



Office of the Public Advocate

Safeguarding the rights and interests of people with disability



Submission to the National Disability Strategy Position Paper

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Abbreviations

Aged Care Royal Commission	Royal Commission into Aged care Quality and Safety
CISO	Corrections Independent Support Officers
COAG	Council of Australian Governments
CRPD	Convention on the Rights of Persons with Disabilities
DAP	Disability Action Plan
ITP	Independent Third Person
NDIS	National Disability Insurance Scheme
OPA	Office of the Public Advocate
Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Recommendations

Recommendation 1

The outcome areas of the National Disability Strategy should remain unchanged but should be reordered as suggested in this submission to reflect its vision better and to emphasise its human rights focus.

Recommendation 2

The next National Disability Strategy should describe a human rights approach in terms of individuals, communities, government, and organisations supporting people with disability to lead a flourishing life.

Recommendation 3

The mission of the next National Disability Strategy should be an inclusive Australia, which resources people with disability to lead a flourishing life.

Recommendation 4

The Australian Government should further develop and promote the use of 'special measures' provisions within the *Disability Discrimination Act (1992) (Cth)* as an effective measure to increase the employment of people with disability, in both the public and private sectors.

Recommendation 5

The Australian Government should include a commitment in its National Disability Strategy 2021-2030, to develop a National Disability Employment Strategy. This strategy should be developed together with people with disability and their representative organisations.

Recommendation 6

The Council of Attorneys-General should progress work on the agreed staged approach to enduring power of attorney reform for financial decisions. This work should be given equal priority to the creation of a national central register of financial powers of attorney as outlined in the National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023.

Recommendation 7

The Australian Government should report publicly on the commitments it makes to people with disability annually. Furthermore, it should report every two years initially and eventually annually on the progress made towards agreed targets in its outcomes framework. This outcomes framework should be developed in consultation with people with disability and their representative organisations.

Recommendation 8

The Australian Government should table the data report on progress made in the federal parliament in a similar way to how *Closing the Gap* reports are tabled.

Recommendation 9

The Australian Government should develop targeted action plans. Accountability for these plans should be vested in a senior Minister, with the responsibility for implementation given to an appropriate departmental secretary who is accountable for its progress.

Recommendation 10

The first targeted action plan should be a National Disability Employment Strategy. Action plans should be developed on other outcome areas as needed. All plans should be developed in consultation with people with disability and their representative organisations.

Recommendation 11

A national disability and carers advisory council should be re-established and adequately resourced to ensure that the Australian Government receives robust advice from people with disability. This Council's functions and duties should be legislated with its main functions to include:

- oversight of the development and implementation of the National Disability Strategy
- oversight and review of targeted disability plans
- development and implementation of an engagement plan with people with disability, their representative organisations and with disability advisory councils to all levels of government.

Recommendation 12

At least 75 per cent of the members of any advisory body should be people with lived experience of disability. This lived experience should reflect the diversity of people with disability. Its membership should have strong networks within the disability community and be regarded as strong advocates and leaders.

1. About the Public Advocate

The Office of the Public Advocate (OPA) is a Victorian statutory office, independent of government and government services that works to safeguard the rights, interests and dignity of people with disability. The Public Advocate is appointed by the Governor in Council and is answerable to the Victorian State Parliament.

The Public Advocate has seven functions under the *Guardianship and Administration Act 2019* (Vic),¹ all of which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect and exploitation.

