



Australian
Human Rights
Commission

Review of Australia's Disability Strategy 2021-2031

Australian Human Rights Commission

Submission to the Department of Social Services

6 September 2024

ABN 47 996 232 602
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

1 Introduction

The Australian Human Rights Commission (Commission) welcomes the opportunity to provide a written submission in response to the Australian Department of Social Services (DSS) *Discussion Paper on Australia's Disability Strategy Review* (Discussion Paper).

The Commission is Australia's National Human Rights Institution, established under the *Australian Human Rights Commission Act 1986* (Cth),¹ with recognised independent status and roles in United Nations human rights fora. The Commission's operations are determined independently of government by the President and Commissioners.

The Commission provides independent and impartial services to promote and protect human rights and fundamental freedoms in Australia. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights. The Commission also has a role in promoting an understanding and acceptance of human rights in Australia.²

2 Recommendations

The Commission makes the following recommendations:

Recommendation 1: Public consultation on the Review of Australia's Disability Strategy should be based on outcomes of the independent evaluation in 2025 and public consultation on the findings of the evaluation.

Recommendation 2: The timing of future consultation should be cognisant of competing demands on the disability community and sector, and timeframes should be sufficient to allow meaningful engagement.

Recommendation 3: The Review of Australia's Disability Strategy should take into account recommendations made by the Disability Royal Commission. Amendments should be clear on how they progress implementation of all relevant Royal Commission recommendations.

Recommendation 4: All policy priorities and actions in Australia's Disability Strategy should be aimed at addressing ableism and exclusion of people with disability.

Recommendation 5: Australia's Disability Strategy policy priorities should be framed around human rights, with supporting target outcome measures.

Recommendation 6: Engagement activities for Australia's Disability Strategy should comply with Article 4(3) of the United Nations *Convention on the Rights of Persons with Disabilities*, including by:

- being co-owned and co-led via a formal partnership with people with disability through their representative organisations;
- having a standalone priority area to enable greater participation and voice of people with disability through their representative organisations in policy making.

Recommendation 7: The Australian Human Rights Commission, under the leadership of the Disability Discrimination Commissioner, should have a formal role in the implementation, evaluation and monitoring of Australia's Disability Strategy.

Recommendation 8: Australia's Disability Strategy should include harmonisation of laws and policies that relate to the rights of persons with disability as a priority.

Recommendation 9: The Review of Australia's Disability Strategy should include the implementation of recommendation 5.4 of the Disability Royal Commission to review national agreements, strategies and plans. The outcomes, and any action taken as a result of the reviews, should be made public.

Recommendation 10: A more robust governance framework and data development plan for Australia's Disability Strategy should be put in place.

3 Timing, timeframes, and methodology for the Review

This is a time during which the disability community and sector are facing unrelenting pressures. The Government Response to the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) was published in July 2024, and there has been continuous engagement on the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024*, which was recently passed in Parliament. While the Commission welcomes consultation on the

review of *Australia's Disability Strategy 2021-2031* (ADS), a consultation period of four weeks is insufficient in present circumstances.

The sequencing of the Review before the independent evaluation of the ADS, scheduled for 2025, is counterproductive. It is difficult to see genuine commitment to the ADS, if the Review is not drawing on all the resources necessary to review and update the ADS, which include findings recommendations from the Disability Royal Commission, the government response to the Disability Royal Commission, and the outcome of 2025 ADS independent evaluation.

It would be of greater value to sequence the Review, and accompanying public consultation, after the evaluation. The Commission urges DSS to commit to public consultation, with sufficient timeframes, at this later stage.

Recommendation 1: Public consultation on the Review of Australia's Disability Strategy should be based on outcomes of the independent evaluation in 2025 and public consultation on the findings of the evaluation.

Recommendation 2: The timing of future consultation should be cognisant of competing demands on the disability community and sector, and timeframes should be sufficient to allow meaningful engagement.

