



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

**Productivity Commission Review of
the National Disability Agreement**

**14 September
2018**

About PWDA

People with Disability Australia (PWDA) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is funded as a NSW and national peak organisation. We are a founding member of Disabled People's Organisations Australia (DPO Australia) along with Women With Disabilities Australia (WWDA), First Peoples Disability Network Australia (FPDN), and National Ethnic Disability Alliance (NEDA).

Disabled Peoples Organisations (DPOs) are organisations that are led by, and constituted of, people with disability. The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability In Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities.

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Introduction

People with Disability Australia welcomes the opportunity to provide our views on the Productivity Commission's National Disability Agreement Review.

Our submission outlines key opportunities and issues to be addressed through the review of the National Disability Agreement (NDA).

PWDA believes that a newly refocused and revitalised NDA will provide a key accountability mechanism to ensure that all tiers of government deliver on agreements to progress the rights of people with disability, as articulated in the Convention on the Rights of Persons with Disabilities (CRPD).

Australia ratified the CRPD in 2008, and developed the National Disability Strategy 2010-2020 (NDS) as the high level policy framework for CRPD implementation. The National Disability Insurance Scheme (NDIS) is a key area of reform under the NDS with a specific focus on disability specialist supports for people with disability. The NDIS Act 2013 gives effect to the CRPD as well as certain obligations in other human rights conventions.¹

Our overarching recommendations for this Review are:

- *That the Productivity Commission analyse the NDA in the context of Australia's obligations under the CRPD;*
- *That recommendations made from this Review ensure that a new NDA is firmly underpinned by the CRPD and enable Australia to give effect to its CRPD obligations.*

We also outline specific recommendations in the discussion below.

Delivering on the next phase of the NDS

The National Disability Strategy 2010-2020 (NDS) was developed and endorsed by Commonwealth, State and Territory Governments and the Australian Local Government Association in 2011. The NDS gives effect to the Australia's obligations and responsibilities under the CRPD.

The NDS recognises that "people with disability must be afforded the same rights as all other Australians ... People with disability are citizens with rights, not objects of charity."²

The NDS commits all tiers of government in Australia (Commonwealth, State and Territories and Local) to uphold the rights of people with disability by improving access, inclusion and participation across six outcome areas:

- Outcome 1: Inclusive and accessible communities — the physical environment, including public transport, parks, buildings, housing, digital information and

¹ National Disability Insurance Scheme Act 2013 (Cth), sections 3(1)(a) and 3(i), https://www.legislation.gov.au/Details/C2018C00276/Html/Text#_Toc519598571

² *National Disability Strategy*, https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf, p.16

communications technologies; and civic life, including social, sporting, recreational and cultural activities.

- Outcome 2: Rights protection, justice and legislation — statutory protections, such as antidiscrimination measures; complaints mechanisms; advocacy; and the electoral and justice systems.
- Outcome 3: Economic security — jobs; business opportunities; financial independence; adequate income support for those not able to work; and housing.
- Outcome 4: Personal and community support — inclusion and participation in the community; person-centred care and support provided by specialist disability services and mainstream services; and informal care and support.
- Outcome 5: Learning and skills — early childhood education and care; schools, further education, and vocational education; transitions from education to employment; and life-long learning.
- Outcome 6: Health and wellbeing — health services, health promotion and the interaction between the health and disability systems; and overall wellbeing and enjoyment of life.³

Two implementation plans have been developed “Laying the Groundwork 2011-2014” and “Driving Action 2015-2018”.⁴

However, despite the development of the NDS and two implementation plans, and after seven years, we remain concerned that “the NDS is not being driven consistently across government and jurisdictions nor does it have the investment or concrete measures needed to deliver solid outcomes under the six policy outcome areas.”⁵ Statistics show that people with disability are still not being able to realise their full rights as citizens within the Australian community.

As noted in the Productivity Commission’s Issues Paper, benchmarks contained within the NDA, such as the number of people who participate in social and community activities are not improving but instead declining over the last six years.⁶

The NDS is currently being reviewed with the intention of establishing a new iteration following 2020. This review and the review of the NDA provides an important opportunity

³ https://www.dss.gov.au/sites/default/files/documents/12_2017/final_-_national_disability_strategy_australian_government_action_plan_-_5_dec_2017.pdf

⁴ <https://www.dss.gov.au/disability-and-carers/programs-services/government-international/national-disability-strategy-second-implementation-plan>

⁵ Sands, T., (2017) *Disabled People’s Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2010 (NDS) to build inclusive and accessible communities*, Disabled People’s Organisations Australia, <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>

⁶ Productivity Commission, National Disability Agreement Review Issues Paper, <https://www.pc.gov.au/inquiries/current/disability-agreement#report>

to address well-documented shortcomings on Australia's delivery of goals set out in the NDS.⁷

The redevelopment of the NDA is the opportunity to establish a high-level inter-governmental agreement between the Commonwealth, State and Territory and Local Governments to deliver on the agreed goals and performance targets of the NDS.

