

The Committee Secretary  
Senate Standing Committees on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Committee Secretary

**Submission – Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities**

This letter forms our submission to this inquiry on the National Disability Strategy.

In making this brief submission we would also direct you to comprehensive submissions that we understand are being made by representative organisations for people with disability including Disabled Peoples Organisations Australia (DPOA).

The Strategy is broad and we note the focus on access in the Terms of Reference for the Inquiry.

Our submission addresses these issues and also addresses the governance of the Strategy as a whole.

**Background:**

*Inquiry*

On 29 November 2016, the Senate referred the following matter to the Senate Community Affairs References Committee for inquiry and report:

The delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities.

The terms of reference are:

- the planning, design, management, and regulation of:
  - the built and natural environment, including commercial premises, housing, public spaces and amenities,
  - transport services and infrastructure, and

- communication and information systems, including Australian electronic media and the emerging Internet of things;
- potential barriers to progress or innovation and how these might be addressed;
- the impact of restricted access for people with disability on inclusion and participation in economic, cultural, social, civil and political life; and
- any other related matters.

### ***The Strategy***

The National Disability Strategy (NDS) 2010–2020 sets out six priority areas for action to improve the lives of people with disability, families and carers. These are: inclusive and accessible communities; rights protection justice and legislation; economic security; personal and community support; learning and skills; and health and wellbeing.

The change domains covered by the NDS are not just ones for government action. They require change by the entire community and across the economy, institutional structures and settings.

The ACT’s approach to the NDS is called Involve Canberra and is being led by Disability ACT in the Community Services Directorate (CSD). It is taking a phased approach to implementing the Strategy by tackling two themes at a time. The focus in 2015/16 was on employment and housing and the focus in 2017 is on justice and health.

### **Access issues:**

#### ***UNCRPD***

Under the UN Convention on the Rights of Persons with Disabilities (Article 9) the Convention requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies.<sup>1</sup>

#### ***Access and transport issues in Canberra***

In the 2010 *Shut Out* report people with disability highlighted access issues as a major factor in their lives.<sup>2</sup>

The report said that for many people with disabilities the built environment acts as a powerful barrier to their full inclusion in the community. It affects people’s day-to-day functioning in ways few others can appreciate. The inability of people with disabilities to access the facilities that everyone else in the community takes for granted—cafes, public buildings, swimming pools, libraries, sporting facilities and movie theatres—limits independence and compromises quality of life.

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1 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>>.

2 National People with Disabilities and Carer Council, *SHUT OUT: The Experience of People with Disabilities and their Families in Australia*, Commonwealth of Australia, 2012, <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/shut-out-the-experience-of-people-with-disabilities-and-their-families-in-australia>>.

More than 27 per cent of respondents said that lack of access to the environment acts as a barrier to their full participation in the life of the community.

In July 2015 PWD ACT commenced a consultation process around disability access issues here in Canberra including a social media forum; an online 'survey monkey' survey; an access phone out to all our 30 organisational members as well as other key stakeholders during September/October; and a forum at the ACT Legislative Assembly.

Key findings focussed on:

- the lack of access in the 'court areas' around Phillip and Belconnen as well as in older parts of the city like Fyshwick and Manuka;
- the lack of access to ATMs due to height and design issues;
- poor street lighting in some suburbs causing trip hazards and people feeling unsafe;
- poor access in iconic buildings like Parliament House including heavy doors and heavy carpet;
- ACT residents not being subsidised for the costs of visual smoke detectors;
- narrow doorways and a lack of access into nightclubs and venues; hotels in Canberra advertising access and then failing to deliver;
- trees, bushes, long grass and shrubs cover foot paths making it near impossible to use the foot paths with a mobility aid;
- problems with sensory processing for people with a hearing disability due to flooring, noisy devices like driers;
- issues at the convention centre;
- disability toilets used for storage; and
- footpaths being cracked, steep, uneven and having poor camber (sloping into the road); and
- people illegally parking in disability spaces throughout Canberra.

The consultation also found widespread concerns about transport—including poor quality experiences in wheelchair taxis; ACTION buses taking off before passengers are seated subjecting people to injury and falls; a lack of any hire cars with hand-controls for visitors; and people illegally parking in disability spaces throughout Canberra. There were also concerns about pedestrian thoroughfares including people needing to travel along overgrown verges and rough ground to get to curb cuts.<sup>3</sup>

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3 Presentation on the PWD ACT Access Project, ACT Legislative Assembly, October 2015 (supplied by PWD ACT).

Under two thirds of buses are accessible in Canberra and full accessibility across the whole fleet isn't slated until nearly a quarter of the way into the 21st Century by 2022<sup>4</sup>.

