



Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Governing for inclusion



Final Report
Volume 5

September 2023

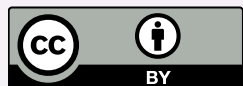
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Final Report

Volume 5

Governing for inclusion

Acknowledgement of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) acknowledges Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pays respect to all First Nations Elders past, present and emerging.

We recognise their care for people and country. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Gadigal people of the Eora Nation where our Sydney office stands, the Jagera and Turrbal people as Traditional Owners and Custodians of the lands on which the city of Brisbane is located and the Ngunnawal and Ngambri peoples upon whose land the city of Canberra is located.

We pay our respects to all First Nations people with disability and recognise the distinct contributions they make to Australian life and to the outcome of this inquiry.

Acknowledgement of people with disability

The Royal Commission acknowledges people with disability who fought and campaigned long and hard for the establishment of this Royal Commission.

We acknowledge the courage and generosity of people with lived experience of disability who shared their knowledge and experiences of violence, abuse, neglect and exploitation with the Royal Commission. Their contributions to the Royal Commission have been indispensable in framing recommendations designed to achieve a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Content warning:

This report contains information about violence, abuse, neglect and exploitation that may be distressing to readers.

The report contains first-hand accounts of violence, abuse, neglect and exploitation. As a result, some direct quotes in the report may contain language that may be offensive to some people.

First Nations readers should be aware that some information in this report may have been provided by or refer to First Nations people who have passed away.

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Key terms

bilateral agreement

An agreement between two parties. In the national context in Australia, a bilateral agreement often refers to an agreement between the Australian Government and one state or territory government.

first ministers

Heads of government cabinets. In Australia, first ministers are the Prime Minister in the Australian Government, premiers in state governments and chief ministers in territory governments.

intergovernmental

Relating to different governments. In the national context in Australia, intergovernmental relations often refers to processes involving the Australian Government and state and territory governments, but can also include process that include local governments.

intergovernmental agreement

An agreement made between different governments. In the national context in Australia, an intergovernmental agreement is made between the Australian Government and state and territory governments.

Summary

Key points

- Strong national disability strategy and governance arrangements are critical to improve outcomes for people with disability. These include the policies, strategies, plans, agreements and national leadership structures that govern national disability priorities.
- National disability strategy and governance should be focused on advancing equality, inclusion and the rights of people with disability.
- A new National Disability Agreement between the Australian Government and state and territory governments is needed to strengthen coordination and collaboration across governments.
- Australia's Disability Strategy 2021–2031 (ADS), the current national disability policy framework, should be reviewed to consider the issues raised during the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the recommendations made in this *Final report*.
- State and territory disability policies and plans are important tools for implementing national disability priorities and ensuring mainstream government services are inclusive and accessible. They should also be reviewed in the context of a strengthened ADS and this Royal Commission.
- We recommend establishing an independent statutory body, the National Disability Commission, to undertake robust monitoring and reporting of outcomes for people with disability. Effective monitoring and reporting can ensure governments are held to account for their actions.
- National disability leadership should be focused, with dedicated skills and capabilities. We recommend establishing:
 - an Australian Government portfolio with responsibility for disability policies and programs
 - a ministerial position, the Minister for Disability Inclusion, that has responsibility for disability inclusion strategy, policies and programs
 - a Department of Disability Equality and Inclusion that has responsibility for national disability and carers policies and programs, including those currently the responsibility of the Department of Social Services.

In this volume, we consider what governments can do, at a strategic level, to prevent people with disability from experiencing violence, abuse, neglect and exploitation, and to achieve a more inclusive society.

This volume analyses existing national disability policy, strategy and governance arrangements involving the Australian Government and state and territory governments and how these can be strengthened.

The phrase ‘national disability policy, strategy and governance’ describes the strategies, policies, plans, agreements and leadership structures used to direct actions and priorities across the Australian Government and state and territory governments that impact people with disability.

It is important the Australian Government and state and territory governments work in partnership with local governments, the broader community and private and non-government sectors to improve outcomes for people with disability.

It is critical to have strong national disability policy strategy and governance arrangements to deliver the significant changes our recommendations are aiming to achieve. This volume makes clear that governments need to work differently to realise significant reform.

This volume has three chapters:

- **Chapter 1 – National disability policy, strategy and governance arrangements**, which sets out the different elements that govern national disability policy in Australia. These include current key intergovernmental strategies and agreements that set national disability policy priorities and current Australian Government leadership arrangements.
- **Chapter 2 – Strengthening national disability policy and strategy**, which assesses the effectiveness of national disability policy and strategy and makes recommendations to improve outcomes for people with disability.
- **Chapter 3 – Reforming national disability governance**, which assesses the governance of national disability efforts, specifically the role of independent reporting and monitoring and Australian Government leadership arrangements. The chapter includes recommendations for improving these.

National disability policy, strategy and governance arrangements

Several national policies, strategies and agreements govern disability related actions across different levels of government. These have evolved over time.

The National Disability Agreement is the intergovernmental agreement governing disability. It was introduced in 2009 and updated in 2012.¹ The current version is out of date, particularly because it does not reflect the implementation of the National Disability Insurance Scheme (NDIS).²

The NDIS is the most significant disability reform in Australia. It began to be progressively implemented in 2013, with full roll out completed in 2020.³ Many agreements and policies support the NDIS's implementation, including those establishing shared governance arrangements between the Australian Government and state and territory governments.

Australia's Disability Strategy 2021–2031 (ADS) was released in December 2021. It is the current national disability policy framework, replacing the National Disability Strategy 2010–2020 (NDS).⁴ The ADS is implemented in a number of ways, including through Targeted Action Plans and jurisdictional disability strategies and plans. A range of reporting arrangements support the implementation of the ADS, including requirements to report on outcomes as well as government actions.

National disability policy leadership arrangements include the Disability Reform Ministerial Council, an intergovernmental forum with ministerial-level membership from the Australian Government and state and territory governments.

Australian Government leadership arrangements include portfolio, ministerial and departmental structures.

Strengthening national disability policy and strategy

We have heard directly from people with disability about their shared vision for an inclusive Australia. Governments should focus on achieving this vision. Strong national disability policy, strategy and governance is needed to promote equality and inclusion, and better protect the rights of people with disability.

This is clear when considering key outcomes. Despite significant reform of national disability policy, strategy and governance over the past decade, outcomes for people with disability in Australia are poor compared to those for people without disability. Some outcomes for people with disability have been difficult to improve.

The NDIS provides funding to eligible people with a permanent and significant disability so they can access reasonable and necessary supports and services through individualised support plans. Critical to its success is increased and equitable access for all people with disability to mainstream services and community supports.

However, there are ongoing issues in the implementation of the NDIS. The scheme's individual plans have become the primary focus of government efforts, compromising the implementation of other components of the NDIS and the broader objectives of the ADS. We have heard that there continue to be concerns regarding service gaps, including confusion over the interface between the NDIS and other service systems.

Some of these issues are being considered as part of the independent review of the NDIS.⁵ Therefore, this Royal Commission does not make specific recommendations on these questions in this volume. However, it is critical that national disability policy and strategic arrangements

ensure governments meet their obligations to provide inclusive and accessible mainstream services.

In line with this, this Royal Commission makes a number of recommendations to strengthen national disability policy and strategy arrangements.

To effectively implement national disability commitments, it is important to link together the different elements and responsibilities of governments. This was the role of the National Disability Agreement. However, it is no longer fit for purpose and has a weak influence on policy.⁶

We recommend a new National Disability Agreement is developed to provide an intergovernmental structure for disability policy and reform. It would bring the ADS and NDIS together, and support national action and coordination to implement recommendations from this inquiry.

The ADS will be most effective if implemented in a coordinated way, capturing the issues raised in, and recommendations made by, this Royal Commission. For example, a stronger approach is needed to implementing the *Convention on the Rights of Persons with Disabilities (CRPD)* in Australia.

Jurisdictional disability strategies and plans are essential to effectively implement the ADS and ensuring government services are inclusive and accessible for people with disability. For this reason, they should also be reviewed in light of changes made to the ADS and ensure alignment with issues raised in this Royal Commission.

Outcomes for people with disability rely on actions across a range of different policy areas and service systems. We reiterate the importance of aligning national disability agreements and strategies on issues such as health, education and housing, with the ADS and the recommended new National Disability Agreement.

Reforming national disability governance

Clearly, governments need to do things differently to advance equality, inclusion and the rights of people with disability. In particular, national disability policy and strategy need to be supported by strong governance that can drive the actions necessary to bring about change.

A critical component of governance mechanisms is monitoring and reporting. Effective monitoring and reporting arrangements provide valuable information about what is working well and what is not, and influences government actions and priorities. Transparent reporting and monitoring mechanisms help hold governments to account.

Previous national reporting arrangements on disability outcomes were limited. While there have been important improvements to reporting under the ADS, these can be built on. Independent monitoring and reporting can play a significant role in helping to improve outcomes for people with disability in Australia.

This Royal Commission recommends establishing an independent, statutory body – the National Disability Commission – with functions across three broad areas:

- monitoring and oversight of the Disability Rights Act, as proposed in Volume 4, *Realising the human rights of people with disability*
- monitoring and reporting on outcomes for people with disability and the implementation of recommendations from this Royal Commission
- promoting research and information sharing to support best practice and encourage innovative approaches to improving outcomes for people with disability.

This *Final report* demonstrates the need for significant reform, and focused efforts, to successfully advance equality, inclusion and the rights of people with disability. It is critical the leadership arrangements within the Australian Government have the required structure and focus to implement this reform.

This volume makes recommendations on the functions of the National Disability Commission to monitor and report on outcomes for people with disability. As part of these functions, the National Disability Commission should assess the performances of jurisdictions. This would help communities and governments better understand the impacts of policies and programs, and would inform decisions about changes and improvements. We also propose that the National Disability Commission should be responsible for reporting and monitoring on the implementation of our recommendations in Volume 12, *Beyond the Royal Commission*.

Currently, disability policy sits within the broad Social Services portfolio. The Australian Government Department of Social Services is responsible for a range of other policy and program issues alongside disability.⁷

This Royal Commission recommends moving responsibility for disability policy from the Social Services portfolio to a new portfolio focused on disability. This should include a new dedicated, ministerial position responsible for disability strategy, policies and programs.

To lead disability policy and programs in the Australian Government, the Royal Commission also recommends creating a new department, the Department of Disability Equality and Inclusion.

To complement strengthened Australian Government arrangements, each jurisdiction should ensure appropriate mechanisms are in place to implement the *CRPD*. Each jurisdiction should also designate a specific department or area of government, a focal point, for matters relating to implementing the *CRPD*. For the Australian Government, this should be the new Department of Disability Equality and Inclusion alongside the Attorney-General's Department.

Recommendations

Recommendation 5.1

The Australian Government and state and territory governments should develop a new National Disability Agreement through the Disability Reform Ministerial Council, to be signed by first ministers. The fundamental objective of the Agreement should be to advance equality, inclusion and the rights of people with disability in Australia.

The Agreement should provide the framework for intergovernmental collaboration to:

- develop and implement reforms requiring national attention and coordination, including recommendations of this Royal Commission
- implement Australia's Disability Strategy 2021–2031 (ADS) and the National Disability Insurance Scheme (NDIS).

The ADS, NDIS national agreements and policies, and other national disability frameworks should be schedules to the new National Disability Agreement.

The Agreement should clearly set out roles and responsibilities of parties to the Agreement.

The new National Disability Agreement should be developed and finalised by the end of 2024.

Recommendation 5.2

The signatories to Australia's Disability Strategy 2021–2031 (ADS) (the Australian Government, state and territory governments and the Australian Local Government Association) should review and update the ADS to ensure it reflects the issues raised and recommendations made by this Royal Commission.

This review and update should:

- consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Engagement Plan, Outcomes Framework, Guiding Principles, reporting arrangements and Data Improvement Plan
- be undertaken in partnership with people with disability and their representative organisations.

An updated ADS should be released by the end of 2024.

Recommendation 5.3

State and territory governments should review and update their disability strategies and plans to ensure they reflect the issues raised and recommendations made by this Royal Commission.

These reviews and updates should:

- consider how these strategies and plans align with Australia's Disability Strategy 2021–2031, including outcomes of Recommendation 5.2
- be undertaken in partnership with people with disability and their representative organisations.

The reviews and updates should be completed by mid-2025.

Recommendation 5.4

The Australian Government and state and territory governments, should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.

Reviews should consider:

- the alignment of national agreements, strategies and plans with Australia's Disability Strategy 2021–2031
- how funding allocations should recognise the needs and rights of people with disability
- the inclusion of specific outcome measures related to people with disability
- the development of specific action plans relating to people with disability.

