

## PEOPLE WITH DISABILITY AUSTRALIA : 2010

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### ACCOMMODATING HUMAN RIGHTS:

A HUMAN RIGHTS PERSPECTIVE ON HOUSING, AND HOUSING AND SUPPORT, FOR  
PERSONS WITH DISABILITY



people with disability

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## PEOPLE WITH DISABILITY AUSTRALIA

People with Disability Australia (PWD) is a national peak disability rights and advocacy organisation. It is an organisation of, and for, persons with all types of impairment and disability. PWD was founded in 1981, in the International Year of Disabled Persons, to provide persons with disability with a voice of our own.

PWD works towards a vision of a socially just, accessible and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all persons with disability are respected and celebrated.

### PURPOSE OF POSITION PAPER

Access to adequate housing, and to adequate social support services, are fundamental human rights, but too often governments and others fail to recognise the human right dimensions in housing and in housing and support.

This position paper has been developed to raise awareness of the human rights dimensions in housing and in housing and support for persons with disability. It also aims to raise awareness about the obligations on all governments to ensure the respect, protection and fulfilment of the right to adequate housing and adequate support services. It will also be of use to persons with disability, their families and advocates, in their advocacy to secure the human rights to adequate housing and to adequate support services.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) places major emphasis on the obligations of governments to ensure that persons with disability, through their representative organisations, are actively involved in all aspects of policy development and decision-making that impact upon them. The paper outlines PWD's formal policy position on housing and housing and support, as a leading representative organisation for persons with disability. It will therefore inform policy makers and others who seek to incorporate a disability and human rights perspective into their work.

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## FOREWORD

The adoption of the Convention on the Rights of Persons with Disabilities by the United Nations General Assembly in 13 December 2006, marked the end of a long journey by the international disability community. Disability organisations had long been pressing for a convention dealing specifically with the rights of persons with disabilities. People with Disability Australia played an important part in bringing that about.

Central to the Convention is a “paradigm shift” in the treatment of persons with disabilities, from being objects of the law to being subjects of the law with the same rights as everybody else. A crucial component of the paradigm shift is moving from segregation from the community to inclusion within it. Access to housing and to adequate social support services, are essential to ensuring that persons with disabilities carefully enjoy their rights in this respect.

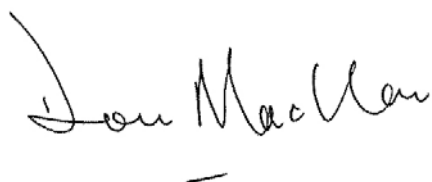
There are also implications for our societies in general. As the Secretary-General of the United Nations said of the Convention upon its adoption, “While it focuses on the rights and development of people with disabilities, it also speaks about our societies as a whole – about the need to enable every person to contribute to the best of their abilities and potential.”

This Convention was the first human rights treaty to be adopted in the twenty-first century. It would not have happened without the commitment and dedication of disability organisations worldwide. Its principles were also strongly supported by governments, which recognised that the time had come to end the discriminatory attitudes and practices of the past. This led to the most rapidly negotiated human rights treaty in the history of international law and to a record level of support on signature. Institutionally, the success of the Convention is now assured.

The real test, however, will be its effective implementation in practice. We all need to ensure that the journey begun so long ago, for the full realisation of the rights of persons with disabilities is a continuing and fruitful one and that the cause is not relinquished.

Ultimately, rights are guaranteed, maintained and strengthened through being used. That requires awareness, knowledge and determination.

This publication and its promotion of adequate housing and support services and inclusiveness is an important contribution to that process.



Don MacKay

*Chair of the United Nations Ad Hoc Committee  
That negotiated the Convention on the Rights  
Of Persons with Disabilities*

## GLOSSARY

### **Cost of disability**

“Cost of disability” refers to the additional financial costs that persons with disability encounter if they attempt to participate in society on an equal basis with others.

### **Congregation**

In this context ‘congregation’ refers to the effect of models of housing and housing and support that oblige or compel persons with impairment and disability to live together with many other persons with impairment and disability as a condition of access to such support.

### **Core human rights treaties**

The international human rights system includes many different types of human rights instruments. These instruments have different status or importance. The highest status and most important human rights instruments are the ‘core’ human rights treaties which are:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- International Convention for the Protection of All Persons from Enforced Disappearance

### **De facto equality**

The term ‘de facto equality’ refers to the effect of specific positive measures to achieve equality, but which do not in fact represent equal treatment. The term is sometimes used interchangeably with ‘substantial equality.’

### **Domestic remedy**

A ‘domestic’ remedy is a remedy for a human rights violation that is provided for by Australian law. An effective ‘remedy’ is a means available in law by which a human right may be enforced, or the infringement of a right may be prevented, redressed or compensated.

**Housing (system)**

In this context the ‘housing system’ means the legislation, policies, programmes, physical and social infrastructure, and forms of tenure of the general housing sectors. It includes the commercial housing market (including the home ownership and private rental markets) and public and private sector social housing.

**Housing and support (system)**

In this context the ‘housing and support system’ means the legislation, policies, programmes, specialist services, physical and social infrastructure and tenure forms of the specialist accommodation and support sector for persons with disability.

**International Bill of Rights**

The ‘International Bill of Rights’ comprises the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

**Isolation**

In this context ‘isolation’ refers to the effect of models of housing and housing and support that oblige or compel persons with impairment to live in a location or in a service configuration that results in no or limited contact with the rest of the community.

**Non-State actors**

The term ‘non-State actor’ refers to agents other than government, and includes private individuals, corporations and non-government organisations.

**Party (to a human rights treaty)**

Treaties are not automatically binding upon nations. They are only binding upon ‘parties’ to the treaty (like parties to a contract). A nation becomes a ‘party’ to a human rights treaty when it ‘ratifies’ or ‘accedes’ to the treaty by depositing formal documents with the United Nations indicating its willingness to be bound by the obligations set out in the treaty.

**Retrofit**

“Retrofitting” refers to the need to uninstall, demolish, or substantially modify an existing inaccessible element of an environment and reinstall or construct an accessible element.

### **Segregation**

In this context 'segregation' refers to the effect of models of housing and housing and support that oblige or compel persons with impairment and disability to live only with other persons with impairment and disability as a condition of access to such support. In other words, persons are grouped together and separated from others on the basis of actual or perceived characteristics of impairment or disability.

### **Support services**

In this context housing and 'support services' refers to a wide range of social services that enable persons with disability to live in their own homes in the community with relative independence. They include personal care services, domestic services, daily living skills support, professional health care, allied health care and psychological services, family support services, and support co-ordination (casework).

### **Shared equity**

Shared equity schemes aim to facilitate home purchase by people who cannot afford the mortgage repayments on 100% of a home's purchase price, but whose incomes would allow them to pay a proportion of the mortgage. The remaining proportion is paid for and owned by another party in a shared equity arrangement. The other parties might be a government or financial institution.

### **Treaty body**

A 'treaty body' is a committee of independent experts elected by the parties to the treaty. The treaty body is responsible for monitoring the implementation of the treaty on behalf of the parties. Its' principal method of doing so is by reviewing and making observations on periodic state party and other reports on the implementation of the treaty. The treaty body may also have the function of receiving, investigating and determining individual communications (or complaints) from persons alleging violations of the treaty. Some treaty bodies may also conduct inquiries into gross or systemic violations of human rights within a state party.



## INTRODUCTION

Access to housing is a fundamental human need and a core element of the human right to an adequate standard of living.

In order to effectively exercise their housing rights, many persons with disability require social support services to provide personal care, domestic services, and living skill support. Access to social services such as these is also a core element of the human right to an adequate standard of living.

The right to housing and the right to social services are recognised not only in the International Bill of Rights (specifically, in the International Covenant on Economic, Social and Cultural Rights) but also in a number of other human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Convention on the Rights of the Child (1989).

These instruments have always applied to persons with disability on an equal basis with other persons. However, until recently, persons with disability have been largely invisible in efforts to implement and monitor these rights at both the national and international levels. This is because the human rights set out in these earlier instruments are formulated at a relatively high degree of generality, and it has not always been clear how they are to be applied in respect of persons with disability. Moreover, persons with disability have tended to be viewed as 'objects' of population health and social development programmes, rather than as bearers of human rights that must be recognised, respected, protected and fulfilled.

Human right perspectives have therefore had very little, if any, impact on housing and housing and support systems upon which persons with disability depend, and indeed, in some cases these systems actually violate human rights. For example, building regulation has failed to ensure that domestic housing is designed and built in ways that accommodate the accessibility requirements of persons with physical impairments, while specialist housing and support is often provided in ways that deprive persons with disability of the right to live independently and be included in the general community.

The central purpose of this position paper is therefore to highlight the human rights dimensions in housing and housing and support for persons with disability against a backdrop of systemic violation, and failure to protect, respect and fulfil these rights in the Australian context. In this respect the paper challenges traditional approaches that view these issues in terms of community welfare, charity, and discretionary service provision.

Adequate housing and adequate social services are human rights to which persons with disability are *entitled!*

To a very significant extent the problems associated with the application of human rights to the circumstances persons with disability face have been overcome by the United Nations' adoption of the Convention on the Rights of Persons with Disabilities (2006) (CRPD). A principal role of the CRPD is to demonstrate how traditional rights – such as the right to adequate housing and the right to adequate support services – are to be applied in respect of persons with disability.

However, it is important to recognise that while the CRPD supplements, it does not a 'substitute' for the earlier core human rights instruments. In order to ascertain the full extent of, and accurately apply, the right to adequate housing and the right to adequate support services, it is therefore necessary to consider all dimensions of these rights across each of the human rights instruments in which they feature. This point is especially significant for the human rights of persons with disability who are members of racial minorities, including indigenous persons, because the CRPD does not deal explicitly with the human rights implications of the multiple and aggravated disadvantage that is associated with the intersection of impairment and disability with racial minority status.

All human rights are indivisible, inter-dependent, and inter-related. Consequently, access to adequate housing is essential for the realisation of many other human rights. It may, for example, be essential for the realisation of the right to life and survival, the right to health, the right to privacy, the right to home and family, the right to security of the person, and the right to freedom from abuse, neglect and exploitation.

In this position paper we focus on the right to housing, but because this right will, in many circumstances, be indivisible from the right to social services, we will also examine in some detail how the right to social services interacts with the right to housing.

## BASIC HUMAN RIGHTS CONCEPTS EXPLAINED

### WHAT ARE HUMAN RIGHTS?

Human rights are fundamental rights and freedoms that are intrinsic to every person by virtue of their status as a human being. In this sense, human rights are said to be 'inalienable' because they can neither be given to a person, nor can they be taken away from them.

