



Australian Federation of Disability Organisations

# The National Disability Strategy: Five Years On

Report Prepared by the  
Australian Federation of Disability Organisations

*This publication has been prepared by the Australian Federation of Disability Organisations for the Australian Government, represented by the Department of Social Services. The views expressed in this publication are those of Australian Federation of Disability Organisations and do not necessarily represent the views of the Australian Government.*

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## About the Australian Federation of Disability Organisations

The Australian Federation of Disability Organisations (AFDO) is the primary national voice to Government that fully represents the interests of people with disability in Australia. AFDO and our member organisations are governed and operated by people with disability for people with disability. Our member organisations are individual consumer peak bodies representing a range of disabilities.

Our vision is a community where people with disability can participate in all parts of social, economic, political and cultural life.

Our mission is to champion the rights of people with disability in Australia and help them participate fully in Australian life.

To achieve our mission and vision, AFDO provides policy advice and representation to the Australian Government on matters that impact on the lives of people with disability. AFDO also works to inform and educate the general community about disability, support disability organisations and people with disability and undertake and support joint and collective campaigns towards elimination of structural and attitudinal barriers for people with disability.

## The National Disability Strategy

The National Disability Strategy is a ten year national plan for improving life for Australians with disability and their families and represents a commitment by all levels of government, industry and the community to a unified, national approach to policy and program development. As the primary national voice of people with disability, AFDO supports the full implementation of the National Disability Strategy and recognises the Strategy as an important mechanism to address the challenges faced by people with disability, both now and into the future, through a collaborative approach involving people with disability and government.

Although the National Disability Insurance Scheme (NDIS) has a high public profile and is recognised as one of the most significant social reforms of our time, the importance of the National Disability Strategy should not be understated. The success of the NDIS is dependent upon accessible and inclusive services and communities to enable people who are eligible to participate in activities of their choice, including employment, recreation, volunteering and civic participation. For the millions of Australians who are not eligible for the NDIS, accessible inclusive services and communities are vital to ensure our maximum participation.

## More than just words

While the National Disability Strategy provides a measure of confidence for many Australians with disability, the Strategy means little unless its commitments are backed up with measureable actions that deliver on the expectations of equality and fairness that are promised. Proposed changes signalled by the Disability Services Act (Cth) (1987) for a more inclusive and integrated life for people with disability

failed to bring an end to segregated and apartheid-like systems in employment, education, health and social, cultural and recreational opportunities. A pre-runner to the current National Disability Strategy (Commonwealth Disability Strategy 1994) made little impact due to the failure of implementation by public sector agencies charged with this responsibility.

It is imperative that the National Disability Strategy culminates into more than words, but into measurable, transparent actions that lead to an improvement in the lives of people with disability. Ultimately, people with disability should be at the centre of any reform agenda; it is their lived experiences, preferences and decisions which should be guiding effective support and care to meet their needs and ensure participation in an inclusive society.

### **The National Disability Strategy: five years on**

During the last five years, AFDO have consulted extensively with people with disability and their representative organisations around Australia on the barriers experienced in day to day life. AFDO has prepared countless submissions with recommendations and solutions to improve the social, cultural and economic participation of people with disability.

While we have seen some improvements in the lives of people with disability during the last five years, including the legislation of the National Disability Insurance Scheme from only the seed of an idea, there remain a number of significant barriers which require strong, effective and urgent systemic reform and action under the Strategy. *The most significant barrier is the lack of an operational plan to make the National Disability Strategy a tangible reality for people with disabilities experiencing disadvantage every day.*

The following report will examine each of the six parts of the Strategy and shine a light on areas where people with disability continue to experience significant disadvantage, discrimination and exclusion. This report is not designed to comprehensively address every issue experienced by people with disability, nor to be the sole reference for government of what needs to change. AFDO recommends that the Australian Government, in addition to reading this report, consult the reports submitted by the disability consumer sector which are rich with the stories, experiences and exclusion of people with disability to fully understand what is needed to implement the Strategy in full and bring about the changes we are collaboratively striving for. The following report highlights just some of the pressing issues that the Australian Government need to address with urgency.

## Part 1. Inclusive and accessible communities

the physical environment including public transport; parks, buildings and housing; digital information and communications technologies; civic life including social, sporting, recreational and cultural life.

### Public Transport

The Disability Standards for Accessible Public Transport (Cth) were introduced in 2002, with a twenty to thirty year timeline set for full compliance of all public transport and infrastructure across Australia. Ten years on, people who experience a wide range of disability remain unable to independently use public transport in and outside of their community. This is due to inaccessible infrastructure or vehicles, poor levels of information which meets their needs; poor availability of public transport to be able to exercise choice about when, where and how to travel and the preference for a systems approach rather than a holistic approach by government and systems planners which fails to consider a person's whole of journey.

The twenty to thirty year timeline for full compliance under the Transport Standards means that many people who currently experience disability will not have equal access to public transport within their lifetime. Further, when compliance with Transport Standards becomes difficult for transport providers or operators, exemptions from compliance or a time extension are sought. These alternatives are to the detriment of people with disability, the very people whose human rights are to be advanced through existing legislation and the UNCRPD. In light of the legislative framework in Australia, and Australia's obligations under the UNCRPD, the long timelines specified in the Transport Standards are not acceptable.

To this day, school buses remain exempt from the application of the Transport Standards. The 2007 review of the Standards recommended the proposed process for equal access to school buses by children with disability should commence in 2029 with compliance by 2044. The Australian Government has committed 'in principle' that school buses need to be accessible to students with disability, yet state jurisdictions have argued that there is no unmet need in regard to students with disability accessing school with the current school bus exemption in place. A student with a disability in Grade 1 will complete year 12 before the process for making school buses accessible begins; assuming that it begins at all.

Public transport barriers experienced by people with disability vary – all of these barriers however significantly impact on the participation of people with disability and more broadly, the effectiveness of policy strategies to ameliorate the disadvantage experienced by people with disability in other areas of life.

For people who are blind or vision impaired, insufficient or no access to public transport information in accessible formats (including web based applications) can mean the difference of using public transport safely and independently or being forced to rely on more expensive options, such as taxi use, in order to safely travel

from point A to B. Insufficient audible information on board vehicles providing real time information remains a significant barrier. The increased use of hybrid 'silent' vehicles, particularly in the taxi fleet, and the increased prevalence of large integrated transport interchanges, where multiple buses utilise the same stop, are also presenting significant access issues.

Access to simple and clear information has also been raised as an important feature of public transport use by people with a cognitive impairment and complex communication needs.

People who are Deaf or hard of hearing report a number of issues including the inconsistent availability of hearing loops in public transport buildings and vehicles; the lack of visual warning and information systems in emergency situations and inconsistent quality of audible and visual information on board vehicles and in buildings, which can be difficult when services are rescheduled. Furthermore, while people who are Deaf are frequent users of SMS facilities, not all of them are competent users of new technology. New technology to provide information should not be seen as the total solution to the information needs of people who are Deaf or hard of hearing.

Ten years on, people with a physical disability continue to experience significant barriers in their use of public transport. Depending on the progress of each state and territory, people with physical disability remain unable to use railway stations due to the lack of lift or ramp access. People who use mobility devices have reported being stranded, or required to wait for lengthy periods of time over and above passengers without disability, as no other access has been provided. The lack of consistency in the dimensions of new trains, trams and buses resulting from different suppliers of these vehicles, coupled with the rollout of accessible tram infrastructure which is not serviced by accessible tram vehicles, also present issues.

In 2012, AFDO provided a submission to the review of the Transport Standards. During our consultations, people with physical disability reported that transport providers have avoided their responsibility to provide direct access by saying they provided 'assisted access'. It is important to note that assisted access is still discriminatory as it requires people with disability to be in special places at special times. People with physical disability reported that staff are often reluctant to assist and noted that it was not part of their job to provide anything extra to help. A number of people with physical disability reported feeling "like a nuisance".

In many states of Australia, passengers are required to hail a bus which is not possible for people with limited upper body movement or for people with significant vision impairment. Existing and newly constructed bus stops do not have accessible paths of travel or curb ramps to enable people with a disability to access bus services. The Transport Standards specify these access requirements but there are many situations of non-compliance.

Overcrowding, resulting in people with disability being required to wait for the next service and the poor attitudes of many drivers and other staff exacerbate discrimination and exclusion.

The delivery of disability awareness training for public transport management and staff is not mandatory in the Transport Standards, with poor understanding of how to meet the different needs of people with disability. The additional needs of people with disability from non English speaking backgrounds (NESB) are not adequately addressed in the Transport Standards.

## **Airlines**

People with disability have not gained the potential benefits of increased competition in the airline industry, despite the introduction of new airlines in the Australian market over the last decade. For many people with disability, particularly people with mobility restrictions, it has become more difficult to travel by air. Some passengers who have travelled independently for many years now find themselves barred from travel or facing the imposition of unreasonable conditions.