National agreements that should be reviewed include the:

- National Agreement on Closing the Gap
- National Housing and Homelessness Agreement
- National School Reform Agreement
- National Health Reform Agreement
- National Mental Health and Suicide Prevention Agreement
- National Agreement for Skills and Workforce Development.

Other national agreements, strategies and plans to be reviewed should include, but not be limited to, those relating to:

- emergency management, such as those for pandemics and natural disasters
- children and young people, such as the National Framework for Protecting Australia's Children 2021–2031
- employment, education, training and skills, such as the National Workforce Strategy 2022–2027
- legal support, such as the National Legal Assistance Partnership 2020–2025
- health services, such as those for preventative health, community health, and mental health
- family and sexual violence, such as the National Plan to End Violence against Women and Children 2022–2032.

The reviews of current agreements, strategies and plans should be completed by the end of 2025.

Recommendation 5.5

The Australian Government should establish the National Disability Commission as an independent statutory body under the Disability Rights Act (see Volume 4). The National Disability Commission should:

- support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act
- monitor and report on outcomes for people with disability across Australia
- promote best practice and innovative approaches to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community.

The Commission should be chaired by a person with disability and comprise a small group of commissioners. The majority of commissioners should be people with disability, and represent the diversity of people with disability.

The National Disability Commission should be established by mid-2025.

In addition to functions proposed in Volume 4 and Volume 12, its functions should include:

- developing an Outcomes for People with Disability report every two years and tabling it in the Australian Parliament. The report should:
 - detail outcomes achieved under Australia's Disability Strategy 2021–2031 (ADS)
 - provide comparative performance assessments on outcomes for people with disability, including the implementation of the ADS, through traffic light reporting across each jurisdiction
 - analyse data, including outcomes data from National Disability Insurance Scheme reporting and other relevant reporting from the Australian Government and state and territory governments. This includes reporting on jurisdictional disability strategies and plans, and reporting from relevant oversight bodies
 - include the views and experiences of people with disability, as well as those of families and carers of people with disability
 - recommend to governments actions needed to improve outcomes for people with disability.
- promoting and disseminating information, research and evidence on best practice models for – and innovative approaches to – improving outcomes for people with disability. This information should be shared across governments, the non-government sector, the private sector and the broader community
- partnering with a diverse range of people with disability, and their families and carers, to develop advice and key reports.

Recommendation 5.6

The Australian Government should establish:

- a portfolio responsible for the disability and carers policies and programs currently the responsibility of the Social Services portfolio
- a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs that are currently under the remit of the Minister for Social Services
- a Department of Disability Equality and Inclusion, responsible for the national disability and carers policies and programs that are currently the responsibility of the Department of Social Services.

People with disability should be recruited to positions within the new department, including into leadership positions.

These new arrangements should be established by the end of 2024.

Recommendation 5.7

The Australian Government and state and territory governments should ensure each jurisdiction has a designated focal point for matters relating to implementation of the *Convention on the Rights of Persons with Disabilities (CRPD)*.

At the Australian Government level, this should be the new Department of Disability Equality and Inclusion, alongside the Attorney-General's Department.

Each *CRPD* focal point should include people with disability in leadership positions.

Each jurisdiction should designate focal points by the end of 2024.

Endnotes

- 1 Exhibit 28-19, 'Statement of Debbie Mitchell', 21 September 2022, at [22]; Australian Government Productivity Commission, *Review of the National Disability Agreement*, Study report, January 2019, pp 4, 70.
- 2 Australian Government Productivity Commission, *Review of the National Disability Agreement*, Study report, January 2019, p 3.
- 3 National Disability Insurance Agency, *NDIS Quarterly report to disability ministers, Q2 2022–23*, December 2022, pp 153–152; Exhibit 25-95, 'Statement of Scott McNaughton', 15 June 2022, at [13–15].
- 4 Australian Government Department of Social Services, *Australia's Disability Strategy 2021–2031*, December 2021, p 4.
- 5 Building a strong, effective NDIS', *NDIS Review*, web page, 18 October 2022. <www.ndisreview.gov.au/about/terms-of-reference>
- 6 Australian Government Productivity Commission, *Review of the National Disability Agreement*, Study report, January 2019, p 2.
- 7 Commonwealth of Australia, 'Administrative Arrangements Order', 13 October 2022, p 36.

1. National disability policy, strategy and governance arrangements

Key points

- Different policies, intergovernmental agreements, strategies and legislation define and drive national disability policy and priorities in Australia.
- National disability strategies have changed over time. Australia's Disability Strategy 2021–2031 (ADS) is the current national framework for disability policy. It replaced the National Disability Strategy 2010–2020.
- The ADS identifies key outcomes and policy priorities for improving outcomes for people with disability. It is supported by state and territory government disability strategies and plans, which focus on disability priorities in each jurisdiction.
- The National Disability Insurance Scheme (NDIS) is a crucial part of the national disability policy context, and has been progressively implemented across Australia since 2013. It is a significant social reform and includes national governance arrangements.
- A number of reporting processes are attached to national disability strategies and agreements. These relate to particular outcomes or indicators associated with people with disability.
- The Australian Government Department of Social Services is responsible for national disability and carer policies and programs, including coordinating the ADS. The Department of Social Services sits within the Social Services portfolio.
- At the Australian Government level, the Minister for the NDIS has responsibility for administering the NDIS. The Minister for Social Services has responsibility for broader disability policy.

1.1. Introduction

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has been directed to inquire into all forms of violence against and abuse, neglect and exploitation of people with disability.¹ We were directed to inquire into what governments, institutions and the community should do to prevent, and better protect, people with disability from experiencing violence, abuse, neglect and exploitation.² We are therefore concerned with the policies, strategies, agreements, programs and services intended to achieve this objective. As part of this, it is important to understand the broader disability strategy and governance arrangements in place at the national level.

This chapter provides an overview of national disability policy, strategy and governance arrangements. It focuses on the policy and strategy arrangements that set national objectives for disability policy and have been agreed to by the Australian Government and state and territory governments. Sometimes, local government is also a party to national strategies.

The Australian Government plays a very important role in driving national disability policy, and in delivering national disability services and programs. This chapter highlights the current leadership arrangements in place within the Australian Government with responsibility for national disability-related policies and programs.

Chapter 2 of the volume assesses existing policy and strategy arrangements. It includes recommendations for strengthening the impact of national disability policy and strategy arrangements aimed at improving outcomes for people with disability.

Chapter 3 of this volume considers current national disability governance arrangements. It makes recommendations to reform the governance structures at the Australian Government level to drive national and significant change to achieve equality and inclusion for people with disability.

1.2. Previous national policy developments

The Australian Government and state and territory governments have had various roles and responsibilities with regard to disability policy and programs. These roles and responsibilities have featured in various intergovernmental agreements and strategies, and have evolved over time.

Commonwealth State/Territory Disability Agreement

In 1991, the Australian Government and state and territory governments agreed to the Commonwealth State/Territory Disability Agreement.³ This agreement defined the roles and responsibilities of the Australian Government and state and territory governments in delivering specialist disability services.⁴ The Commonwealth State/Territory Disability Agreement was updated throughout its lifespan, until it was replaced by the National Disability Agreement at the beginning of 2009 (see section 1.3).⁵

In 2007, the Senate Standing Committee on Community Affairs reviewed the funding and operations of the Commonwealth State/Territory Disability Agreement. The committee expressed concern about the delivery of disability services in Australia, including unmet needs, and the appropriateness of national funding arrangements, including equity issues and cost shifting between governments.⁶ The committee also commented that the multitude of services, programs, models and funding arrangements had led to inefficiencies, service delivery gaps and service interface issues.⁷ The committee concluded the Commonwealth State/Territory Disability Agreement was not an adequate national strategic policy document.⁸ It identified the need for a coordinated national approach to improving the delivery of disability services and ensuring people with disability could access the services they need.⁹

Among a number of recommendations, the committee recommended:

That in the life of the next [Commonwealth State/Territory Disability Agreement], signatories agree to develop a National Disability Strategy which would function as a high level strategic policy document, designed to address the complexity of needs of people with disability and their carers in all aspects of their lives.¹⁰

National Disability Strategy 2010–2020

The National Disability Strategy 2010–2020 (NDS), released in 2011, was developed following a public submission and community consultation process.¹¹ The former National People with Disabilities and Carer Council prepared the report *Shut out: The experience of people with disabilities and their families in Australia*, which summarised key issues raised in these submissions and consultations.¹² The report said the consultations and submissions revealed a clear picture: people with disability ‘may be present in the community but most do not enjoy full participation in it’.¹³

The NDS was the first time all levels of government ‘committed to a unified, national approach to improving the lives of people with disability, their families and carers, and to providing leadership for a community-wide shift in attitudes’.¹⁴ The vision of the NDS was for an ‘inclusive Australian society that enables people with disability to fulfil their potential as equal citizens’.¹⁵ It recognised that all governments, non-government organisations, businesses and the wider community have a role to play in achieving this vision.¹⁶

The NDS was structured around six broad outcome areas, and for each area it identified policy directions and areas for future action.¹⁷

Following Australia’s ratification of the *Convention on the Rights of Persons with Disabilities (CRPD)* in 2008, the NDS was to play an ‘important role in protecting, promoting and fulfilling the human rights of people with disability’.¹⁸ At Public hearing 18, ‘The human rights of people with disability and making the [CRPD] a reality in Australian law, policies and practices’, Ms Sue Robertson, First Assistant Secretary in the Australian Government Attorney-General’s Department, confirmed the NDS was ‘an important part’ of implementing ‘Convention rights more broadly’.¹⁹ The NDS states that its six outcome areas, agreed following substantial consultation, were aligned with the articles of the *CRPD*.²⁰

Three implementation plans were developed for the NDS:

- Laying the Groundwork 2011–2014²¹
- Driving Action 2015–2018²²
- Third Implementation Plan – 2019–2020.²³

Governments committed to delivering NDS progress reports every two years, ‘using trend data to track national progress for people with disability in Australia’.²⁴ These reports would also include other evidence of change; outcomes of any reviews of national agreements and national

partnerships; details on the work of Australian Government agencies; and the views of people with disability, their families and carers, and their representative organisations.²⁵

First ministers received progress reports on the NDS in 2014²⁶ and 2016.²⁷ A third and final progress report covering the period 2017 to 2021 was released after the NDS had ended in December 2022.²⁸

The NDS included a commitment to progressive evaluation, with a final evaluation report to be prepared at the end of its 10-year period.²⁹

The Australian Government Department of Social Services commissioned the Social Policy Research Centre to review the NDS (discussed further in Chapters 2 and 3 of this volume).³⁰

1.3. National Disability Agreement

The National Disability Agreement commenced in 2009.³¹ It replaced the previous Commonwealth State/Territory Disability Agreement as the intergovernmental agreement for disability policy and service provision.³² It was last updated in 2012.³³ It operates indefinitely, but can be amended or revoked by first ministers.³⁴

The National Disability Agreement provides ‘the national framework and key areas of reform for the provision of government support’ for people with disability.³⁵ It was developed under the Intergovernmental Agreement for Federal Financial Relations (IGA FFR).³⁶ The Australian Government and state and territory governments first agreed to the IGA FFR in 2008, which came into effect 1 January 2009.³⁷ The IGA FFR provides a foundation for collaboration on policy and service delivery, and facilitating the implementation of nationally important reforms.³⁸ The National Disability Agreement was one of six initial national agreements under the IGA FFR, alongside agreements on education, health, housing, Indigenous reform, and skills and workforce development.³⁹

The objective of the National Disability Agreement is that ‘people with disability and their carers have an enhanced quality of life and participate as valued members of the community’.⁴⁰ Its purpose is to:⁴¹

- promote cooperation
- enhance accountability
- clarify the roles and responsibilities of governments to improve outcomes for people with disability, their families and carers.

The National Disability Agreement sets out:⁴²

- the objective of the agreement
- broad outcome areas covering
 - economic participation and social inclusion of people with disability
 - choice, wellbeing and the opportunity to live independently for people with disability
 - ensuring families and carers are well supported
- outputs covering the types of services and supports required to achieve the outcome areas
- roles and responsibilities of governments, including shared responsibilities and responsibilities of each government
- performance indicators
- performance benchmarks
- reform and policy directions to achieve the objectives and outcomes of the agreement.