Human rights are *universal norms* in the sense that they are recognised by the international community as intrinsic to every person irrespective of their national, cultural, political, geographic, social, religious or temporal context, and any other personal characteristics, such as gender, race, sexuality, age, or disability. They are norms applicable to all persons, at all times, in all societies.

Of course, this does not mean that human rights are not violated. However, the violation of a human right denies a person the ability to enjoy or attain the right: it does not disentitle the person to the respect, protection and fulfilment of the right. Governments have a fundamental responsibility to avoid human right violations, and to immediately remedy such violations when they do occur. This has particular significance for the right to housing for persons with disability in Australia, because this right is subject to systematic violation.

The fact that such violations are commonplace, and to a very significant degree, institutionalised in public policy and programmes, does not alter the responsibility Governments must bear, and the immediacy with which they must act to remedy these violations; indeed, it intensifies the urgency for action.

### THE SOURCE OF HUMAN RIGHTS

The ultimate source of all human rights is the dignity of the person. Human dignity refers to the inherent worth, uniqueness, equality and autonomy of all human beings, and our ability to realise our potential. Dignity might also be conceptualised as the end goal of human rights. Human rights express the conditions necessary for human dignity to be fully realised.

As human dignity is the source, and goal, for all human rights, it has an important role in reconciling apparent conflicts and tensions between rights when these arise. Such tensions and conflicts must be resolved in a way that ensures the respect, protection and fulfilment of human dignity.

As we shall explain later, this principle has important implications in the area of housing rights for persons with disability. Sometimes, it may be claimed that a person with disability

has 'chosen' to live in circumstances that are degrading to human dignity (for example, in a residential institution). Usually such claims are false because the person is compelled or obliged to live in such an environment in order to obtain essential support services, or because someone else, such as a service provider or family member, has imposed that 'choice' upon the person). However, even if this were not the case, personal autonomy, however important, is ultimately subordinate to human dignity, and therefore Governments have a responsibility to ensure that it is not exercised in a way that is degrading to human dignity.

#### HUMAN RIGHTS AND AUSTRALIAN LAW

Australia is a party to seven of the United Nations' core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, each of which incorporate elements of the right to housing and the right to social services.

When the Australian Government enters into a treaty on behalf of the nation, the terms of that treaty become binding upon all Australian Governments.<sup>1</sup> That is, although it is the Commonwealth Government that enters into the treaty, all Australian States and Territories are equally bound by the terms of the treaty and have a direct responsibility for its implementation. This has important implications for the implementation of the right to adequate housing and the right to adequate social services in Australia, because the responsibility for housing and housing and support policy and programmes is shared between the Commonwealth and State and Territory Governments.

International treaties to which Australia has become a party are binding upon Australia in its relationship with the international community. In other words, Australia is accountable to the international community for ensuring that the rights set out in these treaties are respected, protected and fulfilled within Australia.

There are several mechanisms through which such accountability is exercised. Australia is required to make periodic reports to the relevant treaty body in relation to its progress in realising the rights enunciated by the treaty. Australia may also have agreed that the treaty body may receive and investigate individual communications (or complaints) alleging that Australia has violated a human right recognised by a treaty. In some cases, Australia may have also agreed that the treaty body may conduct inquiries into alleged gross or systemic violations of human rights. In fact, Australia has accepted each of these accountability

measures in relation to the human rights recognised in the Convention on the Rights of Persons with Disabilities.

Australia's entry into an international treaty, does not, however, make the terms of that treaty part of Australian law. For this to occur, with some very limited exceptions, an Australian Government must legislate to incorporate the treaty obligation. In fact, human rights treaties usually make this a general obligation on parties.<sup>ii</sup> In some cases, this has occurred in Australia. For example, the *Disability Discrimination Act, 1992* partly incorporates the obligation on Australia to protect persons with disability from discrimination on the ground of disability. However, not all human rights recognised by Australia are currently incorporated into Australian law, and therefore not all can be enforced under Australian law.

This is the case with the right to adequate housing, and the right to social services, only elements of which are recognised and enforced by Australian law. There is also a great deal of inconsistency in the recognition and enforcement of these rights between Australian States and Territories.

#### NATURE OF HUMAN RIGHTS OBLIGATIONS

When a nation becomes a party to an international human rights treaty it solemnly undertakes, at the most fundamental level, to 'recognise' the rights the treaty enunciates and to guarantee these rights to its people without discrimination of any kind. The obligation to 'recognise' human rights requires parties to undertake a number of substantial actions.<sup>iii</sup> These obligations apply to all human rights including the right to housing. In relation to the right to housing, parties must:

- Adopt laws, policies and programmes to give effect to housing rights;
- Modify or abolish laws, policies, customs and practices that violate housing rights;
- Promote human rights in the development of housing policies and programmes.
- The CRPD extends and amplifies these obligations in a number of key dimensions.<sup>iv</sup>  
Parties must:
- Prohibit and eliminate discrimination on the ground of disability by State and non-State actors from all aspects of housing systems;

- Refrain from engaging in any act or practice that is inconsistent with housing rights, and ensure that public authorities and institutions act in conformity with housing rights;
- Ensure that research is undertaken to develop universal design in housing;
- Provide accessible information to persons with disability about housing services;
- Consult with, and actively involve persons with disability in the development of housing policy and programmes through their representative organisations;
- Collect appropriate information, including statistics and research data, to enable them to formulate and implement policies to give effect to housing rights;
- Establish or designate within Government focal points and coordination mechanisms to facilitate action in relation to housing rights across different sectors and at different levels of government;
- Establish or designate with the nation one or more independent mechanisms to protect and monitor implementation of housing rights;
- Fully involve persons with disability and their representative organisations in monitoring implementation of housing rights.

These obligations apply to all aspects of Australian housing systems.

#### LEVELS OF HUMAN RIGHTS OBLIGATION

Under international law, nations accept three levels of obligation in relation to the realisation of all human rights. They must *respect* human rights, they must *protect* human rights, and they must *fulfil* human rights.

The obligation to *respect* human rights operates as a restraint on arbitrary or unjust Government action. Governments must not interfere with the ability of persons to realise and enjoy their human rights. With respect to the right to housing, this means that Governments should refrain from any action that would arbitrarily or unjustly deprive persons of housing (for example, by arbitrarily evicting persons from their housing or by discriminating against persons with disability in allocation of social housing).

The obligation to *protect* human rights requires Governments to take action to prevent non-State actors (such as private individuals, non-government agencies and corporations) from arbitrarily or unjustly interfering with the ability of persons to realise and enjoy their human rights. With respect to the right to housing this would include measures such as legislation to provide tenancy protections and to prohibit discrimination against persons with disability in the private rental market.

The obligation to *fulfil* human rights requires Governments to take positive action to ensure that all human rights are enjoyed to the full extent by all persons. With respect to the right to housing this would include measures such as the designation of progressive targets for the provision of appropriate social housing to low-income persons with disability, and the establishment or funding of tenant advocacy services to assist in the prevention and remedy of housing right violations.

#### TYPES OF RIGHTS

Human rights are typically conceptualised as falling into two basic categories:

- **Civil and political rights** - These are rights that protect the individual from the arbitrary exercise of power by government, and that protect the individual's right to self-determination free from arbitrary (unlawful) exercise of power by government. Examples of civil and political rights are the right to life, freedom of movement, freedom from discrimination, the right to vote, freedom of conscience, and freedom of association.
- **Economic, social and cultural rights** - These are rights that seek to protect and enhance the economic status, social and cultural wellbeing of peoples. Examples of economic, social and cultural rights include the right to work, the right to social security, the right to an adequate standard of living, the right to health and the right to education.

Civil and political rights are sometimes referred to as 'fundamental freedoms' or 'negative rights' because they recognise and protect the individual from arbitrary (unlawful) interference by government.

Economic, social and cultural rights are sometimes referred to as 'positive rights' or 'positive obligations' because they require governments to take action (rather than refrain from it) to improve the wellbeing of peoples.

Civil and political rights tend to focus on the rights of individuals, whereas economic, social and cultural rights tend to focus on the rights of peoples.

The right to adequate housing, as a core element of the right to an adequate standard of living, is an economic, social and cultural right.

#### STANDARD OF HUMAN RIGHTS OBLIGATION<sup>v</sup>

Under international law, civil and political rights are subject to a different standard of obligation to economic, social and cultural rights.

Civil and political rights are ‘immediately realisable,’ which means that nations must give immediate effect to these rights. In other words, a nation must immediately respect, protect and fulfil civil and political rights in their entirety otherwise it will violate these rights.

Economic, social and cultural rights are ‘progressively realisable,’ which means that nations do not have to immediately fully comply with their obligations in relation to these rights, but must work to fulfil these obligations over time. However, it is essential to understand that this does not mean that economic, social and cultural rights are ‘indeterminate’ or merely ‘aspirational’ and therefore incapable of being violated. In fact, many elements of economic, social and cultural rights have quite concrete implications.

Moreover, the obligations associated with the progressive framework within which economic, social and cultural rights must be realised are also quite concrete.

First, while economic, social and cultural rights may be achieved progressively, the obligation to take progressive action to realise these rights is immediate. In other words, a nation must immediately commit to continuous action to ensure that economic, social and cultural rights are fully realised over time. Nations cannot fail to take action, or postpone action indefinitely, to realise these rights. If they do so, these rights are violated.

Second, there must be continuing progress towards the realisation of economic, social and cultural rights. Deliberate backward (or regressive) steps are not permissible, other than in exceptional circumstances and for a temporary period (for example, in a situation of national emergency).

Third, the starting point for progressive realisation of economic, social and cultural rights is not ‘bottomless.’ All nations, whatever the challenges they face, must respect and protect these rights at least to a minimum standard otherwise these rights would be meaningless. These minimum requirements are both procedural and substantial, as we shall explain below.

Fourth, nations must work towards the full realisation of economic, social and cultural rights to the maximum of their available resources. This means that the action taken to



progressively realise these rights must match the level of resources a nation has available to it. This will vary from nation to nation.

By world standards, Australia is a very wealthy country, with substantial resources available to realise economic, social and cultural rights. It must commit these resources to the full extent of their availability. It is not possible for Australia to rely upon the fact that Australians generally enjoy social rights to a higher level than some other nations. Australia's attainment of economic, social and cultural rights must be measured against its own potential, not that of any other nation.

Fifth, action taken to progressively realise economic, social and cultural rights must be equitably distributed across the population. This means that the most intensive efforts to progressively realise an economic, social or cultural right must be targeted to those individuals and groups who are subject to the most serious deprivation or violation of the right. It would not be enough, for example, that the living conditions of more advantaged individuals and groups continue to improve, while those of disadvantaged individuals and groups did not, or did not do so to at least the same extent.

