



Submission for the review of the National Disability Strategy

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Endorsements

Australian Communications Consumer Action Network (ACCAN)

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

Our core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with a physical disability are improved and upheld.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

Recommendations

Recommendation 1

Amend the vision to include both the terms “citizens” and “members of the community”, i.e.: An inclusive Australian society that enables people with disability to fulfil their potential both as citizens and members of the community”.

Recommendation 2

That Outcome 1 be adjusted to read ‘Physically inclusive and accessible communities’ and that an Outcome 2 ‘Accessible information and communication’ be added as a separate outcome area in the new Strategy.

Recommendation 3

That accessible information and communication in the revised Outcome 2, be defined as information, communications and other services, including electronic services and emergency services as per the UNCPRD.

Recommendation 4

That “Protection and safety in situations of risk and humanitarian emergencies” is included as a new separate outcome area in the upcoming Strategy.

Recommendation 5

Introduce a new Principle 1: Choice and Control, with wording to the following effect:

Principle 1: choice and control

Does the policy or program facilitate the right for people with disability to have individual autonomy and make their own decisions within the scope of their individual capabilities? Does the policy or program ensure that these rights are protected?

Recommendation 6

That Principle 1 in the position paper become Principle 2, and is amended to read as follows:

Principle 2: Involve and Engage

The views of people with disability must be considered in relation to all policies programs and services which impact on them. People with disability must be provided with the opportunity to be involved and consulted with across all key stages in the planning and implementation of policies, programs and services that impact on them.

Evaluation of the effectiveness of policies, programs and services for people with disability must always involve consideration as to whether the policy, program or service has had a positive impact on the lives of people with disability.

Recommendation 7

That Universal Design is defined within the new NDS as follows:

“Universal design” means 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 specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed’.

Recommendation 8

That Principle 2 in the position paper be referred to as Principle 3 in the position paper and adjusted to read as follows:

Principle 3: Design universally:

Universal design extends to 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 specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

It is expected that the principles of accessible design will be applied as a general rule when developing policies or programs in alignment with the Strategy.

Recommendation 9

That Principle 3 be adjusted to be read as Principle 4 in the position paper and amended to read as follows:

Principle 4: Engage Communities:

A whole of community change effort is required to remove barriers and support the inclusion of people with disability as participants in their communities.

Communities will be educated as to the many barriers experienced by people with disability and are responsible for removing barriers and promoting the inclusion of people with disabilities as full community participants.

Recommendation 10

That Principle 4 be amended as Principle 5 and that Aboriginal and Torres Straight Islanders, people living in rural and remote areas, women, people from CALD backgrounds, children and young people, Older persons (+65 years), people who identify as LGBTIQ+, people from low socioeconomic backgrounds, and those living in institutional settings, all be identified as priority groups for the purpose of the Strategy.

Recommendation 11

That Principle 5 be amended as Principle 6 in the position paper and make specific reference to independent individual and systemic advocacy as essential services for people with disability; or, in the alternative that a further principle be added (Principle 7) which states that access to independent individual and systemic advocacy support is essential to ensure that people with disability are able to fully participate in the development of policies or programs which affect them.

Recommendation 12

That a commitment be made at federal, state and territory and local levels of government towards funding projects and initiatives focused on promoting inclusion and improved community attitudes towards disability (including evaluation).

Recommendation 13

*The new NDS should recognise that the non-government sector has an equal responsibility in improving outcomes for people with disability. To achieve this, the NDS should:
Promote the value of inclusion across society as a whole (both as an economic and social good);
Emphasise the key role of the non-government sector in achieving inclusion; &
Set out the expected roles and responsibilities of the non-government sector.*

Recommendation 14

A central administering body should be established to facilitate both the government and non-government sectors to implement strategies to improve the lives of people with disability. Specifically, in relation to assisting the government and non-government sectors to realise their roles the body should:

- 1. Provide education and training;*
- 2. Provide information and advice;*
- 3. Ensure responsibilities are met;*
- 4. Assess and evaluate outcomes; &*
- 5. Receive feedback directly from people with disability*

Recommendation 15

That the government commit to both annual and longitudinal reports across the life of the strategy and that such reports be tabled within parliament by the Minister.

Recommendation 16

That the drafters look to the NDIS reporting framework as an example of a comprehensive reporting mechanism and that the following data be publicly reported in relation to the NDS:

- Government initiatives across all outcome areas;*
- Estimated times of completion across these initiatives,*
- An indication as to whether targeted action plans are on track in terms of progress;*
- General reporting on satisfaction of people with disability in relation to the NDS, both nationally and at state and territory level;*
- Assessment of the actual impacts of initiatives on the lives of people with disability;*
- Longitudinal tracking of satisfaction rates and impacts;*
- Funding streams and funding distribution; &*
- Report as to the ongoing financial sustainability of any funding specific to the administration of the NDS.*

Recommendation 17

That the government conduct an audit of existing action plans which align with the key outcomes of the new strategy

Recommendation 18

Click to add Recommendation

Recommendation 19

That the government commit to a broader review of the effectiveness of legislative protections relating to human rights and anti-discrimination, with a view to strengthening these safeguards.

Introduction

In Australia, 47% of adults with disability have experienced violence after the age of 15, compared with 36% without disability¹; 79% of people with disability of working age are unemployed, verses 48% of working-age people without disability² & 24% of adults with disability experience very good or excellent health, compared with 65% of without disability.

This is despite one fifth of the total Australian population identifying as having a disability.

From the 2019 Australian Institute of Health and Welfare, Web Report, People with Disability in Australia

As the peak representative organisation for an estimated 1,097,2003 people with physical disability across NSW, PDCN appreciates the opportunity to contribute to the formation of the second National Disability Strategy (the NDS). Our submission is reflective of the observations drawn from our membership across the period of the initial NDS – 2010-2020.

PDCN has asked our members to reflect on their experiences across both the public and private sectors to consider to what extent they feel accepted and included as equal members of their communities. Their responses unfortunately highlight that there is still significant progress required for Australia to meet its international commitments to people with disability.