An article in the *Canberra Times* points out smaller planes on many domestic routes mean thousands of passengers at Canberra Airport board and disembark on the tarmac via stairs in all weather and wheelchair users are 'lowered to the ground in a narrow temporary wheelchair on an open-air, scissor-lift style device'.<sup>5</sup>

### ***Reasons for poor progress***

The consultation identified a number of coordination issues. A range of people are undertaking work to plan, educate, promote, broker and regulate solutions for access and this work may be high quality but it is not always coordinated for maximum effect. Many people with disability were also unclear about who is responsible for access issues within the ACT Government and how to raise them. The lines of responsibility within government are also unclear.<sup>6</sup>

The lack of a quality compliance based legal framework to address access issues is consistently highlighted by advocates at the national level as a key reason for limited progress towards improved transport and built infrastructure access.<sup>7</sup>

At the moment there is also no effective legal mechanism to drive comprehensive improvements to access to the built environment, especially in existing buildings.

This is because the current *Disability Discrimination Act 1992* (Cwth) (DDA) relies on people with disability making complaints which can be onerous, expensive and can only be enforced in a superior court (exposing the complainant to costs risk as occurred in the *King vs Jetstar* case where costs were awarded against a complainant in the Federal court<sup>8</sup>).

Unlike workplace safety legislation, complaints of discrimination under the DDA are not investigated and prosecuted by any statutory authority. The Australian Human Rights Commission has no power to enforce compliance with the legislation, there are no penalties for respondents who decline to participate in mediation and the escape clause of 'unjustifiable hardship' is easily invoked.<sup>9</sup>

We support the calls by bodies such as PWD Australia for strengthened disability discrimination law backed by robust mechanisms with teeth with an

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4 Transport Canberra, *Accessible Travel*, ACT Government, 2016, viewed 27 April 2017, <[https://www.transport.act.gov.au/getting-around/bus-services/passenger-info/accessible\\_travel](https://www.transport.act.gov.au/getting-around/bus-services/passenger-info/accessible_travel)>.

5 C Colley, 'Wheelchair user Lud Kerec slams airline's 'archaic' plane access for people with disabilities at Canberra Airport', *Canberra Times*, 26 December 2014, <<http://www.canberratimes.com.au/act-news/wheelchair-user-lud-kerec-slams-airlines-archaic-plane-access-for-people-with-disabilities-at-canberra-airport-20141216-128tpw.html>>.

6 Presentation on the PWD ACT Access Project, ACT Legislative Assembly, October 2015 (supplied by PWD ACT).

7 C Wallace, *Is our Disability Discrimination Act a bit of a dud?*, Ramp Up, ABC, 21 December 2017, <<http://www.abc.net.au/rampup/articles/2012/12/21/3659443.htm>>.

8 G Innes, *King v Jetstar: Up in the air without a flight plan*, Ramp Up, ABC, 30 January 2012, <<http://www.abc.net.au/rampup/articles/2012/01/30/3418828.htm>>.

9 R Randall, *Australia's DDA: not the sharpest tool in the shed*, Ramp Up, ABC, 28 February 2013, <<http://www.abc.net.au/rampup/articles/2013/02/28/3700346.htm>>.

implementation authority capable of enforcing standards and regulations which continuously drives industry improvement.<sup>10</sup>

In the interim the Human Rights Commission should be granted an 'own motion' power so that it can investigate instance of disability discrimination through the failure to provide accessible premises, without an individual with disability needing to acquire litigation risk.

ACTCOSS also notes that while the Building Code is making improvements in existing buildings that there is a need to ensure that regulations are rolled out in the context of lived experience so that mistakes are avoided and access features are fit for purpose for people who actually use them.

For instance, it is possible to build a conforming curb ramp and a conforming disability parking space in the same venue but to situate them in a way that using one blocks the other. There are similar issues in sensory, auditory and information access.

Issues like these are why ACTCOSS supported PWD ACT's call during the recent ACT election for an access taskforce that would bring together consumers, planners, designers and certifiers to ensure that solutions worked in the real world here on the ground in the Territory.<sup>11</sup> We also supported their call for similar work around transport.

We note a range of challenges around access to new technologies such as touch-screens presenting barriers to blind people and problems experienced by users of the 'internet of things', including platforms like ride-sharing. Again we need effective compliance mechanisms to avoid these issues cascading and the community facing the avoidable costs of retrofitting later on.