Under disability funding arrangements, the Australian Government provided funding to state and territory governments for specialist disability services.⁴³ However, this has been superseded as funding transitioned to the National Disability Insurance Scheme (NDIS).⁴⁴

The National Disability Agreement was also supported by separate Australian Government and state and territory government funding.⁴⁵

With funding and services transferred to the NDIS, primary specialist disability services under the National Disability Agreement have declined.⁴⁶ Services that continue to be provided include:⁴⁷

- employment services delivered by the Australian Government
- Basic Community Care services to assist people with disability or a chronic health condition who are aged under 65 (and First Nations people under 50) to live independently.

In 2021–22, expenditure on specialist disability services provided outside the NDIS was around \$2.1 billion.⁴⁸ This does not include funding such as disability education loadings.

The National Disability Agreement operated alongside the former NDS from 2010 until the NDS was replaced by Australia's Disability Strategy 2021–2031 (ADS) (see section 1.5).

It has not been updated to reflect the introduction of the NDIS.⁴⁹ Its performance benchmarks expired in 2018.⁵⁰

The Department of Social Services confirmed that although the National Disability Agreement does not have an expiry date, its funding has ceased and performance benchmarks have lapsed.⁵¹ Its application is therefore now limited.⁵²

Reporting under the National Disability Agreement

Reporting under the National Disability Agreement occurred within the reporting framework established by the IGA FFR. The IGA FFR commits governments to enhanced accountability through 'simpler, standardised and more transparent public performance reporting for all jurisdictions, underpinned by clearer roles and responsibilities'.⁵³

The National Disability Agreement included three performance benchmarks measuring progress against identified national outcomes.⁵⁴ The benchmarks, which have now expired, were:⁵⁵

- **Outcome A – People with disability achieve economic participation and social inclusion**
 - 'Between 2009 and 2018, there will be a five-percentage point national increase in the proportion of people with disability participating in the labour force.'
- **Outcome B – People with disability enjoy choice, wellbeing and the opportunity to live as independently as possible**
 - 'Between 2009 and 2018, there will be a five-percentage point national decrease in the proportion of people with disability who report the need for more formal assistance.'
- **Outcome C – Families and Carers are well supported**
 - No benchmark is identified – parties to the National Disability Agreement agreed further work would be undertaken to develop a benchmark with a quantifiable target for Outcome C.

The National Disability Agreement sets out nine performance indicators:⁵⁶

- 'proportion of people with disability participating in the labour force'
- 'proportion of people with disability who participate in social and community activities'
- 'proportion of income support recipients with disability who report earnings'
- 'proportion of people with disability accessing disability services'
- 'proportion of people with disability who are satisfied with the range of services available, and with the adequacy and quality of services provided'
- 'proportion of younger people entering, living in, and exiting, permanent residential aged care'
- 'proportion of carers of people with disability participating in the labour force'
- 'proportion of carers of people with disability who report their health and wellbeing as positive'
- 'proportion of primary carers of people with disability who are satisfied with the range of services available, and with the adequacy and quality of services provided, to the person with disability and to the carer.'

Annual public reporting under the National Disability Agreement initially occurred through the Council of Australian Governments Reform Council.⁵⁷ This was abolished and from 2015 the Department of Prime Minister and Cabinet established the Performance Reporting Dashboard for reporting against all national agreements.⁵⁸ Responsibility for reporting was transferred to the Productivity Commission in 2017.⁵⁹

1.4. National Disability Insurance Scheme

The introduction of the NDIS is the most significant reform in disability policy in Australia.

Before the introduction of the NDIS, specialist services for people with disability were funded and regulated differently in each state and territory.

In April 2008, the Disability Investment Group was established to ‘explore innovative funding ideas from the private sector that [would] help people with disability and their families access greater support and plan for the future’.⁶⁰ The Disability Investment Group recommended establishing a ‘National Disability Insurance Scheme’.⁶¹ It noted such a scheme had been recommended elsewhere including the *Australia 2020 Summit*, the NDS consultation report *Shut out: The experience of people with disabilities and their families in Australia*, and other reviews and inquiries.⁶²

The National Disability and Carer Alliance was formed in 2009.⁶³ It was established by the Australian Federation of Disability Organisations (representing people with disability), Carers Australia (representing families and carers) and National Disability Services (representing disability service providers).⁶⁴ This alliance developed and governed the Every Australian Counts campaign, a coalition of disability advocacy organisations, peak bodies and representative groups which strongly advocated for the introduction of the NDIS.⁶⁵

The Australian Government commissioned the Productivity Commission, its independent research and advisory body, to investigate an approach for a National Disability Long-Term Care and Support Scheme.⁶⁶ In its 2011 report, *Disability Care and Support*, the Productivity Commission identified that the existing disability support system was:

underfunded, unfair, fragmented, and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports.⁶⁷

It recommended establishing a National Disability Insurance Scheme to provide insurance cover for all Australians in the event of significant disability.⁶⁸

The Productivity Commission proposed three NDIS tiers, designed to support different groups:

- **Tier 1** – focusing on the entire Australian population, providing insurance against the costs of support if they, or a family member, acquire a disability. The NDIS would minimise the impacts of disability by promoting opportunities for people with disability, creating community awareness of issues impacting people with disability and the advantages

of inclusion. The NDIS would draw on its data and research capabilities to engage with other agencies to improve public health and safety (based on 2009 population figures, Tier 1 would encompass around 22.5 million Australians).⁶⁹

- **Tier 2** – providing links, information and referrals to support all people with disability in Australia to connect with the community and with other services and build social capital (based on 2009 data, Tier 2 would capture around 4.8 million people, including people with disability and their carers).⁷⁰
- **Tier 3** – providing long-term care and support for people with a significant and ongoing disability, who also met age and residency criteria (based on 2009 data, Tier 3 would support around 410,000 people).⁷¹

Before the introduction of the NDIS, disability supports were predominantly funded through block funding arrangements, although several jurisdictions ran pilot programs based on more individualised approaches.⁷² Under block funding arrangements, governments directly fund providers with lump sum payments to deliver support services.⁷³

Under Tier 3 of the NDIS, eligible individuals would receive an NDIS funding package to purchase services from different providers.⁷⁴ The Productivity Commission recommended a shift from block funding to an individual choice model, where people could choose how much control they wanted to exercise.⁷⁵ Volume 10, *Disability services* provides further detail on the delivery of disability services.

The Australian Government told us the NDIS provides access to funding ‘to help participants realise their aspirations, and to participate in the social and economic life of the community’.⁷⁶

Mr Michael Coutts-Trotter, then Secretary of the New South Wales Department of Communities and Justice, told us:

The NDIS is not intended to replace all the services and supports provided by ‘other service systems’ (referred to as mainstream services), which may be delivered by governments, non-government organisations, business and the broader community. The NDIS is designed to benefit all Australians with disability, however only a small proportion will receive individualised supports under the NDIS.⁷⁷

NDIS legislation

The *National Disability Insurance Act 2013* (Cth) (*NDIS Act*) establishes the NDIS. The objects of the *NDIS Act* are to:⁷⁸

- ‘in conjunction with other laws, give effect to Australia’s obligations under the [CRPD]’
- ‘provide for the [NDIS] in Australia’
- ‘support the independence and social and economic participation of people with disability’
- ‘provide reasonable and necessary supports, including early intervention supports, for participants in the [NDIS]’

-
- 'enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports'
 - 'facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability'
 - 'promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community'
 - 'protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the [NDIS]'
 - 'raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability'
 - 'in conjunction with other laws, give effect to certain obligations Australia has as a party to specific international covenants and conventions.'

Section 3 of the *NDIS Act* requires these objects are to be achieved by:⁷⁹

- 'providing the foundation for governments to work together to develop and implement the [NDIS]
- adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability
- establishing a national regulatory framework for persons and entities who provide supports and services to people with disability, including certain supports and services provided outside the [NDIS].'

In giving effect to the objects of the *NDIS Act*, regard must be had to the financial sustainability of the NDIS.⁸⁰ Regard must also be had to the broad context of disability reform⁸¹ and services provided by other agencies, departments or organisations.⁸²

Part 2, section 4 of the *NDIS Act* outlines 17 principles that guide actions under the Act (provided in Appendix 5A). These describe the rights and expectations that NDIS participants should have:

- the right to realise personal potential for physical, social, emotional and intellectual development⁸³
- respect for their worth and dignity and to live life free from abuse, neglect and exploitation⁸⁴
- being supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports⁸⁵
- access to and certainty of reasonable and necessary supports, including early intervention supports.⁸⁶

The principles also acknowledge:

- the role of and relationship between people with disability, families and carers⁸⁷
- the importance of co-design and advocacy⁸⁸
- the need for sustainable markets, sector innovation and contemporary disability support practice⁸⁹
- participants may need NDIS supports to coordinate access to mainstream services and supports.⁹⁰

The Australian Government told the Royal Commission that the objects and principles of the *NDIS Act* seek to give NDIS participants choice and control over the care and support they receive.⁹¹

The *NDIS Act* establishes the National Disability Insurance Agency (NDIA) as the independent agency responsible for administering the NDIS.⁹² It also establishes the Independent Advisory Council to the NDIS,⁹³ and the NDIS Quality and Safeguards Commission.⁹⁴ Volume 10, *Disability services*, considers the role of the NDIS Quality and Safeguards Commission.

The *NDIS Act* enables the relevant minister to make legislative instruments called NDIS Rules.⁹⁵ NDIS Rules prescribe matters required or permitted by the *NDIS Act*, or necessary or convenient for giving effect to the *NDIS Act*.⁹⁶ They may provide for the specification of assessment tools and the use of these tools.⁹⁷ They may also cover matters related to the engagement between the NDIA or other specified persons with participants or prospective participants.⁹⁸ The *NDIS Act* requires state and territory governments to agree to the making of the NDIS Rules, depending on the issues the NDIS Rules are about.⁹⁹

Other volumes throughout this *Final report* consider aspects of the *NDIS Act*. In particular, Volume 10, *Disability services*, looks at disability service providers and considers NDIS-related oversight and complaints processes.

Implementation of the NDIS

The NDIS Market Enablement Framework describes the core focus of the NDIS as building the economic and social participation of Australians with disability.¹⁰⁰ The NDIS aims to make early investments to achieve longer term improvements in outcomes for individuals and in doing so also reduce costs.¹⁰¹

Progressive rollout of the NDIS began in trial sites in 2013.¹⁰² Full transition to the scheme began in 2016, and the national rollout was completed in 2020.¹⁰³ As of early 2023, all state and territory governments had entered into full scheme agreements with the Australian Government, except for Western Australia, which has a transition agreement in place and is expected to enter full scheme in July 2023.¹⁰⁴

The NDIS is jointly governed and funded by the Australian Government and state and territory governments.¹⁰⁵ Further information on these arrangements is provided later in this section.

Individualised support plans

According to the Australian Government, the NDIS:

provides funding to people with a permanent and significant disability to access reasonable and necessary supports and services to assist them with their daily living and to support their social, community and economic participation.¹⁰⁶

The *NDIS Act* provides that people who meet specified age,¹⁰⁷ residence¹⁰⁸ and disability requirements¹⁰⁹ or early intervention requirements¹¹⁰ may become NDIS participants. An NDIS participant is someone who has made a request to access the NDIS and is deemed by the Chief Executive Officer of the NDIA to satisfy the relevant eligibility criteria.¹¹¹

NDIS participants receive an individual support plan. These plans include:

- a statement of the participant's goals, objectives and aspirations¹¹²
- the participant's environment and personal context, including their living arrangements, informal community supports and other community supports, and social and economic participation¹¹³
- the general supports (if any) that will be provided to or in relation to the participant¹¹⁴
- the reasonable and necessary supports (if any) that will be funded under the NDIS.¹¹⁵

Reasonable and necessary supports funded by the NDIS can include transport, supports for daily personal activities, therapeutic supports, home modifications, mobility equipment, vehicle modifications and help to get or keep employment.¹¹⁶ A plan can also provide funding for support coordinators, to help the participant implement their NDIS plan, connect with other services and achieve their plan's goals.¹¹⁷

Section 34 of the *NDIS Act* provides further detail on the reasonable and necessary supports provided under these individual plans. In deciding what supports an individual may receive funding for, the NDIA must be satisfied that:

- 'the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations'¹¹⁸
- 'the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation'¹¹⁹
- 'the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support'¹²⁰
- 'the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice'¹²¹
- 'the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide'¹²²

-
- ‘the support is most appropriately funded or provided through the [NDIS], and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered.’¹²³
 - as part of a universal service obligation or
 - in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.’