As part of realising this, the National Disability Strategy should be significantly revised both in terms of drafting and the structures associated with its implementation.

Australia's obligations toward people with disabilities

As a signatory to the Convention on the Rights of Persons with Disability (the UNCRPD) and its Optional Protocol, Australia is obligated to meet its international commitments towards promoting and protecting the rights of persons with disability.

The National Disability Strategy 2010-2020 (*the first Strategy*), adopted during the Gillard Government, was to be one of the major domestic embodiments of Australia's commitment to the UNCRPD. The Strategy was the first time in Australia's history that a unified, national approach was adopted to improve the lives of persons with disability, and was inspired by the recognition that governments, industry and communities needed to organise and collaborate to achieve an *"inclusive Australian society that enables people with disability to fulfil their potential as equal citizens"*.⁴

¹ Australian Institute of Health and Welfare, *People with disability in Australia Web Report*, updated 2 October 2020 <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/summary> accessed 27 October 2020.

² Ibid.

³ Australian Bureau of Statistics, *Disability Ageing and Carers - 44300DO001_2018 Disability, Ageing and Carers, Australia: New South Wales, 2018*

⁴ Australian Government, *2010-2020 National Disability Strategy – An initiative of the Council of Australian Governments*, 2011 <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020>> accessed 27 October 2020, p.3.

The Strategy was to provide a high-level policy framework to guide government activity across both disability specific and broader public policy. It was anticipated that the Strategy would facilitate state and federal governments to act as leaders, enhancing inclusion of people with disability across public policy and in doing so, provide greater visibility around the challenges experienced by this community. It was expected, perhaps ambitiously, that the private sector would then be inspired to improve performance of mainstream services for persons with disability across society as a whole.⁵

Reflecting on the past decade, it cannot be doubted that there has been effort by all levels of government towards incorporating the principles of the NDS over a range of social policy areas. The past decade has seen significant investment on disability-specific strategies to improve the lives of persons with disability at local, state and federal level, including the rollout of the National Disability Insurance Scheme (NDIS), the development of new state disability legislation, such as the Disability Inclusion Act 2014 (NSW) the Changing Places initiative, the Zero Tolerance initiative and the adopting of Disability Action Plans at state and local level⁶ -and many of these strategies have positively impacted the lives of people with disability.

The NDS has also changed the dialogue on disability, driving investigation into the adequacy of existing systems and structures, key examples being the Royal Commissions into Aged Care Quality and Safety and Violence and Abuse, Neglect and Exploitation of People with Disabilities. People with disability are now recognised as having a voice, and entitlement to “*choice and control*” in how they live their lives.

However, ten years after the NDS was first introduced, we still have a long way to go, and progress has fallen short of what people with disability had hoped for. Events of the past year, including the Black Summer bushfires, the Covid19 pandemic, and investigations conducted as part of both the Royal Commissions into Aged Care Quality and Safety and Violence, Abuse, Neglect and Exploitation of People with Disability have served to cast a spotlight on significant deficiencies in upholding the rights of people with disability, both by governments and across society generally.

‘Unless you have a disability or you care or know of a person with a disability, then you don’t care. it is human nature. Plus, the mindset of local state or federal governments is that it is too hard or will cost too much money. People with disabilities [are] very much the silent minority’.

‘Disability is treated as something to be pitied & fixed if at all possible. People are generally well meaning but ignorant & do not grasp the systemic & environmental barriers to people with disability leading a normal, fulfilling life’.

Comments from individual responses, PDCN member survey, August-Sept 2020.

In casting such a spotlight, the revelations speak to the deficiencies of the NDS as one of the major mechanisms for promoting the fundamental human rights of people with disabilities. It is apparent that the previous Strategy did not extend responsibilities far enough and lacked the capacity to monitor outcomes.

To realise true inclusion for persons with disabilities there must be a commitment across all part of society – governments, businesses and individuals, as a synergized effort. Inclusion is everyone’s responsibility – and where incentives are lacking, there must be a means of compelling society as a whole, to step up.

⁵ Ibid.

⁶ Ibid., p 16.

At the same time, the new Strategy must provide a mechanism to track progress, both in terms of specific initiatives and in terms of longitudinal change in achieving an *'inclusive Australian society'*. Priority areas for the Strategy need to be determined on the basis of what people with disability specifically need and this requires a commitment to meaningful ongoing consultation with these people, their carers and advocates.

Looking towards the new NDS, it is important to remember that the strategy embodies our national response to commitments under the UNCPRD and its Optional Protocol, as well as serving to assist governments meet their obligations under domestic anti-discrimination policy and legislation.⁷

The rights accorded to people with disability, both at international and domestic level are non-mutable, and the new NDS must speak to the importance of meeting these commitments as a social good. It must stress that inclusion is not something to be done when it is convenient, or cost effective, or where it might generate media interest or a metaphorical 'pat on the back' – it is not a *"should"* but a *"must"*.

PDCN's long term aspirations for the Strategy is that it normalises consideration of disability across society as simply another consideration in mainstream planning. We are far from this point, but the information on how to design universally accessible communities is already there.⁸ We hope to see the establishment of a central authority to champion and administer the Strategy to manage coordination and accountability across both the public and private sectors so that people with disability can *'fulfil their potential as equal citizens'*.

Our submission will address the targeted questions in the Position Paper and will also identify other key aspects to be considered in the construction of the new NDS.

Question 1: During the first stage of consultations we heard that the vision and the six outcome areas under the current Strategy are still the right ones. Do you have any comments on the vision and outcome areas being proposed for the new Strategy?

The vision and the 6 outcome areas should align with the principles of the UNCPRD and should fully cover all aspects of the life experience for people with disability.

We have reservations with the wording within the vision from *"citizen"* to *"member of the community."* The term citizen has clear associations with rights, privileges, and protection by government.

Whilst we acknowledge that *'member of the community'* captures the sense of engagement across all aspects of day to day life, we consider that the two terms have distinct and equally important meanings. Both terms should be used within the vision to highlight that the vision is inclusive of the experiences of people with disabilities across both public and private spheres.