The Discussion Paper presents draft findings to guide the Review without clearly explaining the process and evidence for determining these draft findings. Furthermore, the consideration of Disability Royal Commission recommendations in the Discussion Paper is not comprehensive. Mapping against ADS specific Disability Royal Commission recommendations (i.e. 5.2-5.4), and all other recommendations that relate to priority areas and actions in the ADS and Targeted Action Plans (TAPs) is a necessary step in this Review.

Recommendation 3: The Review of Australia's Disability Strategy should take into account recommendations made by the Disability Royal Commission. Amendments should be clear on how they progress implementation of all relevant Royal Commission recommendations.

4 Alignment with the CRPD

The ADS is the government's framework for an inclusive Australia, with an aim 'to protect, promote and realise the human rights of people with disability in line with Australia's commitments under the United Nations *Convention on the Rights of Persons with Disabilities*³ (CRPD). As the headline national strategy for people with disability in Australia, it is imperative that the ADS be effective in

progressing the implementation of the CRPD. However, after 4.5 years of evidence of people with disability and other experts, the Disability Royal Commission found that the ADS was lacking in alignment with the CRPD.⁴ The Commission shares this view.

The CRPD sets the roadmap for achieving formal, substantive, and transformative equality (explained below); it should be the departure point for the ADS, as it is for this submission.

The CRPD establishes that people with disability are rights holders and can exercise and enjoy their human rights on an equal basis with others. It is centred on the principle of non-discrimination, defined as 'any distinction, exclusion or restriction on the basis of disability' with the effect of impairing the enjoyment or exercise of human rights.⁵ This translates to the recognition that impairment should never be the basis for the denial or diminishment of the enjoyment and exercise of human rights.

Simply put, formal equality has to do with equality of treatment (everyone is treated the same) whereas substantive equality is achieved through equality of opportunities and equality of outcomes. The latter is only possible with the recognition that ableist structures and systems disadvantage people with disability, an assertion that is wholly absent from the ADS.

Transformative equality goes further, by 'State Parties taking positive measures to dismantle existing normative frameworks underpinned by ableism.'⁶ The CRPD requires that State Parties go beyond reforming existing systems – particularly where they are specialised and / or segregated – by taking steps to transform systemic structures.

"If the focus continues to be on fixing, reforming or maintaining existing systems that are built on ableism, the necessary social transformation required by the CRPD will never be understood or realised."⁷

The ADS as it stands is maintaining the status quo rather than acting as the vehicle for formal, substantive, and transformative equality envisioned by the CRPD. Without aligning itself to the CRPD, it will not achieve its vision for greater inclusion of people with disability in Australian society.

The review of the ADS is an opportunity to act on the evidence-based recommendations made by the Disability Royal Commission and NDIS Review, so that Australia continues the implementation of the CRPD. Australia is scheduled for review by the Committee on the Rights of Persons with Disabilities in 2029. The Committee will undoubtedly scrutinise the effectiveness of the ADS over its

decade long life span, and there is an opportunity now to place Australia in good stead for this treaty review.

In this section of the submission, the Commission makes recommendations on how the ADS could align with the CRPD.

4.1 Human rights model of disability

The ADS should be framed within the human rights model of disability, which incorporates the social model of disability. The human rights model respects and accepts impairment as part of human diversity and dignity,⁸ and affirms that impairment can never be the basis for the denial or diminishment of human rights. The CRPD is grounded in the principles of personal autonomy, the freedom to make one's own choices and the respect for the human dignity and worth of people with disability.

The human rights model is foundational if the ADS is to shift policy and community attitudes in a transformative way. It should feature in the pre-ambles and strongly underlie the priorities and actions in the 'Community Attitudes' outcomes area, as well as inform all aspects of the ADS.

4.2 Acknowledgment of, and action to address, systemic disadvantage

A rights-based strategy should, first and foremost, acknowledge the systemic inequality and discrimination it seeks to address. The Commission points to two national strategies as positive examples to draw on: the *National Agreement on Closing the Gap* (Closing the Gap) and the *National Plan to End Violence against Women and Children 2022-2032* (National Plan to End Violence against Women).