The two wheelchair policy on domestic airlines is an issue which remains problematic and discriminatory to people who experience mobility restrictions. AFDO has contended, and continues to contend, that the airline two wheelchair policy contravenes anti-discrimination legislation in Australia and is not consistent with Australia's obligation as a signatory to the UNCRPD. People with disability have reported missing family celebrations and events, being unable to plan holidays, attend important appointments including as a representative of people with disability and being unable to travel together with an associate, friend or family member who also has mobility restrictions if another passenger is travelling on the same flight and requires the wheelchair space allocation.

AFDO members have highlighted that people who use mobility aids which are not wheelchairs have also had the policy applied to them. In addition, people who need any form of assistance to use airline services are counted as part of the policy. This situation has resulted in people who do not use a wheelchair or motorised mobility device being refused access to their flight.

While AFDO is aware of the economic, operational and safety concerns raised by airlines, many of which are resolvable, the ongoing discrimination of people with disability on the basis of their impairment appears to be a secondary issue of less consequence.

## **Compliance**

Compliance processes are reliant on complaints being initiated by people with disability, at their own cost. AFDO has been provided with many examples of public transport operators and providers not meeting the targets contained in Schedule 1 of the Transport Standards and thus being in breach of the Disability Discrimination Act

1992 (Cth). This includes response times for wheelchair accessible taxis as compared to regular taxis and the provision of information during a transport journey, with a particular focus on audible and visual information. Both targets were required to be met in 2007, yet the lack of enforceability and penalties has led to non compliance with little or no recourse.

As an example in Victoria, public transport operators claim 100% compliance in the provision of information. This is clearly not the case with audible announcements not being made consistently on trams, trains and buses, timetables not being available in accessible formats and information about bus routes also not being available in accessible formats. People with mobility restrictions also continue to wait unreasonable periods of time for a wheelchair accessible taxi, with some individuals waiting in excess of three hours.

As will be explored in Part 2 of this report, the complaints process under the Disability Discrimination Act can be daunting, protracted, expensive and inequitable with many people with disability not lodging complaints. At present, there is no systemic recourse available to people with disability or their representative to address discrimination, including in the use of public transport.

## **Access to the Built Environment and Universal Design**

People with disability continue to experience difficulty accessing the built environment – from access to premises offering goods, services and entertainment to commercial buildings, to the most basic facilities, including being able to independently access toileting facilities. Access can be compromised even where a building may comply with the Access to Premises Standards (2010) (Cth), Australian Standard 1428 and current Building Codes which provide minimum standards for access for people with disability.

Just as imperative, schools need to be able to provide an accessible learning environment for students with disability. This includes having classrooms and facilities which are accessible to students with physical disability, for example, through ramps, railings and accessible toilets and to students with sensory impairments. AFDO are aware of instances where the Building the Education Revolution grants provided under the Rudd/Gillard government were used to build or renovate school facilities in ways which render them inaccessible.

AFDO recommends that it should be a condition of any capital works or infrastructure funding that all works are compliant with the Disability Access to Premises Standard.

The economic, social and environmental benefits through the introduction and application of Universal Design principles are also important to note. Economic benefits are achieved by a greater number of people having access to businesses as customers and employees; social benefits are achieved by reducing social isolation and promoting more connected communities; and environmental benefits are achieved by lower energy costs and greater longevity of buildings and infrastructure.

Universal Design principles give the highest level of access to the greatest number of people and can be applied to all infrastructure including transport, housing, public buildings, road and pedestrian infrastructure and communication.

The level of compliance with accessibility standards and regulations was raised as an issue by the UNCRPD Committee in their Concluding Observations who recommended that 'sufficient resources' be allocated to ensure the monitoring and implementation of the Disability Standards and requirements. From the perspective of people with disability, it is sorely needed if we are to make any traction to reach full community participation.

### **Accessible procurement – government leading by example**

Accessibility is broader than the leasing of a building that caters for wheelchair access. Accessibility includes information and communications technology (ICT) which incorporates universal design principles to allow for independent use (such as software and database systems which are compatible with adaptive technology for people who are blind or vision impaired or for people with limited dexterity); telecommunications; office fit-out and physical considerations; the purchase of other organisational systems; tenders for goods and services as well as the business and employment practices of suppliers, particularly in relation to people with disability. The accessibility of infrastructure, goods and services purchased by Government and the flow on effect of government purchasing decisions has the potential to positively impact people with disability who may be employers, employees or customers of government services.

The Australian Bureau of Statistics (ABS) estimates that one in five Australians have a disability – an estimated four million people. Procurement procedures which embed universal design from the outset as part of good business practice significantly increases access to a broad consumer base, including people with disability.

As one of the largest procurers of infrastructure, goods and services, the Australian Government is in an unparalleled position to influence the market, and in turn, the development of products and services by how they source and tender. As noted by the Australian Communications Consumer Action Network (ACCAN) in their report titled 'Accessible Communications: Tapping the Potential in Public ICT Procurement Policy' (2012):

*'once accessibility criteria are signalled by government as part of their purchasing strategy, greater certainty for manufacturers is created. Companies that already have accessibility features in their products are more competitive when government considers tenders. This in turn encourages competitors to innovate for improved accessibility. With additional demand, costs for components fall making accessible products more affordable, not only to government but to the private sector and the community in general.'*

Many OECD countries have introduced procurement regulations and guidelines to ensure government departments purchase ICT that is accessible to people with disability. As an example, Section 508 of the US Rehabilitation Act requires that electronic and information technology used by US Federal Agencies is accessible to people with disability.

Embedding universal design principles and a commitment to accessibility within Australian Government procurement procedures and tenders would also have a positive and significant impact in addressing disparities in the employment participation of people with disability. Embedding universal design from the outset negates the need to make retrospective adjustments to technology – adjustments which can have a direct impact on the employment participation of people with disability which is examined in detail in Part 3. This could include more accessible employment within government and by suppliers who are committed to employment practices which are inclusive of people with disability.

At ACCAN's Government 2.0 Roundtable in 2009, Graeme Innes, Australia's Commonwealth Disability Discrimination Commissioner noted that the absence of accessibility requirements in public procurement in Australia was limiting opportunities for people with disability. The implications of ICT accessibility criteria were made clear to him when companies, keen to address accessibility requirements to supply the US Government, ignore such requirements in Australia simply because equivalent requirements are not in place. As an example, employees with disability are often required to rely on the Workplace Modifications Scheme (administered under the Commonwealth Government's Employment Assistance Fund) to provide solutions to government systems that are largely inaccessible. This process can take several months, compromising the ability of the employee to work independently, or at all, due to poor inaccessible procurement choices. These barriers also extend to recruitment and career advancement.

## Part 2. Rights protection, justice and legislation

statutory protections such as anti-discrimination measures, complaints mechanisms, advocacy, the electoral and justice systems

### Strong and fair disability discrimination legislation

Twenty one years on from the introduction of the Disability Discrimination Act 1992 (Cth), people with disability continue to experience significant levels of direct and indirect discrimination in all areas of life – education, employment, access to goods and services and in exercising the most basic rights, including the right to cast an independent, accessible vote and to be a member of a jury.

Despite the intent of the legislation, discrimination against people with disability continues to occur on a day to day basis, evidenced throughout this report. The legislation, as it currently stands, has a number of limitations which significantly limit the effectiveness of the Act as a tool in preventing human rights abuse and protection of rights. In particular:

- Overuse of the ‘unjustifiable hardship’ provision has weakened the claim for fair and equitable access by people with disability to services or facilities and reduces opportunities for employment, cultural and civic participation, access to housing and other fundamental elements to participation
- The real or perceived risk of having costs awarded against someone is a significant deterrent to many who face discrimination on the basis of disability
- Respondents to a complaint have no mandatory, legally enforceable requirement to attend conciliation and/or attempt to resolve a complaint lodged by a person with disability. This leaves people with disability with no choice other than to take the matter to a higher jurisdiction at their own cost, or accept the discrimination that has occurred. This can not only be costly, but disenfranchising for people with disability who not only have experienced discrimination which is disempowering, but must pay costs in order to have the discrimination vindicated.
- Exemptions under the Act allow for people with disability who are applying to migrate to Australia to be discriminated against under the Migration Act on the basis of disability or a health condition of an individual or a member of a family seeking to migrate together.
- Exemption from the Social Security Act prevents migrants with disability access to social security payments for ten years. The impact of this discrimination fosters potential dependencies and inadequate access to support and health services.
- The Act has not worked so well for people with cognitive and psychosocial disability

In 2012/2013, disability discrimination comprised 37% of complaints received by the Australian Human Rights Commission; the number of complaints was 14% higher than complaints of racial discrimination, 18% higher than complaints of sexual discrimination and 30% higher than complaints of age based discrimination. Of the 1084 complaints, over 67% related to discrimination in employment or access to goods and services. Staggeringly, 30% of complaints were terminated by the Commission on the grounds of 'no reasonable prospect of conciliation'. Of the 424 complaints conciliated, only 60% of complaints were 'successfully resolved'.