Recommendation 1:

Amend the vision to include both the terms "citizens" and "members of the community", i.e.:

An inclusive Australian society that enables people with disability to fulfil their potential both as citizens and members of the community"

⁷ For example, the *Disability Discrimination Act 1992* (Cth), the *Disability Services Act 1986* (Cth), other state and territory legislation, including the ACT and VIC charters of human rights and the *National Disability Agreement*.

⁸ For example, see work across the housing sector in terms of Livable Housing Design < <http://livablehousingaustralia.org.au/>> accessed 27 October 2020.

There should also be refinement of the outcome areas, including the addition of a new outcome.

Separation of physical and communication accessibility as separate outcomes

Our members have reported to us that the need for accessible information and communications, as required under Article 9 of the UNCPRD, is often neglected both across government and the private sector, despite the fact that digital communications and communications forms part of Inclusive and Accessible Communities (Outcome 2) of the previous NDS.

“Physical is what you can see.... deafness is invisible [both physically and metaphorically].”

-Peter Kerley, Deafness Council of NSW, interview 28 Sept 2020.

Equating accessibility to the capacity to move within the physical environment is a common misconception across society and a source of constant frustration for those living with communication issues.

We agree with the comments of Ms Gaynor Dixon, National President of Speech Pathology, that there has been little progress in meeting the accessibility needs for people with communication issues over the life of the previous Strategy:

Any progress made against the strategy appears to be confined to improvements in physical access. We have seen almost no attention by governments to improving how accessible our communities are for people with communication issues.... communication access is a similar idea to providing curb cuts for people with physical disability. It is about changing the environment, including people in the environment, to enable people with communication disability to access the environment.⁹

We propose that Outcome 1 be ‘*Physically inclusive and accessible communities*’, immediately followed by a new Outcome 2 - ‘*Accessible information and communication*’. This would give equal prominence to both aspects of accessibility and make it clear that accessibility needs vary depending on an individual’s specific disability.

Accessible information and communication should be defined to include information, communications, and other services, including electronic services and emergency services, in line with Article 9 of the UNCPRD.¹⁰

Recommendation 2:

That Outcome 1 be adjusted to read ‘Physically inclusive and accessible communities’ and that an Outcome 2 ‘Accessible information and communication’ be added as a separate outcome area in the new Strategy

Recommendation 3:

That accessible information and communication in the revised Outcome 2, be defined as information, communications and other services, including electronic services and emergency services as per the UNCPRD

⁹ Ms Gaynor Dixon, National President of Speech Pathology Australia quoted in Community Affairs Reference Committee, Federal Senate, *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*, 2017, at p. 42.

¹⁰ United Nations, *United Nations Covenant on the rights of persons with disabilities*, Article 9 < <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> > accessed 21 September 2020, p. 9.

Introduction of an outcome specific to protection and safety in situations of risk and national emergencies

The events of this year, including the Black Summer Bushfire and the Covid19 pandemic, have highlighted that people with disabilities have unique needs during national emergencies, may have particular vulnerabilities, and can be overlooked as a demographic in need of prioritization and specific support.

As a case in point, the Australian Health Sector Emergency Response Plan for Novel Coronavirus¹¹ released on 27 February 2020, did not acknowledge persons with disability as a potentially vulnerable group when outlining the requirement to provide equitable care - a specific resource addressing the healthcare needs of persons with disability during the pandemic was not released until April.¹²

PDCN has generally found that people with disability have struggled to have their needs recognised during the pandemic. People with disability have faced difficulties accessing necessary supports and services, adequate supplies of personal protective equipment (PPE) and essentials like food and medication. We have received reports that many have experienced additional household costs in excess of the financial assistance provided by the federal government to date.

Information specific to the needs of people with disabilities in across accessible formats has been slow to be rolled out, and in many instances, have only been developed after advocacy organisations have requested government guidance on issues on behalf of their membership.

Similarly, we have also seen significant gaps in accounting for the needs of persons with disability in bushfires across this summer, with reports that some emergency evacuation centres and designated safer spaces were not accessible, the National Relay Service was overwhelmed amongst other concerning oversights, and that accessible emergency information was inconsistent.

We note the comments of Disability Anti-discrimination Commissioner, Dr Ben Gauntlett, on the right for persons with disability to be safe and protected in national emergencies:

An important aspect of any inclusive policy response to a health crisis or national disaster is for decision-makers to clearly articulate and acknowledge the issues faced by people with disability. This requires key decision-makers at all levels of government to consult with people with disability who will be affected. A plan of action may then be co-designed. This inclusive approach to policy development creates confidence that human rights will be respected and aids transparent and effective decision-making.¹³

We would like to see a specific acknowledgement of the responsibility across society to ensure that the specific needs of persons with disability in these contexts are not neglected.

¹¹ Australian Government, Department of Health, *Australian Health Sector Emergency Response Plan for Novel Coronavirus (Covid19)* 2020, Last updated 7 February 2020 https://www.health.gov.au/sites/default/files/documents/2020/02/australian-health-sector-emergency-response-plan-for-novel-coronavirus-covid-19_2.pdf accessed 27 October 2020.

¹² Australian Government, Department of Health, Management and Operational Plan for people with disabilities – Australian Health Sector emergency response plan for Novel Coronavirus (Covid19), April 2020 <https://www.health.gov.au/sites/default/files/documents/2020/04/management-and-operational-plan-for-people-with-disability.pdf> accessed 27 October 2020.

¹³ Dr Ben Gauntlett, Bringing a disability lens to the Covid19 Health Response, 5 May 2020 <<https://humanrights.gov.au/about/news/bringing-disability-lens-covid-19-health-policy-response>> accessed 21 Sept 2020.

To achieve this, we request that an additional Outcome Area called "*Protection and Safety in Situations of Risk and Humanitarian Emergencies*" in line with Article 11 of the UNCPRD be included in the new NDS.

Recommendation 4:

That "Protection and safety in situations of risk and humanitarian emergencies" is included as a new separate outcome area in the upcoming Strategy.