Both strategies are founded on a recognition of the inequality and discrimination faced by the relevant groups. For example, Closing the Gap identifies 'entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism'⁹ endured by Australia's First Nations people.

Both strategies direct policy actions towards the political, economic and social known causes of disadvantage. The stated vision of the National Plan to End Violence against Women explicitly recognises the human right to live free from violence and commits 'to ending violence against women and children in Australian in one generation'.¹⁰

By contrast, the ADS's vision is for 'an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community.'¹¹ This fails to recognise ableism and identify the known drivers of

discrimination, segregation, institutionalisation and exclusion of people with disability in Australia. The focus on people with disability achieving their 'full potential' is underlined by ableist assumptions that people with disability are not already doing so. The ADS needs to move the emphasis away from the individual to get at the systemic root causes that prevent the enjoyment of rights on an equal basis.

Some of the ADS supporting documents present prevalence rates for various forms of disadvantage and harm, but the underlying causes go unmentioned and unquestioned. The Disability Royal Commission has clearly shown that benevolent and benign systems deny people with disability the ability to exercise their human rights, for example, around access to adequate housing, education, privacy.

Recommendation 4: All policy priorities and actions in Australia's Disability Strategy should be aimed at addressing ableism and exclusion of people with disability.

4.3 Intersectionality

The CRPD is one of the first international treaties to deal with intersecting identities. With individual articles relating to women with disability¹² and children with disability,¹³ the CRPD is clear in its understanding that intersecting identities impact the ways in which people with disability are discriminated against and excluded from society.

There needs to be recognition within the ADS that people with disability are not a homogenous group. People with disability can have multiple layers of personal identities and life statuses that create unique and specific experiences. It is also crucial that intersectionality be recognised across all areas of the ADS and within broader mainstream policy making. Section 5.2 of this submission speaks to this integration across other national agreements.

4.4 Rights based framing of policy priorities, actions, and outcomes

There is one specific policy priority in the ADS' Safety, Rights and Justice Outcome Area to 'uphold and protect the rights of people with disability.'¹⁴ It is confusing to have such a broad and all-encompassing priority that is also the overall aim of the ADS. This policy priority has no associated actions or targets but does have two associated outcomes measures: the percentage of access to independent advocacy and the number of complaints made under the *Disability Discrimination*

Act 1992 (Cth). These measures are reductionist and inaccurate or incomplete measures of the exercise of or fulfillment of rights.

The Disability Royal Commission pointed to the absence of a TAP on human rights,¹⁵ which causes difficulties in monitoring and assessing 'what actions, if any, are targeted at realising human rights.'¹⁶ The Commission's view is that, in a first instance, human rights should frame and permeate every element of the ADS. To achieve this, the ADS needs to be restructured so that every policy priority be worded in such a way that identifies the individual rights it seeks to realise. Associated TAPs and outcomes can then consequently relate to the realisation of these rights.

At present, some – albeit a minority – of the ADS policy priorities are framed using in a rights-based approach. The Commission recommends all ADS priority areas should be explicit in using rights language, mirroring the CRPD. For example:

- Policy priority 1, Employment and Financial Security, to 'increase employment of people with disability' should be centred on realising the right to work on equal basis with others, with a set target to increase employment rates.
- Policy priority 4, Health and Wellbeing, for 'disaster preparedness, risk management plans and public emergency responses to be inclusive of people with disability and support their health and wellbeing' should be centred on realising 'the right to protection and safety of people with disability in situations of risk and emergencies and natural disasters.'

The rights-based approach needs to trickle down into actions and outcomes measures, too. For instance, objective 4 of 5 of the Safety TAP is to 'reduce and eliminate the use of restrictive practices in all government service systems.'¹⁷ At face value, this is a rights based objective, and undoubtedly the right one, but the associated policy actions narrowly target the alignment of authorisation processes and regulatory frameworks,¹⁸ rather than being grounded in the CRPD obligations and principles relating to the right to liberty of person, and working towards the rights based target outcome of elimination.