To this end, OPA provides a range of critical services for people with cognitive impairment or mental illness, including guardianship, advocacy, and investigation services. In 2018-19, OPA was involved in 1,823 guardianship matters (978 which were new), 404 investigations, and 258 cases requiring advocacy.² Forty-nine per cent of OPA's new guardianship clients were over the age of 65 and more than half (58 per cent) of OPA eligible guardianship clients were National Disability Insurance Scheme (NDIS) participants.³

OPA's two Disability Act officers assist the Office to fulfil its advocacy and safeguarding roles in relation to tenancy rights of people living in disability residential services, including Specialist Disability Accommodation. The officers also provide individual advocacy in relation to safeguard protections involving civil detention and compulsory treatment contained within the *Disability Act 2006* (Vic). These officers' interventions remain the largest single contributor to OPA's individual advocacy.⁴

A key function of the Public Advocate is to promote and facilitate public awareness and understanding about the *Guardianship and Administration Act 2019* (Vic) and any other legislation affecting persons with disability or persons who may not have decision-making capacity. To do so, OPA runs a telephone advice service, which answered 13,644 calls in 2018-19. OPA also coordinates a community education program for professional and community audiences across Victoria to engage on a range of topics such as the role of OPA, guardianship and administration, and enduring powers of attorney.

OPA is supported by more than 700 volunteers across four volunteer programs: The Community Visitors Program, the Community Guardianship Program, the Independent Third Person Program (ITP Program) and the Corrections Independent Support Officer (CISO) Program. The ITP Program is a 24/7, state-wide volunteer service operating in all police stations in Victoria. ITPs assist persons with cognitive impairment when making formal statements to Victoria Police. In 2018-19, ITPs attended a total of 3,222 interviews. CISOs are experienced ITPs who support prisoners who have an intellectual disability at Governor's disciplinary hearings at Victorian prisons and/or remand centres. In 2018-19, CISOs were invited to attend 299 hearings, assisting 164 clients.

¹ *Guardianship and Administration Act 2019* (Vic) s 15. This act came into operation on March 1, 2020 and replaces the 1986 act of the same name.

² Office of the Public Advocate (Vic) *Annual Report 2018-19*, (Office of the Public Advocate, 2019) 9. < <https://www.publicadvocate.vic.gov.au/resources/annual-reports/opa-annual-reports>>.

³ Office of the Public Advocate (Vic) internal program data.

⁴ Office of the Public Advocate (Vic) *Annual Report 2018-19*.

Community Visitors are independent volunteers empowered by law to visit Victorian accommodation facilities for people with disability or mental illness. They monitor and report on the adequacy of services provided in the interests of residents and patients. They ensure that the human rights of residents or patients are being upheld and that they are not subject to abuse, neglect or exploitation. In their annual report, Community Visitors relate their observations on the quality and safety of the services they visit and make recommendations to the Victorian State Government. More than 400 Community Visitors visit across three streams: disability services, supported residential services and mental health services. In 2018-19, Community Visitors made 5,527 statutory visits.⁵

2. About This Submission

This submission will address questions one, two, three, six, seven and eight.

2.1. Previous Relevant OPA Work

OPA will draw upon its previous submission on the new Victorian Disability State Plan 2021-2024 (May 2020)⁶ and its responses to the Rights and Attitudes Issues Paper (August 2020)⁷ and the Employment Issues Paper (October 2020)⁸ from the Royal Commission into Violence, Exploitation and Neglect of People with Disability (Royal Commission).

2.2. A Human Rights Approach

This submission applies a human rights approach that:

- holds that all people with disability have the right to enjoy equality of opportunity and to effectively participate in, and be fully included in, society
- recognises that the vast majority of challenges experienced by people with disability are a result of disabling systems and environments, rather than being due to an inherent 'lack' in the individual
- considers impairment as an expected dimension of human diversity
- seeks for people with disability to be supported and resourced to have the capabilities to lead a dignifying and flourishing life.

3. Key Questions

Question 1: Vision and Outcome Areas

OPA supports the slight amendment to the vision which would replace citizen with 'equal members of the community' as this change is more inclusive of all people with disability than the term citizen.

⁵ Office of the Public Advocate (Vic), *Community Visitors Annual Report 2018-19* (Office of the Public Advocate, 2019).

⁶ Office of the Public Advocate (Vic.) *Submission to the State Disability Plan 2021-2024* (OPA, 2020).

⁷ Office of the Public Advocate (Vic.) *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - Rights and Attitudes Issues Paper* (OPA, 2020).