Question 2: What do you think of the guiding principles?

Our initial thoughts are that that guiding principles lack the conviction that we would expect of a Strategy that embodies our national response to commitments under the UNCPRD.

The proposed principles offer a good level of prescription in terms of what is required in a practical sense but have diverged to an extent from the UNCPRD principles and there are some unacceptable omissions.

There is no proposed principle relating to the "*choice and control*" that must be afforded to persons with disability. This should be the first principle in any Strategy promoting the UNCPRD.

PDCN is also uncomfortable with terms that provide for conditional adherence such as "*where possible*" and "*where available*" and would hope to see a greater emphasis on the importance of people with disability and their advocates being involved across all elements of policy and program design, execution, and evaluation.

Another concern is how effectively the principles will be able to be applied across society, unless there is a robust administering body, responsible for educating the community about the NDS and ensuring that the principles are interpreted correctly and applied consistently.

Recommendation 5

Introduce a new Principle 1: Choice and Control, with wording to the following effect:

Principle 1: choice and control

Does the policy or program facilitate the right for people with disability to have individual autonomy and make their own decisions within the scope of their individual capabilities? Does the policy or program ensure that these rights are protected?

We will now address each of the proposed principles below:

Principle 1: Involve and Engage: *has the policy process or program design engaged with, and listened to people with disability at all stages of planning and implementation and provided accessible information and opportunities for feedback*¹⁴

The proposed Principle 1 is weaker than its equivalent in the previous Strategy, which stated:

*The views of people with disability are central to the design, funding, delivery and evaluation of the policies programs and services which impact on them, with appropriate support and adjustment for participation.*¹⁵

¹⁴ Australian Government, Department of Social Services, *National Disability Strategy Position Paper*, July 2020 < <https://engage.dss.gov.au/wp-content/uploads/2020/07/national-disability-strategy-position-paper-accessible-pdf.pdf> > accessed 27 October 2020, p. 7.

¹⁵ Australian Government, *National Disability Strategy 2010-2020*, op cit, p. 23

It is vital that the new strategy states that the views of people with disability are critical to the design, funding and evaluation of any disability related policy or program relating to them. People with disability want to be engaged in decisions that directly impact their lives.

Policies and programs to benefit people with disability that are designed, implemented, and evaluated without the input of persons with disability at all stages, are at risk of being ableist and may not meet the needs of the people they are designed to assist. People with disability should set the agenda in terms of what is important for them.

At the same time, the new wording, whilst acknowledging that people with disability need to be considered, does not sufficiently stress the importance of engaging people with lived experience of disability across all stages of policy process and program design. The terms “*listen to*” and “*engage with*” are hollow concepts - a common complaint of people with physical disability is that consultation is often conducted in a perfunctory fashion and resulting recommendations are not implemented.

People with disability do not just want to be listened to or engaged with – they want to be heard - have their time and opinions valued, and their contributions incorporated across policies and projects.

You could say I've been an advocate all my adult life [for people with deafness]. I have been attending advisory groups and access committees since around 1990. You can usually tell after four or five meetings if they [the meetings] are going to achieve anything useful. After that you know if you're just wasting your time.

- Peter Kerley, Deafness Council of NSW, interview 28 Sept 2020.

PDCN recommends that the draft Principle 1 is framed in terms of a non-delegable obligation to consult with people with disability at all key stages in the development of policies and programs under the NDS, and an emphasis on actual improved outcomes for persons with disability as a key determinate of success.

To that end, we would suggest the following wording or similar:

Recommendation 6:

That Principle 1 in the position paper become Principle 2, and is amended to read as follows:

Principle 2: Involve and Engage

The views of people with disability must be considered in relation to all policies programs and services which impact on them. People with disability must be provided with the opportunity to be involved and consulted with across all key stages in the planning and implementation of policies, programs and services that impact on them.

Evaluation of the effectiveness of policies, programs and services for people with disability must always involve consideration as to whether the policy, program or service has had a positive impact on the lives of people with disability.

Principle 2: design universally: have the principles of universal design been applied where possible and has the project taken advantage of accessible and assistive technology where available?

We have two main concerns with this draft principle.

Firstly, we consider that it is necessary to provide a definition of what is meant by the term “universal design” since universal design can be specific to the design of buildings and homes,¹⁶ whereas the preferred definition should accord with the broader definition in the UNCPRD:

*‘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 specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed’.*¹⁷

We would suggest that universal design is defined as a term to ensure that the correct definition is applied.

Recommendation 7:

That Universal Design is defined within the new NDS as follows:

“Universal design” means 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 specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed’.

Secondly, we are dissatisfied with the use of phrasing such as “where possible” or “where available”. We consider that these phrases are too readily relied on as a way of opting out of commitments under the UNCPRD for reasons such as expense, time etc.

We appreciate that there will be circumstances where it is not possible to apply universal design or to apply accessible or assistive technology, but the expectation should be that this is the standard to be met, unless an exemption is necessary and exemptions should be provided sparingly. Obviously, this requires oversight of the NDS by an administering body, which will be discussed further in the submission.

We propose that the draft Principle 2 start with a statement highlighting the importance of aiming towards universal design, as the expected standard. It should also be referred to as Principle 3 in recognition of the addition of a new Principle 1:

Recommendation 8

That Principle 2 in the position paper be referred to as Principle 3 in the position paper and adjusted to read as follows:

Principle 3: Design universally:

Universal design extends to 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 specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

It is expected that the principles of accessible design will be applied as a general rule when developing policies or programs in alignment with the Strategy.

¹⁶ For instance, see the *Liveable Housing Design Guidelines* -

<http://www.liveablehousingaustralia.org.au/library/SLLHA_GuidelinesJuly2017FINAL4.pdf> accessed 27 October 2020.

¹⁷ United Nations, *United Nations Covenant on the Rights of People with Disability*, op cit., p. 4.

Principle 3: how has the broader community been informed of, involved in, and been made responsible for removing barriers and supporting the inclusion of people with disabilities?

