**Human Rights Committee: Questionnaire on the rights of persons with disabilities living independently and being included in the community**

**Australia’s Response**

**1. Does the constitution or national or local legislation, including civil and criminal law, of your country include provisions to avoid institutionalization and promote deinstitutionalization through, for example:**

1. Prohibiting forced institutionalization or deprivation of liberty on the basis of disability or diagnosis, condition or impairment
2. Banning presumption of “dangerous” to self or others on the basis of disability, diagnosis, condition or impairment
3. Ensuring an array of options under social protection schemes to choose where to live, and thus avoiding institutionalization in homes, care centres or other segregated settings;
4. Ensuring the right to choose whom to live with, avoiding thus forced institutionalized or any other form of forced living arrangement
5. Considering access to the availability of resources for supported decision‑making processes for adults, providing the person concerned the opportunity to choose the kind of support desired, and
6. Providing for accessibility, physical and for communication and transportation, and to make all services for the general population also available for persons with disabilities, on an equal basis with others.

The Australian Government is committed to improving the lives of all people with disability, including ensuring people with disability have access to supports that will allow them, their families and carers to participate as valued members of their communities. The Australian Government is working closely with state and territory governments to achieve this through the National Disability Strategy 2010-2020.  The Strategy provides a 10-year national policy framework for all levels of government to improve the lives of people with disability, including improving access to buildings, transport, justice, education, health care services, and employment.  A central outcome of the Strategy is to ensure people with disability, their families and carers have access to a range of supports to assist them to live independently and actively engage in their communities.

The Strategy commits to a range of Areas for Action designed to achieve this outcome. These action areas include:

* adopting sustainable funding models and service approaches that are person-centred and provide information, choice and control to people with disability, including the NDIS
* continuing to develop innovative and flexible support models for people with high and complex needs
* collaborating with providers of universal personal and community support services to improve access for people with disability, and
* promoting and sustaining community support networks which provide information and support to families and carers.

Australian governments are committed to maximising opportunities for people with disability to live independently and participate in the economic, social and cultural life of the community. The Australian Government supports the principle that all people with disability should have the same choices and opportunities in their lives as the broader community.

*Housing*

Australian governments are working to increase the provision of accessible and well‑designed housing, including mainstream housing and supported accommodation, in order to enable people with disability to have individual choice and freedom over where they live. In Australia, there is a trend that is resulting in many people with disability moving out of institutional accommodation.

* In 2009, approximately four per cent of Australians with disabilities (158,200 people) were living in ‘institutions’ (hospitals, homes and other cared accommodation for the aged).
* Since 2003 there has been a decrease of more than 25 per cent in the number of people with disability in institutional accommodation.
* Over that period, there has been a 45 per cent growth in accommodation in other community settings.

*Supported decision-making*

Australia strongly supports the rights of people with disability to exercise their legal capacity and recognises that, in some cases, people with disability may require support in exercising that capacity. The Australian Government has commissioned an inquiry into whether there are Commonwealth laws that deny or diminish equal recognition of people with disabilities as persons before the law and their ability to exercise legal capacity. The inquiry is due to report in August 2014.

*Accessibility*

Prohibitions on disability discrimination are well-established in Australian law both at the Commonwealth and State and Territory levels. At the Commonwealth level, the *Disability Discrimination Act 1992* makes it unlawful to discriminate in a number of areas, such as employment, education, the provision of goods and services and facilities, accommodation and the implementation of federal laws and programs. The *Disability Access to Premises Building Standards 2010* (Premises Standards) and the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) are made under the *Disability Discrimination Act 1992* (Cth). The Disability standards give further precision to the rights and obligations under the Act in specific circumstances, and provide greater certainty about how to comply with the Disability Discrimination Act.

The Premises Standards set technical design specifications to assist developers in ensuring that people with disability have dignified access to, and use of, buildings. The Premises Standards were formulated after extensive consultation, over a ten year period, between state and territory governments, industry, community and disability groups.  Improving building access gives more people with disability the opportunity to access employment, education and services, and to connect with and participate in the broader community. The technical requirements of the Premises Standards are mirrored in state and territory building law.

The Transport Standards apply to: trams; trains; buses and coaches; taxis; ferries; and aeroplanes. The Transport Standards have helped to facilitate the progressive removal of discrimination experienced by people with disability in accessing public transport in Australia. The Standards also have been effective in encouraging investment in accessible public transport and infrastructure.