In summary, the implications of this progressive framework for the implementation of the right to housing in Australia are:

- All elements of Australian housing systems must conform to basic human rights standards (we shall discuss what these standards are in a following section);
- Evidence that a significant proportion of the Australian population, or sub-groups within the population (such as persons with disability), are deprived of basic housing rights, would mean that Australia is in violation of the right to housing;
- Australia must clearly identify the 'baseline' position (or starting point) for its efforts to progressively realise housing rights within Australian housing systems;
- Australia must have concrete plans (such as a National, or State or Territory, or Local Government Housing Strategy) to progressively improve the realisation of the right to housing for all Australians;
- These plans must provide for the realisation of the right to housing for every Australian in the shortest possible time using the resources Australia has available to it to the fullest possible extent;

- These plans must be targeted in an equitable way to those individuals and groups within the population who are most disadvantaged in terms of their housing rights, or whose housing rights are currently subject to violation (this would obviously include persons with disability);
- Australia must accurately monitor the extent to which housing rights are being realised for all Australians. Consequently, these plans must incorporate concrete goals and objectives, set out the resources that will be deployed to achieve these goals and objectives, and allocate responsibilities and time-frames for implementation;
- Evidence that an existing level of attainment of housing rights for a significant proportion of the population, or sub-group within the population, is being eroded (whether as a result of a sudden reversal, or by attrition) would mean that Australia is in violation of these rights.

# CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

## INTRODUCTION AND RATIONALE

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly in December 2006. It entered into force at the international level on 3 May 2008. It is now the principal international instrument dealing with the human rights of persons with disability.

The CRPD was developed in an effort to overcome the 'invisibility' of persons with disability in international human rights law and practice. Although the major human rights covenants apply to persons with disability on an equal basis with others, it is now generally accepted that these treaties have done little in fact to protect, promote and fulfil the human rights of persons with disability.

In part, this is because these treaties, both in their formulation and in their implementation, have not penetrated to many of the specific forms of human rights violation persons with disability experience. For the most part, the human rights set out in the major covenants are expressed at a high degree of generality. This is sometimes problematic in a disability context because it may not be obvious how these general statements apply to the specific human rights concerns that persons with disability face. There has also been a general failure to recognise persons with disability as right-bearers and to interpret their needs and concerns in terms of human rights.

With some important exceptions, these problems have also been reflected in Australia's domestic implementation of its international human rights obligations, including in relation to the right to adequate housing, and the right to adequate support services for persons with disability.

The General Assembly mandate under which the CRPD was developed recognised these problems. It stipulated that the primary rationale for the CRPD was to apply existing rights to the particular circumstances of persons with disability. Accordingly, the CRPD has been conceptualised as an 'implementation' convention; one that sets out a detailed code for how existing rights should be put into practice with respect to persons with disability.

The CRPD is thus an essential supplement and interpretative aid for the recognition and application of the right to adequate housing and the right to adequate social services to persons with disability. It must be read in conjunction with (rather than instead of) Australia's other human rights obligations in these areas.

## STATUS OF THE CRPD IN AUSTRALIA

Australia ratified the CRPD on 17 July 2008, and in accordance with the procedure established by Article 45, the CRPD came into force with respect to Australia on 17 August 2008.

The United Nations General Assembly adopted an Optional Protocol to the CRPD at the same time it adopted the CRPD. The Optional Protocol establishes a communications (or complaints) procedure that allows individuals and groups to complain to the Committee on the Rights of Persons with Disabilities (the CRPD Treaty Body) about violations of CRPD rights provided they have exhausted any reasonably available domestic remedies for the violation. It also establishes a procedure that allows the Treaty Body to conduct inquiries into gross or systemic violations of CRPD rights. The Optional Protocol also came into force at the international level on 3 May 2008.

Australia acceded to the Optional Protocol on 21 August 2009 and in accordance with Article 13, the Optional Protocol came into force with respect to Australia on 21 September 2009. Under the Optional Protocol all CRPD rights may be the subject of a complaint to the treaty body, including alleged violations of the right to adequate housing and the right to adequate support services.

## SOCIAL MODEL OF DISABILITY

The CRPD makes it clear that understanding disability according to the social model is essential to a human rights based approach to the needs and concerns of persons with disability.

The social model posits that disability is the result of the interaction between persons with impairments and a barrier filled physical and social environment. It therefore carries the action implication that the physical and social environment must change so as to enable persons with impairments to participate in society on an equal basis with others. A social model perspective does not deny the reality of impairment or its impact on the individual. However, it does challenge the physical and social environments to accommodate impairment as an expected incident of human diversity.

The social model of disability contrasts most directly with what is sometimes referred to as the 'medical' model of disability, or less frequently, as the 'individual model,' in which disability is viewed as the product of impairment; for example, the inability to obtain or maintain appropriate housing is viewed as the inevitable result or consequence of the characteristics of intellectual impairment (such as limited self-care capacity). In the area of housing, the focus of the medical or individual model is on removing the person from

society and ‘treating’ them in isolation from others, to prepare them for integration into mainstream social environments and activities. Typically this has occurred in segregated, medically imaged facilities that operate as a substitute for, or simulation of, typical housing options. In reality, very few persons ‘graduate’ from treatment and preparation programmes, and their segregation and congregation is much more likely to be associated with the loss of skills.

It is important to appreciate that the medical model not only describes the approach that has, historically, underpinned health service delivery to person with disability. It has also predominated in the area of education (where students with disability are educated in special schools), housing (where persons with disability have been accommodated in medically imaged residential institutions), in employment (where persons with disability have been occupied in sheltered workshops), and in many other areas.

The CRPD rejects the medical model of disability and places fundamental emphasis on the acceptance of impairment and the removal of barriers to inclusion and participation (for example, by ensuring that persons with intellectual disability are not subject to discrimination in housing markets, and that they have access to appropriate domestic and living skill support services to assist them to obtain and maintain appropriate housing in the general community). In other words, the CRPD seeks to change society in order to accommodate persons with impairment: it does not seek to change persons with impairment to accommodate society. It asserts the right of persons with disability to engage with the physical and social environment on their own terms, and it calls upon society to welcome and accommodate the diversity and contribution that persons with disability bring to their communities.

#### SOURCES OF CRPD RIGHTS

The primary sources of CRPD rights are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). For this reason it is important to understand the source of each CRPD right, because, among other things, this indicates which rights must be immediately complied with, and which rights are to be the subject of progressive realisation over time. Broadly speaking, articles 10 to 23 and article 29 of the CRPD are civil and political rights, and articles 24 to 28 and article 30 are economic, social and cultural rights.

#### STRUCTURE OF THE CRPD

The CRPD comprises 50 articles and its Optional Protocol comprises 18 articles. Although the CRPD is not formally divided into sections, it is made up of clusters of different types of articles, as explained in detail in Appendix 1. In brief, Articles 1 and 2 contain general

interpretive information, Articles 3 to 9 set out general obligations on parties, and Articles 10 to 30 set out specific obligations related to specific human rights and fundamental freedoms. To understand the full implications of CRPD rights and obligations it is necessary to read its articles in relationship to each other, rather than in isolation.

The CRPD's interpretative articles and general obligations are of a 'cross-cutting' nature, in that they must be taken into account in the interpretation and application of each of the specific obligations. In many instances they serve to amplify and extend the scope and content of the specific obligations. This is true with respect to the right to adequate housing and the right to adequate social services. In particular, the general obligations set out in Article 4(1)(f) in relation to universal design and in Article 9: Accessibility must be read together with the specific obligations set out in Article 19: Living Independently and being included in the community and Article 28: Adequate standard of living and social protection (which incorporates the right to adequate housing and the right to adequate support services).

It is also important to read the CRPD's specific obligations in relation to each other. This is not only because all human rights are indivisible, interdependent and inter-related, but also because, in some instances, one specific obligation will condition how another specific obligation is to be interpreted and applied.

With respect to the right to adequate housing and the right to adequate social services, there are two fundamentally important intersections of CRPD rights that must be observed and understood: the relationship between Article 19 (Living independently and being included in the community) and Article 28 (Adequate standard of living and social protection); and, Article 5 (Equality and non-discrimination) and Article 28 (Adequate standard of living and social protection).

#### ACCESSIBILITY & UNIVERSAL DESIGN<sup>vi</sup>

Article 4(1)(f) of the CRPD imposes a general obligation on parties to undertake or promote research and development of universally designed goods, services, equipment and facilities, and to promote their availability and use. It also requires parties to promote universal design in the development of standards and guidelines. Article 2 defines 'universal design' to mean the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.

Universal design is based upon seven principles:

- Principle 1: Equitable Use  
The design is useful and marketable to people with diverse abilities
- Principle 2: Flexibility in Use  
The design accommodates a wide range of individual preferences and abilities
- Principle 3: Simple and intuitive  
Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level
- Principle 4: Perceptible information  
The design communicates necessary information effectively to the user regardless of ambient conditions or the user's sensory abilities
- Principle 5: Tolerance for error  
The design minimises hazards and the adverse consequences of accidental or unintended actions
- Principle 6: Low physical effort  
The design can be used efficiently and comfortably and with a minimum of fatigue
- Principle 7: size and space for approach and use  
Appropriate size and space is provided for approach, reach, manipulation and use regardless of user's body size, posture or mobility

Universal design has obvious relevance to the built environment, and therefore to housing infrastructure of all types, but it is important to appreciate that it is a general principle, with applicability across many contexts. For example, Principles 1, 3 and 4 have particular relevance to the design of information materials about housing systems. Information ought to be produced in a way that makes it readily accessible to persons of diverse abilities; it ought to be easy to understand regardless of the person's existing level of knowledge and skills, their language skills, and their level of concentration; and, it ought to communicate necessary information to the user regardless of the user's sensory abilities. In other words, it ought to be provided in a format that can be readily accessed by a person who is blind or vision impaired.

The adoption and implementation of the principles of universal design means that the built environment and service delivery arrangements related to housing systems will meet the

needs of most persons. It is therefore not only a more inclusive and broadly beneficial approach, it is also a much more efficient and cost effective approach. If the built environment and generic services meet the needs of most persons, there is substantially less need to develop and fund specialist or parallel systems to compensate for the inaccessibility of the mainstream system. There will also be substantially less need to make specific adjustments to enable individuals to utilise the mainstream system.

The terms of Article 4 of the CRPD as they relate to universal design, are reinforced by Article 9. Article 9 imposes general obligations on parties to ensure that persons with disability are able to access all aspects of the physical and social environment on an equal basis with others. This includes a specific responsibility to identify and eliminate obstacles to housing accessibility. To implement this obligation, parties are required to pursue a range of measures, including the following measures which have direct relevance to the housing and housing and support systems:

- Develop and adopt minimum standards and guidelines for the accessibility of all public services and facilities, and monitor their implementation;
- Ensure that non-State actors that provide services and facilities for the public also take account of the accessibility requirements of persons with disability;
- Provide training for all stakeholders on accessibility issues facing persons with disability;
- Provide signage in Braille and easy to read and understand forms in all public buildings and facilities;
- Provide forms of live assistance and intermediaries to facilitate accessibility to public buildings and facilities;
- Provide any other form of assistance or support to persons with disability to ensure their access to information; and
- Promote access for persons with disability to new information and communication technologies and systems, including the Internet.