Ms Liz Neville, General Manager, Government at the NDIA described the NDIS as:

based upon individualised funding and underpinned by a maturing national marketplace where participants can use their NDIS plans to choose the supports and services that best meet their needs.¹²⁴

The NDIS also funds organisations to provide early childhood support for children younger than seven who have disability or a developmental delay or concerns.¹²⁵

Volume 3, *Nature and extent of violence, abuse, neglect and exploitation of people with disability*, provides data and information regarding NDIS participants. Other volumes throughout this *Final report* also consider issues relating to the NDIS, including but not limited to Volume 8, *Criminal justice and people with disability*, Volume 9, *First Nations people with disability* and Volume 10, *Disability services*.

Information, Linkages and Capacity Building program

The Information, Linkages and Capacity Building program provides funding to organisations ‘to deliver projects in the community that benefit all Australians with disability, their carers and families’.¹²⁶ Its functions include:¹²⁷

- strengthening mainstream services and supports and community capacity to be inclusive of people with disability
- fostering continual improvement and innovation in disability support delivery
- minimising the need to escalate support
- supporting carers
- building and promoting individual capacity and peer support.

The program distributes grants to organisations across four program areas:¹²⁸

- Individual Capacity Building Program
- National Information Program
- Economic and Community Participation Program
- Mainstream Capacity Building Program.

Responsibility for the grants program was transferred from the NDIA to the Department of Social Services in October 2020.¹²⁹ The program has been funded for around \$130 million per annum.¹³⁰

Local Area Coordinators

Under the NDIS, Local Area Coordinators help people find information, understand and access the NDIS, create and implement an NDIS plan and do a plan reassessment.¹³¹

In the context of the Information, Linkages and Capacity Building program, Local Area Coordinators can help people, even if they do not have an NDIS plan, understand what supports and services are available in their local area.¹³² Local Area Coordinators can also help people understand how the NDIS works with other government services.¹³³

NDIS intergovernmental and funding agreements

The NDIS involves shared governance arrangements involving the Australian Government and state and territory governments.

Bilateral agreements between the Australian Government and each state and territory government set out roles and responsibilities in relation to governance, policy, market development and oversight and funding arrangements for the NDIS.¹³⁴ At the time of writing this *Final report*, all jurisdictions except Western Australia had entered into full scheme agreements.¹³⁵ There is currently a transition bilateral agreement in place between the Australian Government and Western Australian Governments, with transition to full scheme to occur from 1 July 2023 onwards.¹³⁶

The Australian Government and state and territory governments jointly govern and fund the NDIS.¹³⁷ The NDIA holds and manages the funds pooled from all governments, administers access to the NDIS and approves payments relating to individualised support plans.¹³⁸

Under these arrangements, the NDIS is funded through government funding previously spent on disability supports, alongside other funding sources including the increase in the Medicare levy on personal taxable income.¹³⁹

Each bilateral agreement sets out the different NDIS funding contributions from the relevant state or territory government.¹⁴⁰ The Australian Government retains responsibility for the balance of NDIS costs.¹⁴¹ These agreements are scheduled for review every five years.¹⁴²

For 2021–22, the total government contributions to the NDIS was \$29.2 billion.¹⁴³ A jurisdictional breakdown is provided in Table 5.1.

Table 5.1: NDIS contributions by jurisdiction, 2021–22

Jurisdiction	NDIS contributions, 2021–22 (\$m) ^a
New South Wales	\$3,605m
Victoria	\$2,792m
Queensland	\$2,213m
Western Australia	\$1,032m
South Australia	\$841m
Tasmania	\$252m
Australian Capital Territory	\$183m
Northern Territory	\$138m
Australian Government	\$18,173m

^a Figures have been rounded to the nearest \$ million.

Source: Steering Committee for the Review of Government Service Provision, *Report on Government Services 2023* (January 2023), Table 15A.1.

NDIS and other service systems

The *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) prescribe which matters the NDIA's Chief Executive Officer must have regard to when deciding what supports should be funded in an NDIS plan.¹⁴⁴ Among other factors, the NDIA Chief Executive Officer must consider whether supports are most appropriately funded or provided through the NDIS rather than through other service systems.¹⁴⁵

These rules are supported by the 'Principles to determine the responsibilities of the NDIS and other service systems', which set out six general principles used to determine funding and delivery responsibilities of the NDIS.¹⁴⁶

Accompanying these principles, the 'Applied principles and tables of support' (also referred to as 'Applied principles and tables of services') set out specific principles and activities regarding funding responsibilities for the NDIS and 11 service areas.¹⁴⁷ These service areas are:¹⁴⁸

- health
- mental health
- early childhood development
- child protection and family support

-
- school education
 - higher education and vocational education and training
 - employment
 - housing and community infrastructure
 - transport
 - justice
 - aged care.

In 2013, the Australian Government and state and territory governments agreed to the 'Principles to determine the responsibilities of the NDIS and other service systems' and the 'Applied principles and tables of support'. These were revised in 2015.¹⁴⁹

Mr Scott McNaughton, General Manager, National Delivery at the NDIA stated:

These documents govern the interactions of the NDIS with other service systems, and reinforce the obligation of other service delivery systems to improve the lives of people with disability in line with the National Disability Strategy.¹⁵⁰

Volume 7, *Inclusive education, employment and housing* and Volume 8, *Criminal justice and people with disability* include further detail regarding the NDIS and interface with specific service systems.

The NDIA has implemented operational guidelines based on the NDIS Rules, policies and agreements on how the NDIS works with mainstream and community supports.¹⁵¹

Independent review of the NDIS

The Australian Government has commenced a review of the NDIS, which is being led by an independent review panel.¹⁵²

The review panel is due to report to the Disability Reform Ministerial Council (see section 1.9) in October 2023.¹⁵³ The panel's terms of reference set out two key review areas:¹⁵⁴

- **Part 1** – examining 'the design, operations and sustainability of the NDIS covering issues outlined in the [full scheme] bilateral agreements' between the Australian Government and state and territory governments
- **Part 2** – examining 'ways to build a more responsive, supportive and sustainable market and workforce'.

The terms of reference for the review are provided in Appendix 5B of this volume.

1.5. Australia's Disability Strategy 2021–2031

Australia's Disability Strategy 2021–2031 (ADS) was released in December 2021, replacing the NDS as Australia's national disability policy framework.¹⁵⁵ It was signed by the Prime Minister, all state premiers and territory chief ministers, and the president of the Australian Local Government Association.¹⁵⁶

Development process

Ms Debbie Mitchell PSM, Deputy Secretary of Disability and Carers at the Department of Social Services, said the ADS was developed 'in consultation with all levels of government, the disability sector, people with disability, their families, carers and representatives'.¹⁵⁷

Several consultation stages occurred, including:¹⁵⁸

- in 2018, targeted consultations with around 150 people from 80 organisations, focusing on the NDS, what worked well and what could be improved
- in 2019, consultations with around 3,000 people through community workshops, consultations with First Nations people with disability, an online public survey and targeted stakeholder meetings (Stage 1 consultations)
- in 2020, the release of a position paper outlining proposals for a new strategy (Stage 2 consultations), with –
 - 237 submissions received from individuals and organisations
 - over 800 people registering for a webinar hosted by the Australian Human Rights Commission and the Centre of Research Excellence in Disability and Health
 - 132 people participating in 18 focus groups (with cohorts of people with disability who did not participate in high numbers during Stage 1 consultation)
 - workshops involving disability representative organisations
- a public consultation process on the ADS Outcomes Framework, with 74 submissions received.

The public consultation stages for the ADS reached over 3,000 people with disability, families, carers and representatives.¹⁵⁹ The Department of Social Services released reports on the views and feedback received.¹⁶⁰

The development of the ADS was also informed by engagement with the NDS Reform Steering Group, which included representatives from key non-government organisations.¹⁶¹ The development process also included the Independent Advisory Council to the NDIS¹⁶² and state and territory government disability advisory groups.¹⁶³

The development of the ADS was also informed by the outcomes of various reviews and inquiries.¹⁶⁴ These included:¹⁶⁵

- the 2017 Senate inquiry into the delivery of outcomes under the NDS to build inclusive and accessible communities
- the 2018 review by the Social Policy Research Centre into the implementation of the NDS
- the 2019 review by the Productivity Commission of the National Disability Agreement
- 2013 and 2019 Australian Government and Civil Society reports to the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee), and the concluding observations from the CRPD Committee
- this Royal Commission.

The ADS states that the feedback received through the above consultations and reviews resulted in:¹⁶⁶

- the ADS ‘having stronger reporting, monitoring and implementation than its predecessor’
- ‘a stronger and a more structured role for people with disability in the implementation of the Strategy’.

The ADS states that its ‘stronger policy focus on housing, safety, employment, and community attitudes is the direct result of what people with disability nominated was important to them’.¹⁶⁷

Vision, purpose and goals

The ADS states that its vision is for ‘an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community’.¹⁶⁸

The purpose of the ADS is to:¹⁶⁹

- ‘provide national leadership towards greater inclusion of people with disability
- guide activity across all levels of public policy to be inclusive and responsive to people with disability
- drive mainstream services and systems to improve outcomes for people with disability
- engage, inform and involve the whole community in achieving a more inclusive society.’

The ADS highlights, in line with Australia’s commitments under the *CRPD*, that it ‘will play an important role in protecting, promoting and realising the human rights of people with disability’.¹⁷⁰

The ADS states it:

is based on the social model of disability. It recognises attitudes, practices and structures can be disabling and act as barriers preventing people from fulfilling their potential and exercising their rights as equal members of the community.¹⁷¹

To achieve its intended purposes, the ADS has seven outcome areas. The Australian Government states that these outcome areas ‘represent the areas people with disability have said are important to them and need to be improved to achieve an inclusive Australian society’.¹⁷² They are areas where governments will focus on delivering changes, working with the community, businesses and people with disability.¹⁷³ The ADS identifies policy priorities within each outcome area.¹⁷⁴

The seven outcome areas are:

- **Employment and financial security** – ‘People with disability have economic security, enabling them to plan for the future and exercise choice and control over their lives’¹⁷⁵
- **Inclusive homes and communities** – ‘People with disability live in inclusive, accessible and well-designed homes and communities’¹⁷⁶
- **Safety, rights and justice** – ‘The rights of people with disability are promoted, upheld and protected, and people with disability feel safe and enjoy equality before the law’¹⁷⁷
- **Personal and community support** – ‘People with disability have access to a range of supports to assist them to live independently and engage in their communities’¹⁷⁸
- **Education and learning** – ‘People with disability achieve their full potential through education and learning’¹⁷⁹
- **Health and wellbeing** – ‘People with disability attain the highest possible health and wellbeing outcomes throughout their lives’¹⁸⁰
- **Community attitudes** – ‘Community attitudes support equality, inclusion and participation in society for people with disability.’¹⁸¹

1.6. Implementation of Australia’s Disability Strategy

The key elements for implementing the ADS are outlined below.

Government roles and responsibilities

The ADS recognises that:

Australian, state, territory and local governments, along with businesses, the community and the non-government sector all play a role in supporting people with disability to enjoy their human rights on an equal basis with others.¹⁸²

Ms Mitchell told us that under the ADS:

governments at all levels are committed to working together with people with disability, communities, businesses, and the non-government sector to implement the Strategy and [realise] its vision in a coordinated way.¹⁸³

The ADS recognises that all levels of governments have a role in providing mainstream and targeted services, supports and infrastructure to people with disability.¹⁸⁴ It notes that governments have obligations for making reasonable adjustments so people with disability can access and use their systems and services.¹⁸⁵ In many cases a support, service or system may involve more than one government.¹⁸⁶

The ADS includes a table providing a high level outline of systems where one level of government holds primary responsibility, and systems where responsibilities are shared.¹⁸⁷ It is not a comprehensive list and does not include every support, service or system.¹⁸⁸

The ADS acknowledges further information on government roles and responsibilities is included in legislation and agreements outlining the funding, regulation and operational responsibility for services and systems.¹⁸⁹ The ADS also acknowledges the Applied principles and tables of support, which sets out responsibilities between the NDIS and other systems,¹⁹⁰ as discussed previously in this chapter.

Guiding principles

The ADS includes the high-level guiding principles governments have agreed to use when developing policies, programs, services and systems to ensure they reflect the *CRPD* human rights principles.¹⁹¹ The principles are based on article 3 of the *CRPD*.¹⁹² They include:¹⁹³

- **Principle 1** – ‘Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons’
- **Principle 2** – ‘Non-discrimination’
- **Principle 3** – ‘Full and effective participation and inclusion in society’
- **Principle 4** – ‘Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity’
- **Principle 5** – ‘Equality of opportunity’
- **Principle 6** – ‘Accessibility’
- **Principle 7** – ‘Equality of people’
- **Principle 8** – ‘Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.’