The following tables and chart sourced from the *2012-2013 Australian Human Rights Commission Annual Report* provide further detail on the experience of people with disability:

**Table 27: Disability Discrimination Act – complaints received by area**

Disability Discrimination Act	Total	Percentage
Employment	353	33
Goods, services and facilities	365	34
Access to premises	59	6
Land	–	–
Accommodation	35	3
Advertisements	–	–
Superannuation, insurance	15	1
Education	68	6
Clubs, incorporated associations	22	2
Administration of Commonwealth laws and programs	29	3
Sport	3	–
Requests for information	1	–
Qualifying bodies	2	–
Registered organisations	–	–
Unlawful to contravene disability standards	122	11
Victimisation	10	1
<b>Total*</b>	<b>1 084</b>	<b>100</b>

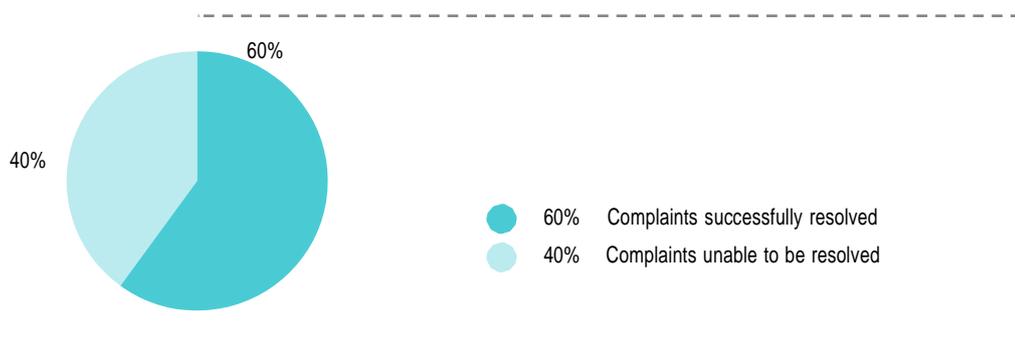
**Table 28: Disability Discrimination Act – outcomes of finalised complaints**

Disability Discrimination Act	
<b>Terminated</b>	<b>351</b>
At complainants request – s.46PE	–
Not unlawful	6
More than 12 months old	12
Trivial, vexatious, frivolous, misconceived, lacking in substance	42
Adequately dealt with already	6
More appropriate remedy available	7
Subject matter of public importance	–
No reasonable prospect of conciliation	278
<b>Discontinued*</b>	<b>48</b>
<b>Withdrawn</b>	<b>117</b>
<b>Conciliated</b>	<b>424</b>
<b>Administrative closure**</b>	<b>21</b>
<b>Total</b>	<b>961</b>

\* Finalised under statutory provision – 46 PF(5)(a) – Satisfied that complainant does not want inquiry to continue.

\*\* Not an aggrieved party, state complaint previously

**Chart 7: Disability Discrimination Act – complaints resolved by conciliation**



The number of complaints received by state based human rights commissions relating to disability discrimination is also high, with the Victorian Human Rights and Equal Opportunity Commission reporting that disability discrimination in all areas is the highest attribute of complaints received.

AFDO has expressed increasing concern of the scope and capacity of the Australian Human Rights Commission to examine systemic discrimination against people with disability and to take action on behalf of people with disability where their rights have been ignored or abused. This is particularly concerning in comparison to other jurisdictions, including Victoria, where the Victorian Equal Opportunity and Human Rights Commission have the power to take action on systemic issues brought to its attention.

Many people with disability, in 2014, continue to be unaware of their rights under the Act, the process of lodging a complaint and the assistance available through the

Australian Human Rights Commission and advocacy organisations across Australia. Those who do have the knowledge note that the complaints process is long (a complaint can take up to twelve months to resolve), exhausting and focused on the experience of one person with very little scope to effect broader systemic change which can improve the lives of people with disability experiencing the same barriers.

The Concluding Observations on the initial report of Australia, adopted by the UNCRPD Committee at its tenth session in Geneva in September last year noted the following (paragraph 14):

*14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.*

*15. The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.*

In light of the above observations, AFDO are particularly concerned by the recent announcement in the 2014-15 Federal Budget that the role of the Disability Discrimination Commissioner will be discontinued. At a time when we are investing significantly in the development of a National Disability Insurance Scheme aimed to empower the social and economic inclusion of people with disability, it is incomprehensible that the only legislative safeguard of people with disability is being removed from beneath us.

### **Access to Justice**

High levels of poverty experienced by people with disability can have a significant effect on the personal and financial capacity of a person with disability to uphold their rights and seek the support of legal services.

In 2014, AFDO contributed to a joint submission into the *Inquiry into Access to Justice*. The following are some of the key findings reported in our submission.

For people with a cognitive impairment (intellectual disability, learning difficulty or Acquired Brain Injury) the complexities of the justice system can seriously limit their access. Without the necessary support, people with a cognitive impairment may not be able to report a crime perpetrated against them, may not be seen as reliable witnesses and as a result are targeted by perpetrators. Statistics show an over-representation of people with a cognitive impairment as victims of crime.

More generally, people with a disability from NESB and culturally and linguistically diverse backgrounds (CALD) communities experience additional barriers to accessing the legal system. The lack of easy access to interpreting services, the lack

of information about the legal system in other languages and the lack of culturally appropriate support services are just a few of the barriers that need to be addressed. This is also true for newly arrived migrants, refugees and asylum seekers who are dependent on information and services that are culturally and linguistically appropriate, particularly as a fear of authority may exist among some diverse communities which may result in a lack of confidence to report a crime.

The issues mentioned above can also be experienced by people with psychosocial disability. When a person with a psychosocial disability is unwell, they need intensive support to access the justice system. With under-resourcing of the mental health system, community legal services and advocacy services, it is likely people with psychosocial disability will have difficulty accessing the justice system. Statistics also show an over-representation of people with psychosocial disability in prison.

People with disability communicate in different ways and can have more complex communication needs. Access to justice can be seriously affected if people with a disability do not have access to alternate communication methods when interacting with the justice system and in formats that they can understand. For example, people who are Deaf need access to Auslan interpreters, people who are non-verbal need access to electronic communication devices, people with cognitive impairment may need information in easy English or pictorial formats and people who are blind or vision impaired require information in a range of accessible formats such as large print, braille, audio and electronic formats. Access to interpreters remains problematic for people with disability in criminal and civil proceedings, with people who are Deaf and people requiring a language interpreter. According to the Human Rights Law Centre, in many jurisdictions, Australian courts play no role in civil proceedings in organising an interpreter to be present or to ensure that the services of an interpreter are available where required.

People who work in the justice system need to be familiar with the access and communication needs of people with disability and be required to undertake relevant training. This view is supported in Paragraphs 27 and 28 of the UN Concluding Observations Report, with the UNCRPD committee expressing concerns at the “lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice, as well as the lack of guidance on access to justice for people with disabilities”. The Committee has recommended that standard and compulsory modules on working with persons with disabilities be incorporated into training programs and that legislation and policy across the states and territories be amended to ensure access to justice for persons with disabilities in line with Article 13 of the UNCRPD.

### **Equal recognition before the law, legal capacity and supported decision making**

People with disability continue to be denied or have diminished status and ability to exercise legal capacity on equal terms. Inconsistency across state jurisdictions around guardian and mental health legislation in relation to how legal capacity is

determined continue to present significant issues in furthering and upholding the rights of all people with disability.

AFDO, the representative voices of people with disability and people with disability themselves have been strong proponents for the transition from substitute decision making approaches to fully supported decision-making. Our collective voice is clearly articulated in Paragraph 187 and 188 of *Disability Rights Now – Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities*, August 2012 presented to the UNCRPD committee. Extracts are provided below:

*“...there is agreement among representative organisations of people with disability and disability advocacy and legal groups that Article 12 underpins the ability of people with disability to achieve many of the rights contained in the CRPD and that it requires fundamental reform in the current legal, administrative and service arrangements that regulate legal capacity for people with disability so that supported decision making measures can be recognised, developed and promoted.*

*Issues in Australian legislative and policy frameworks, including estate management, guardianship and mental health laws, mean that people with disability experience serious breaches of their human rights, including widespread abuse, neglect and exploitation both because of the lack of appropriate arrangements to support their capacity to manage their affairs, to give informed consent, to make important decisions, and as a result of poorly designed, delivered and monitored supported and substitute decision making arrangements”.*

The UNCRPD committee’s has made reference to the need for supported decision making in their Concluding Observations:

24. *The Committee notes that the Australian Law Reform Commission has been recently commissioned to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. However, the Committee is concerned about the possibility that the regime of substitute decision-making will be maintained and that there is still no detailed and viable framework for supported decision-making in the exercise of legal capacity.*

25. *The Committee recommends that the State party effectively use the current inquiry to take immediate steps to replace substitute decision-making with supported decision-making and that it provide a wide range of measures which respect a person’s autonomy, will and preferences and are in full conformity with article 12 of the Convention, including with respect to a person's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry and to work.*

26. *The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for*

*all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.*

Put simply, without a move to supported decision making, people with disability will not be able to exercise true choice and control in the decisions which impact on their everyday life, compromising the intent and vision of the Strategy.

