



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

Tenth session

Summary record of the 107th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 September 2013, at 3 p.m.

Chairperson: Ms. Cisternas Reyes

Contents

Consideration of reports submitted by States parties under article 35 of the Convention
(*continued*)

Initial report of Australia

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 35 of the Convention *(continued)*

Initial report of Australia (CRPD/C/AUS/1; CRPD/C/AUS/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Australia took places at the Committee table.*
2. **Mr. Woolcott** (Australia), introducing his country's initial report (CRPD/C/AUS/1), explained that, since elections had been announced, the Government had assumed a caretaker role and the delegation would not be able to answer questions on future government actions or policies. The Disability Discrimination Commissioner, Mr. Graeme Innes, who worked within the national human rights institution, namely the Australian Human Rights Commission, was present as a member of the delegation but would speak in an independent capacity.
3. Australia had a federal constitutional system, which meant that in practice there were nine governments that shared responsibility for the implementation of the Convention. All nine had agreed to the National Disability Strategy, the foundation of the country's efforts to advance disability rights, which were in turn enshrined in the 1992 Disability Discrimination Act. The governments were currently constructing a new national disability insurance scheme, DisabilityCare Australia, which had been launched in July 2013 and would be fully rolled out by July 2019. The scheme would represent a State investment of 19.3 billion Australian dollars and would provide support to about 460,000 persons. Its aim was to enable more persons with disabilities to participate in the community and the economy while empowering them to choose the type of support they wanted.
4. Employment was essential to well-being, and the Government's Disability Employment Services programme not only supported jobseekers with disabilities, but also built disability awareness among employers and helped them bear the costs of making adjustments for employees with disabilities. To engage persons with disabilities and their representative organizations, the Government funded 13 national disabled persons' organizations, including ones representing specific groups, so that they could contribute to policymaking. The Government had also established the broad-based National People with Disabilities and Carer Council to advise on the interrelated issues of disability and the carer relationship and on the implementation of government strategies and policies affecting persons with disabilities.
5. The Government had set new targets for increasing access to specialist services and support for indigenous persons with disabilities and was providing leadership training for indigenous disability advocates. It was proud to support the First Peoples Disability Network Australia, the only formal, nationally-constituted organization representing indigenous persons with disabilities in the world. Australia was also active in protecting and promoting the rights of persons with disabilities in developing countries through its aid programme, and its work in disability-inclusive development had been recognized at the international level.
6. Much had been accomplished in removing barriers so that persons with disabilities in Australia could enjoy their rights on an equal basis with others, although more work was needed, especially to improve the economic security and social inclusion of persons with disabilities and to safeguard their autonomy and right to choose, as well as to address the challenges facing indigenous persons with disabilities. The evaluation of existing measures was essential for continuing to advance the rights of persons with disabilities, and his delegation therefore welcomed the opportunity to appear before the Committee.

7. **Mr. Innes** (Disability Discrimination Commissioner, Australia) said that, as could be expected in a developed country, human rights were reasonably well protected and respected in Australia. The Australian Human Rights Commission had good working relations with the Government and with civil society and focused on areas for improvement. The Commission was responsible for administering the Disability Discrimination Act, and his role as the Disability Discrimination Commissioner included educating the public, raising awareness and advising the Government. The Commission looked forward to the dialogue with the Committee and would encourage it to explore the possibility of using technologies, such as videoconferencing and voice-over-Internet Protocol services, to facilitate cooperation with national human rights institutions.

8. The Government had reported on the progress made in areas such as access to public transport, premises and services and with the national disability insurance scheme. In addition, Parliament had opened inquiries into forced sterilizations, and other organizations had recently announced inquiries into security and the use of restraints on persons with disabilities. Progress in other areas, particularly employment, access to justice and violence against women with disabilities, however, had been less evident.

9. **Ms. Maina** (Country Rapporteur) said that she wished to raise a number of issues that were particularly pertinent for the Committee's dialogue with Australia. It was apparent from its laws and policies on matters such as health, rehabilitation, capacity assessment and education that Australia still used the old-fashioned medical model of disability instead of a rights-based one. That was reflected in the practices, such as the use of physical restraints, pens and isolation rooms, applied in respect of children and young persons with disabilities in both special and mainstream schools. Persons with disabilities were being arbitrarily detained and subjected to involuntary treatments, including psychosurgery and electroconvulsive therapy. There was also an unregulated use of restraints and behaviour modification.