The ADS acknowledges that businesses, the non-government sector and the broader community should also consider how they can apply these principles.¹⁹⁴

The Department of Social Services is leading the development of a guide on using these principles.¹⁹⁵ Ms Mitchell told us:

they are guidelines and so we will be working with all state and territory governments. We will be working with business, with local communities to put the guidelines out there to demonstrate what is best practice for designing policies, implementing policies, across – across a spectrum that would affect people with [disability]. So, they will be a very good, strong vehicle for people to be able to understand disability issues.¹⁹⁶

Public consultation on the development of the guide occurred between October and December 2022.¹⁹⁷ In December 2022, the Department of Social Services confirmed it had received 54 online submissions from 45 individuals.¹⁹⁸

The Department of Social Services conducted two workshops on the guide with disability representative organisations, and two roundtable discussions with academics and universities.¹⁹⁹ The department also engaged the Disability Advocacy Network to facilitate targeted workshops involving people with disability.²⁰⁰ When this *Final report* was being developed, the department was expected to release the guide in mid-2023.²⁰¹

Targeted Action Plans

Targeted Action Plans have been developed under the ADS. These are commissioned and endorsed by disability ministers, and identify targeted and coordinated actions from governments.²⁰² They provide an ‘intensive focus over one to three years to achieve specific deliverables which improve outcomes for people with disability’.²⁰³

They are ‘an additional tool designed to progress improved outcomes for people with disability’ identified under the outcome areas in the ADS.²⁰⁴

Five Targeted Action Plans were released with the ADS, with new plans to be developed over time informed through engagement with people with disability.²⁰⁵ The current Targeted Action Plans focus on:²⁰⁶

- employment
- community attitudes
- early childhood
- safety
- emergency management.

Ms Mitchell said the Targeted Action Plans ‘were seen as the five areas to commence’ implementation of the 10-year ADS.²⁰⁷ She confirmed that the first set of Targeted Action Plans are based on issues people with disability identified as being important.²⁰⁸

Ms Mitchell has stated that disability ministers will receive advice on future Targeted Action Plans, based on engagement with people with disability following the publication of this *Final report*.²⁰⁹ Future plans could include new subjects not covered by existing Targeted Action Plans, or further actions in areas covered by existing plans.²¹⁰ As Ms Mitchell described, future plans will be informed by the voices of people with disability on what areas should be targeted.²¹¹

Targeted Action Plans complement other policies and strategies for implementing the ADS. State and territory governments use their disability plans and strategies as primary mechanisms for implementing the ADS.²¹² Section 1.7 includes further information on state and territory government disability plans and strategies. The Australian Government has developed and maintains a Government Implementation Plan for the ADS.²¹³ Ms Mitchell told us this plan ‘outlines key initiatives to support the [ADS] and upcoming strategies, roadmaps, frameworks, and blueprints to embed a strong disability focus and be linked to the [ADS] as Associated Plans’.²¹⁴

Associated Plans

Associated Plans to the ADS are ‘strategies, plans, roadmaps and frameworks that focus on improving aspects of Australian life for people with disability and also work to deliver the vision of the Strategy’.²¹⁵

Associated Plans have been included under the ADS to ‘provide a more coordinated, long-term approach to how governments work to improve outcomes for people with disability’.²¹⁶

Associated Plans may be focused on a specific sector or part of the community.²¹⁷ For example, the Disability Employment Strategy is an Associated Plan under the ADS.²¹⁸

Engagement Plan

The Engagement Plan for the ADS outlines how people with disability will be engaged in the implementation of the ADS.²¹⁹ This includes involvement in monitoring and reporting on the progress of the ADS.²²⁰

Elements of the Engagement Plan include:

- the ADS Advisory Council²²¹
- public forums and consultations to be held throughout the term of the ADS (including national and state and territory based forums and consultations to align with major reviews of the ADS)²²²
- an ADS website to make information easily accessible²²³
- the Good Practice Guidelines for the Engagement of People with Disability²²⁴
- revisions to the Strategy Engagement Plan.²²⁵

Australia's Disability Strategy Advisory Council

The ADS Advisory Council advises all levels of government and disability ministers on implementing, monitoring and evaluating the ADS.²²⁶ This includes reviewing and advising on the progress of the ADS, including components such as Targeted Action Plans, the Outcomes Framework, Associated Plans, and progress and implementation reports.²²⁷

The Advisory Council may also provide advice to disability ministers and governments on other issues within the scope of the ADS outcome areas, if all governments agree that it should.²²⁸

The council may also discuss and raise emerging issues and themes raised in the disability community, which will be included in the council's meeting minutes to be distributed to all governments.²²⁹

The Advisory Council may provide formal advice to ministers and governments, or deliver informal advice by sharing its meeting minutes with officials from different levels of government.²³⁰

Members of the Advisory Council are appointed by the Australian Government minister responsible for disability policy.²³¹ Members of the Advisory Council are not part of government.²³²

The terms of reference for the Advisory Council state that its membership will consist of:²³³

- women with disability (with a substantial proportion of members being women)
- First Nations people with disability
- people with disability from culturally and linguistically diverse backgrounds
- young people with disability
- people with remote or thin market expertise
- four members from state and territory disability councils on a rotating basis.

The terms of reference also specify that all members (excluding state and territory disability council members and special advisers) will be people with disability.²³⁴ The 'state and territory disability council members should either be people with disability, have personal experience or have extensive knowledge of disability issues'.²³⁵

All current members of the Advisory Council are people with disability.²³⁶

At the time of writing this report, the Advisory Council is chaired by Dr Ben Gauntlett, the Disability Discrimination Commissioner.²³⁷ The chair of the Advisory Council attends at least one meeting of the Disability Reform Ministerial Council each year.²³⁸

The Advisory Council met six times in 2022 and will meet five times during 2023.²³⁹

The Advisory Council engages with a range of stakeholders to inform its work, including prioritising the voices, views and experiences of people with disability.²⁴⁰

Starting in 2023, the Advisory Council will develop annual reports on its work, for submission to disability ministers.²⁴¹ It will also produce a public meeting summary communique on issues considered and advice provided to governments.²⁴²

The Advisory Council is supported by two research officers.²⁴³ These officers are employed by the Department of Social Services but report directly to the Advisory Council.²⁴⁴ They assist with research and analysis, and preparing advice, feedback and recommendations.²⁴⁵

Australia's Disability Strategy public forums

Public forums will be held throughout the duration of the ADS.²⁴⁶ There will be three national public forums, at least four state and territory forums and three public consultations over the term of the ADS.²⁴⁷

The first ADS National Forum was held on 2 and 3 November 2022.²⁴⁸ Ms Mitchell reports the four key themes raised at the forum were:

- **community attitudes** – ‘how stigma, ableism and misconceptions act as barriers in the lives of people with disability across multiple aspects of life and provided suggestions on how to build positive attitudes towards people with disability’²⁴⁹
- **inclusion and universal design** – ‘the importance of designing accessible services, infrastructure, communication and events rather than trying to make adjustments for people with disability at the end’²⁵⁰
- **COVID-19** – ‘the challenges a number of people with disability have in navigating life where COVID-19 poses a real risk to their health’²⁵¹
- **recognising diversity and intersectionality** – ‘the importance of recognising people’s different identities and the need to tailor responses that consider these differences.’²⁵²

Outcomes Framework and reporting

There are several reporting mechanisms under the ADS, including:²⁵³

- annual reports on Targeted Action Plans
- the Outcomes Framework dashboard and annual reports on the Outcomes Framework
- an implementation report to be produced every two years
- major evaluation reports in 2025 and 2029.

The ADS notes that other reporting mechanisms – including reporting against state, territory and local government disability plans – will complement ADS reporting.²⁵⁴

Annual reports on Targeted Action Plans will provide high level information on their implementation, including actions and successes, other key steps taken or planned, and overall status.²⁵⁵ The first report was released in November 2022, for the period December 2021 to June 2022, providing an overview of progress against actions in the five Targeted Action Plans in place.²⁵⁶

The ADS is accompanied by an Outcomes Framework, that ‘measures, tracks and reports on outcomes for people with disability’.²⁵⁷ The Outcomes Framework’s measures will be replaced by future measures when data is available.²⁵⁸ Overall, the Outcomes Framework includes 85 measures across the seven outcome areas in the ADS.²⁵⁹ These include:

- system measures, for tracking ‘the contribution that key systems, such as health care, housing, education and employment, are making to achieve outcomes’²⁶⁰
- population measures, for tracking ‘changes in outcomes over time for people with disability’,²⁶¹ such as the gap in percentage of people with disability in the labour force who are unemployed compared to people without disability²⁶²
- community attitudes measures, for tracking ‘the change in attitudes towards people with disability, and how people with disability experience community attitudes’.²⁶³

An online dashboard and annual report under the Outcomes Framework communicate progress against each ADS policy priority.²⁶⁴

The Department of Social Services has commissioned the Australian Institute of Health and Welfare to develop and run the Outcomes Framework website and develop the Outcomes Framework annual reports.²⁶⁵ The website will be updated quarterly.²⁶⁶ The Australian Institute of Health and Welfare released the ADS Outcomes Framework annual report in February 2023. It provides baseline data for 47 launch measures in the Outcomes Framework (of the total 85 identified measures), and historical data for 45 of these.²⁶⁷

Under the Outcomes Framework, data is disaggregated where possible by:²⁶⁸

- age group
- sex and gender
- lesbian, gay, bisexual and transgender status
- type of disability
- state and territory
- Indigenous status
- culturally and linguistically diverse status
- remoteness.

The ADS states that governments will work together to develop a comprehensive data strategy, to ensure data needed to measure outcomes is collected, shared and progressively improved.²⁶⁹

The Data Improvement Plan, released in January 2023, was developed in consultation with the Australian Government, state and territory governments and disability representative organisations.²⁷⁰ The Data Improvement Plan is discussed further in Volume 12, *Beyond the Royal Commission*.

At the time of writing this *Final report*, an implementation report had not been released. As at December 2022, Ms Mitchell confirmed planning for the implementation report was underway.²⁷¹

Funding

The Australian Government and state and territory governments separately fund initiatives implemented under the ADS.

The Australian Government has noted it will invest \$250 million over the life of the ADS to support its implementation.²⁷² This includes funding for:²⁷³

- some Australian Government initiatives under Targeted Action Plans
- extension of the National Disability Data Asset (NDDA)
- establishing the National Disability Research Partnership (NDRP)
- better reporting and measurement under the ADS
- supporting engagement activities including establishing the ADS Advisory Council.

In information provided to the Royal Commission, state and territory governments confirmed that initiatives supporting the implementation of the ADS are funded through departmental budgets or budgets under state and territory disability plans, often with no direct funding specifically attributed to the implementation of the ADS.²⁷⁴

For example, the New South Wales Department of Communities and Justice confirmed that it 'has a budget of \$112.5 million over four years from 2020–21 (and \$28.5 million in 2022–23) to continue disability inclusion services and whole of government policy functions'.²⁷⁵ The Victorian Government said its 2022–23 Budget allocated more than \$307 million to support measures contributing to implementing its disability strategy, Inclusive Victoria: State Disability Plan 2022–2026.²⁷⁶

Governance and evaluation

As highlighted, the Prime Minister, state premiers, territory chief ministers and President of the Australian Local Government Association have all agreed to the ADS.²⁷⁷ Major decisions on the ADS are approved by a forum of Australian Government and state and territory government disability ministers.²⁷⁸

Overall strategic oversight and direction for the ADS is managed by a forum of deputy heads of departments responsible for disability in each jurisdiction.²⁷⁹ General operational decisions

about the implementation of the ADS will be made by the Australian Government and state and territory governments.²⁸⁰

Australian Government, state and territory government, and local government representatives meet to discuss and report to the Disability Reform Ministerial Council on the ADS.²⁸¹

The ADS flags that a central policy and implementation unit within the Australian Government will 'drive implementation of the Strategy and manage the governance process'.²⁸² To this end, the Department of Social Services established the Australia's Disability Strategy branch.²⁸³ This unit works with Australian Government departments and agencies to support them to deliver actions against specific ADS responsibilities.²⁸⁴ It also identifies opportunities to work with state and territory governments to progress ADS commitments.²⁸⁵

State and territory governments are responsible for ensuring streamlined communications with this central unit.²⁸⁶

The ADS identifies other sources of advice as part of its governance approach. This includes advice from people with disability, jurisdictions, the Australian Human Rights Commission, Australian Government agencies, and others including peak bodies, service providers, disability representative organisations, research bodies and data specialists.²⁸⁷

As well as reporting on the Targeted Action Plans and Outcomes Framework, governments will produce an ADS implementation report every two years.²⁸⁸ This report will include the voices of people with disability and the broader community, and detail progress against disability initiatives across all levels of government.²⁸⁹ The ADS states that 'people with disability, the Australian Human Rights Commission, and key stakeholders, including the Advisory Council, will be consulted in preparing the report'.²⁹⁰ The first implementation report will be tabled in the Australian Parliament once developed and agreed to by governments.²⁹¹

The ADS emphasises the importance of undertaking evaluations to show how policies, services and programs have contributed to ADS outcomes, and identify strengths and gaps.²⁹² Evaluations 'will enable a clear link to be drawn between the Outcomes Framework, [o]utcome [a]reas, [p]olicy [p]riorities and their impact on the lives of people with disability'.²⁹³

Under the ADS, governments have committed to:²⁹⁴

- 'publicly list planned policy, program and system evaluations'
- 'consider the Strategy's Evaluation Good Practice Guide Checklist when conducting evaluations involving people with disability'
- 'publish evaluation findings to build the evidence base and help inform policy decisions across Australia'
- 'include key findings from evaluations in the Strategy's two-yearly Implementation Reports.'