⁸ Office of the Public Advocate (Vic.) *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability- Employment Issues Paper* (OPA, 2020).

OPA also supports retaining the six outcome areas. However, OPA believes that the hierarchy of the outcome areas indicate their relative priority as an outcome of the strategy and should be reordered to better reflect its vision.

OPA suggests the following reordering of priorities:

1. Rights Protection, Justice and Legislation
2. Inclusive and accessible communities
3. Personal and Community Support
4. Learning and Skills
5. Economic Security
6. Health and Wellbeing.

The reasons for reordering the priorities of the strategy are as follows:

The National Disability Strategy is Australia's main mechanism to meet its obligations under the United Nations *Convention on the Rights of Persons with Disabilities (2006)* (CRPD). The CRPD is a rights-based instrument and therefore the first priority of the strategy must be to ensure that there is a robust system of human rights protections and safeguards for people with disability. Without such a system underpinning the strategy, the other outcomes cannot be achieved successfully.

The reordered priorities two and three must come next because they relate to the broader community. People with disability cannot 'fulfil their potential as equal members of the community' without adequate resources being allocated to ensure that these two communal objectives are first achieved.

The last three priorities are focussed on the individual. Economic security cannot occur without the foundation of learning and skills to acquire information, independence, jobs, and knowledge. Being the last ordered priority does not mean that health and wellbeing are unimportant. On the contrary, they underpin the two above it. Without good health and wellbeing outcomes nothing else can be achieved fully for either the person with disability or the community.

Recommendation 1

The outcome areas of the National Disability Strategy should remain unchanged but should be reordered as suggested in this submission to reflect its vision better and to emphasise its human rights focus.

Question 2: Guiding Principles

The proposed guiding principles do not include the protection and promotion of human rights of people with disability. A human-rights approach begins by recognising people with disability as rights bearers, both moral and legal. Uppermost is respect for the dignity of people with disability. As was recently stated by the Australian Human Rights Commission: 'International human rights law offers the most widely accepted framework for protecting individual dignity and promoting the

flourishing of communities”⁹. The CRPD states what must be done to provide dignity for all people with disability.

As suggested in section 2.2 above, OPA adopts a human rights approach that advocates for ‘people with disability to be supported and resourced to have the capabilities to lead a dignifying and flourishing life’. This advocacy position draws on the capabilities approach developed by Martha Nussbaum and Amartya Sen.¹⁰ What follows draws heavily on OPA’s response to the Victorian Disability Plan 2021-2024 consultation and on OPA’s Rights and Attitudes submission presented to the Royal Commission.

In the capability framework, a ‘flourishing life’ has these ten elements:

1. **Life:** living a normal human life span; not dying prematurely or having life reduced to a life not worth living.
2. **Bodily health:** having good health, including reproductive health; being adequately nourished; having adequate shelter.
3. **Bodily integrity:** being able to move freely from place to place; being secure.
4. **Senses, imagination and thought:** being able to use the senses; to be able to imagine, think, and reason broadly, informed and cultivated by an adequate education, including literacy and basic mathematical and scientific training; being able to use imagination and thought in connection with wide ranging experiences, including religious, literary, musical, and other works and events; being able to use your mind in ways protected by guarantees of freedom of expression, including political and artistic speech, and freedom of religion; having pleasurable experiences and being able to avoid non-beneficial pain.
5. **Emotions:** have attachments to things and people outside of yourself; generally, to love, grieve, experience longing, gratitude, and justified anger; not having your emotional development hindered by fear and anxiety; supporting forms of human association that are crucial to a person’s emotional development.
6. **Practical reason:** being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. **Affiliation:**
 - **Being able to live with and toward others:** recognising and showing concern for others; engaging in social interaction; being able to imagine the situation of another.
 - **Having the social basis for self-respect and non-humiliation:** being treated as a dignified being whose worth is equal to that of others – this entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin and species.