It is important that these measures are pursued in all aspects of housing and housing and support systems. As is clear from the wide scope of obligations, the principle does not apply only to the built environment.



Article 4, in relation to universal design, and Article 9 need to be interpreted and applied together. Universal design is a principal means by which parties can meet their obligations under Article 9, particularly with respect to the development of guidelines and standards for accessibility.

However, it is equally important to appreciate that Article 9 also requires a range of specific, positive measures to ensure accessibility and that these go beyond the scope of the principle of universal design.

#### LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

Article 19 of the CRPD enunciates the right of persons with disability to live independently and be included in the community. Article 19 applies the traditional civil and political rights of liberty and security of the person, and freedom of movement, to one of the most pervasive human rights abuses experienced by persons with disability; their segregation and isolation from the community in institutional environments. As Article 19 is a civil and political right, it must be immediately complied with.

Article 19 requires parties to recognise the equal right of all persons with disability to live in the community, and participate in community life, with choices equal to others. It also requires parties to ensure the full enjoyment of this right by taking effective and appropriate measures that will ensure that persons with disability:

- Have the opportunity to choose their place of residence and where and with whom they shall live on an equal basis with others;
- Are not obliged to live in a particular living environment;
- Have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation and segregation from the community.

Article 19 also requires parties to take effective and appropriate measures to ensure that community services and facilities for the general population are available on an equal basis to persons with disability and that they are responsive to their needs.

#### ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

As we have noted, the right to adequate housing and the right to adequate social services are elements of the traditional right to an adequate standard of living. In the CRPD these

rights are incorporated into Article 28. The right to an adequate standard of living is an economic, social and cultural right, which must be realised progressively.

Article 28 requires parties to recognise the right of persons with disability to an adequate standard of living for themselves and for their families. This includes the obligation to recognise the right to adequate housing and to the continuous improvement of living conditions. Parties must ensure that these rights are realised without discrimination on the basis of disability.

Article 28 also requires parties to recognise the right of persons with disability to social protection and to the enjoyment of this right without discrimination on the basis of disability. Parties must take appropriate steps to safeguard and promote the realisation of this right, and this includes with respect to the rights to housing and social services the obligations to:

- Ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- Ensure access by persons with disability and their families living in situations of poverty to assistance from the state party with disability-related services and expenses;
- Ensure access by persons with disability to public housing programmes.

Upon first encounter, Articles 19 and 28 of the CRPD may appear to cover some of the same subject matter. In a way they do, but each article operates in a different way with respect to this subject matter. In essence, Article 19 guarantees the rights to liberty and freedom of movement of persons with disability by requiring housing and support services to be structured and provided in ways that enable independence, autonomy, participation and inclusion in the community. Article 28 guarantees the right to an adequate standard of living, including the right to adequate housing and support services.

As already noted, Articles 19 and 28 are subject to different standards of obligation – the obligation of immediate compliance and progressive realisation respectively. In effect, what this means in terms of party obligations is that while parties are to pursue the right to adequate housing and the right to adequate social services progressively, they must do so in a way that immediately complies with the right of persons with disability to live in and be a part of the community.

It is therefore not open to parties to claim, for example, that institutional accommodation and support services are a justifiable stage of achievement in progress towards the full realisation of the right to adequate housing and the right to adequate social services for

persons with disability. Still less can parties claim that institutional accommodation and support services fully realise the rights of persons with disability to adequate housing and support services. The CRPD is clear that institutional accommodation and support services are an explicit violation of human rights, and one that parties have an immediate responsibility to prevent and remedy.

#### EQUALITY AND NON-DISCRIMINATION

Article 5 of the CRPD requires parties to recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and benefit of the law. It requires parties to prohibit discrimination on the basis of disability and guarantee to persons with disability equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, parties are required to take all appropriate steps to provide reasonable accommodation. Specific measures which are necessary to accelerate or achieve de-facto equality of persons with disability are not to be considered discriminatory.

Article 2 of the CRPD defines ‘discrimination on the basis of disability’ to mean any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including the denial of reasonable accommodation.

Article 2 of the CRPD defines ‘reasonable accommodation’ to mean ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disability the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.’

As we have already noted, Article 5 is a cross-cutting article that must be applied in the implementation of each specific obligation, including Article 28 (Adequate standard of living and social protection). The Article 5 obligations are reinforced by the terms of Article 28 itself, which refers in both paragraphs to state party obligations to ensure the realisation of each element of the right without discrimination on the basis of disability.

Under international law, the right to equality and non-discrimination is a civil and political right that must be complied with immediately. The standard of equality that parties must achieve is ‘substantive’ equality (equality of opportunity or equality of outcome).<sup>vii</sup> This requires parties to recognise the pre-existing disadvantage to which persons with disability

will be subject in many situations, and to take positive measures to overcome this disadvantage so as to ensure that a right can be enjoyed on an equivalent basis with others. Importantly, substantive equality does not mean treating persons with disability the same as every one else, where this would only entrench pre-existing disadvantage. This has very important implications for persons with disability and the right to housing.

While Australia is entitled to work towards the full realization of the right to housing for all Australians progressively, it must ensure that this right is realized in a manner that does not discriminate against persons with disability. This means that the right to housing for persons with disability must be realised at least at the same rate as it is for others, and in many situations it will be appropriate that the rate of realisation of this right is accelerated for persons with disability, so as to overcome their pre-existing disadvantage.

Persons with disability should not experience housing disadvantage as compared with other segments of the population. It is therefore necessary for Governments to identify any pre-existing disadvantage persons with disability experience in Australian housing systems and take specific action to accelerate the fulfilment of the right to housing for these individuals or groups.

This may require Governments to make, or require, modifications and adjustments to remove barriers that would otherwise limit equitable access to housing for persons with disability (for example, to relax eligibility criteria for two-bedroom social housing to enable a single person with disability to safely and comfortably accommodate disability-related equipment, an assistance animal, or a personal assistant, or to require private landlords to permit a person with disability who relies upon an assistance animal to occupy rented premises where pets are not allowed). The duty to accommodate applies to all aspects of housing systems including, for example, in relation to information and communication, application processes, physical infrastructure, and associated support services.

In some circumstances, it will require parties to go further and adopt positive measures that, in effect, discriminate in favour of persons with disability, so as to ensure that particular features of housing disadvantage can be overcome, at least on a de-facto basis. This might include measures such as a subsidised home modification schemes to enable persons with disability to retrofit their home so as to be safe and accessible at an affordable cost, or a specific social housing building program that will significantly increase the availability of fully accessible housing stock).

In relation to such positive or special measures, it is important to understand that the principle of non-discrimination will not permit treatment of persons with disability

differently to other persons except where this different treatment will assist in overcoming pre-existing disadvantage. In other words, positive measures are 'relieved' from the obligation not to discriminate only to the extent that they are beneficial. However, the implementation of these beneficial measures remains subject to the principle of non-discrimination.<sup>viii</sup>

Consequently, positive measures cannot be implemented in a way that is detrimental to any human right. This has important implications for the way in which specialist housing and support for persons with disability is designed and provided. For example, a special measure, such as a specific social housing building program that is designed to significantly increase the availability of fully accessible housing stock for persons with disability cannot be implemented in a way that fails to realise, or which violates, other human rights, such as the right of persons with disability to live in and be a part of the community.

One of the most fundamental implications of the right to equality and non-discrimination is that it prohibits segregation on the basis of a personal characteristic, such as impairment or disability. This is because of the long established civil rights principle that segregation is, inherently, unequal and detrimental treatment.<sup>ix</sup> Segregation ultimately has its roots in harmful social beliefs about the inferiority of persons, and their 'otherness,' and this is offensive to human dignity and rights. This is true irrespective of the 'quality' of any facilities or services that may be provided in the segregated setting.

This has important implications for the right to housing for persons with disability. Essentially, it means that segregated approaches to providing housing and related support for persons with disability are inherently discriminatory, and are therefore a violation of human rights. While the right to housing and support may be achieved progressively, progressive realisation must be non-discriminatory, and that obligation is of immediate effect. In other words, for this reason also, it cannot be argued that segregated housing for persons with disability is justifiable on the basis that, while not optimal, it is a necessary stage in the progressive realisation of the right to housing.

In very limited circumstances facilities or services that are segregated on the basis of a characteristic such as gender or race may be justifiable as a positive measure. Such approaches may assist in overcoming pre-existing disadvantage, such as male-oriented health services, or Eurocentric educational curricula.<sup>x</sup> However, as we have noted above, these positive measures cannot be implemented in a way that is detrimental to other human rights. They must result in a substantial benefit to the person or group that is affirmative of their dignity and human rights. Positive measures of this nature therefore require very careful judgement and must be scrutinised for their implications and effect.<sup>xi</sup>

While segregated special measures may also be justifiable for persons with disability in very specific circumstances (for example, a segregated peer support program that fosters Deaf culture and language may be justifiable for Deaf teenagers), they can not have the effect of limiting or violating human rights or of diminishing human dignity. Consequently, segregated approaches to providing housing and housing and support for persons with disability could never be justifiable as a special measure. The realisation of so many other human rights is inter-dependent with the right to housing. These rights would inevitably be limited or violated by segregation.

#### DISABILITY NEVER JUSTIFIES A DEPRIVATION OF LIBERTY

For completeness, it is also important to note the requirements and implications of Article 14 of the CRPD for the right to housing and the right to social services.

Article 14 is a direct application of the right to liberty and security of the person to persons with disability. It requires parties to ensure that persons with disability enjoy the right to liberty and security of the person on an equal basis with others, and that they are not deprived of their liberty unlawfully or arbitrarily. Very importantly, Article 14 stipulates that the existence of a disability, of itself, shall in no case justify a deprivation of liberty.

Article 14 does not mean that persons with disability can never be held in detention. For example, if a person with disability commits a crime that carries a penalty of imprisonment, for which it is appropriate to hold them culpable, and they are convicted of this crime by a court after a fair trial, then detention will usually be justifiable. In such a situation the person is not being detained because of their disability, but because of the crime they have committed.