10. It was clear from the report that the State party's interpretative declaration on articles 12, 17 and 18 was hindering the full implementation of the Convention, since the provisions concerned intersected with so many of the other articles, including articles 1, 2, 5, 7, 14–16, 19, 21 and 23–29. The implementation of article 2, for example, had been affected because the definitions of disability in legislation still used degrading terms to describe persons with disabilities or focused on their lack of capacity. Disabled persons' organizations, which had not been consulted when the declaration was drafted, had expressed concern about the human rights violations arising from it and the lack of consultations on the possible withdrawal of the declaration, especially with regard to article 17. They wondered why their Government would want to deny them the benefit of the article's provisions on protecting the integrity of the person.

11. A joint parliamentary committee on human rights had reportedly considered the compatibility of 11 legislative instruments with the Convention, finding approximately 5 to be compatible and the other 6 not. The Committee would like to have detailed information on the contents of all the instruments in question to assess the disability rights situation in Australia.

12. There had been a number of government initiatives to advance the rights of persons with disabilities, such as the National Disability Strategy, DisabilityCare Australia, the disability advocacy framework, the definition of the statutory duties of the Disability Discrimination Commissioner and the appointment of the National Children's Commissioner. Australian disabled persons' organizations claimed, however, that the initiatives failed to conform to the Convention in that they were being conducted within the current guardianship framework rather than as part of a comprehensive review of substitute decision-making. The primary focus was still on a person's capability to perform actions rather than on how that person could be supported to act or make decisions on his or her

own. The use of augmentative and alternative modes of communication, as well as of sign-language and tactile communication, was also not being effectively promoted and monitored to prevent substitutive communication. There was furthermore no effective national framework for monitoring the implementation of the Convention and involving persons with disabilities and their representative organizations in the process, as required by article 33.

13. It should be noted that, in July 2013, the Senate committee inquiring into the forced and coerced sterilization of persons with disabilities had recommended only the regulation, rather than the prohibition, of such sterilizations, disregarding the recommendations made to Australia by other United Nations human rights treaty bodies. Government policies for their part seemed to discriminate against indigenous persons with disabilities and persons with psychosocial disabilities. Owing to a lack of accessible and affordable shelters, a large proportion of the latter group and of young indigenous persons with disabilities were in prison despite never having been convicted, and there were no mechanisms for getting them out of prison and into inclusive habilitation and rehabilitation programmes. In 2013, the Government had not advanced the 2012 human rights and anti-discrimination bill, which would have addressed the multiple discrimination faced by indigenous persons with disabilities, through Parliament. Meanwhile the Government's proposed national framework for reducing the use of restrictive practices was based purely on the medical model of disability and focused on when and how to use restraints rather than seeking to prevent their use.

Articles 1–10

14. **Mr. Tatić** said that the Committee would like to have more information on the involvement of persons with disabilities in DisabilityCare Australia and on the situation of the deaf society in Adelaide and its building. Information on the outcomes of the complaints lodged under the Disability Discrimination Act and on the review and implementation of the accessibility plan would also be appreciated.

15. **Mr. Kim Hyung Shik** asked whether the existence in Australia of different definitions of disability had posed problems in compiling data and implementing the Convention, and which definitions had been used for compiling the statistics presented in the report. It was encouraging to learn that persons with disabilities could lodge complaints under the Disability Discrimination Act, and he would like to know how many indigenous persons with disabilities had actually done so and won in the past five years.

16. **Mr. Ríos Espinosa** said that, given the substantial resources allocated for the promotion and protection of the rights of persons with disabilities in Australia, he was perplexed by the State party's interpretative declaration, which virtually functioned as a reservation. The preamble to the Convention recognized the need to promote and protect the human rights of all persons with disabilities, including those who required more intensive support. Given that the declaration did not respect that principle, he wondered whether the State party would consider withdrawing it.

17. **Ms. Degener** asked what was preventing Australia from establishing legal remedies for persons with disabilities who suffered intersectional discrimination, particularly women and indigenous persons with disabilities, and why the serious situation with respect to the violence and abuse suffered by some women with disabilities, especially those who belonged to indigenous groups and those who were institutionalized, had not been adequately addressed. She wished to know what opportunities were available for children with disabilities to make their voices heard. Noting that children with disabilities were at higher risk of being subjected to corporal punishment, she asked why the State party had not yet prohibited corporal punishment throughout its territory and in all settings.