⁹ Australian Human Rights Commission, *Human Rights and Technology Law: A Discussion Paper* (The Commission, 2019) 31. <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-discussion-paper-2019>>

¹⁰ Martha C. Nussbaum, *Frontiers of justice: disability, nationality, species membership* (Belknap Press of Harvard University Press 2006) 69-81. The ten capabilities are listed at pp. 76-78.; Amartya Sen, *The Idea of justice* (Belknap Press of Harvard University Press, 2009).

8. **Other species:** being able to live with concern for and in relation to animals, plants and the world of nature.
9. **Play:** being able to laugh, to play, to enjoy recreational activities.
10. **Control over environment:**
 - **Material:** being able to hold property (both land and movable goods); having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having freedom from unwarranted search and seizure; having meaningful work where you can exercise practical reason and your human potential; having meaningful relationships and mutual recognition with other workers.
 - **Political:** being able to participate effectively in political decisions that govern life; having the right of political participation; protections of free speech and association.

OPA sees the elements of a flourishing life as a guide for developing inclusionary human-rights based approaches. The elements of the capability-based approach can be translated into revised arrangements for the protection of human rights in the next National Disability Strategy. OPA suggests that a mission statement for the Strategy would support this goal. This mission statement is 'an inclusive Australia, which resources people with disability to lead a flourishing life'. To expand the Strategy in this way would guide the ways that individuals, communities, and organisations respond to people with disability in ways that are consistent with the CRPD.

This statement is a natural progression from the proposed vision of that Strategy, which is of 'an inclusive Australian society that enables people with disability to fulfil their potential as equal members of the community'. The next National Disability Strategy can be the roadmap for a process of implementing and evaluating progress towards its mission of resourcing people with disability to lead a flourishing life.

Recommendation 2

The next National Disability Strategy should describe a human rights approach in terms of individuals, communities, government, and organisations supporting people with disability to lead a flourishing life.

Recommendation 3

The mission of the next National Disability Strategy should be an inclusive Australia, which resources people with disability to lead a flourishing life.

OPA agrees with the consultation paper's proposal that in addition to the principles outlined in Article three of the CRPD, the new strategy should contain the additional guiding principles listed therein. As indicated above, its first guiding principle should focus on human rights. Any implementation plans for the strategy should demonstrate how all the guiding principles will be reflected in any and actions, programs and policies that are undertaken.

Question 3: Improving Community Attitudes

OPA agrees that the next National Disability Strategy would benefit from an increased emphasis on improving attitudes towards people with disability across all six outcome areas. OPA and

Community Visitors observe that persistent and destructive discrimination lingers in major social systems of care. The fact that a Royal Commission is sitting, at the behest of the Australian Government, demonstrates how poor the attitude of the community toward people with disability can become. The horrific death of Ann Marie Smith is, in part, a consequence of almost complete social disengagement. Ann Marie Smith had few people involved in her life who were not paid to support her, and this lack of community involvement may have been a significant contributing factor to her death.

3.1. Improving Community Attitudes to People with Disability of Working Age

OPA also believes that the best challenge to deeply rooted exclusionary attitudes and prejudices is everyday contact with people with disability. The Royal Commission has noted the following in its Rights and Attitudes Issues Paper:

Research suggests limited contact between people with disability and the wider community can contribute to a lack of understanding of disability. Negative attitudes can cause a social distance between people with disability and the wider community driven by stigma.

The paper then goes on to say that: 'Negative attitudes appear to be based in misunderstandings of people with disability and limited contact'.¹¹

The implications of this statement highlight the importance of addressing the under-representation of people with disability in Australia's workforces. As well as the direct benefits to the person achieved through employment, there is a broader opportunity for people without disability who are the person's colleagues. One of the best ways to challenge negative attitudes is through increased interaction, especially in the highly valued domain of paid employment. This means mainstream employment is a critically important domain for promoting the inclusion and human rights of people with disability.

To ensure greater equity of outcomes, it is appropriate to adopt an approach called substantive equality sometimes referred to as 'affirmative action' or 'special measures', to increase the employment participation of people with disability.