The Disability Royal Commission made several recommendations for the elimination of restrictive practices, including recommending the immediate prohibition of certain restrictive practices and the introduction of targets to drive the reduction and elimination of restrictive practices.¹⁹ None of these are accepted in full, some are accepted in principle,²⁰ which is concerning given that the overall aim for elimination is agreed to in the ADS. This could be read as a

renewing of ADS commitments, rather than an opportunity to reaffirm the rights based imperative to achieve this objective and refine policy actions towards it.

Recommendation 5: Australia's Disability Strategy policy priorities should be framed around human rights, with supporting target outcome measures.

Returning to the Disability Royal Commission observation around a standalone TAP on human rights, this could fit within the new ADS structure proposed in this submission, and could contain high level universal actions for the establishment of a human rights framework, such as the modernisation of discrimination law, the introduction of rights based legislation, and other systems of governance and accountability. The Commission refers DSS to its report entitled, *Free & Equal: Revitalising Australia's commitment to human rights*, which outlines a proposal for a human rights framework.

4.5 Participation of people with disability

Article 4(3) of the CRPD requires Australia to closely consult with and actively involve persons with disabilities, including children with disabilities, in the development and implementation of legislation and policies that relate to them.²¹ Participation is one of the enablers of transformative equality and quintessential to the CRPD.

The ADS aims to 'engage, inform and involve the whole community in achieving a more inclusive society'.²² The Discussion Paper seeks feedback on a draft recommendation to 'develop and implement an ADS Community Engagement Plan, in addition to the existing ADS engagement commitments'.²³ The Commission is of the view that an additional engagement plan with a focus on 'campaigns to improve public knowledge and awareness of the ADS',²⁴ as proposed in the discussion paper, will not facilitate the necessary conditions for genuine involvement of people with disability in the design, implementation and governance of the ADS.²⁵

In its 2019 Concluding Observations, the CRPD Committee raised concerns about the weakness of mechanisms and limited funding under the then NDS (and National Disability Agreement) for the full and effective engagement of persons with disabilities, through their representative organisations in policy development, implementation and monitoring of actions relating to the Convention.²⁶

The Commission is pleased to see that all levels of government accepted the Disability Royal Commission recommendation to review and update the ADS 'in partnership with people with disability and their representative organisations'.²⁷ A

deeper level of engagement is required to meet the 'partnership' threshold set by the Disability Royal Commission, and, more importantly, to meet the requirements of CRPD Article 4(3).

For instance, the CRPD Committee states that:

Public authorities should give due consideration and priority to the opinions and views of organizations of persons with disabilities when addressing issues directly related to persons with disabilities. Public authorities leading decision-making processes have a duty to inform organizations of persons with disabilities of the outcomes of such processes, including an explicit explanation in an understandable format of the findings, considerations and reasoning of decisions on how their views were considered and why.²⁸

On the matter of engaging children with disability, the Commission is engaged by the DSS to lead the *Supporting Quality Engagement with Children* consultation project, which aims to include the voices of children, young people and their families in policies and services that directly affect them. Consultation activities focus on five National Strategies, one of which is the ADS.

In its recent report, *'Do things with the information we tell you': Supporting Quality Engagement with Children*, the Commission recommended that children's rights, including children with disability, should be at the centre of policy and program design.²⁹ One way to achieve this is to use a Child Rights Impact Assessment (CRIA) tool. In line with CRPD obligations, the Commission recommended that children and young people with disability should be directly involved in the design and implementation of policies and services affecting them, including providing feedback about how their input has been used.³⁰

One relevant example of good practice is the partnership between Australian Governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations to develop and implement Closing the Gap. Not only is Closing the Gap co-owned and co-led with Aboriginal partners, it also has a standalone priority reform area on formal partnerships and shared decision-making, with concrete actions to enable participation and targets to measure progress.³¹ This robust approach could be replicated in the ADS.