The Evaluation Good Practice Guide Checklist has been developed to help governments evaluate disability-specific and mainstream policies and services.²⁹⁵ The checklist prompts governments to consider issues including adherence to the ADS Guiding Principles, measuring impacts for different cohorts and the scope of the evaluation.²⁹⁶

Two major ADS evaluation reports are planned for 2025 and 2029.²⁹⁷ These will be conducted by independent reviewers and will include recommendations for improvement.²⁹⁸ They will be developed in consultation with people with disability, the Australian Human Rights Commission and other stakeholders including the ADS Advisory Council.²⁹⁹

1.7. State and territory government disability plans and strategies

State and territory governments each have in place disability plans and strategies, supported by action plans that drive their implementation. These include:

- NSW Disability Inclusion Plan 2021–2025³⁰⁰
- Inclusive Victoria: State Disability Plan 2022–2026³⁰¹
- Queensland’s Disability Plan 2022–27: Together, a better Queensland³⁰²
- Inclusive SA: State Disability Inclusion Plan 2019–2023³⁰³
- A Western Australia for Everyone: State Disability Strategy 2020–2030³⁰⁴
- Accessible Island: Tasmania’s Disability Framework for Action 2018–2021³⁰⁵
- Northern Territory Disability Strategy 2022–2032³⁰⁶
- ACT Disability Strategy 2022–2032 (currently under development).³⁰⁷

In Public hearing 31, ‘Vision for an inclusive Australia’, state and territory governments indicated implementation of the ADS is largely driven through these more localised disability plans and strategies.³⁰⁸ The Northern Territory, Queensland and Victoria have recently released new plans. The Australian Capital Territory, Tasmania and South Australia are developing new plans or reviewing those currently being implemented. Western Australia and New South Wales are part way through implementing an existing plan.

Public sector authorities and departments within state and territory governments develop action plans to guide the development and implementation of commitments in line with the priority areas of the state or territory government strategy. In New South Wales, Victoria, South Australia and Tasmania this is required by legislation.³⁰⁹

Review periods for the state and territory disability plans and strategies vary across jurisdictions. For example, in New South Wales the minister is required by legislation to review the plan before the end of each four-year period.³¹⁰ Western Australia has a 10-year strategy, and its supporting action plan is updated every two years.³¹¹

Most state and territory governments largely use their relevant plan's reporting processes to evaluate implementation of the ADS, in addition to participating in ADS reporting mechanisms.³¹² Some state and territory governments undertake formal review processes and table reports in their parliaments.³¹³ Some also have commissioners providing independent oversight.³¹⁴

Example: Queensland Government Disability Plan

The Queensland Government Disability Plan 2022–27: Together, a better Queensland (the QDP) is the primary mechanism for implementing the Queensland Government's commitments under the ADS.³¹⁵ The QDP adopts the outcome areas of the ADS.³¹⁶

The QDP guides the development of Disability Service Plans (DSPs) by each Queensland Government department.³¹⁷ The *Disability Services Act 2006* (Qld) requires every Queensland Government department to develop a DSP at least every three years.³¹⁸ Departments review their DSP in line with the QDP.³¹⁹ Other organisations, including statutory bodies and local governments, are also encouraged and supported to develop DSPs.³²⁰ Departmental chief executives report annually on their departmental DSPs.³²¹

Disability and Seniors Connect, a division within the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the department), is responsible for the QDP and working with other government departments to ensure DSPs are in place.³²²

The Disability Reform and Implementation Interdepartmental Committee, chaired by the Director-General of the department, oversees the coordination and implementation of the QDP.³²³

A progress report on the QDP will be published annually.³²⁴

In Public hearing 31, Ms Michelle Bullen, Executive Director at the department, confirmed that there is 'no funding allocated specifically' to the QDP.³²⁵ However, within the department, over \$203 million has been 'allocated towards delivering disability and inclusion services in 2022–23'.³²⁶ Ms Kathy Parton, Deputy Director-General at the department, explained that 'responsibilities are with so many different departments, so there would be budget line items within each department's budget'.³²⁷

1.8. Other national disability policy arrangements

Other arrangements currently in place also relate to national disability policy. Some of these are described at a high level below.

National Disability Data Asset

The National Disability Data Asset (NDDA) Pilot ran for 18 months until the end of 2021.³²⁸ It tested how data could be shared and linked.³²⁹ The pilot was a partnership between the

Australian Government and the governments of New South Wales, Victoria, South Australia and Queensland.³³⁰ It examined five test cases on:³³¹

- outcomes measurement in housing
- services and supports for people with disability and mental health issues
- pathways from education to employment
- experiences with the justice system
- early childhood supports.

The Department of Social Services, the Australian Bureau of Statistics and the Australian Institute of Health and Welfare are managing the next phase of the NDDA.³³² Governments are currently working on the design for the next phase.³³³

In Volume 12, we recommend the Australian Government and state and territory governments, through the Disability Reform Ministerial Council, make a long term commitment to the NDDA.

National Disability Research Partnership

The NDRP is funded by the Australian Government.³³⁴ It ‘will fund research led by and with people with disability’, to help facilitate a collaborative and inclusive disability research program to build evidence to inform policy and practice.³³⁵ The Establishment Phase of the partnership ran from June 2020 to June 2022.³³⁶ It made recommendations on the future make-up of the partnership.³³⁷ It is expected to start mid-2023.

The NDRP is discussed further in Volume 12.

Other national disability reporting processes

The NDIS has a range of reporting mechanisms. The NDIA provides quarterly reports to national disability ministers and publishes these on its website.³³⁸ The quarterly reports provide information on NDIS participants and the provision of supports by the NDIA for each jurisdiction.³³⁹ The NDIS also publishes a range of reports and data including information about participants and participant outcomes and market monitoring.³⁴⁰ Several NDIS-related measures are included in the ADS Outcomes Framework.

Oversight bodies also collect and report on information about people with disability. This includes the NDIS Quality and Safeguards Commission, the Commonwealth Ombudsman, and state and territory ombudsmen. Some jurisdictions have bodies to protect people with disability, for example, the NSW Ageing and Disability Commissioner.³⁴¹

The Australian Institute of Health and Welfare publishes reports providing an overview of people with disability in Australia, drawing on a range of information sources.³⁴²

The Australian Bureau of Statistics *Survey of Disability, Ageing and Carers* collects some information about people with disability, people aged 65 and over, and carers of people with disability or a long term health condition or older people.³⁴³ The survey does have limitations, and excludes people living in particular circumstances or geographic areas.³⁴⁴

The *Report on Government Services* looks at the equity, efficiency and effectiveness of government services in Australia.³⁴⁵ As previously described, one chapter focuses on Australian Government and state and territory government services for people with disability and their carers, including support provided through the NDIS and specialist disability services under the National Disability Agreement.³⁴⁶ It also reports on broad social and economic outcomes for people with disability and their use of mainstream services.³⁴⁷

1.9. Current national governance arrangements

Australian Government arrangements

The following is an overview of Australian Government administrative arrangements with responsibility for disability, specifically portfolios, ministerial positions and departments of state.

Portfolio and ministerial arrangements

National disability policy and programs are managed within the Social Services portfolio of the Australian Government.

Within a portfolio, different ministers can be responsible for different policy areas. As at 30 June 2022, the following ministerial positions had responsibilities within the Social Services portfolio:³⁴⁸

- the Minister for Social Services
- the Minister for the NDIS and Minister for Government Services
- the Minister for Housing and Minister for Homelessness
- the Assistant Minister for Social Services and Assistant Minister for the Prevention of Family Violence.

Ministers within the Social Services portfolio are responsible for administering legislation. This includes the *NDIS Act*, except those few sections administered by the Treasurer, and the *Disability Services Act 1986* (Cth).³⁴⁹

The Minister for Social Services and the Minister for the NDIS are currently members of Cabinet.³⁵⁰

Within the Social Services portfolio, the Department of Social Services is the lead entity or Department of State.³⁵¹

The Social Services portfolio also includes several entities and bodies relating to disability, including the NDIA and the NDIS Quality and Safeguards Commission.³⁵² Hearing Australia is also currently an entity in the Social Services portfolio reporting to the Minister for Government Services, providing research and hearing services.³⁵³

Departmental arrangements

The Department of Social Services is responsible for national disability and carers policies and programs. The Disability and Carers stream within the department's organisational structure is responsible for disability employment services; support for carers; advocacy support for people with disability; the ADS; and policy relating to the NDIS, including the NDIS market, continuity of support and participant plans.³⁵⁴

Current groups within the Disability and Carers stream include:³⁵⁵

- Strategic Policy, Markets and Safeguards
- Disability Strategy
- Disability Employment and Carers
- NDIS Participants and Performance.

Under these four groups, 10 different branches are responsible for different policy and programs.³⁵⁶

Alongside disability policy, the Department of Social Services is also responsible for a broad range of policy and program areas. These include, but are not limited to:³⁵⁷

- income security and support policies and programs
- services for families with children
- community mental health
- community support services
- child support policy
- social housing, rent assistance and homelessness
- whole-of-government service delivery policy.

The Department of Social Services is responsible for financial support for people with disability and carers, as part of the social security system.³⁵⁸

Other Australian Government departments are also responsible for various services and supports accessed by people with disability. For example, the Australian Government is responsible for: universities; aged care; elements of the health system including general practitioners, the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme; and the federal justice system.³⁵⁹

Article 33(1) of the *CRPD* requires governments to designate one or more focal points and to consider establishing a coordination mechanism for implementing the *CRPD*.³⁶⁰ Australia has two designated joint focal points: the Department of Social Services, and the Australian Government Attorney-General's Department.³⁶¹

Disability Reform Ministerial Council

The Disability Reform Ministerial Council is the current ministerial intergovernmental forum for disability issues. Its members include Australian Government and state and territory government ministers who have responsibility for disability policy.³⁶² It discusses ways to improve disability policy and implementation of the ADS and NDIS.³⁶³

The Disability Reform Ministerial Council is part of broader intergovernmental arrangements supporting Australian Government and state and territory governments to work together.

In May 2020, National Cabinet agreed to a review of ministerial forums that were part of the former Council of Australian Government arrangements.³⁶⁴ The aim of the review was to rationalise and reset intergovernmental structures and work programs.³⁶⁵

The review recommended reducing the number of forums and identified a small number of issues – including disability reform – that should maintain regular ministerial meetings.³⁶⁶ These ministerial meetings would not have a reporting line to first ministers within the National Cabinet infrastructure.³⁶⁷ National Cabinet membership includes the Prime Minister, state premiers and territory chief ministers.³⁶⁸ The Prime Minister, state premiers and territory chief ministers accepted the review's recommendations in October 2020.³⁶⁹

These arrangements were amended in 2022. Under the amended arrangements, the Disability Reform Ministerial Council reports annually to National Cabinet on its progress in delivering tasked priorities, and on its work plan.³⁷⁰

Other ministerial councils with reporting lines to National Cabinet include, but are not limited to:³⁷¹

- Attorneys-General
- Community Services
- Education
- Emergency Management
- Health
- Housing and Homelessness
- Infrastructure and Transport
- Joint Council on Closing the Gap
- Skills and Workforce
- Women and Women's Safety.