These provisions are available in the *Disability Discrimination Act (1992)* (Cth) and can be used by both the public and private sectors to increase the participation of people with disability in the workforce, including people with cognitive impairment.¹² The Australian Government should promote greater use of these measures within both the public and private sectors to encourage the employment of people with all types of disability of working age. The ability to develop Disability Action Plans (DAP) exists under both Federal and state legislation and is a useful tool for improving employment participation particularly if special measures' provisions are used to increase the employment of under-represented groups of people with disability. The ability to require organisations to report publicly on their DAP and its progress is also a useful monitoring and accountability tool.

¹¹ Royal Commission into Violence, Abuse, Neglect and Exploitation *Issues Paper- Rights and Attitudes* (Royal Commission, 2020) 3-4. <<https://disability.royalcommission.gov.au/publications/rights-and-attitudes>>

¹² *Disability Discrimination Act 1992* (Cth) s. 45 (Special Measures). <<https://www.legislation.gov.au/Details/C2018C00125/>>

The Australian Government needs to lead by example by including in the next National Disability Strategy a commitment to develop a National Disability Employment Strategy, in close consultation with people with disability and their representative organisations. A useful model of such a strategy is the Victorian Public Service's disability employment action plan, entitled *Getting to Work*. It is an ambitious plan that uses both employment targets and targeted positions for people with disability to fulfil its goals amongst other actions.¹³

Recommendation 4

The Australian Government should further develop and promote the use of 'special measures' provisions within the *Disability Discrimination Act (1992) (Cth)* as an effective measure to increase the employment of people with disability, in both the public and private sectors.

Recommendation 5

The Australian Government should include a commitment in its National Disability Strategy 2021-2030, to develop a National Disability Employment Strategy. This strategy should be developed together with people with disability and their representative organisations.

3.2. Preventing Financial Abuse against Older People with Disability

It is worth noting that a Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) is sitting, also at the behest of the Australian Government. The Australian Bureau of Statistics Survey on Disability, Ageing and Carers *Summary of Key Findings 2018* tells us that almost one in two (49.6 per cent) of people with disability are aged 65 years and over. The Aged Care Royal Commission entitled its interim report: *Neglect*.¹⁴ This means that one in two people with a disability also may experience negative attitudes because of their age as well as their disability. This will mean that older people with disability may also experience elder abuse, particularly financial abuse. When considering appropriate actions in the outcome area of financial security, the need to prevent the financial abuse of older people with disability must be a key area of action.

OPA welcomes the Australian Government's commitment to tackling the financial abuse perpetrated against older people detailed in its *National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023*.¹⁵ The plan identified five priority areas for action, including Priority area 4, Planning for future decision-making. Initiative 4.1 commits state and territory governments, assisted by the Australian Government, to consider developing options for harmonising enduring powers of attorney, particularly in relation to financial powers of attorney, to achieve greater national consistency. Initiative 4.2 commits the Australian Government to investigate the feasibility of developing a national online register of enduring powers of attorney. The Council of Attorneys-General agreed in-principle to the proposed broad policy design for a national register of enduring documents and tasked the Commonwealth to present a final proposal

¹³ Victorian Government, *Getting to Work: Victorian Public Sector Disability Employment Action Plan 2018–2025*. (Victorian Public Sector Commission, 2018) < <https://vpssc.vic.gov.au/resources/disability-employment-action-plan/>>

¹⁴ Aged Care Quality and Safety, Interim Report: *Neglect* (The Royal Commission 2019) 3 vols. < <https://agedcare.royalcommission.gov.au/publications/interim-report>>

¹⁵ Council of Attorneys-General, *National Plan to respond to the Abuse of Older Australians [Elder Abuse] 2019-2023* (The Council, 2019)<<https://www.ag.gov.au/sites/default/files/2020-03/National-plan-to-respond-to-the-abuse-of-older-australians-elder>>.pdf

on the possible implementation and costing of the scheme, including resolution of outstanding issues, before the end of 2020.