However, Article 14 does mean that persons with disability can never be held in detention because of, or as a consequence of, their disability. In international law, 'detention' has a very broad meaning. It encompasses not only prisons, immigration detention centres, and involuntary psychiatric treatment facilities, but all situations where persons are compelled or obliged to remain 'involuntarily'. The basis of involuntary detention does not have to be a law or other overt compulsory state party action.<sup>xii</sup>

In a disability context, for example, a person might be compelled or obliged to live in circumstances amounting to detention by the way in which essential support services are organised and delivered. This is the case, for example, with residential institutions and other accommodation facilities for persons with disability. Although, usually, no law compels persons with disability to live in such environments, they have no alternative but to do so if they are to have access to essential support services. The detention of persons with

disability in such environments is therefore a consequence of disability, and an explicit violation of Article 14.

The involuntariness of such detention includes the inability of the person to choose an alternative place to live (which would provide the services essential for survival and well-being), the inability to choose with whom they will live, and the inevitable suppression of personal autonomy to externally imposed rules (such as meal times, meal composition, sleeping times, and personal care arrangements). Typically, such facilities also restrict, or entirely prevent, the person from leaving the facility, sometimes by overt means, such as by locking ward or unit doors, and sometimes by less obvious means, such as by not teaching independent living skills, or by failing to provide support to a person to leave the environment when they wish to. Being required to 'visit' the community in the company of others at times and places facility managers and staff choose is also an example of the involuntariness of such detention.

Article 14 is a civil and political right that must, under international law, be immediately complied with. Australia must therefore take urgent action to address the human right violations associated with the involuntary detention of persons with disability in residential institutions and other facilities on the basis of disability.

## THE CORE ELEMENTS OF THE RIGHT TO HOUSING

The right to housing is constituted by a number of elements which have been progressively elaborated by the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Special Rapporteur on Housing over time.<sup>xiii</sup> With respect to persons with disability, these elements must now be informed and supplemented with the relevant rights and obligations enunciated by the CRPD.

The elements of the right to housing are set out below. After describing each element, we provide examples of action required of parties to respect, protect and fulfil that element of the right to housing with respect to persons with disability. Note that these are only examples of action required, and that much more is required of parties in addition to the measures outlined.

### LEGAL SECURITY OF TENURE

The right to housing requires that all persons must have adequate security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Governments must therefore ensure that legislation establishes legal security of tenure across all aspects of the housing system.

Persons with disability must enjoy security of tenure on at least an equal basis with others. Such protection must take into account the reasonable accommodations that may be required by persons with disability in order to enjoy this right on an equal basis with others. For example, tenure measures should protect access to housing, and prevent eviction, for persons in the private rental market who need to undertake housing modifications in order to occupy a dwelling, or who need to accommodate an assistance animal.

Additionally, specific positive measures are likely to be warranted in many situations to protect security of housing tenure for persons with disability in recognition of the great difficulties many experience in obtaining accommodation that is appropriate to their needs. For example, in some circumstances it will be appropriate to provide a higher degree of legal protection for persons with disability against rent hikes or unreasonable termination of tenancy.

Special measures are also warranted to ensure that persons with disability have ready access to information and representation that will enable them to act upon, and enforce, their housing rights. This might include the funding of independent tenancy advice and



advocacy services to provide no or low cost advice and representation for persons with disability in relation to their housing rights.

The obligation to ensure security of tenure also requires parties to take action to prevent harassment and other threats that inhibit the realisation of the right to adequate housing. In a disability context, this requires parties to provide protection against harassment and vilification of persons with disability as it impacts on housing tenure (for example, from neighbour or community protests about persons with disability moving into a neighbourhood). It also requires parties to ensure appropriate protection for persons with disability from detrimental action by housing providers (and, if relevant, housing and support providers) in response to complaints that persons with disability may make about the quality of their services. In this latter respect, it will usually be preferable for housing and support to be provided by separate organisations to minimise the likelihood that a dispute with one provider will result in the loss of both sources of support.

Text box 1 highlights some of the actions required of parties to realise security of housing tenure for persons with disability.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Enact legislation to provide security of tenure on an equal basis with others for persons with disability in public social housing (for example, those who live in specialist supported accommodation)</p> <p>Ensure such legislation protects the tenure of persons with disability who require disability related-accommodations (for example, public housing law and policy must accommodate persons who require larger dwellings to safely store disability related equipment, or who cannot tolerate particular chemicals used in housing construction and fit-out due to chemical sensitivity).</p> <p>Abolish housing legislation, policy and program elements that discriminate on the basis of disability (whether directly or indirectly) (for example, so-called ‘anti-social behaviour’ legislation in public housing which compromises tenancy protection for persons with high social need, including persons with mental health conditions).</p> <p>Prohibit detrimental action against persons who make housing- or housing and support-related complaints</p>	<p>Enact legislation to provide security of private housing tenure for persons with disability on an equal basis with others (for example, in the licensed and unlicensed boarding house sectors)</p> <p>Ensure such legislation protects the tenure of persons with disability who require disability related accommodations (for example, private landlords must be required to accommodate assistance animals).</p> <p>Abolish housing legislation, policy and program elements that discriminate on the basis of disability (whether directly or indirectly) in the private and non-government sectors (for example, policy that requires persons with disability to have secured support services before being eligible for social housing).</p> <p>Prohibit disability vilification.</p> <p>Prohibit detrimental action against persons who make private or non-government sector housing- or housing and support-related complaints.</p>	<p>Enact specific (additional) tenure protections for persons with disability (for example, to prevent rent hikes or unreasonable terminations of tenancy).</p> <p>Provide rental subsidies to assist with housing affordability.</p> <p>Provide, or facilitate, no or low interest loans to assist persons with disability into home ownership.</p> <p>Provide or fund tenant advice and advocacy services to assist persons with disability to act upon and enforce their tenancy rights.</p>

**Text Box 1: Realising legal security of tenure**

## AVAILABILITY OF INFRASTRUCTURE AND SERVICES

The right to adequate housing requires that all persons must have sustainable access to infrastructure and services necessary for them to fully enjoy the right. This includes access to energy for cooking, heating, cooling and lighting; sanitation and refuse disposal services; washing, cooking and bathing facilities; clean drinking water; food and other storage facilities; ready access to public transport; ready access to food supplies; and, access to emergency services, such as Police, medical and fire control services.

A number of these elements have a specific disability dimension. For example, the requirement that there be ready access to energy would include, in a disability context, access to a fail-safe system of power generation to ensure continuity in the operation of life-sustaining equipment (such as a ventilator) in the event of a power outage. The requirement that there be access to energy for heating and cooling will justify the subsidisation of the costs associated with such energy use in particular instances where maintenance of a regular temperature is necessary for a person's health and well-being. The requirement that there be adequate cooking and bathing facilities would obviously mean that such facilities must be fully physically accessible to persons with disability who seek to use them. Similarly, food and other storage facilities must be fully accessible to persons with disability, and of sufficient size to safely accommodate disability related equipment, and/or an assistance animal where required. Public transport, and the built environment in which food and other supplies are available, also must be fully accessible to persons with disability.

In a disability context, appropriate access to emergency services may require specific arrangements with local police, medical and fire control services to ensure a rapid and appropriate response in a situation of emergency. For example, it may be more difficult for a person with disability who lives independently to mobilize to a position of safety because they are unable to transfer from a bed to a mobility device without assistance. Local emergency services may need to be on notice in these circumstances and have procedures in place that will ensure a rapid response should an emergency arise.

In a disability context, sustainable access to adequate infrastructure and services will also require the ready availability of social support services such as domestic assistance, personal care, or daily living skills support. This means that urban planning policies must be formulated and implemented in a way that will ensure the ready availability of local key workers to staff these services.

Text box 2 highlights some of the actions required of parties to ensure the availability of housing-related infrastructure and services.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Ensure that all public housing provides ready access to infrastructure and services necessary for full enjoyment of the right to housing.</p> <p>Ensure that public housing design is easily adaptable so that meal preparation, bathing, storage and other facilities are accessible to persons with disability.</p> <p>Ensure that public housing design and allocation policies provide sufficient storage and other space for persons with disability who rely upon disability-related equipment, assistance animals or live assistance.</p> <p>Ensure that public emergency services are accessible and responsive to persons with disability.</p> <p>Ensure the availability of accessible public transport.</p>	<p>Ensure that environmental planning and development controls over new land releases provide for the development of adequate infrastructure and services necessary for the full enjoyment of the right to housing.</p> <p>Ensure that environmental planning and development controls facilitate a social mix that will provide a key worker labour force for disability accommodation and support services.</p> <p>Ensure that energy service providers provide a fail-safe back-up energy supply to ensure continuity in the operation of life-sustaining equipment.</p>	<p>Establish comprehensive local social support services, such as those providing domestic assistance, personal care and daily living skills support, to ensure that persons with disability are able to enjoy the right to housing on an equal basis with others.</p> <p>Provide, or facilitate, grants or subsidies for the purchase of air-conditioning and heating equipment, and for energy costs, where maintenance of regular temperature is essential for health and well-being.</p>

**Text Box 2: Realising housing-related infrastructure and services**

## AFFORDABLE HOUSING

The right to adequate housing requires that all persons must have access to housing that is affordable. To be affordable, the costs of housing must not exceed a level where it becomes difficult for the person to attain or satisfy other basic needs, such as for nutritious food, warm clothing, and healthcare. This element of the right to housing requires parties to develop and implement a range of measures to meet the needs of low income and housing disadvantaged groups.

A primary implication of this element of the right is the obligation of parties to provide or facilitate the provision of social housing for low income and housing disadvantaged groups. This might be achieved in a variety of ways. Parties must build or acquire housing stock and make it available to low income and housing disadvantaged groups at an affordable rental (usually significantly below its 'market' value), or it may contract with the private or non-government sectors to do so. Additionally, parties may create incentives or impose obligations on private developers to include an affordable housing component in large scale housing developments.

This element of the right to adequate housing also requires parties to protect low income and housing disadvantaged groups from unreasonable rent or rental increases. This could take the form of rental subsidies, or legal protection against unreasonable rent increases.

It will also be appropriate in many circumstances for low income and housing disadvantaged groups to be provided with access to low or no interest loans, and other financial products (such as shared equity), to enable them to participate in home ownership on an equal basis with others.

There are obvious additional disability dimensions to these elements of the right to adequate housing.

The requirement that the costs of housing be affordable must also take into account the extra costs of disability. Housing options for persons with disability should therefore be designed and located in a way that avoids, or at least does not exacerbate, these additional costs. For example, adequate housing ought to be available to persons with disability at an affordable cost in close proximity to accessible public transport, accessible and affordable shopping, to sources of employment, and entertainment and leisure facilities.

To be affordable, housing should not require substantial modification before it is accessible for persons with disability. This means that building regulation must require minimum accessibility features in all housing. Home modifications are a principal source of the extra

costs of disability. It is therefore essential that the costs of any required home modifications should be met in full or significantly subsidised by government.