This would significantly strengthen delivery of commitments within State, Territory and Local Government disability inclusion or action plans that are aimed at implementing the NDS. However, some State and Territory plans do not include all NDS outcome areas, nor do they articulate the connection to the NDS and the rights of people with disability. This compromises national consistency in NDS implementation, monitoring and evaluation frameworks, progress reporting, including data collection and analysis.

As a high-level intergovernmental agreement, the NDA could be a mechanism for coordinated agreed NDS action, monitoring and evaluation across Australia to ensure national consistency, high level responsibility and accountability.

In addition, the purpose and scope of the NDA should include an outline of funding arrangements, including financial incentives, for the Australian Government and its agencies, State and Territory governments and their agencies, and Local Government to deliver on key targets, priorities and actions within the NDS.⁸ It should also include provisions for the Australian Government to withhold funding where agreed performance targets in the NDA are not met.

A new NDA requires performance targets and robust reporting requirements that demonstrate how the rights of people with disability are being upheld in line with the goals of the NDS and, consequently meet obligations under the CRPD. Progress on meeting key goals and performance targets could then be reported annually in the Federal parliament by the Prime Minister to reflect the importance of Australia meeting its obligations and responsibilities under the CRPD.

Recommendations:

- *That the review of the NDA focuses on the establishment of a high-level intergovernmental agreement between the Commonwealth, State and Territory and Local Governments to deliver on nationally consistent agreed goals and performance targets of the NDS.*
- *That the NDA should include funding arrangements to support delivery on State, Territory and Local Government disability inclusion or action plans.*
- *That funding arrangements, performance measures (benchmarks and indicators) in the NDA relate directly to the NDS and meeting Australia's obligations under the CRPD.*

⁷ See e.g., Sands, T., (2017) *Disabled People's Organisations Australia (DPO Australia) Submission to the Senate Community Affairs References Committee Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2010 (NDS) to build inclusive and accessible communities*, Disabled People's Organisations Australia, <http://dpoa.org.au/submission-senate-inquiry-delivery-outcomes-national-disability-strategy-2010-2020/>

⁸ For example, some inter-governmental COAG agreements (such as in the early childhood education and care sector) set benchmarks that states and territory governments are required to meet in order to receive future funding and/or increased funding

A new NDA needs to deliver for all people with disability

In 2015, a survey conducted by the Australia Bureau of Statistics showed that 18% of people (4.3 million people) have disability in Australia. This figure more than doubles for older Australians where 51% of Australians aged 65 years and over have disability.⁹

The NDIS was introduced in 2013 with the aim of reforming a broken and crisis driven disability service system, and a focus on delivering choice and control for people with disability in accessing the services and supports needed to live an ordinary life. To be approved as a participant in the NDIS, people with disability, need to be under 65 years of age and demonstrate that they have 'significant and permanent' disability.¹⁰ It is estimated that following full roll-out, approximately 10% of people with disability in Australia will be eligible for the NDIS.¹¹

While the redesign and delivery of specialist disability services through the NDIS might raise the question of the need for a NDA, PWDA argues that a new and significantly redeveloped NDA can ensure that all people with disability in Australia can access the disability services and supports they need, not only those who are eligible for the NDIS. This is critical, given some State and Territory Governments have withdrawn from funding disability services entirely or in part under the mistaken view that the NDIS addresses disability support needs for all people with disability. There is already growing evidence of disadvantage and hardship being experienced by people with disability who are not eligible for the NDIS but who are no longer provided with, or cannot access disability services in their State or Territory.¹²

A new NDA would not duplicate the legislative requirements or bilateral agreements under the NDIS, but should address the relationship and interface between mainstream services, State based disability supports and the NDIS. It should focus on ensuring that:

- NDIS participants can access mainstream and disability services and supports that are not part of the NDIS; and
- people with disability who are not part of the NDIS (around 90% of people with disability) can access mainstream and disability services and supports.

This would ensure that all people with disability are able to fully participate in the civil, political, economic, social and cultural life of the Australian community.