OPA recognises that the laws relating to financial powers, which vary across states and territories, are complex and that difficulty may cause some attorneys to act unlawfully inadvertently. However, it is also true that the very complexity may make it easier for financial abuse to be perpetrated against an older person with disability. In 2019, OPA produced a guide entitled: *You Decide Who Decides: Making an enduring power for financial decisions*,¹⁶ which proposed a model for harmonising the financial-powers-of-attorney laws across the country.

OPA would like to see this harmonisation process progressed more quickly alongside the current priority of creating a national central register for financial powers of attorney. To do so, would improve the financial security of older people with disability by reducing the risk to them of experiencing financial abuse by family members or friends.

Recommendation 6

The Council of Attorneys-General should progress work on the agreed staged approach to enduring power of attorney reform for financial decisions. This work should be given equal priority to the creation of a national central register of financial powers of attorney as outlined in the *National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019-2023*.

Question 6: Informing the Public about the Strategy's Progress

OPA regards regular public reporting as an important accountability and monitoring tool. What follows draws heavily on the Submission to the Royal Commission in response to its Rights and Attitudes Issues Paper.¹⁷

The Prime Minister recently announced that the Council of Australian Governments (COAG) is to be formally replaced by the National Cabinet and that further changes will flow on to governmental governance structures following a review by the National Cabinet. The COAG Disability Reform Council will be affected and

while the review is underway, disability ministers continue to meet to discuss critical issues of national significance in accordance with agreed protocols and the NDIS Act. The future form and role of a disability ministers' forum will be determined under the revised Ministerial Forum structure, including progressing of current actions.¹⁸

The most recent COAG Disability Reform Council Terms of Reference were agreed to in 2019.¹⁹ The role of the Disability Reform Council includes critical responsibilities for issues

¹⁶ Office of the Public Advocate, *You Decide Who Decides: Making an enduring power for financial decisions* (OPA on behalf of the Australian Guardianship and Administration Council, 2019).

< <https://www.publicadvocate.vic.gov.au/resources/booklets/642-you-decide-who-decides-accessible-pdf?>>

¹⁷ Office of the Public Advocate, *Rights and Attitudes Paper*, 13.

¹⁸ Meeting of Commonwealth, State and Territory Disability Ministers (Government of Australia). Statement (24 July 2020). < https://www.dss.gov.au/sites/default/files/documents/07_2020/statement_-_disability_ministers_meeting_24_july_2020.pdf>

¹⁹ Council of Australian Governments, 2019. COAG Disability Reform Council, 2019 Terms of Reference. < <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/disability-reform-council/disability-reform-council-terms-of-reference>>

and intergovernmental agreements including the National Disability Strategy 2010-2020.

OPA hopes that the important role of the Disability Reform Council will continue and be improved under the new Ministerial Forum structure. Disability Ministers', as a group, should be the vehicle for improving the National Disability Strategy as a platform for human rights based approaches across all governments and extending to the wider community. To that end, OPA agrees that Disability Ministers should report annually through a public statement outlining the Australian Government's commitments to people with disability.

One way of monitoring progress is by analysing the available data. An outcomes framework is a good method of making that data available and measuring progress towards targets. OPA agrees that this data should be made available at least every two years initially and eventually annually to enable progress to be measured and those responsible for implementation held to account.

For any outcome framework to be effective, the dataset it uses should be robust and comprehensive. It should be developed in consultation with people with disability and their representative organisations and it should deliberately avoid a one-size-fits-all approach. The framework should be sensitive to the diversity of people with disability and the issue of the additional disadvantage(s) that people with disability can experience. These can be because of age, gender, gender identity, carer status, income, race, Indigenous status, religion, cultural background, educational opportunity, or impairment type. Rich data will facilitate a complex analysis, which in turn will drive effective, nuanced policy responses that are attune to the diverse experiences and needs of people with disability.