To be affordable, the cost of housing related support services (such as personal care, domestic assistance and residential service fees) must be affordable, and not jeopardise access to housing or the ability to meet other basic needs. This requires action by governments to ensure affordable access to these support services, either by means of direct provision or funding of such services, or by providing financial assistance to persons with disability to obtain these services on the open market.

Governments must also exercise restraint in the level of residential service fees they charge to persons with disability living in government operated supported accommodation. Similarly, they must protect persons with disability living in government funded or licensed accommodation services from excessive residential fees.

Many persons with disability experience housing disadvantage on a life-long basis. Perhaps more than any other group, persons with disability require housing stability, because in many cases they will need to modify and adapt a dwelling to meet their personal needs, often at significant personal or public cost. It is therefore important for government to facilitate and protect housing stability for persons with disability.

The private rental market is not always conducive to the attainment of housing stability for persons with disability. There remains a great deal of discrimination on the ground of disability in rental markets. The trigger for this discrimination may be a lessor's prejudiced beliefs about the inferiority and instability of persons with disability as tenants, or the necessity to accommodate home modifications or assistance animals. However, due to the high demand for rental accommodation in many areas, much of this discrimination is difficult to prove, and therefore to challenge under non-discrimination law. Lessors may easily choose other tenants without indicating an explicit negative choice with respect to applicants with disability. Indeed, because of the structural disadvantage experienced by persons with disability (for example, in access to employment) it is often difficult for persons with disability to present competitive tenancy applications, particularly where they are competing with persons who are able to effectively participate in the labour market.

Consequently, housing assistance in the form of private rental market subsidies, whatever benefits they may have in terms of supporting tenant mobility and therefore more ready access to employment markets, have significant disadvantages in terms of securing the right to adequate housing for persons with disability. At the very least, private rental market

subsidies ought to be only one of a wide range of measures designed to facilitate access to adequate housing for persons with disability.

Governments ought also to undertake, or facilitate, education campaigns within housing markets aimed at dispelling myths and stereotypes and combating discrimination about persons with disability, and promoting their potential as tenants.

Text box 3 highlights some of the actions required of parties to ensure housing affordability.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Rent levels for public housing must be affordable, ensuring that tenants are able to attain or satisfy their other basic needs.</p> <p>Residential service fees charged by Government operated disability services must be affordable, ensuring that occupants are able to attain or satisfy other basic needs.</p> <p>All public housing ought to be fully accessible and adaptable for persons with disability, eliminating or minimizing the cost of modifications.</p> <p>Public housing for persons with disability must be situated in areas that minimise the extra costs of disability, for example, close to accessible public transport, accessible and affordable shopping, employment markets, and entertainment and leisure facilities.</p>	<p>Governments must ensure that rents and residential service fees charged by funded or licensed non-government social housing and disability service providers are affordable, ensuring that occupants are able to attain or satisfy other basic needs.</p> <p>Governments must protect disadvantaged private tenants from unreasonable rents and from unaffordable rent increases. Measures may include market-sensitive rental subsidies and legal protections against unreasonable rents.</p> <p>Building regulation ought to require minimum accessibility features for all housing.</p>	<p>Governments must pursue progressive targets to increase the supply of accessible and affordable social housing for low income groups, including persons with disability. Measures ought to include the construction or acquisition of appropriate housing stock, and the creation of incentives and imposition of obligations for private developers to construct affordable housing.</p> <p>Governments ought to adopt measures to make home ownership affordable for low-income groups, including persons with disability. Measures might include low or no interest loans or shared equity financing.</p> <p>Governments ought to meet, or subsidise the costs of home modifications necessary to secure safe and accessible housing for persons with disability.</p> <p>Governments ought to provide, or otherwise meet the costs of, essential personal care, domestic, and living skills support services, necessary for persons with disability to obtain and maintain effective access to housing.</p> <p>Governments ought to undertake, or facilitate education campaigns in housing markets to eliminate discrimination against persons with disability, and promote their potential as housing market participants.</p>

**Text Box 3: Realising housing affordability**



## HABITABLE HOUSING

The right to housing requires that all persons must have access to housing that is safe, healthy and secure. To be adequate, housing must also provide appropriate privacy and space. It must be free from structural hazards and disease vectors and protect against cold, damp, heat, rain, wind and other threats to health.

In a disability context, safe housing is also that which provides environmental (or 'ecological') protection against violence and abuse.

Housing for persons with disability must be made available in the general community, close to personal relationship networks, and other sources of formal and informal support. Housing options must not result in the congregation, segregation or isolation of persons with disability, each of which is a key accelerator or facilitator of abuse, neglect and exploitation of persons with disability. For the same reason, housing options ought not to result in the congregation of persons with disability with others with high social needs (for example persons recovering from addictions, former offenders, homeless persons etc), as grouping practices of this kind are also strongly associated with abuse and exploitation of persons with disability.

Safe and healthy housing, from a disability perspective, is also housing that is physically accessible and protects against trips and falls. Where required, it will provide appropriate adjustments for persons who are blind or deaf-blind (such as tactile indicators to assist with way-finding) or deaf (such as visual indicators to indicate visitors or a visual alarm to indicate an emergency).

Adequate protection from disease would include, especially in relation to persons with health vulnerability, avoiding the congregation of persons with disability in one residential or other setting which would increase the likelihood of disease transfer between residents and between staff and residents. It requires the avoidance of low quality housing (for example, housing with poor ventilation, poor lighting, a leaking roof, and damp floors or walls). It may require the positioning of housing options away from particular locations that are associated with airborne agents that might trigger respiratory distress (such as a motorway, garbage tip, or construction site). It may require the avoidance of construction and furnishing materials that may trigger chemical sensitivities for some persons.

Protection against cold and heat will require, in some instances, air-conditioning and heating to be provided at an affordable cost, especially where this is necessary for the safety and well-being of a person due to a health condition.

Adequate privacy would include that which is normative for a typical person of the same age, and for adults, it would generally require a private bedroom and living area. The right to privacy in housing also means that persons with disability should not be compelled or obliged to share housing with other persons; they ought to be able to freely choose where and with whom they will live.

Adequate space would include any additional room that may be necessary to manoeuvre a mobility device (for example, an open-plan layout that avoids narrow corridors and wide doorways), to store mobility and health-related equipment, or to accommodate a personal assistant or assistance animal.

Housing habitability has both an objective and a subjective dimension. For some persons with disability the subjective dimension may be at least as important as the objective dimension. For example, some long-term homeless persons with psycho-social impairment may require housing to be provided in a particular configuration or location that they feel able to utilise, otherwise they will prefer homelessness.

The requirement for housing to be habitable will usually mean that purely commercial housing options (such as boarding houses) for persons with disability with high support needs and low incomes will be inappropriate. The cost structures of these service models will typically result in the provision of very poor quality housing and support services, and in the levying of residential fees and other charges almost to the full extent of the person's income.

Text box 4 highlights some of the actions required of parties to ensure housing habitability.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Government provided housing options must provide ecological protection against abuse, neglect and exploitation.</p> <p>Government funded housing options must provide adequate protection from disease, protect against trips and falls, and be adapted to the safety needs of housing users.</p> <p>Government provided housing options must be provided in appropriate locations for housing users, for example, where necessary, away from locations that may trigger distress in persons with respiratory conditions.</p> <p>Government provided housing must respect the privacy of persons, in particular, by providing appropriate age-related space, and by not obliging or compelling them to live with persons they do not choose to.</p> <p>Government provided housing must provide any additional space necessary to accommodate and store disability-related equipment, an assistance animal or a personal assistant.</p>	<p>Governments must ensure that housing options provided by non-state actors (for example, organisations funded or licensed by government to provide housing options) provide ecological protection against abuse, neglect and exploitation.</p> <p>Governments must ensure that housing options provided by non-state actors provide adequate protection from disease by avoiding the congregation of persons in a particular location.</p> <p>Building regulation should ensure the accessibility and safety of all housing.</p> <p>Governments must ensure that housing options provided by non-state actors provide any necessary disability related adjustments.</p> <p>Governments must ensure that housing options provided by non-state actors is of good quality.</p> <p>Governments must ensure that housing options provided by non-state actors respect the privacy of persons.</p> <p>Governments must ensure that housing options provided by non-state actors provide any additional space necessary to accommodate disability related equipment, an assistance animal or a personal assistant.</p>	<p>Governments must pursue progressive targets to significantly increase the supply of habitable housing for persons with disability.</p> <p>Governments ought to meet, or subsidise the costs of, home modifications necessary to secure safe and accessible housing for persons with disability.</p> <p>Governments ought to meet, or subsidise, the costs of air-conditioning and heating where temperature regulation is required as a result of a disability related health condition.</p>

**Text Box 4: Realising housing habitability**

## ACCESSIBLE HOUSING

The right to housing requires that housing must be accessible to those persons who are entitled to it.

In a disability context particularly, the requirement for accessibility has broad import. It must be understood as encompassing not only built structures, but also the legislation, policy and procedures which regulate housing systems and the allocation of social housing, and the information and communication systems used in all aspects of housing systems.

This element of the right to housing requires housing to be physically accessible to persons with disability. For example, it must provide dignified level access for persons who use mobility devices, provide adequate space for internal mobility (for example, wide doorways, and open rooms that avoid narrow corridors), and enable persons to exercise maximum personal independence (for example, kitchen bench-tops and laundry equipment must be within reach, and toilet and bathroom facilities must be fully accessible).

Where required, housing ought to incorporate audible and tactile way-finding measures for persons who are blind, and visual signals for persons who are Deaf (for example, to indicate a caller at the door, or to raise a fire alarm).

The requirement for housing accessibility not only pertains to the personal housing of persons with disability. If persons with disability are to maintain and develop their family and personal relationship networks, and participate in all aspects of community life, it is essential that they be able to at least visit the homes of their family members and friends. This requires governments to regulate for the accessibility of all residential dwellings over time.

Information about how to secure and maintain appropriate housing options, and about how to act on housing rights, must also be accessible to persons with disability. This means that it must be available in a range of accessible formats, including Easy-English, Large-Print, Braille and accessible electronic text (including on websites that provide housing related information).

Additionally, persons with disability need to be able to effectively communicate with actors in all sectors of the housing system (such as landlords, real estate agents, social housing providers, mortgagees, housing regulators etc) using a variety of accessible communication methods, including sign-language and synthetic speech and other communication devices. This requires the imposition of duties on housing actors to accommodate these needs, and

the implementation of strategies to build the capacity of housing actors to effectively fulfil these duties.