This principle has been considerably weakened in comparison to the principle specific to community involvement in the previous Strategy.

For the new strategy to drive inclusion, it must emphasise the vital role played by the community, both in supporting government initiatives and in embedding inclusiveness across day to day social interactions. Community does not take a supporting role in inclusion. In many ways, community “makes or breaks” inclusion. Laws around inclusion are only effective if they are adhered to by communities. This is particularly the case in Australia, which does not have an enforceable Bill of Rights. At the same time, inclusion can range from the drafting of anti-discrimination legislation, to an individual choosing to avoid ableist language, to a café offering wider egress for guests with wheelchairs. All actions are valid and necessary to realise a fully inclusive society.

Accordingly, we would propose the following changes:

Recommendation 9:

That Principle 3 be adjusted to be read as Principle 4 in the position paper and amended to read as follows:

Principle 4: Engage Communities:

A whole of community change effort is required to remove barriers and support the inclusion of people with disability as participants in their communities.

Communities will be educated as to the many barriers experienced by people with disability and are responsible for removing barriers and promoting the inclusion of people with disabilities as full community participants.

We are appreciative that there is an acknowledgement of specific groups within the disability community which have specific needs and may require additional supports.

Principle 4: Address barriers faced by priority populations - How have the priority populations noted by the National Disability Strategy been identified and what action has been taken to specifically address the barriers they may experience?

Addressing barriers faced by specific groups of persons with disability was not a specific principle in the previous Strategy.

We consider that the principle is drafted well, in that the responsibility to consider priority groups is not qualified in any way, however it would be useful to know which groups were specifically identified as “priority”.

We would suggest those which are already widely recognised as experiencing several levels of interconnected barriers and additional discrimination, including Aboriginal and Torres Strait Islanders, people living in rural and remote areas, women, people from CALD backgrounds, children and young people, older persons (+65 years), people who identify as LGBTIQ+ and people from low socioeconomic backgrounds all face additional challenges to inclusion.¹⁸ We also consider that those living in institutional settings should also be prioritised as a group requiring additional support.

¹⁸The Social Deck, on behalf of the Department of Social Services, *Right to Opportunity – Consultation report to help shape the next National Disability Strategy (Beyond 2020)*, December 2019 <

Recommendation 10:

That Principle 4 be amended as Principle 5 and that Aboriginal and Torres Straight Islanders, people living in rural and remote areas, women, people from CALD backgrounds, children and young people, Older persons (+65 years), people who identify as LGBTIQ+, people from low socioeconomic backgrounds, and those living in institutional settings, all be identified as priority groups for the purpose of the Strategy.

Principle 5: Carers and supporters - how have the needs of the family, carers and circles of information and formal support for the person with disability been considered in the development of the policy or program.

The role of carers and that of formal disability support services, including advocacy organisations, must be considered within the scope of the Strategy, since all are vital in ensuring that people with disability receive the care and support they need.

We are confused by the term “circles of information and formal support”. If this term is used, it should be defined for clarity.

We are disappointed that disability advocacy organisations have not been specifically referred to in the proposed principle. The right to advocacy for persons with disability is provided in Article 29 of the UNCPRD.¹⁹ Advocacy is unique from other formal supports, including information, but is critical to ensuring that people with disability are able to engage in shaping the policies and programs that affect them.

Advocacy is also critical to ensuring the accountability of both governments and the broader community to the principles and objectives of the NDS.

We note the specific reference to disability advocacy in the 2010-2020 NDS:

It is important that people with disability have the opportunity to participate in decisions that affect their lives. For some people this participation is supported by advocacy services.

Disability advocacy enables and supports people with disability to safeguard their rights and overcome barriers that impact on their ability to participate in the community. Advocacy supports people to make sure that their rights are promoted and valued, to participate in the decisions that affect their lives, especially around access to services and support, and to be actively involved in the life of their communities. Disability advocacy enables people with disability to actively participate in the decision-making processes that safeguard and advance their human rights, wellbeing and interests.

Individual advocacy supports people with disability to understand and exercise their rights, through either one-to-one support, or by supporting people to advocate for themselves individually, or on a group basis. Systemic advocacy seeks to introduce and influence longer term changes to ensure the rights of people with disability are attained and upheld to positively affect the quality of their lives. Systemic advocates can

https://www.dss.gov.au/sites/default/files/documents/12_2019/nds_beyond2020_summaryreport-121219.pdf accessed 27 October 2020, pp 12-13.

¹⁹ United Nations, United Nations Covenant on the Rights of people with disabilities, op cit., Article 29 <<https://humanrights.gov.au/our-work/commission-general/convention-rights-persons-disabilities-human-rights-your-fingertips>> accessed 29/09/2020.

influence positive changes to legislation, policy and service practices and work towards raising and promoting community awareness and education of disability issues.²⁰

The future of disability advocacy across at least two states, including NSW is uncertain. Within NSW, for example, disability advocacy at the state level is currently funded until June 2021, with no guarantee of financial support after this period. It is imperative to the success of the NDS, that people with disabilities retain access to independent advocacy at both an individual and systemic level.

PDCN would look to Principle 5 being amended to include disability advocacy organisations or as an alternative, that an additional principle be added, which recognises the importance of advocacy for people with disability.

Recommendation 11:

That Principle 5 be amended as Principle 6 in the position paper and make specific reference to independent individual and systemic advocacy as essential services for people with disability; or, in the alternative that a further principle be added (Principle 7) which states that access to independent individual and systemic advocacy support is essential to ensure that people with disability are able to fully participate in the development of policies or programs which affect them.

Question 3: What is your view on the proposal for the new Strategy to have a stronger emphasis on improving community attitudes across all outcome areas?

It is vitally important that the new Strategy works towards both improving community attitudes towards disability and raising awareness of the vital role community has in building a more inclusive society.

We agree with the drafters of the position paper that “changing community attitudes is a pre-requisite for overcoming the barriers faced by people with disability in their daily lives”²¹ and that facilitating and fostering ongoing longitudinal change is needed if Australia is to realise its commitment towards equality for people with disability.