Any engagement around the ADS must adhere to human rights standards to comply with CRPD Article 4(3). CRPD General Comment No.7 provides further guidance on these standards.³² The Commission is available to advise DSS and the ADS Advisory Council on how to fulfill these obligations.

Recommendation 6: Engagement activities for Australia's Disability Strategy should comply with Article 4(3) of the United Nations *Convention on the Rights of Persons with Disabilities*, including by:

- **being co-owned and co-led via a formal partnership with people with disability through their representative organisations;**
- **having a standalone priority area to enable greater participation and voice of people with disability through their representative organisations in policy making.**

4.6 The role of the Australian Human Rights Commission and the Disability Discrimination Commissioner

This submission makes the case for a renewed focus on human rights in the ADS, which should naturally result in increased and formalised engagement with the Commission and Disability Discrimination Commissioner.

The Commission is Australia's A-status National Human Rights Institution (NHRI) and operates independently from government. As a NHRI and by way of statutory functions, the Commission has a role to hold governments accountable by monitoring and reporting on Australia's compliance with international human rights treaties.³³ The Commission also has a role in building the capacity of governments and the public service workforce to understand and comply with human rights obligations.

At present, the Commission and Disability Discrimination Commissioner have minimal visibility of, or input into, the ADS. Engagement is limited to public consultations and ad-hoc presentations to the ADS Advisory Council. Under past operating arrangements, the Disability Discrimination Commissioner was the appointed Chair of the ADS Advisory Council, but this arrangement (appropriately) ceased in June 2023 without a suitable alternative mechanism being put in place.

Notwithstanding that the Commission's broad monitoring functions as they are currently written into law do not satisfy CRPD Article 33(2) requirements for a designated Independent Monitoring Mechanism³⁴ (a designation the Commission continues to advocate for), international treaty bodies see the Commission as having a de-facto role in monitoring the implementation of the CRPD in Australia.

The above factors – the Commission's mandate as NHRI, its statutory functions, and its positioning as de-facto CRPD monitor – should result in the Commission having a rightful, pertinent and formalised role in the implementation and oversight of the ADS. The Commission is available and willing to partner with DSS and the ADS Advisory Council in a greater capacity.

Recommendation 7: The Australian Human Rights Commission, under the leadership of the Disability Discrimination Commissioner, should have a

formal role in the implementation, evaluation and monitoring of Australia's Disability Strategy.

5 Comments on draft findings and recommendations

In this last section of the submission, the Commission responds to draft findings and recommendations in the Discussion Paper that relate to ADS governance, coordination and accountability.

5.1 The ADS as a guiding policy framework for harmonisation of laws, policies and agreements

The strengths of the ADS are that it is agreed to by all levels of government and it spans multiple areas of government responsibility. The extension of its remit beyond disability specific policy is welcome, but the ADS' priority areas and outcomes are for the most part geared towards the delivery of social and welfare services.

Draft finding 1 in the Discussion Paper identifies a need for the ADS to support consistent and coordinated actions across governments.³⁵ This replicates a Disability Royal Commission recommendation for national coordination and greater leadership by the Australian Government.³⁶

In its 2019 review of Australia's implementation of the CRPD, the CRPD Committee called on Australia to 'fully harmonise domestic legislation with the Convention.'³⁷ More recently, the Disability Royal Commission made several recommendations that, if implemented, would have the effect of harmonising laws and policies across Australia, to ensure equivalent rights protections to people with disability across the country.

The Australian Government should seek to utilise the ADS to not only identify areas of law and policy that require harmonisation, but act as a mechanism to set the minimum agreed standards for measuring reform. These could then be translated into TAPs setting out, and monitoring, the necessary reform in every jurisdiction.