⁹ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

¹⁰ Children under 6 years who may not have meet the 'significant and permanent' disability criteria are able to access the NDIS through Early Childhood Early Intervention (ECEI)

¹¹ For example, in NSW, it is anticipated that around 140,000 people will be NDIS participants, while 1.4m people in NSW identify as having disability.

¹² See e.g., People with Disability Australia, 'Realising the State of Inclusion: The role of the NSW Government for people with disability', Submission to the NSW Legislative Council Inquiry into the Implementation of the National Disability Insurance Scheme and the provision of disability services in NSW, <https://www.parliament.nsw.gov.au/lcdocs/submissions/61696/0329%20People%20with%20Disability%20Australia.pdf>

Recommendation:

That a key purpose and function of a new NDA is to define and outline the service delivery roles, responsibilities and obligations for all levels of government to deliver mainstream and disability-specific services for all people with disability regardless of NDIS eligibility.

Addressing interface issues between the NDIS and mainstream and disability services

While it is widely recognised that there are a number of internally focussed operational issues with the implementation of the NDIS, there are also growing challenges regarding the interface between the NDIS and access to mainstream and specialist services for people with disability.

Interface issues are emerging across a range of service areas including health, mental health, aged care, justice as well as early childhood education and care, school and tertiary education. Interface issues broadly describe circumstances where the roles and responsibilities of differing agencies are unclear in relation to the NDIS, and this leads to people with disability being unable to access or receive vital services due to jurisdictional and ‘demarcation’ issues between the NDIS and government agencies. At worst, this can lead to people with disability being denied NDIS funding and/ or being unable to receive services that can place their health, wellbeing and safety at extreme risk.¹³

Redevelopment of NDA can provide significant and much-needed opportunities to clarify roles, responsibilities and multi-lateral funding arrangements to ensure that people with disability are able to access the services and supports they need.

These interface issues must be addressed by all tiers of government as a matter of urgency. To do this requires leadership at all tiers of government and a whole-of-government approach. A new NDA represents an ideal platform from which to clarify jurisdictional and agency responsibilities and, in turn, deliver accessible and inclusive services and supports for all people with disability.

Recommendation:

- *That the review of the NDA clarifies funding responsibilities and service delivery expectations between the NDIS and mainstream services and other disability-specific government services.*

Priorities for the NDA to deliver inclusion for all people with disability

A new NDA should clearly articulate expectations for outcomes, roles and responsibilities for funding, monitoring and reporting across the key human rights domains that are not

¹³ Please see PWDA’s recent submission to the NSW NDIS Inquiry at <https://www.parliament.nsw.gov.au/lcdocs/submissions/61696/0329%20People%20with%20Disability%20Australia.pdf>

currently effectively represented or articulated within existing agreements under the NDIS or the NDS. These areas should include:

- Enhancing representation of people with disability, individual, systemic and self-advocacy, and peer support and capacity-building, to enable people with disability to have a 'voice' in decision-making, and to assist in protecting and upholding rights.
- Strong focus on the protection of children and adults with disability from all forms of violence, abuse and exploitation, including the elimination of restrictive practices and forced treatments and medical interventions.
- Key outcomes based on genuine inclusive education for people with disability from early childhood education and care, school education, vocational and tertiary education.
- Inclusive health care and aged care systems including addressing the inequity within the interface between NDIS and My Aged Care for people over 65 years of age, and addressing the inequity for young people residing in aged care systems.
- Infrastructure development and mandatory obligations and standards including for public and private transport, active transport and mobility access, universal housing design, accessible built environments.
- Driving the shift from substitute decision-making to supported decision making in law and policy and significant improvements to access to justice including diversion of people with disability from contact and entry into the juvenile and criminal justice system
- Driving improved compliance with disability discrimination legislation by reducing the reliance on "unjustifiable hardship" and exemptions when governments and their agencies are meeting obligations under the National Disability Discrimination Act 1992, the Disability Standards for Education 2005, Disability (Access to Premises—Buildings) Standards 2010.

Recommendation:

- *That the NDA articulate expectations for outcomes, roles and responsibilities for funding, monitoring and reporting across key human rights domains that are not effectively represented or articulated within NDIS or the NDS.*



**PEOPLE WITH DISABILITY
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For individual advocacy support contact the **Disability Rights Information Service (DRIS)** between 9:00 am and 5:00 pm (AEST) Monday to Friday on (02) 9370 3100 or Toll Free on **1800 422 015** or TTY Toll Free on **1800 422 016** or email dris@pwd.org.au

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