The disability standards each contain a provision setting out a review process. The relevant Minister, in consultation with the Attorney-General, must review the effectiveness of each of the disability standards in achieving their objects within 5 years after they take effect; and there must be a subsequent review every 5 years after the initial review. These reviews must also consider any necessary amendments to these Standards.

**2. Does your country have a plan or program that provides for, inter alia, the following services to support community living for persons and disabilities?**

The National Disability Insurance Scheme (NDIS), currently being trialled in seven locations around Australia, will reform the way Australians with disability are supported. It will provide participants with individual funding packages with which they can choose the services and providers they wish to access. This supports choice and control for people with disability. It is not means tested.

The NDIS will enable people with disability to access necessary supports based on their functional needs rather than on a specific diagnosis. The supports provided will vary in nature as they will be tailored to each person’s individual needs.

To be eligible for participation in the NDIS, a person must have an impairment that is, or is likely to be, permanent and which results in them having a substantially reduced capacity to undertake activities of daily living.

The first stage of the NDIS began in the Hunter area in New South Wales (NSW), the Barwon area of Victoria, throughout South Australia and Tasmania, (the latter to be trialled for certain age groups) from 1 July 2013. The Australian Capital Territory (ACT), the Barkly region of the Northern Territory and Western Australia joined the trial on 1 July 2014. The roll out to the full scheme is currently scheduled for 2019.

The following responses relate to the provision of disability support services under the NDIS.

1. **& (b) Personal assistance; and in‑home and other community‑based services.**

The NDIS adopts an insurance approach that assists people with a disability to access mainstream and community supports; helps support informal care and funds reasonable and necessary supports, including early intervention, for its participants.

The NDIS enables participants to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports. The scheme will help participants to increase their independence and social and economic participation.

The supports available under the scheme will vary from person to person but may include therapies, home and vehicle modifications, assistive devices and equipment, assistance with household tasks, personal care and transport, and assistance for family and carers.

**3. If so, please respond to the following questions:**

1. **Are the services paid for by a State entity (central/federal)?**

Yes. At full scheme, the Australian Government will fund 53 per cent and the states around 47 per cent of the total cost.

1. **Are the service providers chosen directly by persons with disabilities or is the choice made by other entities including companies, social security agencies, the government, medical insurance agencies, guardians or other third party?**

Under the NDIS, a participant of the scheme will have individualised planning processes to identify the reasonable and necessary supports they need to enable them to achieve their goals.

The participant has flexibility to choose how and when supports are provided as part of developing and implementing an individual support plan. This can include accessing mainstream and community supports, choosing support providers, choosing to change providers, and considering how formal supports fit best with those provided informally by family, friends and other carers.

1. **Are persons with disabilities entitled to refuse the support offered and choose an alternative support?**

Under the NDIS, the participant has control over how, when and where they receive supports. They can arrange the details of support, such as when and how to receive supports, directly with their chosen provider. The NDIS, in the sense meant by the question, does not link a participant to a particular provider. The participant chooses a provider.

The participant can also change their goals and plan, what supports they need, how supports are provided, and who provides these supports.

1. **Can family members be service providers?**

Family members cannot be employed to provide supports under the scheme unless there are exceptional circumstances, for example where there is no other provider available.

1. **Are there public and private service providers to choose from?**

Unless a participant’s plan is managed by the NDIS Agency, there are no restrictions on who may provide funded supports under the plan, except as restrictions outlined above on family members.

The Agency has a list of registered providers which have met requirements in relation to qualifications, approvals, experience and capacity for the approved supports. These include public and private service providers.

1. **Does the provision of services cover the entire country, in urban and rural areas with equal quality services?**

Not at present. The first stage of the NDIS began in the Hunter area in New South Wales (NSW), the Barwon area of Victoria, South Australia and Tasmania from 1 July 2013. The Australian Capital Territory (ACT), the Barkly region of the Northern Territory and Western Australia joined the trial on 1 July 2014.

The roll out to full scheme is currently scheduled for completion by 2019. Until this time, people with disability who do not live in a trial site will continue to receive their supports through their current means, usually through State and Territory administered disability support arrangements. These arrangements attempt to provide equal quality services as far as possible.

1. **Are these services available to all persons with disabilities, regardless of their impairment (please use article 1(2) of the Convention on the Rights of Persons with Disabilities as reference for ‘persons with disabilities’)?**

Participants must meet eligibility requirements regarding their disability, in addition to residency and age requirements. The *NDIS Act 2013* sets out the disability requirements as the following -

The requirements are met if:

(a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or to one or more impairments attributable to a psychiatric condition;

(b) the person’s impairment or impairments are, or are likely to be, permanent;

(c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication, social interaction, learning, mobility, self‑care, self-management;

(d) the impairment or impairments affect the person’s capacity for social and economic participation; and

(e) the person is likely to require support under the NDIS for the person’s lifetime.