18. **Ms. Peláez Narváez**, expressing concern about the discrimination suffered by women and children with disabilities in Australia, asked what measures the State party was taking to implement the recommendations made by the Committee on the Rights of the Child in 2012 and by the Committee on the Elimination of Discrimination against Women in 2010 in that regard.

19. **Mr. Lovász** said that the establishment of DisabilityCare Australia, while welcome, should be viewed as a first rather than a final step. He asked whether the World Health Organization (WHO) International Classification of Functioning, Disability and Health had been taken into account when establishing the new scheme. He wished to know whether the functions of the government bodies referred to in paragraph 17 of the State party's report included imposing fines for violations of anti-discrimination legislation. It would be interesting to learn whether the five-year limitation on exemptions from accessibility standards applied to sectors other than transport and to hear more about the findings of the recent reviews of the Transport Standards and Education Standards.

20. **Mr. Langvad** asked in what circumstances legislation on persons with disabilities applied to refugees and immigrants and whether they were provided with sign-language interpretation and other support enabling them to apply for residency in Australia. It was difficult to understand why certain sectors of society were not protected from discrimination on the ground of disability. He asked what forms of support the Government provided to disabled persons' organizations, especially to those representing indigenous persons and children with disabilities.

21. **Ms. Quan-Chang** asked how the Australian Human Rights Commission helped indigenous persons with disabilities, particularly women and children, to seek reparation for any intersectional discrimination they suffered, particularly when they lived in isolated or remote areas.

22. **Mr. Buntan** asked what support and protection was available for immigrants with disabilities who were not Australian citizens. He commended the State party for the progress it had made regarding accessibility and enquired whether it had created any tools to measure that progress. Lastly, he wished to know the rationale for the recent legislation that regulated, but did not fully ban, sterilization on the basis of disability.

23. **Mr. Ben Lallahom** asked whether the National Children's Commissioner addressed issues concerning children with disabilities, or whether she focused mainly on violence against children as reports had indicated.

24. **The Chairperson**, speaking in her personal capacity, asked what progress had been made in replacing the existing medical model of disability with a social and human rights-based one. She wished to know how the needs of indigenous persons with disabilities and persons with disabilities who did not speak English were addressed in the State party's National Disability Strategy and to what extent those persons participated in its implementation. She wondered what steps were being taken to mainstream the perspective of children with disabilities, especially those belonging to indigenous groups, and to implement the recommendation made by the Committee against Torture to impose an absolute prohibition on corporal punishment. Lastly, she enquired if Australia had a national mechanism for the prevention of torture that was competent to address issues relating to persons with disabilities.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

25. **Mr. Innes** (Disability Discrimination Commissioner, Australia) said that 48 per cent of the nearly 1,000 complaints lodged under the Disability Discrimination Act each year were resolved by conciliation. Of those, 62 per cent resulted in successful outcomes. Some 2 per cent of complaints were lodged by persons who identified themselves as Aboriginal

or Torres Strait Islander people. The review of the Transport Standards was still under way; the findings were therefore not yet available. Fines were not imposed for breaches of any anti-discrimination law. The five-year limitation on exemptions from accessibility standards applied to all types of accessibility standards not just the Transport Standards. The Australian Human Rights Commission sent conciliation officers to remote areas to help the residents file complaints and also used other means to communicate with them.

26. **Mr. Bouwhuis** (Australia) said that the interpretative declaration made by Australia conveyed the State party's understanding of the Convention and was therefore different from a reservation in that Australia remained a party to all articles of the Convention. Any decision to review or withdraw the declaration would be for the incoming government soon to be elected. As Australia had a common law system, there was no single piece of legislation defining disability; rather, different laws included different definitions according to the purpose of each law. Nevertheless, evidence of a transition from a medical to a social model of disability was to be seen in the National Disability Strategy and in recent legislation and programmes such as DisabilityCare Australia, which did indeed take account of the WHO International Classification of Functioning, Disability and Health.