### **High levels of people with disability in corrections and criminal justice system**

The over-representation of people with disability in the criminal justice system – especially with cognitive, brain injury and psychosocial disability – highlights a significant problem across most Australian jurisdictions. For people with a cognitive impairment, this can be exacerbated by limited understanding of their legal rights and the ability to become more easily confused at police interviews and in court which could result in a miscarriage of justice.

This situation can be far worse for Indigenous people with disability, with additional language and communication barriers leading to extreme over-representation of Indigenous people with a disability in prison. Failure to apply appropriate measures and supports to these cohorts of people with disability to create diversion and rehabilitation programs matched to the needs of the individual are in large part responsible for this major failure.

The UNCRPD Committee, in their Concluding Observations (Paragraph 30) recommend that “all people with disability who have been accused of crimes and are currently detained in jails and institutions, without trial, are allowed to defend themselves against criminal charges, and are provided with required support and accommodation to facilitate their effective participation”.

The Committee also expressed concerns regarding the experience of people with disability who are deemed unfit to stand trial and detained indefinitely in prisons or psychiatric facilities which can significantly exceed the period of custodial sentence for the offence. Paragraph 32 of the Concluding Observations state:

*The Committee recommends that the State party, as a matter of urgency:*

- (a) End the unwarranted use of prisons for the management of unconvicted persons with disabilities, focusing on Aboriginal and Torres Strait Islander persons with disabilities, by establishing legislative, administrative and support frameworks that comply with the Convention;*
- (b) Establish mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate support and accommodation;*
- (c) Review its laws that allow for the deprivation of liberty on the basis of disability, including psychosocial or intellectual disabilities, and repeal*

*provisions that authorize involuntary internment linked to an apparent or diagnosed disability.*

AFDO recommends timely action by the Australian Government to protect the legal and human rights of some of our most vulnerable Australians.

### **Advocacy, rights information and training for people with disability**

To exercise our rights, it is important that people with disability know what their rights are. AFDO maintains that it is essential that training is provided for people with disability about their rights under the UNCRPD, including how to exercise these rights. The information must be communicated in a variety of modes to meet individual needs, be understandable and be provided by parties other than service provider/s.

State, territory and federal legislation needs to enshrine these rights and ensure there are effective statutory complaints mechanisms/bodies to monitor and take action where breaches occur. It is also important that people with disability have access to advocates to assist and support their rights and freedom of choice. Independent advocacy and representation by disability consumer organisations, who are appropriately funded, is critical to ensure that the rights of people with disability are upheld.

### **Compatibility of domestic laws with our international obligations**

The ultimate success of the NDIS is dependent on ensuring that all existing and new Commonwealth laws and legal frameworks are consistent with the UNCRPD. To this end, AFDO reiterates our recommendations that:

- All current Commonwealth laws and legal frameworks are tested against a 'Compatibility Framework'
- All proposed Commonwealth laws and legal frameworks submitted to the Parliament for consideration must be accompanied by a 'Statement of Compatibility' based on the 'Compatibility Framework' and,
- The Australian Human Rights Commission maintains a register of Statements of Compatibility to monitor the compliance of Commonwealth laws and legal frameworks with the Convention.

This process is similar to a requirement in Victoria that all proposed legislation be accompanied by a Statement of Compatibility with the Victorian Charter of Rights and Responsibilities. The Victorian Equal Opportunity and Human Rights Commission maintain a register of Statements of Compatibility as part of its monitoring role of the implementation of the Charter.

## Part 3. Economic security

### jobs, business opportunities, financial independence, adequate income support for those not able to work, and housing

#### Employment - A real job for a real wage

*“If you have a disability in our country you are more likely to be unemployed, more likely to be living in poverty and more likely to be less educated than if you don't have a disability. Too easily we're overlooked and ignored. Too often the story of disability is told through unemployment and poverty. Our system is broken. We aren't doing enough”.*

Kurt Fearnley, Australia Day Address 2013

Inequitable employment participation continues to be one of the most significant issues impacting people with disability in Australia, with just over one in two people with disability (53%) participating in the workforce as compared to the workforce participation of people without disability (83%). According to the Australian Bureau of Statistics Survey of Disability and Carers (2012), there are 2.2 million Australians with disability of working age (15-64). The statistics as they relate to the employment of people with disability are well known and reinforce a story of unemployment and poverty.

According to the COAG Reform Council, from 2003 to 2009 there was no significant change in the national labour force participation rate for people with disability. Further, the 2012 ABS Survey of Disability and Carers has shown that the labour force participation of people with disability has decreased by 0.4% since 2003, indicating that in the last decade we have not only made no progress, but have in fact stagnated in addressing employment participation.

Public sector employment rates have seen a significant decline. Changes to the eligibility for Disability Support Pensions have forced some people with disability onto unemployment benefits with the stated aim of encouraging this group off welfare into paid employment, but there is little or no investment in making the workplace structurally more accessible or increasing real job opportunities. Furthermore, the focus of successive governments has been to treat the workforce participation of people with disability as a separate agenda to broader employment and workforce reform, rather than an essential component to redress skill shortages, increase productivity, contribute to economic growth and lessen welfare dependency.

Current labour market programs targeted at unemployed people with disability are failing to deliver effective lasting employment outcomes, with only approximately one in four people with disability reaching an outcome rate of 26 weeks or greater. Of employers who know about Disability Employment Services, only 3% use the services available.

A much more rigorous and accountable employment support regime is desperately needed to promote greater opportunities for economic security for people with

disabilities seeking paid work. With the unemployment rate almost double that of Australians without a disability (9.4% as compared to 4.9%) and Australia ranked 21 out of 29 as compared to other OECD countries, it is clear that current mechanisms are not working and that a new way forward is needed.

The barriers faced by people with disability in employment have been well documented and range from structural barriers to attitudinal ones. These include:

- Poor awareness or negative attitudes by employers towards disability (ie. perceptions that people with disability are costly to employ and are less productive than people without disability)
- Employers' lack of understanding and confidence to talk about disability and its impact on those who currently work, and who might work, in their organisations
- Employers' concern about potential risks, including superannuation implications and Workcover costs and exclusions
- Buildings, infrastructure and workplace systems not being disability-friendly and public transport is not always available or accessible
- Lack of visibility – people with disability are not well-represented in public roles, making it difficult to recognise their potential
- Lack of career development opportunities (ie. not included in professional development and skills training/upgrading, passed over for promotion and higher duties, lack of job rotation etc.)
- The compliance requirements on Australian Government funded programs, such as Disability Employment Services, has taken the focus away from assisting people with disability to find meaningful long-term work onto low-skilled, short term jobs and programs in order to continue to receive funding

There is also an expectation within the current system that people with disability will somehow find their own way through the complex and inter-layered system of welfare, education, vocational training and disability employment programs into employment. While many people with disability have successfully navigated the system or have gained employment of their own accord, the current system does not provide a continuum where all parts are intuitively connected. AFDO maintains that an effective employment system is one that recognises, plans for and provides support across the continuum and includes the following elements:

- work experience in school to provide an insight, as well as practical experience of, and exposure to, the world of work;
- effective transition pathways from school to post-school training and employment, and ongoing development in the workplace;
- inclusive graduate programs;

- peer support, job mentoring and external support, and workplace support as required;
- access to quality disability service providers to build and support individual capacity (including employment service providers);
- job readiness skilling and practical experience to enable people with disability to build personal confidence and demonstrate competency to employers;
- a responsive employment service system which meets the needs of both jobseeker and employer and
- once in a job, access to career advancement and leadership opportunities that are available to any other employee.

In 2012, AFDO prepared a comprehensive submission to then Minister for Employment, the Hon. Bill Shorten to the *Inquiry into Improving the Employment Participation of People with Disability* which made a number of recommendations. These recommendations include:

- Scrutiny of all employment sectors regarding their employment practices. We cannot expect business to perform well when government and the not-for-profit sector are performing dismally.
- The Australian government provide leadership in the employment of people with disability. AFDO recommended that the Australian Public Service trial best practice approaches and development of different models for inclusion of people with disability at all levels and all departments from 'intake to leadership', in collaboration with Disabled Persons Organisations (DPOs).
- Incentives should be provided to all employers via preference in the awarding of tenders, funding and procurement to workplaces that can demonstrate good employment practices. Government procurement policy should be adjusted to favour businesses that demonstrate their positive outcomes in employing people with disability. All government-funded contracts should only be entered into with organisations who have already achieved positive results in employing people with disability.
- Work place subsidies should be targeted at Small to Medium Enterprises (SMEs) which employ less than 100 employees. Large employers indicate that the present workplace subsidies do not provide any incentive regarding their decisions to employ, while SMEs would employ people on a more long term basis if the subsidy was provided for a year as opposed to 26 weeks. This should be acted on in consultation with employers who are already achieving best practice outcomes such as large corporates in the banking and IT sectors.
- Insurance (work cover) premiums are a deterrent in the employment of people with disability. Any effective changes will need to include a change to this. By

lowering premiums for employees with disability, this would assist employers with any additional costs incurred when 'reporting' on disability in their workforce.

