



Inner West Council submission on the stage 2 review of

The National Disability Strategy

30 October 2020

Introduction

The National Disability Strategy (NDS) has failed to achieve the depth and magnitude of positive change necessary for people with disability to enjoy dignified, safe, healthy, productive lives in Australian society. 44% of all complaints to the Australian Human Rights Commission concern the failure to protect the rights of people with disability. The promise of employment and productive lives inherent in the National Disability Insurance Scheme has not been delivered. Almost half (40%) of people with disability live at or near the poverty line. Health outcomes and longevity remain far below those of other groups. And in framing this review, the government fails to properly name these significant challenges.

Creative policy and statutory change are required to create the conditions that permit the realisation of rights and opportunity. Progress will require Australia reaching a point of being shocked, concerned, embarrassed and angry at its lack of significant realisation of disability rights. A national conversation on inclusion in every facet of life is required. And this is the challenge before any new National Disability Strategy.

The NDS is an important and primary tool for change. It has no greater role than to describe and govern change and harness clear consistent and actionable policy on the suite of issues before it. While these issues are complex and many, Council believes the following deserve immediate attention as they are foundational to achieving sustained change.

1. Respect for human rights

1.1 The Disability Discrimination Act was enacted in 1992, before the United Nations Convention on the Rights of Persons with Disabilities (CRPD) entered into force in Australia in 2008. The Act prohibits discrimination against people with disabilities in employment, education, publicly available premises, provision of goods and services, accommodation, clubs and associations, and other contexts. The international treaty identifies the rights of people with disability as well as the obligations on Parliament and the UN Assembly to promote, protect and ensure those rights. Taken together they constitute the legal framework for protection of the rights of people with disability in Australia.

Recommendation: The NDS prioritise law reform that is needed to give great effect to the convention articles and integrate them more purposefully into domestic law, regulation and government policy.

1.2 In 2018/19, the Australian Human Rights Commission received 891 complaints about disability discrimination; accounting for 44% of all complaints and higher than for race and gender combined. These complaints detail discrimination, vilification and a failure to protect against discrimination towards people with disability that no other group in Australian society endures. It is sobering to consider of some 4 million Australians living

with disability less than 1000 complaints reached the Commission, yet we know disability discrimination is endemic for those with disability across all facets of life.

1.3 With disability related complaints now the single highest cause of complaint under Australian human rights anti-discrimination law, the growth suggests that the Act has critical flaws highlighting it has reached peak influence and is not capable of achieving parity with other human rights outcomes. The Australian Human Rights Commission dataset provides a rich insight into persistent and systemic discrimination and could be employed to devise policies that respond more effectively.

Recommendation: That the NDS take account of the AHRC data to create legal and policy remedies that articulate a better future for Australians to mobilise around.

1.4 Interconnected standards including the Disability Standards for Accessible Public Transport are nearing due dates within the period of this strategy with no agreed, detailed plan for renewal or replacement. Most states report they will not achieve the outcomes required under existing standards. The NDS is critically dependent on the built environment and associated infrastructure that facilitates inclusive communities; yet there is no effective evaluation of the current approach and no public accountability for improvements in accessibility. The NDS needs to speak more purposefully and urgently to these issues.

Recommendation: That the NDS propose a methodology to stocktake the built environment and infrastructure situation and to create an evaluation so that future investment and planning can be confident of addressing and improving NDS outcomes.

1.5 The DDA is the only Australian human rights statutory instrument to contain the caveat of unjustifiable hardship and this should now be removed. While all anti-discrimination laws have limits to their power this one is particularly obnoxious to people with disability as they are the most likely to face discrimination as a result of the built world, communications and elements that by nature will involve significant change and often associated cost to correct. Further, unjustifiable hardship provisions within DDA standards are unnecessary as they have already been the subject of Regulatory Impact Statement processes. It is hard to imagine any other group would be expected to accept their rights being contingent on what it may cost to cease or reduce the discrimination. The UNCPRD of which Australia is a signatory has no such caveat although it accepts that change will be commensurate with a nations resources and capacity to comply. As a wealthy OECD nation Australia no longer needs such an impediment to progress.

1.6 Concessions like unjustifiable hardship place unreasonable burden on those who exercise their rights under the Act's provisions. In effect the onus to prove you have been discriminated against and secondly that it would not impose an undue hardship on the respondent leaves people unwilling to challenge the status quo and risk legal costs awarded against them. Further barriers exist within systems approaches requiring justification on a cost vs benefits analysis. This is clearly heavily weighted in favour of the status quo and quantifiable economic impacts on potential respondents.