1. **Please, specify what Ministry is in charge of implementing these policies on provision of services.**

Senator the Hon Mitch Fifield, Assistant Minister for Social Services, is responsible for administering the *National Disability Insurance Scheme Act 2013*, and exercises statutory powers with the agreement of states and territories, including a power to make the NDIS Rules and give general directions and strategic guidance to the National Disability Insurance Agency.

The National Disability Insurance Scheme is a nationally based scheme with funding and governance shared amongst all governments. All Australian governments will continue to be involved in decisions relating to the scheme’s policy, funding and governance.

The governance model for the National Disability Insurance Scheme is outlined in the *National Disability Insurance Scheme Act 2013*.

**4. Does your country have an independent accountability mechanism in place to monitor the implementation of the deinstitionalization policies to avoid abuse in current segregated settings and to ensure access to justice, if needed?**

Disability support services (including residential care) and the accountability mechanisms governing those supports, are currently the responsibility of state and territory governments.

These services will be the responsibility of the National Disability Insurance Scheme (NDIS) from 2019, when the full NDIS scheme comes into place. Officials from all jurisdictions are currently working together to develop a nationally consistent, risk based, approach to quality and safeguards. In the interim state and territory governments maintain a range of safeguards including, in some jurisdiction, independent statutory office holders with broad oversight powers.

Australia strongly supports the rights of people with disability to exercise their legal capacity, and recognises that, in some cases, people with disability may require support in exercising that capacity. The Australian Government has commissioned an inquiry into whether there are Commonwealth laws that deny or diminish equal recognition of people with disabilities as persons before the law and their ability to exercise legal capacity. The inquiry is due to report in August 2014.

*Guardianship*

Guardianship laws are different in each State and Territory. There are procedures for review of guardianship decisions in each jurisdiction.

*Mental Health*

In Australia, the focus of mental health policies and programs are aimed at providing sufficient community-based services to adequately support people within their communities to prevent their hospitalisation or involuntary treatment. States and Territories manage specialised, community-based mental health services, which provide ongoing clinical and psychosocial support to people with persistent mental illness.

Mental Health reform is taking place in the States and Territories. Australian Governments are actively working to ensure that approaches to mental health service delivery recognise and respect the rights of persons with disabilities. For example, Queensland is reviewing its *Mental Health Act 2000* (QLD) to ensure that it reflects contemporary mental health service delivery requirements and the obligations in the Convention. The Western Australian government has developed a strategic plan for mental health called Mental Health 2020: Making it Personal and Everybody’s Business. The Strategic plan proposes greater emphasis on services capable of supporting people to live well in the community and avoid hospital admissions.

**5. Does your country have disaggregated data on persons with disabilities, including women, children and older persons:**

**(a) Profiting from public housing programs and support services (compared to the general population) that enable them to live in the community?**

The Australian Government collects disaggregated data on persons with disabilities, including women, children over 15 years and older persons, being resident in a household receiving government housing assistance.



Australian governments are working to increase the provision of accessible and well-designed housing, including mainstream housing and supported accommodation, in order to enable people with disability to have individual choice and freedom over where they live.[[1]](#footnote-1) State and Territory disability services fund a range of supports to support people with disability to live independently and be included in the community.

*Social Housing Initiative:*

Australia invested in a Social Housing Initiative, designed to fund the construction of new social housing supply and the repair and maintenance of existing social housing. People with disability were a key target group for the Social Housing Initiative.

Seventy three per cent of new dwellings constructed incorporated minimum Universal Design elements to make properties more accessible to people who are ageing or live with disability. These features include grab rails, wider corridors and step-free showers.