This could be achieved within existing TAPs, as illustrated in section 5.3 with regards to restrictive practices, or for the advancement of rights through policy areas not yet captured in the ADS, for example the right to the exercise of legal capacity. Mapping of laws and recommendations for harmonisation were made in 2014 by the Australian Law Reform Commission (ALRC) in its report on

Equality, Capacity and Disability in Commonwealth Laws. National Decision-Making Principles³⁸ were proposed as the minimum standard to be incorporated into law. The ADS could be the mechanism through which to achieve agreement by jurisdictions to the Principles, and from there, monitor reform of each of these laws.

Recommendation 8: Australia's Disability Strategy should include harmonisation of laws and policies that relate to the rights of persons with disability as a priority.

5.2 The ADS and Government leadership

Transformative equality can take generations to achieve. The ADS can commence the transition away from existing systems and structures that maintain exclusion and segregation of people with disability.

The ADS should lay the necessary foundations and chart the course for all levels of government to innovate by initiating and progressing reform, especially in mainstream policy areas. It should not be a static document, and its implementation should not result in maintaining the status quo. This was recognised in the Discussion Paper and by the Disability Royal Commission, which identify significant flaws in TAPs that point to programs that have been in place for some time.

A more dynamic use of the ADS would see it used as a bargaining tool by the Australian Government to uplift intergovernmental agreements, strategies and plans to ensure they progress commitments made in the ADS, and in the CRPD.

For instance, the Commission is aware that the *Better and Fairer School Agreement* was released this year, with bilateral agreements being negotiated for a 1 January 2025 commencement.³⁹ The Agreement reaffirms a 'continued commitment to the implementation of the ADS',⁴⁰ but it is not clear how the Agreement aligns with, or progresses, the ADS general and specific aims. While it includes national future measures for students with disability (around access, participation and outcomes), the Agreement excludes students with disability from some of its Improvement Measures relating to Year 12 certification,⁴¹ for example, which goes against the ADS policy priority to improve pathways to further education. A stronger, rights-based ADS would trickle down to like Agreements to address barriers and move away from segregated settings.

The Disability Royal Commission made a recommendation for all national agreements, strategies and plans that affect people with disability to be reviewed to consider, among a number of factors, their alignment with the ADS.⁴² While

this should already be occurring when new agreements are developed, it has not been common practice.

It is encouraging that the relevant Disability Royal Commission recommendation was accepted in principle by all governments. The Commission recommends that the assessment of national agreements against the ADS form part of the ADS Review, and that the outcomes of such assessments be published, along with any actions taken.

Recommendation 9: The Review of Australia's Disability Strategy should include the implementation of recommendation 5.4 of the Disability Royal Commission to review national agreements, strategies and plans. The outcomes, and any action taken as a result of the reviews, should be made public.

5.3 Accountability

The Discussion Paper acknowledges that 'ADS reporting does not support government accountability and implementation compliance.'⁴³ Draft recommendations for comment include reporting through the Outcomes Framework and more robust reporting for TAPs. The Commission agrees with these recommendations, with the addition of more robust and consistent TAPs, as explained below.

Firstly, it should be noted that ADS agreements are spread across a number of documents, and not all policy priorities agreed to in the ADS have a corresponding TAP, making it difficult to know how these priorities are progressed by government, if at all.

In addition, where TAPs are in place, the actions are not congruent with, or sufficient to achieve, objectives. The Commission builds on the analysis provided in section 4.4, relating to the objective to reduce and eliminate restrictive practices, as per the Safety TAP.

The first observation is that there are significant inconsistencies across the Australian Government's TAP and State based TAPs. For instance, the Australian Government TAP has an action to 'work with states and territories to align to agreed national principles, with definitions and authorisation processes in place by 2023.'⁴⁴ Every jurisdictional TAP should have an ensuing similar action, but this is not the case. State TAPs are also piecemeal in their interpretation of the scope of the objective, which applies across all settings. Yet, Victoria's TAP is solely focused on custodial settings, and makes no direct mention of the use of restrictive practices; NSW focuses on education settings; Queensland on health settings.⁴⁵

It is unclear how the Australian Government is taking on its leadership role to coordinate action across jurisdictions.