Recommendation: That the NDS propose the removal of the caveats of unjustifiable hardship as they place unreasonable burden on people who are discriminated to justify their complaint or remedy and do not facilitate effective implementation of human rights and the international convention.

1.7 The DDA and the process of considering complaints is not dynamic enough in driving challenge or amendment to laws to provide people with disability with equal treatment and protection. This includes the systemic abuse and violence highlighted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC). Immigration and the health cost thresholds discriminate unfairly on individuals and families and establish and reinforce a negative discourse around 'burden of disability'. This contradicts the principles of the NDS and UNCRPD. People seeking immigration already have to meet stringent criteria, adding an arbitrary health cost threshold does not measure the contributions a person with disability or their family can make to Australian society.

Recommendation: That the NDS propose the removal of caveats in immigration like the health cost threshold as they place unreasonable expectation on people with disability and families and are not consistent with implementation of the CRPD.

2 Greater disability policy coherence

2.1 Governments and their policy settings continue to define the notion of disability and eligibility in determining access to supports differently and in unequal ways. This creates uncertainty and prohibits a consistent foundation of approach that can be built upon and improved over time.

2.2 The nexus of ageing and disability support through the NDIS highlights where such disparity of approach jeopardises outcomes when both disability support and age-related provisions are necessary as a person with disability ages. Pathways to achieve the best outcome require a consistent and permeable understanding and response often between Commonwealth and State. Boarding house residents with disability who are predominately in the older cohorts are an example of where this juncture is apparent and need to have a clear pathway to disability support systems when needed.

Recommendation: Create clear pathways to disability support for people with complex needs who intersect with both aged service and disability support mechanisms are required.

2.3 Announcement that NDIS participants and those seeking access to the scheme will be required to undertake a 20 minute eligibility and need assessment in 2021 based on standardised medical assessment of 'capability' is flawed. People with disability who require a range of supports to reach potential, agreed plan goals and the Act's objectives are not served by a return to a medicalisation of disability. It will have greatest impact on those with inconsistent, situational, multiple and complex needs that cannot be readily understood by outsourced consultants tasked with application of questionable assessment tools. All contemporary policy, laws and learnings related to disability have embraced a social model as the central philosophy.

Where consistency in providing essential disability, support is the goal policy it should be framed on understanding disability support does not nullify all the consequence of disability and is distinct from measure of abilities. Abilities are contextual and for many dependent on situation and support availability.

Recommendation: As the primary source of policy and program direction in Australia the NDS engage on and outline an equitable framework on how such significant reviews are to occur and what steps and process elements must be adhered to.

3 Resilience in the face of shocks: People with disability, the COVID 19 pandemic and emergency response protocols

3.1 The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has made a series of statements of concern regarding failures of Australia's emergency and pandemic responses to adequately plan for and protect people with disability. It has also noted poorer outcomes and avoidable deaths due to lack of communication evident whilst interacting with medical and health system supports.

3.2 The commission found that some 400 people with disability die a year from not receiving medical attention including as a result of inadequate communication with patients. It is critical that protocols are developed to assist communication between health and medical staff and patients with disability during regular and urgent, emergency scenarios.

3.3 Over the course of the next few years as we manage and hopefully control the pandemic, we cannot afford to ignore 20% of people and their families. Social, health and economic recovery planning, initiatives and programs require stronger attention in this regard. Climate emergency scenarios are also predicted to have greater impact on the lives of people with disability and will require greater emergency planning. The NDS should be very clear in articulating the importance of placing people with disability at the centre of such planning to ensure their safety but also as the most effective mechanism to address the spectrum of circumstance that ultimately will ensure everybody's protection.

Recommendation: The NDS highlight the importance of placing people with disability at the centre of emergency planning and mandate agencies to include effective methods to ensure the safety of people with disability.

4 Employment and investment targets

4.1 Recent workforce adjustments necessary as a direct result of COVID amount to greater flexibility in accommodations including working from home. This newfound flexibility might well be maintained and leveraged to bridge past and persistent barriers contributing to low employment rates of people with disability.