27. **Mr. Lewis** (Australia) said that persons with severe intellectual or psychosocial disabilities had been enrolled in the Personal Helpers and Mentors Programme not solely on the basis of a medical diagnosis, but rather on the basis of test scores indicating the extent to which they felt affected by their disabilities. A subsequent assessment had shown that 95 per cent of those with high test scores, indicating a severe impact, were later diagnosed with a medical condition. DisabilityCare Australia clearly employed a needs-based approach to support for persons with disabilities, whose needs were determined by a functional assessment of the impact of their disability on their daily activities. A separate assessment tool was used for children, which included questions relevant to the child's age, context and developmental stage. DisabilityCare Australia would supplement rather than replace other support systems, a broad range of which existed.

28. **Mr. Woolcott** (Australia) said that all governments in Australia recognized the importance of reducing the use of restrictive practices in disability services and had jointly developed a draft national framework for achieving that objective.

29. **Mr. Lewis** (Australia) said that the use of restrictive practices had long been an issue of concern, and that many alternatives had been tried over the years in an attempt to be as humane and inclusive as possible. The draft national framework was still open for comment by citizens and organizations of persons with disabilities, whose views would be taken into consideration.

30. **Mr. Woolcott** (Australia) said that the Human Rights Framework announced in April 2010 outlined the key measures to be taken to protect human rights, which included human rights education, the establishment of a joint parliamentary committee on human rights, and the development of anti-discrimination law and a national human rights action plan. The Framework did not include a human rights act or a charter of rights, as many citizens had been concerned about the consequences of such an act or charter in view of the country's common law history. A new human rights action plan had been adopted in December 2012, however. Five bills had been considered by the joint parliamentary committee on human rights and deemed compatible with the Convention. The other bills and instruments considered by the committee had been deferred for further study, but no finding of incompatibility had been issued.

31. **Mr. Bouwhuis** (Australia) said that the relevant legislation and standards required all school-age children to be enrolled in a safe and supportive school. Corporal punishment was not endorsed, and most states and territories had explicitly banned it or removed legislative provisions allowing the use of reasonable chastisement by persons in loco

parentis. Complaints of excessive use of force against children could be filed under the Disability Discrimination Act or brought before the Australian Human Rights Commission.

32. **Mr. Lewis** (Australia) said that the DisabilityCare Australia initiative was and would continue to be shaped by consultations with persons with disabilities, their families and carers and by feedback from individuals, organizations and experts. The board of DisabilityCare Australia, which was at arm's length from the Government, received independent advice on delivery of the scheme from an advisory council. The board must include persons with disabilities, carers and persons experienced in service delivery in rural and remote areas, and over half the members of the advisory council were persons with disabilities.

33. The Government provided annual funding of almost 2.5 million Australian dollars to 13 national disabled persons' organizations that were accountable to their members and represented member views to the Government.

34. **Ms. Sherburn** (Australia) said that, for data collection purposes, the Australian Bureau of Statistics identified persons with disabilities by asking about limitations, restrictions and impairments that lasted for a minimum of six months. That approach was in conformity with the WHO recommendations on definitions of disability and health. Data would also soon be collected on school students with disabilities, including those without a clinical diagnosis, by recording whether students had a disability as defined in the Disability Discrimination Act or were provided with adjustments under the relevant legislation.

35. **Mr. Bouwhuis** (Australia) said that, prior to ratification of the Convention, the Government had reviewed national legislation and common law protections, concluding that the necessary legislative framework was already in place and complied with the Convention. Nonetheless, a number of amendments had been made to legislation in various areas. The Disability Discrimination Act prohibited discrimination in areas including employment and implementation of federal laws and programmes. A bill to consolidate all legislation on disability into one act had been drafted but needed further work if it was to be considered.

36. **Mr. Lewis** (Australia) said that the Disability Standards for Accessible Public Transport applied to most forms of public transport and had facilitated the gradual removal of barriers. A review of the Transport Standards in 2011, which was performed by an independent consultant and included a nationwide discussion, had resulted in 15 recommendations, commendation of the progress achieved and a suggestion to undertake further research in certain areas. The next review was already under way.

37. The Disability (Access to Premises – Buildings) Standards 2010 were designed to ensure that equal access was provided to all new and renovated public buildings and buildings for which planning permission was required. They incorporated technical standards to ensure that equal access was considered at the planning stage and provided for adaptations such as larger lifts and sanitary facilities and increased wheelchair seating in entertainment establishments. The Government had allocated 5 million Australian dollars to make public buildings accessible, which would be matched by local government funding. Projects funded thus far included the construction and refurbishment of social and cultural infrastructure, leisure facilities and parks, and the installation of ramps to public toilets.