- The question of disability's place in diversity needs to be explored and better understood. A research fund should be established for the purpose of an investigation as to how reforms/initiatives undertaken in the diversity strands of gender, indigenous and multiculturalism can be applied to people with disability.
- Educating all employers (private and public) on issues around workforce participation of people with disability is essential.

To address the woeful participation of people with disability and work to close the gap in workforce participation, people with disability and employers need to be at the heart of an employment system that is designed to support them. AFDO, in collaboration with stakeholders who are dedicated to increasing the workforce participation of people with disability, are committed to commencing the groundwork for the development of a new employment model which is jobseeker and employer centred.

### **An end to segregated employment**

Twenty eight years after the introduction of the Disability Services Act 1987 (Cth) and five years since the introduction of the National Disability Strategy, approximately 20,000 people with disability continue to be 'employed' by an Australian Disability Enterprise, with people with disability 'earning' as little as \$0.33c an hour. This is in spite of a Federal Court decision which judged the use of the BSWAT discriminatory and recommended the use of the Supported Wage System. This is also in spite of the recommendations of the UNCRPD committee in their Concluding Observations (Paragraph 50):

*50. The Committee recommends that the State party:*

*a) Immediately discontinue the use of the Business Services Wage Assessment Tool;*

*b) Ensure that the Supported Wage System is modified to secure correct assessment of the wages of persons in supported employment;*

*c) Adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.*

All Australians, including people with disability undertake work to get paid, to increase our financial security and independence. Work is not a social club or a hobby or voluntary work. The importance of this statement cannot be underestimated as frequently managers of sheltered workshops (Australian Disability Enterprises) extoll the social outcomes of work while paying low 'wages'. This is not to say that

friendships, health and wellbeing are not outcomes of having a job but to clearly distinguish the unique characteristic of employment which is earning a wage.

It is important to note that the objective of the Disability Services Act was that of “integration”, with the intent to move to employment assistance that supported people in paid work in the open labour market. ‘Supported employment’ was meant to provide employment assistance to people who were unable to work at full award wages and need substantial ongoing support. Supported employment was never meant to be a term used for the legitimised segregation of people with disability in sheltered workshops; a model contrary to the objects and intent of the DSA and the UNCRPD.

The UNCRPD calls for the labour market to be open and inclusive of people with disability and does not make exception due to the degree of disability or support need. A vision of ‘inclusion’ in employment for people with disability requires an employment service response that supports all people with disability to find a job, receive the necessary training and support, and be assured long term ongoing support if needed. In earning a real wage, people with disability have the opportunity to be active citizens, taxpayers, contributors to the wealth of Australia and in turn lessen their dependence on the Disability Support Pension.

‘Dignity of work’ is often cited, yet there is no dignity in settings which do not value, including in financial terms, the inherent capacity of people with disability.

## **Welfare**

Forty-five per cent of the two million Australians living with disability live in or near poverty.<sup>1</sup> This is more than 2.5 times the rate of poverty experienced in the general population and more than double the OECD average of 22%.<sup>2</sup> The Australian Council of Social Service has also released figures showing 620,600 people with disability in Australia are living below the conservative, internationally accepted poverty line used to measure financial hardship in wealthy countries.<sup>3</sup> This accounts for over a quarter of people with disability in Australia, and is likely due, in large part to weaker employment prospects<sup>4</sup>

People with disability report a gross median weekly income of \$400, almost half the gross median weekly income of Australians without disability. For a significant

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<sup>1</sup> PriceWaterhouseCoopers, (2011) *Disability expectations: Investing in a better life, a stronger Australia*, 3.

<sup>2</sup> Organisation for Economic Co-operation and Development (2009). *Sickness, disability and work: Keeping on track in the economic downturn – Background paper*. Figure A2.6.

<sup>3</sup> Australian Council of Social Service (2012) *Poverty in Australia*, ACOSS Paper 194, 26. This research does not take account of the extra costs of a disability, which may include adjustments to the home or workplace, purchase of care, additional transport costs such as taxis, pharmaceuticals and medical treatment. A previous study found that taking these costs into account substantially increases the level of poverty among people with disability. See: Peter Saunders, (2005) *Disability, Poverty and Living Standards: Reviewing Australian Evidence and Policies*, Social Policy Research Centre Discussion Paper No 145..

<sup>4</sup> Australian Council of Social Service (2012) *Poverty in Australia*, ACOSS Paper 194, 26. *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of the Person with Disabilities* (2012). Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations. 135.

proportion of this population, this income is not generated from work but by welfare payments, with only 8.5% of Disability Support Pension recipients reporting any income from work and almost half of this total (4.1%) reporting earned income of less than \$125 per week. Australia is the worst performer on the indicator of poverty as compared to other OECD countries, ranking 27 out of 27 for selected OECD countries.

AFDO is clear that any reform of the welfare system must be met with parallel systemic reforms which support real jobs for real wages in open employment. A reform to welfare without a focus on job creation and workforce participation disregards the intent of the National Disability Insurance Scheme and National Disability Strategy to enable people with disability to contribute as economic citizens.

## **Housing**

Limited availability of accessible and affordable housing places a significant restraint on the choice of home and lifestyle for many people with disability. Further, block funding accommodation and support packaging ensures that many people with disability who are more reliant on disability supports are forced into co-tenancy arrangements that severely limit their freedoms and lifestyle choices. In far too many of these situations, residents are victim to abuse and assaults from other residents and experience significant levels of psychological stress. Incompatibility of co-residents is one of the most significant issues facing more vulnerable people with disability.

In 2014, AFDO worked with Disability Advocacy Network Australia and the National Ethnic Disability Alliance in the preparation of a joint submission to the *Senate Standing Committee on Economics Affordable Housing Inquiry*. This comprehensive report can be accessed at <http://www.afdo.org.au/node/63>.

In October 2014, the UNCRPD Committee recommended that Australia act to close all residential institutions and conduct a mapping of the various forms of accommodation based on the needs of various kinds of people with disability. To comply with international human rights, and reflect the inclusive aims of National Disability Strategy, Australian government decisions and policies must ensure people with disability are given “a free choice of where they want to live and with whom and be able to receive the necessary support regardless of the place of residence”.

As noted in our joint submission,

*“the reality of housing choices for people with disabilities in Australia is a long way from this vision. People with disability experience higher rates of discrimination and lower rates of employment, often find themselves practically excluded from owning or renting a home, vulnerable to homelessness, and reliant on public or social housing, which may be unavailable or inadequate. Difficulties in finding secure, stable accommodation may be compounded by the shortage of accessible housing,*

*culturally appropriate housing or housing located in easy proximity to public transport, amenities and services.*

*Modifying accommodation to be accessible and responsive to individual needs is often problematic or costly, due to the limited use of universal housing design principles. Furthermore, people's choices of where and with whom to live are often constrained by the tying of specialist supports and services to accommodation facilities. Many people with disabilities are currently compelled to live in institutional settings, which restrict individual freedom and decision making, and segregate and isolate people from the wider community, in environments that often foster violence, abuse and neglect.*

Some of the key findings shared in the submission include:

- Opportunities for people living with a disability to participate in the mainstream housing market are limited by high costs and low incomes. In 2012, over 15 percent of people with disability had experienced homelessness and a fifth had experienced being without a permanent place to live.
- Many people are unable to access the funding they need that would support them to live independently in a place of their own. This results in many people with disability residing with their ageing parents who struggle with their care.
- The increased dependence on informal family care arrangements places pressure on all family members and compromise the natural informal support that should exist between a person with disability and their family and wider community networks, and may lead to financial pressure, relationships breakdown, and poor physical and mental health.
- Some people with disability (particularly those with high or complex support needs), are currently compelled to live in institutions in order to access the support they need. This framework is underpinned by a view that people with disability need specialist types of housing and support options, and so the provision of housing and support becomes focused on the development of special purpose care facilities.

As noted in the submission:

*“People with disability are the only group within Australia, apart from those in custodial facilities, which in general have no control over where they live and with whom they live. Often they are forced to reside with people who, like them, are living with various forms of disability and with whom they have little or nothing in common apart from living with disability. This model lacks the basic respect and understanding of their needs as member of the community. More often than not people living with disability, who are in need of accommodation services, are allocated a place to live with little consultation and an inference that they should be grateful for small mercies”.*

Improvements in accommodation and support systems are of particular significance for people with disability living within the nursing home system and particularly young people living in nursing homes. This group in particular are at risk and disadvantage with regards to housing and support services concerning their ability to self-determine and live within an age appropriate environment.