‘Society is not inclusive of people with a disability because all as you see is words written. But when it comes to reality or life happenings nothing works. You are on your own and have done everything for yourself. Which at times can be very hard to do and arrange’.

Person with disability, PDCN survey response, 29 September 2020.

Grassroots initiatives, including initiatives by people with disabilities and their supporters should be encouraged by government as mechanisms to build community and address specific gaps and issues in particular areas, but this should not detract from the role government must play in broader campaigning and the development of public policy aimed at both increasing accessibility and improving community attitudes.

People with disability should be involved at all stages in the development, implementation and evaluation of any strategies to tackle community attitudes, with progress tracked longitudinally via consistent measures so that useful comparisons can be made across different projects and initiatives – it is important that success is measured by tangible improvements in the lives of people with disability.

²⁰ Australian Government, 2010-2020 National Disability Strategy – An initiative of the Council of Australian Governments, op cit., p 17.

²¹ Australian Government, Department of Social Services, National Disability Strategy Position Paper, op cit, p.7

An increased emphasis on changing community attitudes must be met with sufficient resourcing to conduct research, as well as develop and administer strategies. The NDS is a national strategy, and there needs to be commitments towards funding at national, state and territory and local levels to ensure that all persons with disability across Australia are able to fulfil their full potential both as citizens and as members of their communities.

Fair and equitable distribution of resources is vital - in the last decade, there have been marked differences in the capacity of different government departments, LGAs and communities to run campaigns and other activities on account of resource disparity – this has been particularly apparent in rural and regional areas of NSW, where the rate of progress on issues like inclusive transport have been much slower.

At the same time, such investment must be across the life of the Strategy. There needs to be a recognition that shaping community attitudes and increasing inclusion is an ongoing process requiring sustained effort.

Recommendation 12:

That a commitment be made at federal, state and territory and local levels of government towards funding projects and initiatives focused on promoting inclusion and improved community attitudes towards disability (including evaluation).

Question 4: How do you think that clearly outlining what each government is responsible for could make it easier for people with disability to access the supports and services they need?

"Funding for disability has long been the subject of debates about cost and blame shifting between the Commonwealth and the states and territories".²²

It is vitally important that the structures around all disability supports and services come with clearly delineated roles and responsibilities across state and federal government.

Over the past few years, we have seen the politicising of various services and supports across both the Disability and Aged Care sectors. It is of utmost importance that people with disability are not, in the words of RACGP President Dr Bastian Seidel *'be placed in the middle of political dealings'*.²³

With funding for a range of disability-related services now split between the Commonwealth and the states and territories and potential upcoming reforms to the disability sector at both Commonwealth and state level, there is a strong need for clear guidance on what each government is responsible for both in terms of administration and funding.

At the same time, disability supports, and services must be acknowledged as essential – requiring long term investment, irrespective of government. This is particularly critical considering the projected

²² Buckmaster, L., Dr., *Paying for the National Disability Insurance Scheme*, Parliament of Australia, Research Publications, Parliamentary Briefing Book
<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/NDIS> accessed 28 October 2020.

²³ Dr Bastian Seidel, quoted in Lyons, A., *Continued uncertainty over funding for National Disability Insurance Scheme*, News GP, 26 April 2020 < <https://www1.racgp.org.au/newsgp/professional/continued-uncertainty-over-national-disability-ins> > accessed 27 October 2020 – note – this was in reference to the NDIS specifically, but we submit can apply equally across disability services generally.

growth of persons aged over 65 years over the course of the next few decades.²⁴ Disability supports and services must be ‘*permanent, reliable... above the vicissitudes of politics and not jeopardised by a change of government*’.²⁵

Disability support should be view as basic social infrastructure, no different to Universal Healthcare or Income Support.

Question 5: How do you think the Strategy should represent the role that the non-government sector plays in improving outcomes for people with disability? (Examples of the non-government sector include big, medium and small businesses, community organisations, employees of these businesses, private research, investment organisations and individuals.)

A strategy committed to realising the rights of people with disability to fulfil their potential (both as citizens and) members of the community” must have the support and engagement of the whole community – and this requirement has become increasingly apparent through the life of the 2010-2020 NDS. It is clear that whilst government will always have a primary role in ensuring that people with disability are included as citizens, inclusion at the community level is often much dependent on the attitudes and values held across the private sector – *does a restaurateur appreciate the value of disabled facilities? Does a taxi driver choose to avoid picking up a person who has a Guide Dog? Does a member of the public readily offer a seat to a person who has mobility limitations on public transport?*

We look to see the new NDS reframed from a “*whole of Government agreement*” to a “*whole of society agreement*”, with the scope of the new NDS expanded to place a greater emphasis on the role of the non-government sector in facilitating inclusion for people with disabilities. This is a logical reflection that, in any ordinary day, people with disability engage with a range of private and public entities:

*Case Study: Sandra**

Sandra uses a power wheelchair. Although Sandra can travel on public transport and can use her wheelchair on public footpaths, she is unable to enter many businesses since they are not wheelchair accessible. This prevents Sandra from attending many social events with her non-disabled friends and family.

*Case Study: Karen**

Karen is vision impaired. Karen cannot drive and relies on taxis and public transport. Karen recalls that there used to be tactile numbering on the outsides of taxis which she could use to ensure she was entering the right vehicle. Many of the new smaller providers do not provide the numbering on their vehicles. This is a safety issue for Karen, but she feels that there is little that she can do.

Broadening the scope of responsibility across the public and private sectors will address the need for a broader experience of inclusion for people with disabilities. As we have noted – people with disability currently receive supports and services in a very piecemeal way and while the scope of the NDS

²⁴ Australian Institute of Health and Welfare, *Older Australia at a glance*, web report, last updated 10 September 2018 < <https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/contents/demographics-of-older-australians/australia-s-changing-age-and-gender-profile> > accessed 27 October 2020.