Funding provided to each State and Territory Government under the Social Housing Initiative and key outputs are summarised as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Funding allocation $m** | **No. new dwellings constructed** | **No. dwellings - repairs/ maintenance** |  | |
| **Percentage of new dwellings tenanted to people with Disability** 1 |
| **NSW** | 1,894.0 | 6,330 | 31,672 | **47** |
| **VIC** | 1,265.9 | 4,663 | 9,363 | **29** |
| **QLD** | 1,165.6 | 4,035 | 27,420 | **58** |
| **WA** | 590.2 | 2,083 | 10,489 | **24** |
| **SA** | 434.2 | 1,470 | 503 | **50** |
| **TAS** | 134.8 | 530 | 534 | **40** |
| **ACT** | 93.5 | 421 | 259 | **14** |
| **NT** | 59.7 | 208 | 297 | **23** |
| **TOTAL** | 5,638.0 | 19,740 | 80,537 | **42** |

1 Percentages are based on the number of new dwellings that had been tenanted as at 30 November 2012.

*The National Partnership Agreement on Social Housing*

People with disability were also one of the target groups for the National Partnership Agreement on Social Housing. The fund provided capital funding to support a range of projects to increase the supply of social housing in the short term and to enable more disadvantaged households to access safe and secure housing that met their needs. As at 3 September 2013 around 35 per cent (655) of the 1,910 dwellings constructed under the National Partnership Agreement on Social Housing had been tenanted by people with disability.[[2]](#footnote-2)

1. **Institutionalized in psychiatric, social or other institutions? Please provide the available data.**

*Residential Mental Health Services*

* Over 2.1 million patient days were provided by public hospital specialised mental health services during 2011–12.
  + More than two-thirds (71.6%) of all patient days were in specialised psychiatric units or wards in public acute hospitals.
  + New South Wales (114.0) had the highest number of patient days per 1,000 population, while the Northern Territory (45.1) had the lowest, compared with the national rate of 94.9 (per 1,000 population).
* Residential mental health services provided about 752,000 patient days during 2011‑12.
  + Around two-thirds (68.7%) of all patient days were for residents of 24-hour staffed services.
  + Tasmania (124.1) had the highest number of patient days per 1,000 population within General services, while New South Wales (10.6) had the lowest; compared with the national rate of 36.1 (per 1,000 population).
  + People aged 35–44 comprised the highest proportion of residential care episodes (29.1%) and had the highest number of episodes per 10,000 population (5.2) in 2011–12.
  + Overall, there were more residential care episodes for males than females (53.2% and 46.8% respectively), except for the 55 and over age group which had higher the rate of episodes for females than males (1.8 compared with 1.4 per 10,000 population).
* Specialised mental health services in private hospitals provided 708,794 patient days during 2011–12, equating to 31.5 days per 1,000 population. However, in contrast to public sector services, this figure also includes same day separations.

\* Data sourced from AIHW – Mental Health Services in Australia (www.mhsa.aihw.gov.au)

**Notes:**

* Data provided relates to persons with a mental illness. This does not necessarily mean that the person receiving care had a psychiatric disability, as a mental illness is not always classified as a disability.
* For the purpose of this activity, mental illness is defined as a clinically diagnosable disorder that significantly interferes with an individual’s cognitive, emotional or social abilities. Psychiatric disability refers to the impact of a mental illness on a person’s functioning in different aspects of their life.
* For the purposes of this activity, psychiatric institutions include specialised mental health care delivered in and by a range of specialised facilities in Australia including public and private psychiatric hospitals, psychiatric units or wards in public acute hospitals, community mental health care services and government- and non‑government-operated residential mental health services.
* Patient days are days of admitted patient care provided to admitted patients in public psychiatric hospitals or specialised psychiatric units or wards in public acute hospitals and in residential mental health services.

*Residential Disability Services*

The Australian Bureau of Statistics 2012 Survey of Disability, Ageing and Carers estimates there were 185,700 people with disabilities living in ‘institutions’ (hospitals, homes and other cared accommodation for the aged), or approximately four per cent of the population with a disability.

* 159,300 of the people in institutions (86 per cent) had impairments which meant they always needed help with at least one of the three core activities: self-care, mobility and communication. This is almost 22 per cent of people who need this level of support.
* 166,800 of the people in institutions (90 per cent) need assistance with at least one activity of daily living several times each day.

The Disability Services National Minimum Data Set demonstrates the commitment at all levels of government for a trend that moves people out of institutional accommodation over recent years.

* Since 2003 there has been a decrease of more than 25 per cent in the number of people with disability in institutional accommodation.
* The data also shows that accommodation in other community settings has grown by over 30 per cent in the same period.

The table below demonstrates the commitment at all levels of Governments, for a trend that moves people out of institutional accommodation over recent years (2003-04 to 2010‑11). Since 2003 there has been a decrease by more than 25 per cent in the number of people with disability in institutional accommodation.  Simultaneously, the data shows that alternative support (see other community settings) has grown by over 30 per cent for the same period.