Articles 11–20

38. **Ms. Maina** asked whether, in view of the interpretative declaration made by Australia, the Government considered that it was obliged to fully implement articles 12, 17 and 18 of the Convention. The reports before the Committee gave cause for concern in that regard. They referred, for example, to the continued practice of forced treatment and a lack

of recognition of the need to obtain consent to treatment from persons with disabilities. Furthermore, no information had been provided by the State party concerning the use of augmentative and alternative modes of communication that could facilitate supported decision-making. The delegation should state what action would be taken to eliminate practices that were not in compliance with the Convention and ensure the full implementation of the three articles in question.

39. **Ms. Degener** said that, like other members of the Committee, she was concerned by reports that forced, involuntary or coerced sterilization of women and girls with disabilities took place in Australia and that legislation was planned merely to regulate such sterilizations, rather than prohibit them. Moreover, as she understood it, the inquiry into the matter had recommended that the laws and procedures applicable in cases where persons with disabilities were considered not to have capacity to consent to treatment should allow sterilization to take place. It appeared that the interpretative declaration made by Australia was indeed a barrier to the full implementation of the Convention, and the Government should consider withdrawing it.

40. **Ms. Peláez Narváez** said that reports from civil society organizations indicated that some Australian courts had awarded custody of the children of women with disabilities to the father in cases where the men concerned had perpetrated domestic violence against the mother. She asked what was being done to rectify the situation and ensure that all court decisions on child custody were consistent with the Convention. Approximately 30 to 50 per cent of the women in prison in the State party were women with disabilities. She wished to know what social programmes were available to those women and whether they were able to participate in all activities offered to inmates. The Committee had been informed that a number of cases of rape of women with disabilities in institutions had not been fully investigated. She asked why full police investigations had not been carried out in those cases and how women and girls in institutions were protected from abuse.

41. **Mr. Langvad** said that lawyers were often in a position where they had to determine the legal capacity of persons with disabilities. He would appreciate information on the training provided to lawyers, judges and other relevant persons to ensure that they fully understood the issue of legal capacity as it related to persons with disabilities and acted to protect their human rights.

42. He asked how it was ensured that appropriate housing was available to persons with all types of disability and how the percentage of accommodation required for persons with disabilities was calculated. There being no institutions in Tasmania, he wondered what existed in their place. He also wished to know whether persons with disabilities had the right to choose where they lived, even if they depended on substantial support, and whether they were guaranteed the continuation of support after moving to another part of the country.

43. **Mr. Ríos Espinosa** said that the State party's interpretative declaration was in practice a reservation and appeared to be a way to avoid stating that it did not wish to comply with the Convention. Aboriginal and Torres Strait Islander people, including some with disabilities, who were deemed to lack legal capacity and were thus unable to stand trial often spent their lives in prison, where they were liable to suffer human rights violations and were at risk of torture or other cruel treatment. He wished to know how the Government was addressing that situation and whether it was considering immediate measures to ensure that the persons concerned would finally be afforded due process.

44. **Ms. Quan-Chang** expressed concern that almost half the persons detained without trial in the State party were indigenous persons, many of them with disabilities. She noted the disparity between mental health laws, some of which permitted deprivation of liberty on the ground of psychosocial or intellectual disability, and asked whether the State party

intended to reform and harmonize mental health legislation to ensure that it complied with the Convention.

45. **Mr. Buntan** said that, in response to his earlier question about progress regarding accessibility, he would like to hear more about information and communication. Key indicators of achievement would also be helpful. He asked whether the State party had a disaster risk reduction plan that included persons with disabilities as full stakeholders and whether there were long-term plans to review the State party's position on its interpretative declaration. Lastly, he expressed concern that persons with psychosocial disabilities were not always viewed as enjoying full legal capacity.

46. **Mr. Al-Tarawneh** said that he wished to highlight the increasing number of persons with disabilities who were placed in institutions and asked what action the State party intended to take in that regard. He also wished to know how the issue of disability would be addressed in the State party's report on the Millennium Development Goals. Information on whether prisoners with disabilities were included in all prison activities and were provided with appropriate accommodation would be appreciated.

47. **Mr. Ben Lallahom**, noting that a number of services for persons with disabilities were under regional control, asked whether that resulted in geographical imbalances in the availability of services.

The meeting rose at 6 p.m.