Our mechanisms need to move from complaints handling to compliance with quality. Over time we will need another shift from providing access due to compliance to demand. Businesses need to see people with disabilities as consumers of importance and value, especially as a peaking wave of retiring baby boomers acquire disability. At the moment the lack of effective regulation, solely based on complaints if they arise, leaves access in a 'nether world' where business is unsure of the need and basis on which to act in the first place.

Improvements to access will not occur until the NDS encompasses these broader issues, especially the lack of an effective legal and regulatory framework.

## **Effectiveness of the Strategy as a whole**

### ***Engagement***

ACTCOSS notes the need for strong engagement mechanisms and strategies with people with disability in the implementation of the National Disability Strategy. These should not just be the National Disability and Carers Council but mechanisms that connect from local, State and national levels including the Disability Reference Group here in the ACT.

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10 PWD ACT, *2016-17 ACT Budget Submission*, PWD ACT, <<http://pwdact.org.au/index.php/policyinfo/211-pwd-act-s-2015-16-act-budget-submission#ftn2>>.

11 PWD ACT, *2016-17 ACT Budget Submission*, PWD ACT, <<http://pwdact.org.au/index.php/policyinfo/211-pwd-act-s-2015-16-act-budget-submission#ftn2>>.

A number of these mechanisms have fallen away or become disconnected through the NDIS transition. For instance, we note that there used to be an active network of Disability Advisory Bodies which provided feedback to the national council but we understand this is no longer active.

It is important that there is a connection and a line of sight between State and Territory Councils and reference groups and the national council in the monitoring of the Strategy.

### ***Accountabilities***

Noting that the Strategy is a whole of government and whole of community strategy, we would support consideration being given to innovative, tailored and fit for purpose methods of tracking progress under the Strategy including the option of using deliberative methodologies such as a Citizen's Jury.

People with disability also experience dual disadvantage and multiple vulnerabilities, especially to violence. Aboriginal and/or Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds and people who identify as LGBTI who also have a disability also have poor outcomes in a range of life areas.

We support linking NDS to other frameworks, such as the National Plan to Reduce Violence against Women and their Children, Closing the Gap and the National Framework for Protecting Australia's Children. There should also be links to frameworks which address the needs of people in dual disadvantage.

### ***Reporting and timeliness***

ACTCOSS supports public reporting against a transparent and robust outcomes framework focussed on outcomes for people with disability.

Reporting under the Strategy by DSS should be public, accountable and ongoing with online tracking similar to the United Nations Human Rights Recommendations Database.<sup>12</sup>

We also note issues with the timeliness of reporting. When the Strategy was launched in 2010 biannual reporting was flagged:

In addition to the high level report tracking national progress, Community and Disability Services Ministers will report to COAG on achievements under the Strategy, including reporting from other portfolio Ministers. These two-yearly reports will be made available to the community and be placed on the Commonwealth's website.<sup>13</sup>

ACTCOSS shares concerns about the timeliness of actual progress reporting under the Strategy which we understand will be raised in other submissions.

For instance, we note that the second implementation plan was released in late 2016 and reporting on this plan is being prepared now.

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12 Attorney-General's Department, *United Nations human rights recommendations database*, Attorney-General's Department, <<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Pages/default.aspx>>.

13 Commonwealth of Australia, *National Disability Strategy 2010-2020*, Commonwealth of Australia, p.69, <[https://www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf)>.

We also believe that there are deficits in the way progress is being monitored and presented under the Strategy.

Taken as a whole the implementation report presents a summary of many government programs, inquiries and initiatives but does not provide evidence about whether these are actually making real world changes in the six thematic areas of the Strategy.

Seven years after *Shut Out* a more useful approach might be to ask people with disability themselves whether they have experienced substantial improvement in the areas identified by the Strategy.

Again we would support looking at fit for purpose methods such as deliberation to ensure that the voice of people with disability are central within the evaluation of their own strategy.

### ***Resourcing***

ACTCOSS is concerned that the Strategy is being undertaken in the absence of significant standalone resourcing.

Ideally the NDS should complement the investments that governments and the Australian people are making through the specialist service system so that people with disability can enter and fully participate in a welcoming and accessible community using those supports.

Resourcing should focus on improvement areas within the six themes rather than the communication of the Strategy itself as a standalone outcome which was a focus of the 2nd implementation report.

While we support the outward focus of the ACT's approach through Involve Canberra, we would also note the need for stronger work and complementary initiatives from government in some areas, especially health.

Thank you for considering this submission – we would be happy to support this by appearing as a witness to the inquiry as needed.

Please feel free to contact me or our Advocacy Manager, Craig Wallace, via email at [craig.wallace@actcoss.org.au](mailto:craig.wallace@actcoss.org.au) or by phone on 02 6202 7208.

Yours sincerely,



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