Accessible and affordable community based accommodation (regardless of impairment, support needs, cultural identity or socioeconomic status) is vital to creating the inclusive future that the National Disability Strategy and NDIS envisage. A healthy and safe appropriately designed environment which provides privacy, personal space, accessible facilities, legibility and adaptability is central to the wellbeing of people with disabilities. The impact of not having a long-term, national affordable housing plan disproportionately affects people with disability and compromises ongoing advancements in other areas of disability related policy.

AFDO recommends that the Department review the extensive report prepared with particular attention to the following recommendations:

- Australian governments must refrain from supporting (for instance, through grants of land or funding) the promotion and redevelopment of institutional models that diminish the choices of people with disability to select their own supports and their own housing.
- Government policies should also avoid endorsing strongly one specific type of housing or design and rather embrace flexible responsive design that can maximise independence of residents and be adapted with ease according to needs and diverse preferences.
- As the United Nations Committee recommends in its Concluding Observations (Paragraph 42), the Australian government should “conduct a mapping of the various forms of living accommodation based on the needs of various kinds of persons with disabilities”. A wide variety of options is needed to adequately cater for the wide variety of access, support, family, cultural, locational and personal needs of people with disabilities
- The introduction of regulations for Universal Housing Design Standards in the construction of all new housing in Australia.

## **Part 4. Personal and community support**

### **inclusion and participation in the community, person-centred care and support provided by specialist disability services and mainstream services; informal care and support**

The last five years have heralded a significant change for people with disability in relation to person centred care and support, with this critical area of life finally receiving the attention it deserves. The National Disability Insurance Scheme (NDIS), one of the most significant social reforms positively impacting on the lives of Australians with disability, was enacted into legislation in 2013.

#### **National Disability Insurance Scheme**

There are two critical aspects of the NDIS that represent a departure from the past and provide people with disability with significant hope for a transformation. These are:

1. The NDIS and the NDIA are transparent and adopt mechanisms that enable people with disability, their families and carers to have regular input and discussion to inform a scheme that is about us and for us. This is a distinct departure from state based systems where the voice of people with disability have traditionally been ignored or stifled, particularly in the direction and implementation of decisions about the lives of people with disability in institutionalised settings. This change presents a fundamental shift in how disability support has been provided over many decades.
2. Ability of people to make choices and have control of their own lives, coupled with our move as a society away from segregation and institutionalisation to a model which is inclusive and empowering, sets the NDIS apart from previous reforms.

The design principles of the NDIS and the NDIA's willingness to operationalise them are a first in disability reforms in this country in that they protect and support that very fragile and vulnerable voice. In AFDO's view, this is what transforms the NDIS into something aspirational and more than just an insurance approach. It is imperative that the design principles remain at the heart of the Scheme's implementation, most notably community inclusion, choice and control which protects the rights of people with disability to be at the centre of their own planning and consultation and ongoing dialogue with people with disability.

While the NDIS is a major social reform which has the capacity to substantially benefit people with disability and Australian society, AFDO recognises that there will be a number of key challenges which will require the collaborative efforts of people with disability and government to overcome. These challenges include:

- Moving from segregation of people with disability to true community inclusion - while the NDIS signals a promise to move away from segregated thinking and

approaches to community inclusion, there is a very real risk that ‘old system’ thinking will creep back in

- Deeply entrenched perceptions and beliefs about people with disability
- Dismantling the entire disability support services system and creating a new system
- Interface issues between the new system and parallel ‘old’ systems which remain, at least for now, service and government centred. The interface between the NDIS and employment system, which is service provider and government regulated, is one example.
- Significant need for capacity building of people with disability, carers and communities
- Recruiting a suitably qualified workforce now and into the future
- Importance of maintaining bipartisan support over the long term to ensure the full, sustainable and transparent implementation of a safety net for all Australians who are born or acquire a disability

AFDO maintains that the implementation of the scheme requires a longer term approach. It is to be expected that implementing a reform of this magnitude will highlight gaps and areas where further work and capability is required.

### **Consultation of and for people with disability**

As noted in Part 2 of this report, the important of independent advocacy and representation of people with disability by people with disability themselves is paramount. The voice of people with disability is crucial to the successful implementation of the National Disability Strategy as well as significant reforms such as the NDIS. Disabled Persons Organisations (DPOs) continue to have an important role to play to ensure that the rights of people with disability are upheld, furthered and most importantly heard.

The UNCRPD Committee in its Concluding Observations noted:

*10. The Committee regrets that there are not enough mechanisms for consultation and engagement between Government and persons with disabilities and their organizations in all matters of policy development and legislative reform relating to the Convention.*

*11. The Committee recommends that the State party, in partnership with persons with disabilities — including children with disabilities — through their representative organizations, establish mechanisms to ensure meaningful participation in the development and implementation of legislation and policies to implement the Convention.*

12. *The Committee is concerned that not all organizations of persons with disabilities, including those of persons with psychosocial disabilities, and Aboriginal and Torres Strait Islander people, are provided with adequate resources for their operations.*

13. *The Committee recommends that the State party take initiatives to increase the resources available for independent organizations of persons with disabilities, including organizations representing children with disabilities.*

AFDO reiterates our call that Disabled Persons Organisations and advocacy organisations are appropriated resourced to ensure the continued effective representation of people with disability, now and into the future.

### **The right to vote**

While most Australians with disability have the right to vote, many are not able to exercise their civic participation.

The local school, which meets the needs of most voters, is often inaccessible to a person using a mobility aid - for those who can make their way into the building, the next barrier is likely to be the voting booth which is slightly too high for a person in a wheelchair to use or a cardboard booth that may not be wide enough. Whilst there are now more and more centres catering for accessibility through the work of state and territory electoral commissions, these centres may still be out of reach for voters who are reliant on public transport, particularly in regional and rural locations.

Whilst there has been a significant commitment and good progress made by some state and territory governments and the Federal Government to enable people who are blind or vision impaired to cast a secret, independent and verifiable vote, the availability of this process to people with other forms of disability is still many years away.

Concern has been rightfully expressed by the UNCRPD Committee in their Concluding Observations that people with intellectual and psychosocial disabilities are automatically excluded from the electoral roll. AFDO supports the Committee's recommendation (Paragraph 52) that "...Australia enacts legislation to restore presumption of the capacity of persons with disabilities to vote and exercise choice, and ensure that all aspects of voting in an election are made accessible to all citizens with disabilities".

## Part 5. Learning and skills

early childhood education and care, schools, further education, vocational education; transitions from education to employment; life-long learning

### Education – the building blocks to work

At present, around 13% of Australian children under the age of 18 are registered as having a disability. Over the past few decades, there has been a dramatic change in the experiences of students with disability in school systems across the country. Education practices have shifted from segregated, institutionalised settings as the norm to the inclusion of students with disability in mainstream schooling, in line with the requirements of the Disability Discrimination Act 1992 and the UNCRPD.

The cohort of students themselves has also changed over this time. Students are now more commonly diagnosed with conditions which were less likely to be detected decades ago, such as autism, ADHD and psychosocial disability.

However, in spite of the gains made in identifying and mainstreaming students with disability, major problems remain. There are still many children in segregated schools and classes. While there have been increases in participation in ordinary schools, the increases in segregated classes and schools has been greater.

Students with disability are less likely to complete secondary and tertiary education than students without disability. Students in mainstream schools still experience major difficulties in basic aspects of school life such as socialising, understanding their work and gaining physical access to their school's grounds and equipment. Without addressing these issues we risk returning to an era of special schools as 'dumping grounds' for students with disability, contravening the UNCRPD and the basic human right to education that many take for granted in a country such as Australia. Furthermore, without an adequate – let alone useful – education, students with disability are at high risk of long term unemployment and social exclusion.

Throughout Australia, children with disability continue to be discriminated against in the education system. There is a general view in many schools that these students should be educated elsewhere, with attitudes and funding remaining significant barriers. Research and anecdotal evidence consistently demonstrates that most students with disability and their families are not welcomed routinely into schools in the public, independent or religious school systems.

Fewer still receive the supports they need to progress their education and proceed to higher education and employment.

### Effectiveness of the Education Standards

For people with disability and their families, navigating everyday battles within the education system can be a daunting task. Education systems often involve complex layers of bureaucracy when it comes to accessing disability supports. Getting appropriate educational support may also mean navigating 'satellite' systems, such

as aids and equipment schemes, early intervention programs, therapies, accommodation support and public transport subsidies.

Being aware of, and able to use, the Education Standards effectively requires time, energy and the ability to seek out information then articulate your needs. Even assuming leftover time and energy, people with disability face many disadvantages in seeking information and articulating their needs. This is especially obvious in some disadvantaged groups, such as people with disability from Non-English Speaking Backgrounds, but it can take more subtle forms. Often women with disability and those with certain types of disability, such as intellectual disability, have experienced lifelong social conditioning to be compliant and not to make waves when things go wrong.