The TAP, and indeed the ADS, is also silent on previous commitments towards this objective. The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector was endorsed by Commonwealth, State and Territory Ministers in 2014, more than ten years ago. While the Framework would need to be expanded to all settings beyond disability services, such as mental health, justice, child protection and aged care and needs refreshing to apply to the current service landscape (most notably, NDIS), it provides a good starting point for this work.

Finally, current ADS reporting frameworks are not presented in a way that is specific to any TAP objective or action. The two published *TAP Reports* present disaggregated data in tables and graphs showing the *total* number of actions that are complete / on track / delayed, rather than providing a status update for *each individual* action committed to.⁴⁶ Reports make no reference to the objectives in each TAP. This makes it impossible to decipher whether or how any action – for example the goal to have all jurisdictions agree to national principles for restrictive practices by 2023 – has been progressed. The ADS Implementation Report is equally non-specific and opts for presenting high level dot point lists of examples of activities, rather than comprehensively reporting on implementation.

A rights-based framing and understanding of each ADS objective is needed in a first instance as recommended earlier in this submission. This needs to be supported by shared workplans across all jurisdictions for each TAP, and similar benchmark indicators.

5.4 The role the Outcomes Framework

The ADS Outcomes Framework is a notable improvement from the NDS and an important tool to monitor and inform implementation, and to hold governments to account.

It is inevitable that policy will evolve during the decade long life span of the ADS, and so it should be sufficiently supple to reflect new data where it is being collected. Notwithstanding the concerns raised above, the *Better and Fairer Schools Agreement* includes a review of the Measurement Framework for Schooling in Australia to consider data reporting that would capture access and outcomes, in addition to the school participation indicator that is already captured in the ADS Outcomes Framework. Should this data improvement (and

hopefully others) be agreed to, it should trigger amendments to the ADS Outcomes Framework.

The Outcomes Framework should also be used to drive increased reporting, especially in mainstream policy areas.

As an example, the ADS Outcomes Framework has an agreed future outcome measure on percentage compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) (DSAPT).⁴⁷ Once reported on, this data point will be the first ascertainment of DSAPT compliance in the 22 years of their operation. That this data point has been agreed to by all parties to the ADS is an achievement.

A working group has now been established by the Australian Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) to develop a non-mandatory reporting framework for DSAPT compliance. The Commission has issue with non-mandatory reporting, which is flawed, inaccurate, and likely be incomplete. Reporting is not obliged by law under the DSAPT, but that it was agreed to in the ADS Outcomes Framework should be sufficient to materialise in mandatory reporting, at least for the governments who have agreed to it.⁴⁸ The Commission is hopeful that the ADS can be used to persuade reporting on this measure.

5.5 Governance for the Outcomes Framework and data development plan

It is a significant concern that measures are set for future reporting in the ADS Outcomes Framework, without a comprehensive plan or identified data points to build and gather the evidence. For example, it is unclear to the Commission how the full measure of DSAPT compliance mentioned above will be arrived at, given that the DSAPT applies not only to governments (who at least are party to the ADS), but also to private transport providers and operators.

It is also concerning that the ADS does not link to the National Disability Data Asset (NDDA). The NDDA aims to be fundamental in supporting the development of human rights indicators and an evidence base for transformative policy reform.

More robust governance around the Outcomes Framework would be highly beneficial as an accountability measure. By way of comparison, Closing the Gap includes a thorough data development plan that includes prioritisation and time frames, as well as two independent reviews, one led by the Productivity Commission (owner of the reporting dashboard) and another by Aboriginal and Torres Strait Islander people.⁴⁹

Recommendation 10: A more robust governance framework and data development plan for Australia's Disability Strategy should be put in place.

¹ *Australian Human Rights Commission Act 1986* (Cth) s 7.

² *Ibid* s 11(1)(g).

³ See Department of Social Services (Cth), *Australia's Disability Strategy 2021-2023* (3 December 2021) < [Australia's Disability Strategy 2021-2031 | Disability Gateway](#) > (*Australia's Disability Strategy*).

⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023), vol 5, 83.

⁵ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD') art 2.

⁶ Rosemary Kayess and Therese Sands, UNSW Social Policy Research Centre, *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation* (Research Report, September 2020) 30.

⁷ *Ibid* 46.

⁸ CRPD art 3(d).

⁹ Department of Prime Minister and Cabinet (Cth), *National Agreement on Closing the Gap* (July 2020), 2.

¹⁰ Department of Social Services (Cth), *National Plan to End Violence against Women and Children 2022-2032* (2022), 14.

¹¹ *Australia's Disability Strategy*, 5.

¹² CRPD art 6.

¹³ CRPD art 7.

¹⁴ *Australia's Disability Strategy*, 17.

¹⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 5, 83.

¹⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) Executive Summary, 179.

¹⁷ *Australia's Disability Strategy Safety Targeted Action Plan*, 5.

¹⁸ *Australia's Disability Strategy Safety Targeted Action Plan*, 10.

¹⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 6.

²⁰ Department of Social Services (Cth), *Australian Government Response to the Disability Royal Commission* (July 2024).

²¹ CRPD art 4(3).

²² *Australia's Disability Strategy*, 7.

²³ Department of Social Services (Cth), *Australia's Disability Strategy Review* (Discussion Paper, August 2024) 12.

²⁴ *Ibid*.

²⁵ *Ibid*.

²⁶ *United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019, adopted 20 September 2019), 5(d).

²⁷ Emphasis added. Department of Social Services (Cth), *Australian Government Response to the Disability Royal Commission* (July 2024) 63.

- ²⁸ United Nations Committee on the Rights of Persons with Disabilities, General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, UN Doc CRPD/C/GC/7 (9 November 2018) [23].
- ²⁹ Australian Human Rights Commission, 'Do things with the information we tell you': Supporting Quality Engagement with Children (Report, 2024) 64.
- ³⁰ Ibid.
- ³¹ Department of Prime Minister and Cabinet (Cth), National Agreement on Closing the Gap (July 2020), 5.
- ³² United Nations Committee on the Rights of Persons with Disabilities, *General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention*, UN Doc CRPD/C/GC/7 (9 November 2018)
- ³³ *Australian Human Rights Commission Act 1986* (Cth) s 10.
- ³⁴ Article 33 of the *CRPD* is in relation to National Implementation and Monitoring. Article 33(2) specifies that:
- States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
- ³⁵ Department of Social Services (Cth), *Australia's Disability Strategy Review* (Discussion Paper, August 2024) 9.
- ³⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023), vol 5, 84.
- ³⁷ United Nations *Committee on the Rights of Persons with Disabilities, Concluding Observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019, adopted 20 September 2019), 2 [6(a)].
- ³⁸ Australian Law Reform Commission, *Equality, Capacity and Decision-Making in Commonwealth Laws* (Report No. 124, November 2014), page.
- ³⁹ Department of Education (Cth) *Better and Fairer Schools Agreement 2025-2034* (31 July 2024).
- ⁴⁰ Ibid 4.
- ⁴¹ Ibid.
- ⁴² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 5, 94.
- ⁴³ Department of Social Services (Cth), *Australia's Disability Strategy Review* (Discussion Paper, August 2024) 11.
- ⁴⁴ Australia's Disability Strategy Safety Targeted Action Plan, 10.
- ⁴⁵ Australia's Disability Strategy Safety Targeted Action Plan.
- ⁴⁶ Department of Social Services, *Australia's Disability Strategy Targeted Action Plans Report, 1 July 2022 to 30 June 2023*, (2023) 20.
- ⁴⁷ Department of Social Services (Cth), *Australia's Disability Strategy 2021-2031 Outcomes Framework* (2012) 2.
- ⁴⁸ The *Disability Discrimination Act 1992* (Cth), and disability standards, apply to both government entities and private transport providers and operators.
- ⁴⁹ Department of Prime Minister and Cabinet (Cth), National Agreement on Closing the Gap (July 2020).