The Disability Reform Ministerial Council is supported by a forum of senior executives from jurisdictions.³⁷² As highlighted, this forum provides strategic oversight and direction for the ADS.³⁷³ Under this forum, groups of officials have been established to progress key tasks including the ADS, NDIS system reform and interface with mainstream services, and NDIS performance.³⁷⁴

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2. Strengthening national disability policy and strategy

Key points

- Key issues are hindering the effectiveness of national disability policy and strategy arrangements to improve outcomes for people with disability. This means people with disability in Australia are continuing to experience poorer outcomes than people without disability.
- The implementation of the National Disability Insurance Scheme (NDIS) has experienced ongoing issues that impact on the daily lives of people with disability, and their families and carers. For example, there continues to be confusion over the roles and responsibilities of the NDIS, and those of mainstream services.
- These issues highlight the need for strong and connected national disability policy and strategy arrangements. These arrangements should drive governments to advance equality, inclusion and the rights of people with disability.
- We recommend developing a new intergovernmental agreement – a National Disability Agreement – to provide the intergovernmental structure for national disability reform efforts. The proposed new National Disability Agreement should link the different elements of national disability policy together and support reforms that require national coordination.
- Australia's Disability Strategy 2021–2031 (ADS) is the national disability policy framework. Governments should review the ADS to ensure it addresses the issues raised and recommendations made in this *Final report*. State and territory disability strategies should also be reviewed to ensure alignment with this inquiry.
- As part of strong national disability policy and strategy arrangements, policies governing other service systems and issues need to adequately recognise people with disability. This is critical to improving outcomes for people with disability and addressing service and support gaps.

2.1. Introduction

Throughout this Royal Commission, people with lived experience of disability told us clearly and passionately about their vision for an inclusive Australia. We heard from people with varied impairments, backgrounds and perspectives. All shared a vision for a society where people with disability live free from violence, abuse, neglect and exploitation. A society where human rights are protected; where individuals can live with dignity, equality and respect, and where everyone can fulfil their potential.

National disability policy, strategy and governance structures should recognise this vision.

Public hearing 31, 'Vision for an inclusive Australia', examined implementation of Australia's Disability Strategy 2021–2031 (ADS). Ms Debbie Mitchell PSM, Deputy Secretary, Australian Government Department of Social Services, agreed the overall purpose of the ADS is to protect the rights of people with disability and to shift their aspirations of a better life into lived reality.¹ However she agreed that to achieve this, all governments should do things differently.²

In line with this, Mr Gerard Quinn, the United Nations Special Rapporteur on the rights of persons with disabilities, wrote about the need to reform service systems:

It is hard to talk about the formal right to live independently and be connected to the community without talking about the kinds of services needed to make it a reality. No amount of positive law reform will be sustainable unless the underlying ecosystem of support and services changes.³

This will require focused efforts from governments. Mr Quinn told us (although not with specific reference to Australia):

the reality is that over the past 60, 70 or 80 years, we've built up massive service systems that are actually designed to implement a segregationist ethic. Turning that around is going to take a lot of intentionality, a lot of effort, a lot of movement of budgets, a lot of innovation.

There will be many mistakes made and it's important that the political branch gives cover to the administration to innovate its way through in re-designing how these services are delivered.⁴

He gave evidence about article 4(4) of the *Convention on the Rights of Persons with Disabilities (CRPD)*, telling us it:

essentially says that states are encouraged to innovate, to think differently, not just to follow standards but to set their own standards.⁵

In his opinion, article 4(4) is an:

open invitation toward policy entrepreneurship within states, to thinking differently, and to putting in a dynamic of change that can help keep moving things forward.⁶

This volume, *Governing for inclusion*, focuses on how national disability policy, strategy and governance arrangements can best support governments to implement the focus and innovation needed to effect change for people with disability.

In this chapter, we review the adequacy of national disability policy and strategy arrangements to support the shifts required to advance equality, inclusion and the rights of people with disability, and make recommendations for reform.

In Chapter 3 of this volume, we recommend changes to reform national governance arrangements in the Australian Government.

Together, these recommendations aim to support the implementation of the changes required to better prevent violence against, and abuse, neglect and exploitation of, people with disability.

2.2. Difficulties improving outcomes

The extent of violence against, and abuse, neglect and exploitation of people with disability in Australia is substantial. This is evident through the experiences people with disability have shared with us, and is highlighted throughout this *Final report*.

Volume 3, *Nature and extent of violence, abuse, neglect and exploitation of people with disability*, examines available data and information. It provides information on experiences and outcomes for people with disability across different service systems and settings.

It is important to consider this data in the context of national disability policy and strategy arrangements – the focus of this volume. In particular, whether the significant national disability policy and reform efforts over the past decade have improved outcomes for people with disability.

As described in Chapter 1 of this volume, the National Disability Strategy 2010–2020 (NDS) was the first time all levels of government committed to a unified, national approach to improving outcomes for people with disability, and their carers and families.⁷ The final progress report for the NDS highlighted key achievements that were implemented between 2017 and 2021, including:⁸

- the full implementation of the NDIS
- Australian Government financial investment in improving outcomes for people with disability, including through the Quality Schools Package
- the implementation of the Information, Linkages and Capacity Building program
- the introduction of new disability legislation across jurisdictions
- the implementation of state and territory disability plans and strategies
- shifts to rights-based approaches across governments and communities to remove barriers to people with disability
- the establishment of this Royal Commission.

The ADS was introduced in 2021 following public consultation.⁹ This included a survey with questions about what had improved, and what had not, under the NDS.¹⁰ Taking the public survey in 2019, respondents were asked whether they perceived changes to health, wellbeing and inclusion of people with disability over the previous five years.¹¹

Of the 2,649 public survey responses, a large proportion of respondents indicated that there had been no change.¹² In addition:¹³

- 71 per cent of respondents said having enough money to make choices about where and how to live had not changed or become slightly or much worse
- only one-third of respondents said discrimination of people with disability had improved
- just over one-quarter of respondents reported experiences of neglect, exploitation, violence and/or abuse had become worse over the past five years.

Common areas where people reported improvement included:¹⁴

- access to individualised services and support, as a result of the rollout of the NDIS
- community attitudes and awareness
- community inclusion and access.

Yet in the same survey, other people said those same things had not improved.¹⁵

Common areas where people reported no improvement included:¹⁶

- government policy and investment
- access to health, hospitals and medicines
- enforcement of rights and discrimination legislation.

The 2019 report also flagged that, although many people saw improvements across the NDS outcome areas, there remained significant barriers for people with disability.¹⁷ Specifically:¹⁸

- in being able to live independently
- in being employed and financially secure
- in having access to services and opportunities they need and have the right to.

Some of the barriers and problem areas that arose during these consultations are also evident in data on outcomes for people with disability. In particular, there are key outcomes where there have been no or little improvement for people with disability over the lifetime of the NDS:

- In 2012, almost 53 per cent of people aged 15 to 64 years with a disability reported they participated in the labour force.¹⁹ In 2018, this had increased by 0.6 percentage points.²⁰ By comparison, between 2012 and 2018, the labour force participation rate for people without disability increased from around 83 per cent to 84 per cent.²¹
- Unemployment rates of people with disability remained fairly stable between 2012 and 2018: in 2012, 9.4 per cent of people aged 15 to 64 years with disability were unemployed;²² which increased slightly to 10 per cent in 2018.²³

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- In 2015 8.6 per cent of people with disability reported experiencing discrimination in the past 12 months because of their disability.²⁴ This increased to 9.6 per cent in 2018.²⁵ We note there are variations in experiences of discrimination across different types of disability. For example, in 2018, 22 per cent people with intellectual disability reported experiencing discrimination in the past 12 months.²⁶
 - The proportion of low income households with at least one person with disability experiencing housing cost stress (defined as spending more than 30 per cent of their income on housing costs) only slightly decreased between 2013–14 (21 per cent) and 2017–18 (20 per cent).²⁷

We note outcomes have improved for some people with disability. For example, in 2012, almost 37 per cent of people with disability aged 20 to 64 years had completed year 12 or equivalent.²⁸ This increased to over 42 per cent in 2015, and almost 46 per cent in 2018.²⁹

But, despite efforts including the introduction of the NDS and NDIS, it is clear some key outcomes for people with disability have not improved, or not improved very much. While different factors can influence these outcomes, people with disability are still experiencing overlapping and significant forms of discrimination and disadvantage.

2.3. Difficulties improving access to mainstream and community services

To live with dignity, equality and respect, and fulfil their potential, people with disability must be able to access appropriate community and mainstream supports and services.

The Productivity Commission's proposal for the NDIS recognised this. As highlighted in Chapter 1 of this volume, the proposal included three tiers.

Tier 1 focused on the general Australian population, providing insurance against support costs for those who acquired a disability.³⁰

Tier 2 focused on referring and linking all people with disability to services outside the NDIS, such as mainstream services and community supports, and providing information about effective care and support options.³¹ This tier was designed to work alongside Tier 1, and to strengthen voluntary links between the community and people with disability to stimulate social capital, including formal and informal supports.³²

The Information, Linkages and Capacity Building program provides grants to organisations focused on individual capacity building, information programs, economic and community participation, and capacity building of mainstream services.³³ The Department of Social Services administers the grants.³⁴ As part of the program, Local Area Coordinators help to link people with disability to other service systems and supports.³⁵

Tier 3 provided NDIS-funded, individualised supports to eligible people.³⁶

The 2011 Productivity Commission report emphasised the importance of the relationship between the NDIS and mainstream service systems. The report stated:

It will be important for the [NDIS] not to respond to problems or shortfalls in mainstream services by providing its own substitute services. To do so would weaken the incentives by governments to properly fund mainstream services for people with a disability, shifting the cost to another part of government ... This 'pass the parcel' approach would undermine the sustainability of the [NDIS] and the capacity of people with a disability to access mainstream services.³⁷

However, there have been issues that have hindered the achievement of the full vision of the NDIS proposed by the Productivity Commission. This chapter focuses on:

- issues with the implementation of Tier 2 of the NDIS, including:
 - NDIS individual plans under Tier 3 becoming the primary focus of government efforts, compromising the implementation of other components of the NDIS and the former NDS
 - the design and delivery of the grants under the Information, Linkages and Capacity Building program and confusion over its intended aim
- issues with understanding the roles and responsibilities of the NDIS and of other services, including what broader responsibilities governments of all levels have to deliver accessible and inclusive mainstream services.

Implementation of Tier 2 of the NDIS

Focus on Tier 3 supports

As highlighted in Chapter 1 of this volume and above, Tier 2 of the NDIS focuses on linkages and referrals to mainstream services and community supports for all people with disability.³⁸ It therefore relies on these supports being available and accessible.

Some have suggested the NDIS detracted policy attention from implementation of the aims of the broader NDS.³⁹ This was raised in the consultation undertaken to inform the development of the ADS, during which it was said 'coordination across government and resourcing for disability programs and supports, which should have been driven by the [NDS], were affected by the introduction of the NDIS'.⁴⁰

Mr John Walsh AO was the Associate Commissioner on the Productivity Commission's 2010–11 Disability Care and Support inquiry. Mr Walsh told the Royal Commission that, in his view, the final structure of the NDIS did not align with the Productivity Commission's intended design.⁴¹ Mr Walsh considered that Tier 1 and 2 of the NDIS were poorly implemented and not strategically included in the overall NDIS vision.⁴²

In Professor Richard Bruggemann's statement to the Royal Commission, he argued although the NDIS was supposed to be one part of the broader NDS, it has become the 'main game'.⁴³ He stated that most attention is on individualised packages, with governments not providing 'the level of support and commitment needed to drive the types of initiatives that can result in real community participation'.⁴⁴

Research by the Melbourne Disability Institute, in partnership with the Brotherhood of St. Laurence and Baptcare, also indicated there is a significant gap between the support promoted and what is actually available for those not eligible for NDIS plans.⁴⁵ The research involved two surveys: one of people with a disability living in Tasmania, Victoria and South Australia who were not NDIS participants, and one of families and carers of people with disability with the same criteria.⁴⁶ It also included a desktop scan of resources, services and programs in the abovementioned states, as well as focus groups with representatives from service providers, peak bodies, advocacy groups and disability representative organisations.⁴⁷

The review concluded that the gap between supports promoted and supports delivered is 'a major fault line' in the ADS.⁴⁸

The Australian Government commissioned Mr David Tune AO PSM to review the *National Disability Insurance Scheme Act 2013* (Cth) (*NDIS Act*).⁴⁹ His 2019 report emphasised that the NDIS should not take the focus away from the broader responsibilities governments have to ensure inclusive and accessible communities.⁵⁰

The same report recommended that the new national disability strategy to be developed post 2020 complement the NDIS by driving improved outcomes for all people with disability, whether or not they are NDIS participants.⁵¹ Mr Tune said a focus on improving mainstream services and community access will be critical to the long term viability and effectiveness of the NDIS.⁵²

Design of the Information, Linkages and Capacity Building program

Tier 2 of the NDIS includes the implementation of the Information, Linkages and Capacity Building program. This program is designed to:⁵³

- strengthen mainstream services and supports and community capacity to include people with disability
- foster continual improvement and innovation in disability support delivery
- minimise the need for escalation of support
- support carers
- build and promote individual capacity and peer support.

