.

In Australia the right to autonomy is not an absolute right. Under the *Mental Health Act 1986* the right is withdrawn where certain criteria are met as set out in section 8(1) of the Act. When the constellation of these criteria apply a person may be ordered to undergo compulsory treatment for their mental illness. For those admitting of the concept of mental illness, such treatment is designed to augment their mental integrity and so is consistent with Article 17 of the Convention. For those who reject this view or who reject the treatment of modern psychiatric practice, compulsory treatment would be disintegrative of the person as it affronts their autonomy and dignity. For this group Article 17 would prevent compulsory treatment as it affronts the integrity of the patient.

It is the view of this Office that mental illness should be treated where this is integrative for the patient. There may be instances where such treatment must be provided to a person against their wishes as the illness is preventing the person from making an integrated decision about their health and best interests. Accordingly this Office supports these Articles but with an understanding that these Articles do not prevent such treatment as a last resort to assist a person's mental or physical health.

Recommendation – the Office supports the HREOC and PWD Australia recommendation that a statement of interpretation be developed and lodged to clarify that Australia will interpret this article as permitting compulsory treatment as a last resort in appropriate circumstances

Right to life (Article 10)

The Office supports the comments made in the submission by the Australian Guardianship and Administration Council (AGAC) in regard to Article 10 – indicating its consistency with Australian values and laws. AGAC stated:

The ability to ensure effective enjoyment by persons with disability on an equal basis with others has strong links to the fundamental principle common across Australian guardianship jurisdictions of promoting the best interests of the person who is a subject of an application. It is also consistent with the principle of promoting the freedom of decision and action for persons with disabilities. Such principles, which are also relevant to other provisions such as Article 19, are embodied in ... the *Guardianship and Administration Act 1986* (Vic), section 4(2).

It is important to affirm that an inherent right to life does not translate to 'life at all costs', as was established in *BWV* [2003] VCAT 121 and *Gardner; re BWV* [2003] VSC 173 which considered the sustained administration of artificial hydration and nutrition and determined, in line with English authorities, that there must be a balance between the principles of the sanctity of life and the right to self determination.

In the Victorian Civil & Administrative Tribunal decision, the Tribunal stated:

Medical treatment may be considered unwarranted if it can provide no medical benefit to the patient, that is if it has no medical purpose, or if the treatment is reasonably seen to be disproportionate to the results that can be expected

And in the Victorian Supreme Court decision, his Honour Justice Morris who made the important distinction between medical treatment and treatment that will unduly prolong the natural process of dying.

The Office supports AGAC's endorsement of Article 10 and its the cautionary note that necessary measures to ensure effective enjoyment include the ability to refuse (whether by means of substitute consent or direct consent) burdensome and futile treatments at the end of one's life.

Respect for home and family (Article 23)

- Sterilisation of children with disability

The sterilisation of children who have a disability was highlighted in 2007 by the American case of parents who sought to keep their child with an intellectual disability as a child and who sanctioned various health interventions, including sterilisation, to achieve this. In Australia this issue is governed in part by the common law (see the High Court case of *Re Marion*) and various Acts of Parliament by Australian states. The Standing Committee of Attorneys-General is looking at nationally consistent legislation outlawing this practice except in extremely narrow circumstances relating to the health of the child and authorised by a state body such as a court or tribunal.

- Protocol for Special Medical Procedures (Sterilisation)

The Office supports the statement made by AGAC in its submission to the National Interest Analysis regarding the Protocol for Special Medical Procedures (Sterilisation) that was endorsed by the Council in 2003. In its submission, AGAC explains that

The aim of that protocol is to promote consistency in procedures and:

- (a) Promote, enhance and protect the best interests of the person.
- (b) Promote positive outcomes for the person.
- (c) Give the people involved or concerned in the decision an opportunity and forum to raise and discuss all relevant issues.
- (d) Ensure that alternative and less invasive procedures have been tried or considered.
- (e) Ensure that sterilisation is a last resort, after other options have failed to produce outcomes satisfactory to the person.