Housing regulation and policy (including in relation to eligibility) must not create barriers to accessibility for persons with disability. For example, housing should be available to persons with disability who require social support on terms that are at least as favourable as for those who do not require such supports. Limiting housing availability to only to those who currently have access to necessary or desirable social supports is inherently discriminatory and a violation of the right to adequate housing. Governments must effectively coordinate housing and social services so as to ensure that persons with disability who require such supports are not discriminated against in housing systems.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Government provided housing must be physically accessible to persons with disability.</p> <p>Information about government provided housing, and related issues, must be fully accessible to persons with disability, including being available in a wide range of formats.</p> <p>Government housing actors must ensure that they are competent to effectively communicate with persons with disability, whatever their specific communication needs may be.</p> <p>Government housing regulation and policy must not create barriers to access to housing for persons with disability.</p>	<p>Building regulation must ensure the accessibility of all new residential accommodation, and existing residential accommodation over time.</p> <p>Governments must impose duties on non-state actors to ensure that they provide housing related information in formats that are accessible to persons with disability.</p> <p>Governments must impose duties on non-state actors to ensure that they establish capacity to communicate in modalities that are accessible to persons with disability.</p> <p>Governments must impose duties on non-state actors (including publicly funded or licensed accommodation providers) to ensure that they do not create or maintain policy barriers to access to housing for persons with disability.</p>	<p>Governments ought to meet, or subsidise, the costs of home modifications to ensure that housing can be made accessible at an affordable cost.</p> <p>Governments must ensure the effective coordination of housing and support services to ensure access to housing for persons with support needs on terms that are at least as favourable as for others.</p> <p>Governments ought to undertake, or facilitate, education to build the capacity of actors within all elements of housing systems to provide accessible housing related information to persons with disability and to communicate with persons with disability in accessible modalities.</p> <p>Governments ought to provide free and timely access to communication support for persons with disability (including sign language interpreting) so as to ensure that persons with disability are able to participate in housing systems on an equal basis with others.</p>

**Text Box 5: Housing accessibility**

## HOUSING LOCATION

The right to adequate housing requires that housing be situated in locations that allow access to employment options, health care services, schools, child care centres, cultural, recreation and leisure and other social facilities. In a disability context, as already noted, it is essential that housing is located in ready proximity to accessible transport, and in an accessible built environment that provides effective access to health care services, schools and other community facilities. For persons with disability, housing location has particular importance given the fundamental emphasis the CRPD places on inclusion and participation of persons with disability within community life.

It is also essential that housing for persons with disability is located in proximity to any necessary social support services, such as personal care, domestic assistance, and daily living skill support. In practice, this means that the delivery of these services needs to be planned and implemented to support housing in local communities close to where persons with disability live.

Environmental planning and development controls must also ensure a housing mix in all areas so as to ensure that key workers are available to staff necessary disability support services. In specific circumstances it may be necessary for governments to ensure an adequate supply of key worker staff by creating incentives for key workers to locate in particular communities (for example, by providing rental subsidies, a location-related allowance, or income incentives).

The right to housing also requires that housing not be built on polluted sites or in immediate proximity to pollution sources that threaten the right to health of the inhabitants. As we have already noted, in a disability context this may also require the avoidance of other locations that present health risks to inhabitants, such as motorways and construction sites.

Text box 6 highlights some of the actions required of parties in relation to housing location.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Governments must ensure that public housing is situated in close proximity to accessible transport, and in a built environment that provides access to health care services, employment options, social support services, and entertainment, recreation and leisure facilities.</p> <p>Governments must ensure that public housing is situated away from locations that could cause health risks, including sites associated with pollution.</p>	<p>Environmental planning and development controls must ensure that housing is situated in close proximity to services and facilities. In practice, this requires disability sensitive integrated planning.</p> <p>Governments must ensure that non-state actors (for example, funded or licensed disability services) do not situate housing in locations that could cause health risks.</p>	<p>Governments ought to provide incentives for key workers to relocate to ensure access to services for persons with disability in areas of need.</p> <p>Governments ought to provide specific rental and other housing subsidies to facilitate persons with disability obtaining housing in favourable locations.</p>

**Text Box 6: Housing location**



## CULTURALLY ADEQUATE HOUSING

The right to housing requires that housing be culturally sensitive. The way housing is constructed, the building materials used, and housing regulation and policy must enable the expression of cultural identity and diversity.

In a disability context, the right to housing requires recognition of the multiple and aggravated forms of discrimination and housing disadvantage that may be experienced due to the intersection between a person's disability and minority cultural status. Such disadvantage may not be merely additive, but exponential; that is, discrimination and disadvantage is intensified by the presence of more than one socially devalued characteristic.

Persons with disability from minority cultural backgrounds may be effectively excluded, or receive poor quality assistance, from both mainstream services and from generic culturally specific services. Mainstream services may fail to meet the person's cultural needs, and generic culturally specific services may fail to recognise and effectively support the person's impairment and disability related needs.

Consequently, governments may need to devise and implement specific positive measures to overcome such disadvantage and to ensure that persons with disability from cultural minorities have access to adequate housing on at least an equal basis with others. Typically, this will require significant capacity building both in mainstream and generic culturally specific services.

At a minimum this would include ensuring that relevant elements of housing systems provide information in community languages. They should also provide free access to interpreter and translation services and ensure that access to these services is effectively promoted to relevant target groups.

However, a great deal more will be required to ensure that persons with disability from cultural minorities experience equitable access to housing and housing and support services. Specific outreach strategies, disability services that are culturally specific, and culturally sensitive and competent staff may also be required.

Housing and housing and support services may also need to be situated in locations that will maximise the opportunity for participation in a particular cultural environment. Housing size and configuration, and housing allocation policies must take appropriate account of the different family and kinship structures of particular cultural groups, including that of

indigenous persons. Housing size and configuration may also need to provide for in-home religious observances for some cultural and religious groups.

One of the most important means of achieving culturally sensitive and competent housing systems is to consult with, and involve, persons with disability from minority cultural backgrounds in the development and delivery of housing policy and programmes.

The United Nations Declaration on the Rights of Indigenous Peoples makes it clear that this is especially necessary in relation to indigenous persons with disability. The Declaration provides that indigenous persons have the right to determine and develop priorities and strategies for exercising their right to housing development. The Declaration also provides that indigenous persons have the right to administer these programmes through their own institutions wherever possible.

Text box 7 highlights some of the actions required of parties to ensure culturally adequate housing.

	<b>Respect</b>	<b>Protect</b>	<b>Fulfil</b>
<b>Measure</b>	<p>Governments must recognise the multiple and aggravated forms of housing discrimination and disadvantage experienced by persons with disability from minority cultural backgrounds, and devise and implement specific positive measures to overcome this.</p> <p>Governments must ensure that their own housing and housing and support programmes are culturally sensitive and competent.</p> <p>Governments must recognise the right of persons from cultural minorities, particularly indigenous persons, to participate in service design, and in the planning and implementation of housing policy and programmes.</p> <p>Governments must respect the right of indigenous persons to administer housing and housing support programmes through their own organizations wherever possible.</p>	<p>Governments must ensure that non-state actors in housing systems recognise the multiple and aggravated forms of discrimination and disadvantage experienced by persons with disability from minority cultural backgrounds, and impose positive duties upon non-state actors to effectively address this.</p> <p>Governments must ensure that those elements of the housing and housing and support system operated by non-state actors are culturally sensitive and competent.</p> <p>Governments must ensure that non-state actors involved in housing systems provide opportunities for persons with disability from minority cultural backgrounds to participate in, and effectively influence, service design, and policy and programme development.</p>	<p>Governments ought to provide, or ensure the provision of, culturally specific housing and housing and support services for persons with disability from minority cultural backgrounds, where appropriate.</p> <p>Governments ought to undertake, or facilitate, measures to build the capacity of culturally specific services to deliver high quality housing and housing and support services to persons with disability.</p> <p>Governments ought to undertake, or facilitate, measures to build the capacity of persons with disability from minority cultural backgrounds to effectively participate in housing service design and policy and programme development, and to directly administer these services and programmes wherever possible. This ought to include the provision of financial assistance for agencies to represent the interests of these groups, and for organisational development.</p>

**Text Box 7: Culturally adequate housing**

## CHALLENGING SEGREGATION AS 'CHOICE'

Sometimes it is argued that persons with disability 'choose' to live in segregated accommodation options, and that Governments must give effect to this 'choice' on the basis that the right to personal autonomy overrides all other values. The real facts underlying these situations very rarely reflect such claims.

In most situations of this type, persons with disability have been, or continue to be, obliged to live in segregated environments in order to receive essential support services. Governments could just as readily provide these support services in the community, and indeed, as we have noted, Article 19 of the CRPD makes it clear that they have a fundamental obligation to do so.

In other situations, this will have historically been the case, and the individuals concerned may have become institutionalised by many years of segregated living. Institutionalisation is the outcome of systematic subordination of a person to inflexible external social, medical or legal controls. It results in the suppression and degradation of autonomy and personality, and is, in fact, the ultimate opposite of personal autonomy. This life experience makes it difficult for the person to imagine or trust in the promise of a positive community based alternative. However, institutionalisation of the person can be overcome through sensitive structured engagement of the person in normative patterns of life.

In most other cases it is not persons with disability who are making this 'choice' at all. It is family members, carers, guardians, service providers, and policy makers who seek to persist with, or impose, segregated housing and support options on persons with disability.

In many cases family members have come to rely upon institutional settings because they were initially advised by health professionals and service providers that this was the only option possible for their family member with disability. The decision to place the person in an institutional setting may have been a very painful one which it is difficult to revisit, particularly where this must involve some level of recognition and acceptance of the harm that institutionalisation has caused their relative. In some cases, family members may feel personally blamed for this harm, or experience feelings of guilt about their original decision. This may make community based living options – and the human rights related premises on which they are based – difficult to accept. This calls for a high degree of sensitivity and skill in the positive engagement of family members in planning for community based living for their relative. The vast majority of family members, including those who have expressed vigorous opposition to community living, strongly support community based alternatives once they and their relative with disability have experience of them.

Often the language of choice masks other, far less palatable, motivations. In reality, the real motivator may be a view of persons with disability as socially inferior, and therefore as not entitled, or not capable, of living an ordinary life in the community. The real aim may be to prevent persons with disability from causing social discomfort to others (including their own family members, neighbours, and the community generally).

Service providers and policy makers may view segregated institutional models of care as a 'cheaper' social support option for Government (although in most cases institutional models of support are, in fact, more expensive than community based models). Family members, carers and guardians may view segregated institutions as 'safer' places for persons with disability to live, even though the evidence overwhelmingly demonstrates that they are associated with very high rates of neglect, violence and abuse of persons with disability.

Whatever the cause or motivation, the suppression of autonomy and personality of the individual by segregated, institutional models of housing and support is offensive to human dignity.