Similar to AFDO's assessment of the effectiveness of the Transport Standards, the Education Standards are designed to be a tool for reactively addressing the problems caused by breaches of educational rights. They do not require an active promotion and protection of these rights, with the onus left squarely on the person with disability or their family to resolve problems long after they should have been fixed. The focus is also on individual solutions, which may or may not have larger scale outcomes.

The Education Standards have failed to establish consistency throughout Australia in the following areas:

- Teacher training curricula still view the teaching of children with disability as an add on, rather than be designed to include the notion of teaching for all. Schools often do not receive assistance to modify curricula when needed.
- Schools have inadequate access to specialist assistance for assessments, speech therapy, physiotherapy, Auslan interpreters, mobility and orientation specialists and psychologists.
- Students with disabilities are often excluded from extra curricula activities such as camps, school concerts and afterschool music programs.
- School buildings are only made accessible when a child enrolls in the school. All schools should be made ready for children with disability. We don't wait for someone with a disability to front up to a hospital or other public building before it is made accessible.
- Disability awareness training is sporadic. Disability awareness needs to be an ongoing part of the school curricula as well as professional development for the entire school community.
- The standards suffer from a lack of clarity particularly around the notion of reasonable adjustment. This needs to be clarified as too many schools and educational departments use it to discriminate against children with disability.

- In December 2012 the DEEWR Report on the Review of Disability Standards for Education 2005 found that the existence of the Standards is not widely known nor understood by many educational institutions, resulting in inferior educational outcomes for students with disability.
- Whilst the Standards in a few situations have been used to prevent discrimination the results do not have impact across either the individual state where the complaint is settled or Australia wide.
- The Standards do not have enough focus on measures for promoting greater inclusion and removing subtle and indirect discrimination.
- The obligations and requirements under the Standards are not backed up by strong accountability frameworks.

Educators and support staff across the country lack knowledge about the educational needs of students with disability. This is evident in a number of areas, namely that:

- Generic school teachers do not receive any compulsory, nationally consistent training in the needs of students with disability, and may not consider those needs until they are faced with a student who requires adjustments. This means they may not understand different learning styles specific to disability, know the roles of a teacher's aide or itinerant teacher, or be able to adapt to working with disability specific technology;
- Specialist teachers, teacher's aides and support workers have few if any consistent qualification requirements. There is no qualification requirement to show proficiency in either Auslan or Braille, for example, and teacher's aides in the classroom need not even pass the most basic of literacy tests. AFDO are aware of instances where students who are blind learning Braille were being taught by a teacher concurrently learning Braille. This would be deemed unacceptable if the same arrangements were in place for a student without disability.

This lack of consistency means that educators and support workers not only lack the quantifiable skills listed above, but they also lack the appropriate attitudes which can be so crucial to a student's success. A teacher who does not believe that a student 'really belongs' or is capable of academic success is less likely to teach appropriately.

AFDO has recommended that it should be compulsory for schools and jurisdictions to report

- The accessibility of their buildings, facilities, transport and technology infrastructure for students with disability
- Outcomes for students with disability (such as happiness at school, and school completion rates)

- Teacher and support staff competences in responding to the needs of students with disability
- Awareness of disability inclusive practices across a school community, and initiatives to promote positive attitudes

AFDO has also supported recommendations that:

- All schools receiving Government funding should be education ready for the inclusion of children with disability. This includes full accessibility of all infrastructure, teacher training to ensure teachers teach for all children and creating a school environment that welcomes children with disability, including participation in extra-curricula activities and school community social events
- Education for students with disability should focus on quality outcomes in academia, culture, physical activity and civic participation. Students with disability should be enabled to perform to their full potential in these areas.
- Supported with targeted resources aligned to individual need, Australian students with disability can achieve higher educational outcomes which enable their participation in the diverse, skilled workforce which is critical to meet future projected workforce shortages and tax base.

Funding for students with disability also remains inadequate and lacking in transparency. Schools do not necessarily have to allocate funding to individual students, and when they do, the funding is rarely tailored to the support required by individual students. AFDO and its member organisations strongly support the call for individualised funding for students with disabilities which: follows the student from school to school and jurisdiction to jurisdiction, and allows families and students with disability the greatest say in the types of support they can purchase.

Individualised funding would need to work in concert with any other funding schemes that are available to students, such as current aids and equipment programs and/or the National Disability Insurance Scheme (NDIS) to ensure that we minimise the risk of gaps being created.

Article 24 of the UNCRPD states that the key to realising the right to an education for a student with disability is recognising individuality, promoting inclusion and providing disability specific supports as appropriate. The inadequate implementation of the Education Standards has seriously compromised Australia's legal duty in implementing the UNCRPD. The inadequacy of implementation is also flagged by the UNCRPD Committee who state:

*45. The Committee is concerned that despite the Disability Standards for Education established to ensure access to education on an equal basis, students with disabilities continue to be placed in special schools and many of those who are in regular schools are largely confined to special classes or units. The Committee is further concerned that students with disabilities enrolled in regular schools receive a substandard education due to lack of*

*reasonable accommodation. The Committee is also concerned that secondary school completion rates for students with disabilities are about half of those for people without disability.*

46. *The Committee recommends that the State party:*

*a) Step up its efforts to provide reasonable accommodation of necessary quality in education;*

*b) Conduct research into the effectiveness of current education inclusion policies and the extent to which the Disability Standards in Education are being implemented in each state and territory;*

*c) Set targets to increase participation and completion rates by students with disabilities in all levels of education and training.*

With the recent cuts announced in the Federal Budget 2014 to state based education spending and the lack of funding commitment to the Gonski reforms, AFDO is concerned that young people with disability will fail to develop the building blocks they need to obtain employment and full economic participation.

### **Transition from school to post school options**

Staggeringly, one third of 15-19 year olds who are not in education, employment or training are people with disability on income support. Professor Richard Sweet in his advice to the COAG Reform Council recommended:

*“A Commonwealth approach to inactive youth that spans its income support, disability, health, employment, and education and training portfolios: this in recognition of the fact that around half of inactive youth are Commonwealth passive income support clients of whom the largest group receive disability support pensions”.*

In 2011, less than 2% of people with disability were enrolled in an apprenticeship or traineeship, with people with disability also significantly underrepresented in the vocational education and training.

AFDO believe that a strong school to work system of support is one of the most effective strategies to address the low labour force participation rate of people with disability. The success of this strategy is dependent on an approach that crosses inclusive of a number of sectors and jurisdictions and spans income support, disability, health, employment and education and training portfolios.

## Part 6. Health and wellbeing

### health services, health promotion and the interaction between health and disability systems; wellbeing and enjoyment of life

#### **Forced sterilisation**

Women and girls with disability in Australia continue to be denied their human rights to make informed choices about their bodies and their reproductive lives. Women and girls with disability continue to be sterilised without their consent - a clear violation of their human rights, and an act of unnecessary and dehumanising violence which denies a woman's basic human right to bodily integrity and to bear children, which can result in adverse life-long physical and mental health effects.

In its Concluding Observations, the UNCRPD Committee raised significant concerns that the *Senate Inquiry into the Involuntary and Coerced Sterilisation of Persons with Disability*, released in July 2013, in effect, supports the continuation of these practices. The Committee has urged Australia to adopt uniform national legislation prohibiting the sterilisation of boys and girls with disability, and adults with disabilities, in the absence of their prior, fully informed and free consent.

The high incidence of violence against, and sexual abuse of women was also identified in the Concluding Observations of the UNCRPD Committee. The Committee has recommended (Paragraph 17) that Australia include “a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence”, to ensure access for women with disability to an effective, integrated response system.

AFDO supports these recommendations and calls for their immediate implementation.

#### **Abuse and neglect**

Long after there was an attempt to end institutional models of care for people with disability under the Disability Services Act (Cth), there are still many people with disability accommodated, educated and cared for in settings that segregate them from the rest of the community. Neglect, abuse and exclusion continue to be a common experience for far too many people. This issue was well documented in the *Shut Out* Report and has emerged in consultations AFDO have undertaken. While AFDO has welcomed the closure of institutionalised settings such as the Oakleigh Centre in Victoria, greater commitment is required by all levels of government to ensure that the intent of the Strategy reflects real commitment.

It is well known that women with disability experience high levels of physical, emotional and sexual abuse. Women with disability and their children in urgent need of emergency housing are often unable to find properties to meet their access needs. Access barriers to the legal system, as outlined earlier in this report, further exacerbate the exclusion experienced. Women with a cognitive impairment are particularly vulnerable to abuse, with urgent action required to address this situation

as recommended in Paragraph 17 of the UN Concluding Observations Report. As noted in Part 2 of this report, women from CaLD and/or NESB backgrounds with disability are also usually unlikely to use the justice system, especially in family and civil law. NEDA strongly suggests that this situation be addressed through programs specifically targeting women from CaLD and NESB backgrounds.