- (f) Ensure clarification of and delineation between what is in the best interests of the person and what is in the interests of the person's care giver/s.

One of the platforms of the protocol is to ensure that a person who is the subject of an application for sterilisation has separate representation in any forum.

The protocol does not extent to the Family Court who also have jurisdiction regarding the sterilisation of children with disabilities.

Broaden the Commonwealth Disability Strategy

The Office believes that the Commonwealth Disability Strategy could provide the ideal platform from which to plan an implementation framework for ratification of the Convention. This would be particularly valuable in striving to achieve progressive realisation of the economic, social and cultural rights of people with disability.

In broadening the Strategy, some of the following considerations might be made.

- Training strategy

The CDS could include a strategy to work towards achieving the goals set out in the Convention around training needs and raising awareness. These include:

- Article 4.1(i) – To promote the training of professionals and staff working with persons with disabilities in the rights recognised in the present Convention so as to better provide the assistance and services guaranteed by those rights
- Article 8 (a) – To raise awareness through society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; (c) to promote awareness of the capabilities and contributions of persons with disabilities
- Article 9.2(c) – to provide training for stakeholders on accessibility for people with disability
- Article 13.2 – to promote training for those working in the field of administration of justice, including police and prison staff
- Article 20(c) – to provide training in mobility skills to people with disability and to specialist staff working with persons with disabilities
- Article 24.4 – appropriate training for all staff working in all levels of education in the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
- Article 25(d) – training for health professionals

- Article 26.2 – training for professionals and staff working in habilitation and rehabilitation
- Article 27.1(d) – availability of continuous training for people with disability in employment

- Communications strategy

The development of a communications strategy would provide an important foundation for working towards obligations to raise awareness of capabilities of people with disability and combat stereotypes. Relevant articles include:

- Article 8 – Awareness raising
- Article 24 – Education
- Article 21 – Access to information
- Article 25 – Health

- Education strategy

The development of an education strategy would provide the basis from which Australia could work towards ensuring an inclusive education system at all levels – thus contributing to the development by persons with disability of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.

Such a strategy would need to be interlinked and integrated with all relevant strategies in the education system.

A strategic plan in education would be an important approach to achieving the expectations set out in Article 24 (Education).

- Health strategy

The development of a health strategy would be critical for ensuring that health professionals provide the same range, quality and standard of free and affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs.

The Victorian Community Visitor Program has highlighted the limitations of the health system for many of the most vulnerable people in the community. For example, the Disability Services Annual Report 2007 revealed that people have been refused treatment at public hospitals, experienced long delays in accessing treatment and had difficulties accessing preventative dental care (p.15).²

² Community Visitor Annual Reports can be accessed at the Office's website – www.publicadvocate.vic.gov.au.

A health strategy should also seek to ensure that people with disability have access to health services needed specifically because of their disability.

The development of a health strategy – as part of the CDS and integrated into mainstream health strategy – would be a significant step towards achieving the expectations set out in Article 25 (Health)

- Employment strategy

An employment strategy aimed at achieving the obligations set out in Article 27 (Work and employment) would be an important component of a revised approach to the CDS.

A report by the Human Rights and Equal Opportunity Commission (HREOC) finds that people with disability face higher barriers to participation in employment than many other groups in Australia. HREOC reports these barriers include concern about costs involved in accommodating for disability in a workplace and misconceptions of disability that may be held by employers, for example the view that people with disabilities are less productive or will lodge workers' compensation claims.³

The CDS already has a focus on promoting the participation of people with disability in work and employment. The evaluation of the CDS in 2006, however, revealed that rates of employment of people with disability in the workforce were not increasing, and in some instances (such as the Australian Public Service) decreasing.⁴ In 2003, 53.2 per cent of people with disabilities participated in the labour force as compared to 80.6 per cent of those without disability.⁵

To create a labour market and work environment that is open, inclusive and accessible to people with disability, Australia would require a disability employment strategy that aims to directly address the barriers that currently exist.