²⁵ Dr Ken Baker, quoted in Chan, G., *Labor using NDIS and Medicare levy 'to play politics'*, *disability groups say*, The Guardian Australian Edition Online, 15 May 2017 < <https://www.theguardian.com/australia-news/2017/may/15/labor-using-ndis-and-medicare-levy-to-play-politics-disability-groups-say> > accessed 27 October 2020 – note, again, this is in reference to the NDIS but it is arguable that the quotation is equally applicable in reference to funding all services under the NDS.

remains focused on government as the driver of reform, there are limited mechanisms for addressing this.

In articulating the roles and responsibilities of the public and private sectors, it is particularly important to recognise the diversity across the non-government sector. Different responsibilities should be accorded across big, medium and small businesses, community organisations, employees of businesses, private research institutions and individuals. These responsibilities should be realistically determined according to the practical capabilities of each entity, with a baseline of minimum requirements that must be met.

It is essential that support and information is provided to assist both the public and private sectors to both understand their responsibilities and fulfil them. We consider that this would best be achieved via a central independent administering body with these responsibilities. Such a body could also act as a point of contact for feedback from people with disabilities and assess and evaluate the implementation of the strategy.

We make the following recommendations:

Recommendation 13:

The new NDS should recognise that the non-government sector has an equal responsibility in improving outcomes for people with disability. To achieve this, the NDS should:

- 1. Promote the value of inclusion across society as a whole (both as an economic and social good);*
- 2. Emphasise the key role of the non-government sector in achieving inclusion; &*
- 3. Set out the expected roles and responsibilities of the non-government sector.*

Recommendation 14:

A central administering body should be established to facilitate both the government and non-government sectors to implement strategies to improve the lives of people with disability. Specifically, in relation to assisting the government and non-government sectors to realise their roles the body should:

- 1. Provide education and training;*
- 2. Provide information and advice;*
- 3. Ensure responsibilities are met;*
- 4. Assess and evaluate outcomes; &*
- 5. Receive feedback directly from people with disability*

Question 6 What kind of information on the Strategy's progress should governments make available to the public and how often should this information be made available?

It is important that there is an evidence –based measurement framework to track the success of the NDS.

As part of this framework, we propose that there be needs both annual and longitudinal progress reports across the life of the strategy. All reports relating to the progress of the NDS in meeting its vision should be publicly accessible and tabled by the Disability Minister within Parliament.

We note that a National Disability Data Set is in the process of being developed. Such a resource will without doubt have significant usefulness in terms of understanding the needs, service usage and service delivery for people with disability.

The NDIS reporting system, as provided under s.174 of the *National Disability Insurance Scheme Act 2013* (Cth) provides a good reporting framework template which we consider should be adopted in determining the success of the NDS. The NDIS reporting framework provides national, state and territory progress reports against key outcome areas as well as a breakdown of spending across each jurisdiction.

Additional aspects of the NDIS reporting scheme which would have benefit in the context of tracking the success of the NDS include:

- **Reporting on participant satisfaction** – a similar evaluation could be made in relation to the satisfaction of people with disability regarding progress across the NDS key outcome areas;
- **Assessment of participant outcomes** – this is vital to determine the actual effectiveness of strategies, and should therefore be part of the evaluation of any project or scheme under the NDS;
- **Longitudinal tracking** – the NDS is a 10-year scheme with broad application across the whole of society - it is important to track progress against the key outcomes over its life span to ensure that progress is being made across long term projects as well as tracking whether incremental progress is being met as part of these long term objectives;
- **Public transparency regarding funding streams and distribution of funding** given that the NDS is a national scheme, with shared responsibilities across federal, state and territory governments, it is important to ensure that there is equitable allocation of funding to ensure that jurisdictional inequities do not arise &
- **Reporting on the ongoing financial sustainability of the Scheme as a whole** - this should include reporting on any risks to ongoing financial sustainability and strategies to mitigate these risks.

Recommendation 15:

That the government commit to both annual and longitudinal reports across the life of the strategy and that such reports be tabled within parliament by the Minister.

Recommendation 16:

That the drafters look to the NDIS reporting framework as an example of a comprehensive reporting mechanism and that the following data be publicly reported in relation to the NDS:

- *Government initiatives across all outcome areas;*
- *Estimated times of completion across these initiatives,*
- *An indication as to whether targeted action plans are on track in terms of progress;*
- *General reporting on satisfaction of people with disability in relation to the NDS, both nationally and at state and territory level;*
- *Assessment of the actual impacts of initiatives on the lives of people with disability;*
- *Longitudinal tracking of satisfaction rates and impacts;*
- *Funding streams and funding distribution; &*
- *Report as to the ongoing financial sustainability of any funding specific to the administration of the NDS.*

Question 7: What do you think of the proposal to have Targeted Action Plans that focus on making improvements in specific areas within a defined period of time (for example within one, two or three years)?

We support the setting of priority focus areas and the development of targeted action plans as a way of ensuring that progress is made towards addressing certain barriers to inclusion.

People with disability and their advocates should be consulted to determine the specific areas of focus as well and co-design the targeted action plans together with government.

The National Agreement on Closing the Gap (the NACG)²⁶ offers a good model in terms of how action plans across key policy areas might sit within the new NDS. The NACG sets out goals and steps to achieve these goals (including specified timeframes in some instances) split across three jurisdictions – *jurisdictional actions, partnership actions and community-controlled sector elements*.²⁷ It also prescribes points at which progress will be assessed as it relates to each priority reform area, for example:

*In 2025, the Parties to the Agreement will meet and consider progress on Priority Reform One and make additional partnership actions if needed and the Agreement will be updated accordingly.*²⁸

Having prescribed points at which to consider progress across targeted action plans and potentially re-evaluate focus areas, would ensure that the NDS remained flexible to the changing needs and priorities of people with disability.