OPA believes that this disability progress report should be tabled in the federal parliament by the Prime Minister in a similar way what happens with *Closing the Gap* reports for Aboriginal Australians. This will give measuring the progress towards equality of people with disability in the Australian community, the public prominence it deserves.

Recommendation 7

The Australian Government should report publicly on the commitments it makes to people with disability annually. Furthermore, it should report every two years initially and eventually annually on the progress made towards agreed targets in its outcomes framework. This outcomes framework should be developed in consultation with people with disability and their representative organisations.

Recommendation 8

The Australian Government should table the data report on progress made in the federal parliament in a similar way to how *Closing the Gap* reports are tabled.

Question 7: Targeted Action Plans

OPA agrees that targeted action plans are a good mechanism to support effective implementation of the Strategy. These targeted action plans should contain targets and performance measures that are monitored. They should be developed in consultation with people with disability and their representative organisations. These plans should be resourced adequately and be championed by a senior minister and a senior bureaucrat (such as a departmental secretary) who should be charged with its implementation and held accountable for its progress.

Several targeted action plans linked to the outcome areas should be developed over time according to need. The most critical area, as discussed above, is employment and OPA suggests that the first targeted action plan should be a National Disability Employment Strategy for the reasons discussed in this submission in section 3.1 above.

Recommendation 9

The Australian Government should develop targeted action plans. Accountability for these plans should be vested in a senior Minister, with the responsibility for implementation given to an appropriate departmental secretary who is accountable for its progress.

Recommendation 10

The first targeted action plan should be a National Disability Employment Strategy. Action plans should be developed on other outcome areas as needed. All plans should be developed in consultation with people with disability and their representative organisations.

Question 8: Engagement with People with Disability

This submission has emphasised that people with disability and their representative organisations must be consulted at every stage of implementation of the Strategy. The best way to ensure that occurs is to adopt a co-design approach with people with disability. At a consultation organised by the Australian Human Rights Commission on the position paper for the National Disability Strategy, it was observed that the old mantra of the disability rights movement: ‘nothing about us without us’ has now become ‘nothing without us’. Everything that happens in society can have an effect on people with disability and they need to be engaged with and consulted when major changes are proposed or bureaucratic decisions are made which could impact their lives, even if the instigators of those changes had not foreseen the impact on people with disability.

To that end, the engagement mechanisms used need to be strong, active, well-resourced and its existence and functions enshrined in appropriate legislation. The Australian Government established a National Disability and Carers Advisory Council with responsibility to oversee the National Disability Strategy.²⁰ This Council is supposed to be co-chaired by the relevant Assistant Minister and a member of the Council. It has representatives from the disability community advocacy sector, disability industry and carers representatives. It has not issued a communique since its meeting on 30 October 2018 with its term supposed to end in November 2019. Its web page has not been updated for almost 12 months and a new council has not been announced. This means that one of the Federal Government’s main advisory mechanism for engagement with people with disability is dormant while a new National Disability Strategy is being developed. Furthermore, there is no opportunity for consultation between the National Disability and Carers Advisory Council and other state and territory disability advisory councils, such as the Victorian Disability Advisory Council. It is crucial that in this period of ongoing national disability reform that a strong national disability advisory council exists to ensure that ‘nothing without us’ does not become ‘without us’ due to the absence of a meaningful advisory mechanism.

²⁰ <<https://www.dss.gov.au/disability-and-carers/overview/national-disability-and-carers-advisory-council>>

Recommendation 11

A national disability and carers advisory council should be re-established and adequately resourced to ensure that the Australian Government receives robust advice from people with disability. This Council's functions and duties should be legislated with its main functions to include:

- **oversight of the development and implementation of the National Disability Strategy**
- **oversight and review of targeted disability plans**
- **development and implementation of an engagement plan with people with disability, their representative organisations and with disability advisory councils to all levels of government.**

Recommendation 12

At least 75 per cent of the members of any advisory body should be people with lived experience of disability. This lived experience should reflect the diversity of people with disability. Its membership should have strong networks within the disability community and be regarded as strong advocates and leaders.