Paragraph 37 of the Concluding Observation makes specific reference to the high rates of violence perpetrated against women and girls living in institutions and other segregated settings with the UNCRPD Committee recommending that Australia “investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and that it take appropriate measures on the findings”.

### **Children and abuse**

In 2013, a Royal Commission into the Institutional Responses to Child Abuse was instigated. Through significant pressure by AFDO and other disability groups, attention was given to the abuse and neglect of children with disability; an area which has been largely ignored, trivialised and forgotten.

Our understanding as a sector of the levels of sexual abuse among children with disability is very limited, and the victims are left with few, if any, means to resolve their complaints and move on in their lives. Many inquiries are already revealing the high incidence of sexual abuse of children with disability. It is imperative that children with disability are afforded the same rights as children without disability.

AFDO are concerned that children with disability still largely do not have a voice and can therefore be subject to higher levels of abuse and neglect. Often children with disability use alternative modes of communication, such as non-verbal cues or communication aids, and police and other investigative mechanisms may be reluctant to accept the evidence related to their sexual abuse. Likewise, some children with disability, such as those with intellectual or psychosocial disability, are considered less reliable witnesses in formal prosecutions because they are disabled. It is because of this that it is possible that children with disabilities may, in fact, have been targeted by sexual predators.

Further, the distinction between family abuse and institutional abuse may be blurred in the case of children with disability. For example, the abuse may have occurred in an institutional setting but not spoken of in the family, as they were dependant on the institutional support for their family member and vice versa. Children with disability living at home may also experience abuse from carers or other professional staff from institutions in their family setting.

In its Concluding Observations, Paragraph 18, the UNCRPD Committee have expressed concern that there is no comprehensive national policy framework for children, including children with disabilities, that articulates how the rights of children should be implemented, monitored and promoted. The Committee have recommended that Australia:

*(a) Step up efforts to promote and protect the rights of children with disabilities, by incorporating the Convention into legislation, policies, programmes, service standards, operational procedures and compliance frameworks that apply to children and young people in general;*

*(b) Establish policies and programmes that will ensure the right of children with disabilities to express their views on all matters concerning them.*

### **Restrictive practices, compulsory treatment regimes, seclusion and restraint**

Concerns continue to be expressed about ongoing practices in the disability support system where people with disability experience solitary confinement, being tied up, shackling, over use of medical restraints and control agents without recourse to more appropriate and effective contemporary expertise and practice in this area..

People with disability subject to restraint and seclusion have raised major concerns about the use of these practices in their lives, particularly among people with an intellectual disability, psychosocial disability and/or various dual and multiple disabilities. They have provided many examples of the abuses they've undergone or witnessed, and the subsequent loss of physical and emotional safety and security in their day to day existence.

Similarly, the rights of children with disability are also recognised in the UNCRPD as part of the population of 'persons with disability' whose rights are enshrined. Disability advocacy groups have highlighted the ongoing problem of the physical and psychological abuse of children and young people in schools in Australia. In discussion they cite numerous examples of abuse being reported to them which not only breach the UNCRPD, but also ignore the Convention on the Rights of the Child, the International Convention on Civil and Political Rights and the Convention against Torture. Abusive restrictive practices in schools continue to be reported across Australia. These include, but are not limited to, children and young people with disabilities being:

- regularly locked in a room for lengthy periods resulting in soiling of their clothes, and frequent physical restraint. This is not only physically and emotionally distressing, but also demonstrates a lack of respect for the child/young person and their dignity;
- tied to chairs;
- locked in isolation rooms;
- fenced off in outside areas, and
- subject to a range of other physical and mechanical restraints.

From the perspective of AFDO and its members, the location, age and gender of the person with disability is irrelevant. Whether it be a residential unit, a day program, a hospital or a school, the rights of a person with disability to be treated with dignity

and respect, and to be able to participate in the decisions that affect their lives is non-negotiable. AFDO believes that a cross government, cross jurisdictional strategy is required to ensure that restraint and seclusion is not only prevented, but entirely eradicated. Further information regarding the experience of children in school settings is provided in Part 5 of this report.

One of the most concerning aspects of the current regime of restraint and seclusion is the lack of advocacy services for people with disability subject to, or potentially subject to, these practices of abuse. It is not good enough to have an 'independent' person to explain restraint and seclusion in an individual plan and/or the possible avenues of a right of appeal. This approach is almost a technical 'tick the box' which in no way addresses or supports the right of the individual to freedom of choice in decisions which affect their personal liberty, safety and health and well-being. A robust and appropriately funded advocacy program, independent of the service system, is a fundamental component of a truly rights-focused paradigm shift in models of support and care.

The use of restraint and seclusion is abhorrent, abusive and represents significant breaches of the UNCRPD which cannot be ignored. There is no evidence base to justify the use of these practices as therapeutic for individuals with disability. It is also imperative that 'environments of concern' (the systems of care and support, and the workforce within these) should be driven by the aspirations, hopes and dreams of people with disability, rather than the reality which is focused on systems of control and management at the expense of individual rights. For people with disability subject to restraint and seclusion this has led to a culture of fear, anxiety, intimidation, frustration, anger and a life where a sense of personal safety and security cannot be found at home, at school, in training or even when seeking healthcare in hospital.

Australia's commitment must be to totally eradicate the use of restraint and seclusion, not just to introduce strategies over time to monitor, prevent and 'where possible' eliminate these practices of abuse. Having consistent definitions and a national database may serve to demonstrate the size of the problem in states and territories across Australia, but whether it is abuse of 60, 600, 6,000 or 60,000 people the fundamental principle and right is unchanged.

In recent years, the Australian Government explored the introduction of a national framework to monitor 'acceptable' forms of restraint and seclusion. AFDO at the time noted that it was not acceptable and assumed a continuation of current practices in the foreseeable future and hence implicit support for the use of restraint and seclusion during a set period of time. The proposal amounted to an acceptance of further abuse of the rights of people with disability, irrespective of what may or may not be the long term goals.

The UNCRPD Committee has made a number of recommendations in their Concluding Observations with specific reference to medical intervention imposed against the will of a person with disability, if the person is deemed to be capable of

making or communicating a decision about treatment. In Paragraph 34, the Committee recommends:

34. *The Committee recommends that the State party repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.*

*Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)*

35. *The Committee is concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.*

36. *The Committee recommends that the State party take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention — such as mental health facilities, special schools, hospitals, disability justice centres and prisons —, in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions.*

## Data Collection and Dissemination

We can only know how far we have progressed as a nation through objective evidence which shows how we have progressed, if at all. AFDO, in previous submissions, have called for open and transparent analysis of the baseline data as it relates to the current human rights of people with disability so that this can be used in both setting clear and measureable targets for change as well as providing a basis for measuring progress towards addressing shortfalls in human rights.

AFDO reiterates our recommendation that there is a change in the closed approach to data collection by government and public sector bodies to one that is open and transparent and has the capacity for community groups to request the data they need to provide evidence based arguments to support their advocacy and action around unmet needs and human rights gaps. Such an approach will also go a long way to meeting the demands by our sector for disaggregated data that allows for better analysis of inter-sectoral issues such as people with disabilities in indigenous communities, women with disability, children with disability, migration and refugees with disability and people with cognitive disability in the correctional services and prison system to name just a few. Current data collection has been very poor in addressing multiple disadvantage where living with a disability is just one of the factors of disadvantage.

The manner in which data is collected and made available to the public is a key determinant in protecting basic human rights and democratic processes that support them. It can also have a significant impact on the success of the implementation of the Strategy if we understand where we have shortfalls and how these might be remedied.

This view is supported by the UNCRPD in their Concluding Observations made in Geneva in 2014, with the Committee referencing the low level of disaggregated data collected on persons with disability and reported publicly and the lack of data regarding the situation of children with disability. The two recommendations of the committee are provided below:

*54. The Committee recommends that the State party develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. The Committee further recommends that the State party commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.*

*56. The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children. It further recommends that the State party commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.*

## Closing

The development UN Convention to the Rights of Persons with Disability is a significant 'lighthouse' moment for countries to make significant progress toward rights and social inclusion of people with disability.

Australia's plan to enact these rights is the National Disability Strategy. First and foremost the lives of Australians with disability have been significantly enhanced with the development of the National Disability Insurance Scheme in particular. While only in its infancy the scheme has the potential to take a quantum leap forward for people with disability in regard to social inclusion in particular.

However for the National Disability Strategy to be more meaningful there must be an operational plan with timeframes and resources to give the plan meaning. Generic statements of themselves do not drive change. The widely publicised fiscal difficulties we are currently experiencing will mean that the development of a meaningful operational plan for the National Disability Strategy will be difficult,

however AFDO is committed to working collaboratively and creatively to find ways to make this process happen. The first step however must be a commitment to action, time-frames, responsibility and resources.

We look forward to contributing to a productive and meaningful process.