4.2 Employment and income support options could similarly be improved with flexibility and being reimagined. Harnessing the significant experience and wisdom of people living with disability ought to be positioned as an asset rather than burden particularly as we are in uncharted territory through the pandemic and a future with uncertain climate change impacts. The current situation disguises this potential and needs to be abandoned in policy and public discourse. The NDS can promote the economic potential of people with disability and their families to contribute much to a troubled economy. The employment demand in the disability sector is well documented. It is one of the largest and growing areas of employment.

Recommendation: The NDS develop mechanisms to encourage employment targets for people with disability, sustainability of the disability support workforce and research into emerging disability markets.

4.3 Innovation and research also benefit from a more diverse involvement and aligned technology industries. Providers could benefit from harnessing the disability sector rather than seeing it as an insignificant or niche market. Australian standards including those related to access and mobility and communication technologies often haven't the flexibility to promote new products or encourage their development. This restricts NDS outcomes and presents a barrier to achieving a healthy market and employment opportunities.

4.4 Financial participation and wellbeing are also linked to income support systems designed for purpose and life stage. For many people with disability the main income support is the Disability Support Pension and in regard to assets and other structures it closely reflects the Aged Pension designed to support people with limited funds at retirement. Consequently, for a younger person the DSP inhibits transition from economic dependency as recipient's savings are penalised and are unable to meet life needs as they move towards eventual retirement. This create an economic and social disincentive to forming close, healthy and caring relationships. It perpetuates dependence on the pension and/or on a partner and often locks people into cycles of domestic violence and poverty.

Recommendation: The NDS explore what changes are needed to provide a fit for purpose income support scheme for people with disability that addresses life transition stages including from school, through training/employment and encourages living independently.

4.5 Advocacy and security of funding to allow disability agencies to be stable agents for change and develop into effective, sustainable vehicles to assist providers and governments to achieve NDS commitments is a key area that would benefit from NDS direction. The NDS could signal how important and integral advocacy is at both national and state levels. This would elevate its recognition and confirm its role and resourcing as a core component within subsequent inclusion planning mechanisms across government. It is especially important to achieve representation on boards and decision making bodies.

Recommendation: The NDS promote the importance of advocacy and methods to develop and support disability leaders and be a more effective catalyst for people with disability to be 'at the table' and co-designers of the journey to inclusion.

5 Unconscious bias and attitude as a proxy for discrimination

5.1 As an umbrella term unconscious bias is useful to convey the invisible processes all marginalised peoples have experienced and talk of in their journey to recognition and equal treatment. All of us can exhibit these biases and be unaware of the consequence. At the core of discrimination lies the stigmatising of people through a set of characteristics, beliefs and a devaluing of their worth as a result. With respect to disability 'ableism' is a persistent underlying narrative responsible for poor progress towards inclusion. The effect of ableism is widely appreciated within disability

communities but rarely acknowledged beyond. It is as damaging to society as racism, sexism, ageism and other suppressors of diversity.

Attitudes drive laws, culture and behaviour. A useful filter is to explore how 'ableist' is the thinking or assumption, to what degree the unconscious bias is inherent in the approach. Such a filter would bring unconscious practice to where it can be examined, understood and where needed amended.

5.2 The use of 'attitude' then as an overarching descriptor in the next NDS is too passive and fails to locate the root issue. Everyone has attitudes and opinions, and these are to be welcomed it is central to our democracy that we flourish in diversity of perspective. However, when attitudes and opinions become a proxy for abuses and discrimination that is reflected in the alarming disability statistics Australia regularly reports, it is in need of change.

5.3 The NDS must step up and demonstrate much needed coherence in disability policy, challenge underlying bias, causation of employment lethargy, promote urgent reforms and reposition the national lens on where investment is needed that will capitalise on the enormous wealth of talent and innovative entrepreneurs that can enliven an untapped sector for sustained social and economic benefit.

Recommendation: The NDS conduct a mature, sophisticated conversation about the nature of ableism, its impact and on what Australians can do to be aware of and reduce its persistence.

6 Renaming the NDS

6.1 The National Disability Strategy is an apt title, it clearly reflects what it is and requires no amendment.

7. Local disability sector response

7.1 Council recognises and supports the submission made by the Inner West Disability Forum: a network of active local disability service agencies, allied other services and individuals with disability who maintain an interest in the sector. It is the primary disability related interagency of the inner west. It includes Council staff and Access Advisory Committee members.

7.2 The IWDF submission was developed with the aid of a survey and network consultation to canvas responses to the NDS review. For your information a link is provided here is the link: <https://ndcocds.files.wordpress.com/2020/10/iwdf-nds-response.pdf>