We would note that potential action plans already exist across several issues of importance for people with disability. For example, ACCAN has produced an Ideal Accessible Communications Roadmap as a national plan to meet Australia’s international and domestic obligations to provide full and equal access to all communication technologies and services for people with disability. This roadmap was the product of consultation across 35 organisations (including Disabled Peoples Organisations, advocacy groups and disability service providers) and 9 individuals about accessible communications.²⁹

We would recommend that the government conduct an audit of existing action plans which align with the key outcomes of the new strategy. Areas which we have identified requiring significant attention over the life of the new Strategy include the following:

1. Inequity in level of support for individuals in Aged Care verses NDIS

We are concerned that there is a significant gap in terms of resourcing and funding between the two schemes, with participants in the NDIS leading to increased inequality for older Australians with physical disability;

2. Employment

Despite a number of initiatives under the 2010-2020 NDS to address higher levels of unemployment for people with disability, 79% of people of working age with disability are unemployed. More work needs to be done to improve access to employment for people with disability as well as addressing employers’ attitudes towards hiring people with disabilities;

3. Housing

There is a serious lack of affordable and accessible housing that is suitable for people with disability. Data from the most recent Anglicare Rental Affordability Snapshot demonstrates that in August this year only 0.3% of rental properties nationally were affordable for a single

²⁶Council of Australian Governments, Partnership Agreement on Closing the Gap 2019-2029 – an agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and the Council of Australian Governments, July 2020 <<https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>> accessed 27 October 2020.

²⁷ Ibid.

²⁸ Ibid., p. 8.

²⁹ For more information on the Accessible Communications Roadmap - <<http://accan.org.au/Ideal%20Accessible%20Communications%20Roadmap.pdf>>

person living on the Disability Support Pension³⁰ - when taking into account accessibility we anticipate that this percentage to be reduced even more significantly; &

4. Accessible Communication

Accessible communication is vital to ensure that people with disability can fully participate in community life. Many people with physical disabilities still experience barriers in accessing information, both when engaging with government and in the broader community.

Recommendation 17:

That the government conduct an audit of existing action plans which align with the key outcomes of the new strategy

Recommendation 18:

That employment, housing, accessible communication and equality across the NDIS and Aged Care be key focus areas for reform in the new strategy.

Question 8: How could the proposed Engagement Plan ensure people with disability, and the disability community, are involved in the delivery and monitoring of the next Strategy?

The National Disability Strategy is highly ambitious - focused on broadscale changes across national, state and territory infrastructure as well as driving a shift in long held societal attitudes relating to disability. Despite this, there is much that could be achieved across a decade if the Strategy were to be prioritised.

In order to realise the Strategy's vision, society needs to be aware of the barriers faced by people with disability and there needs to be universal commitment to removing these barriers. An Engagement Plan could act as a useful mechanism to elicit broad societal support for the NDS and reinvigorate the commitment across government – this is particularly relevant given that we are now in recession and disability issues, are likely to be far from the minds of many.

Having said this, it is difficult given the current structure around the administration of the NDS to see how an engagement plan would be implemented or where necessary funding and resources might be sourced – if an engagement plan is to succeed there needs to be both a driving body to coordinate its implementation and funding to facilitate this.

A central administering body for the NDS, could be tasked with the role of engaging with people with disability and the disability community both in relation to the development of the Strategy and its monitoring. There are many ways that this could be realised, for example, through the setting up of a national disability reference group, conducting research into the longitudinal health and wellbeing of people with disabilities or engaging directly with the disability community through consultations and calls for submissions.

Ed Santow, in a recent presentation on the future of the NDS stated '*A human right not enforced is just a good idea*'.³¹ In the same sense, a strategy to address structural inequalities without a responsible entity to act as a lynchpin to hold together all its component parts is just a good plan –

³⁰Anglicare Australia, *Rental Affordability Snapshot – Special Update*, August 2020 <<https://www.anglicare.asn.au/docs/default-source/default-document-library/special-release-rental-affordability-update.pdf?sfvrsn=4>> accessed 12 October 2020, p. 6.

³¹ Presentation by Edward Santow at the National Disability Strategy Webinar, hosted by the Australian Human Rights Commission and the Centre of Research Excellence in Disability and Health, 24 September 2020.

and we have seen how a lack of centralised coordination of the previous Strategy negatively affected both the implementation progress and its momentum.³²

³² Davy, L., Fisher, K., et al, *Review of implementation of the National Disability Strategy 2010-2020*, Final report by the Social Policy Research Centre, prepared for the Department of Social Services, August 2018, p 25.

Concluding comments

The new National Disability Strategy is an opportunity to build on a solid foundation. For all its faults, the vision of the old strategy and its goals reflected the ambitions of people with disability - and this is impressive, given the diversity of the community it sought to empower. It is important that the new strategy builds on this legacy to strengthen the rights of people with disability, not erode them.

Disability as part of the human condition, is only going to become more prevalent across our society over the next few decades as we will see an exponential increase in people over 65 years of age.³³ It is important that the government use the new strategy as an opportunity to both protect the rights of those with disability now, but to also pre-emptively prepare our society for life in 10, 20, even 30 years from now, and the evidence is that it is both socially and economically worthwhile to do so.

But the Strategy is only one part of the mechanism. When considering the National Disability Strategy as an instrument to embed the provisions of the UNCPRD (and anti-discrimination law) into our society, it is critical to also look at state and federal structures to protect the rights of people with disability, and contemplate whether these mechanisms are sufficiently robust to ensure adherence, even when convenience and cost effectiveness would argue otherwise. It may also be time to ask the difficult question - *how serious are we about human rights, if we are not prepared to statutorily enforce them?*

The new National Disability Strategy can go some way towards driving a whole of society commitment to the rights of people with disability, but to do so it needs to present a strong stance on what is expected from society and have the leadership, capacity to coordinate and the resourcing to ensure that society is accountable. It also needs to have the power that only comes from the ability to enforce rights, if need be.

Recommendation 19:

That the government commit to a broader review of the effectiveness of legislative protections relating to human rights and anti-discrimination, with a view to strengthening these safeguards

³³ The Australian Treasury, *Australia to 2050: Future Challenges – the 2010 intergenerational report overview* https://treasury.gov.au/sites/default/files/2019-03/IGR_2010_Overview.pdf accessed 28 October 2020 at p. 4.