- Justice strategy

To achieve access to justice for people with disability, the inclusion of a justice strategy in a revised CDS would be important. The key articles that this strategy would cover include:

- Article 12 – Equal recognition before the law
- Article 13 – Access to Justice
- Article 14 – Liberty and security of the person

³ Human Rights and Equal Opportunity Commission, *Workability 1: Barriers*, 2004, p 13.

⁴ Erebus International, Report to the Department of Families, Community Services and Indigenous Affairs, Report of the Evaluation of the Commonwealth Disability Strategy (CDS), September 2006, p.24.

⁵ Quoted in Report of the Evaluation of the CDS, p.24.

One issue to consider within a justice strategy might be further exploration (and possible) extension of state programs that aim to protect and promote the interests of people with disability (cognitive) when they are in the police interview process in relation to a crime, for example the Independent Third Person program (ITP) of OPA. The person with a disability may be an alleged offender, a victim or witness to a crime. The independent third person is a trained volunteer whose primary role is to facilitate communication between the person with disability and the police.

The objective of a justice strategy would be to ensure that people with disability (particularly with a cognitive disability) involved with the justice system experience effective access to justice on an equal basis with others.

- Developing and providing a responsive service system

There is a need for a strategy that accounts for obligations specific to housing and support. There is an identified shortage of appropriate housing and support for people with disabilities, in particular people with high, complex and changing needs⁶ and a recognition that the demand for specialist housing and support is increasing and current service responses are not able to meet the current demand, nor are they equipped to adequately plan or provide for the increasing future demand.⁷

Article 19 of the Convention requires that State Parties take appropriate measures to ensure people with a disability are able to live in the community, have choices in relation to housing commensurate with other community members and have access to the full range of supports and services to enable this.

To meet this obligation the Office recommends that there be a national commitment to closing residential institutions and developing appropriate community based support services particularly for people in need of intensive support that is long term.

Article 29 of the Convention requires that persons with disabilities have an adequate standard of living and social protection. The Office recommends national promotion of programs such as the Community Visitor Program in Victoria that work to ensure that where persons with disabilities rely on services to provide their housing and support, that these services meet appropriate standards and legislative requirements. Also, in support of this Article, the Office recognises the need for ongoing research and policy development to address issues of abuse of girls and women with disabilities and development of responsive services to protect this vulnerable group. In addition, under this Article, the Office notes that there is little national recognition of the link between poverty and disability and a need for research that raises this issue nationally.

⁶ Bigby, C & Fyffe, C (2007) (eds) Proceedings of the Second annual roundtable on Intellectual Disability Policy. LaTrobe University, Melbourne

⁷Victorian Auditor-General, (2008). *Accommodation for people with a disability*. Melbourne: Victorian Auditor General. Victorian Government Printer, Melbourne

Build research capacity

The Convention requires that research and development is promoted on a range of issues relating to people with disability. A key consideration for Australia in implementing the Convention relates to how it will build its research capacity on disability issues to meet obligations relating to research and to ensure evidence based response to other obligations.

Some articles make explicit reference to the need for research capacity and others are implicit in their expectation that research and understanding will form the basis of how specialist services and support are developed and evolve. For example:

- Article 4(f) – requires that promote research & development of universally designed goods, services equipment and facilities
- Article 4(g) – requires that promote research & development and provide availability and use of new technologies including information and communications technologies, mobility aids, etc.
- Article 16 – providing responses to prevent exploitation, neglect and abuse of people with disability

A key strategy to achieve this increased research capacity would be the creation of a national disability research institute that creates strong linkages across both the research community and the disability movement.

Costs of implementing the Convention

Australia largely meets the minimum obligations set out in the Convention.

Costs would therefore be minimal and related to commitments the Australian Government is willing to make to achieve progressive realisation of the economic, social and cultural rights contained within the Convention.