As we have already noted, human dignity is the ultimate source of all human rights, and it might also be conceptualised as the end goal of all human rights. Consequently, all human rights must be interpreted and applied in a way that respects, protects and fulfils human dignity.<sup>xivxv</sup> Human dignity has both a personal and collective dimension; that is, it encapsulates, and insists upon, fundamental values for the individual and for societies as a whole.<sup>xvi</sup> It is therefore an obligation that applies to duty bearers (those who must respect, protect and fulfil human rights) as much as it does to right bearers (those whose rights must be respected, protected and fulfilled). In other words, right bearers as well as duty bearers have a fundamental responsibility to act in ways that respect, protect and fulfil human dignity. This has important implications for resolving the clash of constituent or subordinate human right values.

Even in those very rare situations where persons with disability seek segregated housing and support options, it means that Governments are under a clear obligation to protect and preserve human dignity. To do otherwise would degrade the dignity of all persons with disability, and our society as a whole, by creating or preserving social institutions that perpetuate a belief in the social inferiority of persons with disability.

The patterns of behaviour and belief associated with segregated housing models may create delicate and painful challenges to be resolved. But experience overwhelmingly demonstrates that they can be resolved with startling benefits not only for persons with disability, but for all stakeholders, and the community as a whole.

Attitudes and beliefs that perpetuate segregated housing options for persons with disability must be challenged and overcome. In this respect Article 8 of the CRPD makes the human rights obligations of parties very clear. They must 'adopt immediate, effective and appropriate measures:'

- To raise awareness throughout society, including at the family level, of the rights of persons with disability, and to foster respect for the rights and dignity of persons with disability;
- To combat stereotypes, prejudices and harmful practices relating to persons with disability in all areas of life; and
- To promote awareness of the capabilities and contributions of persons with disability.

Governments therefore fail to respect, protect and fulfil human rights if they acquiesce in, or seek to take advantage for their own purposes, of calls for the establishment or perpetuation of segregated housing and support options for persons with disability.

## CHALLENGING CONGREGATION AS 'TYPICAL'

It is also sometimes argued that housing and housing and support options that congregate persons with disability together in significant numbers are justifiable because other people in the community choose to live this way. The most often cited example of 'typical' congregate accommodation options are residential services for older and elderly persons.

This argument ignores or distorts very important facts.

First, as we have already noted, the CRPD provides a very specific human rights related prohibition on the delivery of housing and housing and support services in ways that result in the segregation of persons with disability from their non-disabled peers and in the isolation from the community. The CRPD is clear that arrangements of this nature are human rights violations. All Australian Governments have a solemn obligation to recognise, respect, protect and fulfil CRPD rights. It is therefore not open to Governments to act in violation of these rights no matter what conditions may prevail with respect to other population groups within the community.

Second, the claim that older and elderly persons ‘prefer’ to live in institutional accommodation services is seriously misstated. In fact, in many cases, older and elderly persons are obliged or compelled to live in these environments in the same way that persons with disability have been historically. These environments have all of the same problems that institutional environments for persons with disability have had, and continue to have. If the necessary supports were provided that would enable older and elderly persons to age in their own homes safely and with dignity, the vast majority would do so. To a significant extent aged care policy now recognises this in its emphasis on the development and delivery of supports that will allow older people to ‘age in place;’ that is, in their own homes and communities, rather than in specialist aged care facilities.

Third, the ‘contemporary’ institutional housing and support options that are advanced on this premise are actually segregated simulations of the larger group style accommodation they take as their precedents. Subject to other human rights considerations being satisfied, if persons with disability were to choose to live in larger group environments with a range of other persons of their choice, there may be no objection to such arrangements. However, that is not what the proposed ‘contemporary’ institutional models of accommodation involve. They segregate persons with disability from their non-disabled peers. In those circumstances where these facilities simulate services for older and elderly persons, they also typically violate age-related norms. Non-disabled ‘younger’ adults do not choose to live in residential aged care facilities.

Finally, it might be observed that there is a significant qualitative difference between a frail elderly person nearing the end of their life being accommodated in a residential facility, and a young person with disability with many years of life to lead being accommodated in such a facility. Such accommodation is not preferable for either group but it is more intensely inappropriate for younger persons with disability.

## THE RIGHT TO ADEQUATE HOUSING – AN AGENDA FOR ACTION

In this section we identify the contemporary priorities for government action towards the full realisation of the right to adequate housing for persons with disability. We do not attempt to identify every action that is needed to realise the human rights of persons with disability in Australian housing and housing and support systems. However, if effective action was to be taken in relation to our identified priorities, many other problems would also be resolved.

1. All Australian Governments must take immediate action to close all residential institutions accommodating persons with disability, including those operated by the non-government and private sectors, and allocate and provide the resources necessary for residents to move to individualised community based housing and support options that will support their inclusion and participation in the general community.
2. All Australian Governments must take immediate action to provide persons with disability with control over the resources they require to live with dignity in the community. Such individualised funding arrangements must ensure that persons with disability are able to choose where and with whom they will live, and which agencies and individuals they will contract to provide them with necessary support services. Persons with disability must be provided with any support they may require to exercise their rights and obligations under individualised funding arrangements.
3. All Australian Governments must take immediate progressive action to significantly increase the availability of social support services necessary for persons with disability to live in and be a part of the community (such as personal care, domestic assistance, and daily living skills support). These measures ought to be subject to explicit, measurable targets.
4. All Australian Governments must devise and implement complementary and progressive housing strategies that will significantly increase the availability of accessible social housing for persons with disability over time. All new social housing stock ought to be accessible and adaptable. All existing social housing stock ought to be retrofitted for accessibility and adaptability over time. Social housing stock that cannot be economically retrofitted for accessibility and adaptability ought to be replaced. These measures ought to be subject to explicit, measurable targets.



5. All Australian Governments ought to collaborate to develop and implement changes to Australian building regulation that will ensure that all future residential accommodation is accessible and adaptable, and that accessibility features are incorporated into any major renovation or redevelopment of existing accommodation.

## Appendix 1: Structure of the Convention on the Rights of Persons with Disabilities

Section	Articles	Content
Preamble	Preamble paragraphs a to y	The <i>Preamble</i> provides an overview of the international concern that led to the development of the <i>CRPD</i> , and situates the <i>CRPD</i> in the context of other disability and human rights initiatives undertaken by the international community up to that point. It highlights key issues necessary for a proper understanding of disability and human rights concerns. Unlike the other parts of the <i>CRPD</i> , the <i>Preamble</i> does not contain binding legal obligations. However, it plays an important role in the interpretation of the <i>CRPD</i> .
Interpretive articles	Articles 1 and 2	The <i>interpretive articles</i> set out the general purpose of the <i>CRPD</i> , describe the class of persons to whom the <i>CRPD</i> applies, and defines key terms. They also assist in clarifying the scope and content of the <i>CRPD</i> 's legally binding obligations.
General obligations	Articles 3 to 9	The <i>general obligations</i> contain overarching or crosscutting principles and measures to be applied in all aspects of the implementation of the convention. They contain legally binding obligations and also assist in clarifying the scope and content of the specific obligations.
Specific obligations	Articles 10 to 30	The <i>specific obligations</i> set out, mostly in some detail, the specific human rights and fundamental freedoms recognised by the convention. They are legally binding obligations. Broadly speaking, Articles 10 to 23 and Article 29 are based in civil and political rights, while articles 24 to 28 and Article 30 are based in economic, social and cultural rights. However, as noted, in some cases there are new or amplified applications or extensions of these rights, and there is also a blending of each class of rights.
Implementation and monitoring articles	Articles 31 to 40	The <i>implementation and monitoring provisions</i> contain the arrangements required for implementation and monitoring of the convention at both the national and international levels. At the international level this includes the establishment of a new treaty body called the Committee on the Rights of Persons with Disabilities.

Operational or machinery articles	Articles 41 to 50	The <i>operational or machinery provisions</i> deal with a range of administrative and legal issues such as how states become a party to the <i>CRPD</i> , and when it will come into force.
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<b>Optional Protocol</b>	Articles 1 to 18	The <i>Optional Protocol</i> is a separate document to the <i>CRPD</i> that incorporates an individual complaint procedure, which allows individuals and groups of individuals to raise complaints with the treaty body where they have exhausted domestic remedies. It also establishes an inquiry procedure in relation to gross or systemic violations of <i>CRPD</i> rights.
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## END NOTES

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<sup>i</sup> Generally, Article 29, *Vienna Convention on the Law of Treaties*, 1969; this obligation may also be a term of the treaty itself; see for example, Article 4(5) of the Convention on the Rights of Persons with Disabilities.

<sup>ii</sup> Cf Article 4(1)(a) of the Convention on the Rights of Persons with Disabilities

<sup>iii</sup> Article 2(1), International Covenant on Economic, Social and Cultural Rights; see also Committee on Economic Social and Cultural Rights, *General Comment 4: the right to adequate housing*, 1991

<sup>iv</sup> Articles 4, 31, and 33, Convention on the Rights of Persons with Disabilities

<sup>v</sup> Article 2, International Covenant on Economic, Social and Cultural Rights; see also Committee on Economic Social and Cultural Rights, *General Comment 4: the right to adequate housing*, 1991; Office of the High Commissioner for Human Rights: *Fact Sheet no 21, The Human Right to Adequate Housing* (undated).

<sup>vi</sup> See further Centre for Universal Design, North Carolina State University available at [www.design.ncsu.edu/cud](http://www.design.ncsu.edu/cud)

<sup>vii</sup> Human Rights Committee, *General Comment 18, Non-Discrimination*, 1989; Office of the High Commissioner for Human Rights.

<sup>viii</sup> *Gerhady v Brown* [1985] HCA 11; (1985) 159 CLR 70 see especially Brennan J at 37.

<sup>ix</sup> *Brown v Board of Education* 347 US Rep 483 (1954) and *Penn. Assn for Mental Retarded Children v Penn* 334 F Supp. 1257 (1971); followed in Australia in *Dalla Costa v the ACT Department of Health* (1994) EOC 92-633 and *Alex Purvis on behalf of Daniel Hoggan v the State of New South Wales (Department of Education)*, Human Rights and Equal Opportunity Commission, Matter 98/127, 13 November 2000 (later overturned on appeal, but not on this point)

<sup>x</sup> *Proudfoot v ACT Board of Health* (1992) EOC 92-417

<sup>xi</sup> *Gerhady v Brown* [1985] HCA 11; (1985) 159 CLR 70

<sup>xii</sup> Article 4(1) *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

<sup>xiii</sup> see also Committee on Economic Social and Cultural Rights, *General Comment 4: the right to adequate housing*, 1991; Office of the High Commissioner for Human Rights: *Fact Sheet no 21, The Human Right to Adequate Housing* (undated).

<sup>xiv</sup> *Manuel Wackenheim v France*, Communication No 854/1999, U.N. Doc. CCPR/C/75/D/854/1999 (2002)

<sup>xvi</sup> *Kracke v Mental Health Review Board & Ors (General)* [2009] VCAT 646 esp at 24ff