A further breakdown of transition from institutional care to independent living disaggregated by gender, disabilities, age, and indigenous people is not available.

The table below updates the one included in Australia’s List of Issues response provided in July 2014 to the UN Committee on the Rights of People with Disabilities.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Table: Users of accommodation support services, accommodation support type, 2003–04 to 2012–13** | | | | | | | | |  | | |  |  | |
| **Accommodation support type** | | **2003–04** | **2004–05** | **2005–06** | **2006–07** | **2007–08** | **2008–09** | **2009–10** | **2010–11** | | **2011–12** | **2011–12** | | |
| Institutional accommodation | | 5,303 | 5,068 | 5,059 | 4,805 | 4,461 | 4,547 | 4,174 | 3,981 | | 3,702 | 3,452 | | |
| Group homes | | 11,308 | 10,722 | 11,414 | 12,274 | 12,913 | 13,188 | 13,435 | 15,130 | | 16,190 | 16,433 | | |
| Other community settings | | 17,271 | 18,621 | 19,714 | 21,143 | 21,318 | 22,419 | 23,024 | 25,075 | | 22,712 | 24,747 | | |
| **Total accommodation support** | | **33,175** | **33,787** | **35,566** | **37,473** | **37,704** | **39,169** | **39,854** | **42,579** | | **41,421** | **43,592** | | |
| **Total service users (all service types)(a)** | | **187,806** | **200,493** | **217,143** | **232,253** | **246,281** | **279,301** | **295,024** | **314,252** | | **317,616** | **312,539** | | |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| (a) Includes service users of all service groups—accommodation support; community support; community access; respite; and employment. For a complete list of service types and groups see *Disability support services 2011–12: Appendix* (AIHW cat. no. Aus 173) Table B59. | | | | | | | | | |
| *Notes* |  |  |  |  |  |  |  |  |  |
| 1. Service user data are estimates after use of a statistical linkage key to account for individuals who received services from more than one service type outlet during the 12-month period. | | | | | | | | |  |
| 2. Total for accommodation support may not be the sum of components because service users may have accessed services from more than one of the accommodation support categories listed. | | | | | | | | |  |
| 3. Institutional accommodation refers to service users accessing service types 1.01 large residential institutions; 1.02 small residential institutions; and 1.03 hostels. ‘Group homes’ refers to service users accessing service type 1.04 group homes; ‘Other community settings’ refers to service users accessing service types 1.05 attendant care/personal care; 1.06 in-home accommodation support; 1.07 alternative family placement; and 1.08 other accommodation support. | | | | | | | | |  |
| 4. Linkage processes (to get unique service user counts) from 2007–08 have changed from those for previous years. For further information, see Chapter 1 in *Disability support services 2008–09*. | | | | | | | | |  |
| 5. Because of revisions to data over years, data may not match previously published figures. | | | | | | | | |  |
| *Source:* Disability Services National Minimum Data Set. | | |  |  |  |  |  |  |  |

*The Survey of Disability, Ageing and Carers*

The Survey of Disability, Ageing and Carers has scope and coverage exclusions. These exclusions are:

* persons in very remote areas;
* persons living in Indigenous communities in non-very remote areas;
* persons living in boarding schools; or
* persons living in gaols or correctional institutions.

These exclusions should not impact on the estimates for the institutions being considered under Article 19 of the Convention. A complete breakdown of the prevalence of disability amongst different types of non-private dwellings in the 2012 SDAC are provided below.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Has a disability** | **Does not have a disability** | **Total** |
| Not applicable - Private Dwellings | 3,941,000 | 18,532,700 | 22,472,500 |
| Hospital - general | 4,300 | 200 | 4,300 |
| Hospital - other | 600 | 0 | 600 |
| Home for the aged | 57,200 | 1,600 | 58,700 |
| Home - other | 4,100 | 200 | 4,200 |
| Accommodation for the retired or aged | 119,500 | 4,700 | 124,300 |
| Hostel for the homeless, night shelter or refuge | 600 | 1,200 | 3,600 |
| Hotel, motel or other short term accommodation | 13,800 | 20,000 | 32,000 |
| Retired or aged accommodation (self-care) | 77,000 | 44,400 | 121,400 |
| Religious and educational institution | 700 | 12,000 | 11,800 |
| Short-term caravan park, youth camp or camping ground | 15,000 | 16,500 | 31,800 |

1. Brief 34: Living independently and being included in the community, p313. [↑](#footnote-ref-1)
2. Brief 34: Living independently and being included in the community, p317. [↑](#footnote-ref-2)