It is intended to be a 'bridging and capacity building service', 'designed to provide information, linkages and referrals to people with disability, their families and carers, with community and mainstream supports'.⁵⁴ The focus of program is on individual development and community inclusion.⁵⁵

The Department of Social Services has been reviewing the program, including the grants component and the role of Local Area Coordinators.⁵⁶ The department commissioned the Centre for Social Impact at the Swinburne University of Technology to analyse gaps and unmet needs.⁵⁷

As part of this review, the Centre for Social Impact consulted with stakeholders including 'grantees and sector informants'.⁵⁸ The review reports that stakeholders described the grants as 'piecemeal', 'scattergun' and a patchy 'jigsaw' of funding.⁵⁹ The competitive nature of the grants program was seen as counterproductive to collaboration and shared learning.⁶⁰ Stakeholders also expressed concern that short-term grant funding did not 'match the nature of the activities required to make change which require the building of trust and ongoing delivery of support and activities to meet entrenched needs'.⁶¹ Stakeholders identified the need for targeted commissioning, and a funding design driven by a more strategic approach.⁶²

This aligns with evidence we heard, in particular, concerns that short-term grant funding limits the ability to achieve real change.⁶³

However, views differ about the aims of the Information, Linkages and Capacity Building program. Some argue the program should fund disability services for people with disability who are not NDIS participants.⁶⁴

We heard concerns that the NDIS, although a proactive step towards the inclusion of people with disability, may have marginalised and further excluded people ineligible to access NDIS plans.⁶⁵ We have been told about the negative experiences of older people with disability over the age of 65 years and who are excluded from the NDIS, such as reduced access to community and social connections and deteriorating health.⁶⁶

This raises questions over the responsibility of governments to deliver inclusive and accessible mainstream services. During Public hearing 31, Ms Mitchell stated:

It was never envisaged that the [Information, Linkages and Capacity Building program] grant process would be supporting [T]ier 2 supports. So, when the Productivity Commission first developed the original NDIS program, they were looking at – they were under the assumption that those [T]ier 2 or mainstream supports that were in place when the NDIS was stood up would remain in place.⁶⁷

She said:

The [Information, Linkages and Capacity Building program] is \$136 million a year. It is not sufficient to be supporting or propping up mainstream services in health and education that are under the responsibility of the [state and territory governments].⁶⁸

Mr Walsh highlighted the direct relationship between Tier 2 of the NDIS and broader disability policy and strategy. He said the necessary partner of the NDIS and a strong Tier 2 is:

a strong and healthy National Disability Strategy, through which the states, territories and the [Australian Government] live up to their rhetoric in providing accessible

mainstream services to all Australians. There is little point building capacity and confidence of people with [disability] if the mainstream services are not there to support them.⁶⁹

It is not appropriate for the Information, Linkages and Capacity Building program to address all service gaps for people with disability. However, the program's aims of capacity building, referral and linkages require both an effective program design as well as other services and supports being available.

In March 2021, the Department of Social Services released a summary of findings to date from the review of the program, flagging issues raised to consider with the current investment strategy.⁷⁰ It also highlighted that the next steps of the review, including evaluating grant project outcomes and undertaking a needs and gap analysis.⁷¹ The independent review of the NDIS, underway at the writing of this report, is considering the effectiveness of the Information, Linkages and Capacity Building program.⁷²

Roles and responsibilities of NDIS and other government services

State and territory governments deliver many services that are used and accessed by both people with and without disability. State and territory governments are primarily responsible for public, social and community housing, public hospitals, public transport services, public schools and child protection.⁷³ Before the NDIS, state and territory governments were also responsible for disability services (except disability employment services).⁷⁴ Disability services were those specifically designed to meet the needs of people with disability.⁷⁵

The Australian Government is also primarily responsible for the delivery of some services accessed by people with disability on a day to day basis. These include disability employment services, income support payments, the Medicare Benefits Schedule, services provided by general practitioners, and the aged care system.⁷⁶

The introduction of the NDIS changed the delivery of disability services. As described in Chapter 1 of this volume, key documents outlining the distribution of roles and responsibilities between the NDIS and other services include the NDIS Rules and the 'Applied principles and tables of support'. Operational guidelines⁷⁷ and mechanisms such as escalation processes and pathways⁷⁸ are also in place to support different services to work together. However, despite these, the boundaries between the NDIS and mainstream service systems remain unclear.

Some of these issues existed before the introduction of the NDIS, while others are a direct result of the implementation of the NDIS. All continue to affect the lives of people with disability, and their families and carers. These issues include:⁷⁹

- the discontinuation of programs provided by governments when funding was transferred to the NDIS
- a lack of clarity at the interface between the NDIS and other service systems, such as the health system

-
- persistent gaps in services and supports which existed before the introduction of the NDIS
 - challenges in funding system-wide services, such as advocacy and support coordination.

National Disability Services, Australia's peak industry body for non-government disability service provider organisations, told us that ambiguity in relation to the responsibilities of different systems arose with the introduction of the NDIS and continues to persist years into implementation.⁸⁰ National Disability Services also highlighted that this uncertainty can at times put the health and safety of people with disability at risk.⁸¹

Examples of issues considered during the Royal Commission

This Royal Commission has heard about problems in the relationship between the NDIS and other service systems. These have related to the unclear delineation of responsibilities, service gaps and concerns about governments meeting their broader responsibilities to provide inclusive and accessible services.

The transformation of legislation and high level policies into operational reality has also been raised as a key issue impacting on these interface issues. Mr Michael Coutts-Trotter, then Secretary of the New South Wales Department of Communities and Justice, told us:

the *NDIS Act*, Supports for Participants Rules, Ministerial policy and [Administrative Appeals Tribunal] decisions are interpreted and developed into operational policies and guidelines by the NDIA [National Disability Insurance Agency], which experience in [New South Wales] has indicated can, in some cases, lead to further confusion as to roles and responsibilities.⁸²

The Royal Commission has heard that confusion remains regarding the delineation of roles and responsibilities between the NDIS and other service systems.

Issues regarding the relationship between the NDIS and the education and justice systems are discussed in Volume 7, *Inclusive education, employment and housing* and Volume 8, *Criminal justice and people with disability*.

The following information highlights some other service systems and interface issues with the NDIS.

NDIS and the health service system

For example, the Royal Commission has heard about issues in the health system with accessing NDIS services. Parents of children with disability have told us about trying to access appropriate disability services while their child was in hospital, only to receive inconsistent advice about whether NDIS supports were available.⁸³

The Queensland Government submitted that all state and territory governments experience challenges 'ensuring patients with disability can safely leave hospital in a timely manner,

with delays experienced often due to inadequate NDIS community supports'.⁸⁴ The NSW Ageing and Disability Commission raised concerns about the high risks faced by people with cognitive disability and swallowing difficulties in hospitals, particularly during mealtimes.⁸⁵ This included not being provided adequate support to consume their meals.⁸⁶

The NDIS Quality and Safeguards Commission's January 2023 Own Motion Inquiry report highlights issues regarding the interface between supported accommodation services and the health system. The report highlights:

Incidents arise in relation to the transition of participants from the health system to the disability support system, from inadequate access to health care resulting in accelerated deterioration where a person has a chronic condition, and poor quality end of life support.⁸⁷

NDIS and the employment service system

In Public Hearing 9, 'Pathways and barriers to open employment for people with disability', Ms Catherine McAlpine, Chief Executive Officer of Inclusion Australia, explained that the Disability Employment Services, the Disability Support Pension and the NDIS are the three main systems that work together to effect how a person with intellectual disability or complex support needs finds and maintains employment. In her opinion, 'there is a lack of appropriate supports to navigate the frameworks, programs and policies available'.⁸⁸ In an exchange with the Chair of the Royal Commission, both Professor Anne Kavanagh, Academic Director of the Melbourne Disability Institute, and Dr Alexandra Devine, Research Fellow with the Melbourne School of Population and Global Health, agreed there is no simple guide available to support people to navigate these systems or understand the supports available through private or government programs.⁸⁹

The importance of support in navigating these pathways and the consequence when they are not available was also highlighted by Mr Edward Sianski. Mr Sianski gave evidence about the lack of structures available to assist his son Yuri, who lives with schizophrenia, in obtaining a job.⁹⁰ Mr Sianski stated that his grandson, 'Robert',⁹¹ has also been diagnosed with schizophrenia but has received more employment support than his father, Yuri.⁹² Robert receives support through the NDIS to arrange travel to attend interviews and is registered with an employment agency.⁹³ Mr Sianski stated:

I think the contrast between the support Robert is getting and what Yuri got is an amazing contrast.

It is encouraging that Robert has NDIS support and an employment agency that recognises his special needs. My current fear is that this support will evaporate in time and that he will [be] joining his father, Yuri, languishing on the sidelines of employment and education opportunities to supplement his pension.⁹⁴

In response, the Australian Government submitted:

The [Department of Social Services] is working with the NDIA to ensure supports available under [Disability Employment Services] and the NDIS are well integrated. In particular, the NDIA and [the Department of Social Services] are examining the participant experience of preparing for work, finding a job, keeping a job and career development to understand how NDIS supports and the [Disability Employment Services] program can best support participants to find and keep a job, and improve outcomes for NDIS participants.⁹⁵

Employment services and the NDIS is discussed further in Volume 7.

NDIS and the housing service system

The Royal Commission has heard that there can be a lack of clarity about the responsibilities of the NDIS and the mainstream housing service system in the coordination of accommodation and supports to people with disability. In Public hearing 32, ‘Service providers revisited’, Ms Cathy Milne from Side by Side Advocacy told us about the frustration she experienced trying to coordinate housing and NDIS supports for people with disability:

there are hours and hours of time that I would rather spend doing supported decision-making that I’m spending convincing a housing provider that they have a responsibility for some of it and NDIS that they have a responsibility for other parts of it. That’s a waste of my resources. Someone in a government agency should be working with someone in another agency negotiating an [Memorandum of Understanding], because this is a systemic issue. But when it comes to my lap, it’s not a systemic issue. It’s the difference between someone living in their home or ending up in hospital for six years – for six months before being forced into a nursing home prematurely. The gap is too big to address at an individual level, and it shouldn’t be.⁹⁶

In Public hearing 25, ‘The operation of the NDIS for First Nations people with disability in remote and very remote communities’, Ms Beth Walker, Public Guardian and Trustee of the Northern Territory, told us that gaps still exist for people with disability in service systems such as housing and the criminal justice system, leaving people without a coordinated package of accommodation and support:

what we see or get told is housing isn’t an NDIS problem. And so – but sometimes there’s not an awareness of what it means for the individual ... I’ve talked often about the package of, you know, somewhere to live and support, and that’s one of the areas alongside Corrections and Health and some of those other touch points that I think the scheme needs to – to be slightly remodelled to make sure that we’re not – not creating gaps at those spaces.⁹⁷

Volume 7, *Inclusive education, employment and housing* discusses further issues relating to housing and homelessness.

Provider of last resort

We have also considered issues regarding which service system should be the provider of last resort. Public hearing 14, 'Preventing and responding to violence, abuse, neglect and exploitation in disability services (South Australia)', heard evidence about providers of last resort when an NDIS participant is at risk of becoming homeless.

The Joint Standing Committee on the NDIS recommended in its report, *Transitional Arrangements for the NDIS*, that the Australian Government and state and territory governments and the NDIS collaborate to include crisis accommodation and provider of last resort arrangements for housing in their bilateral agreements governing the transition to the NDIS.⁹⁸ Our report following Public hearing 14 recommended that a provider of last resort should be in place in each Australian jurisdiction.⁹⁹

There will always be people with disability who require care and support outside the NDIS or other programs established by legislation and specifically funded by governments. There will also be circumstances where the market is unable to meet the needs of particular NDIS participants for one reason or another.¹⁰⁰

Volume 10, *Disability services*, examines the role of providers of last resort when there is a market failure.

Case management and coordination

Responsibility for case management and coordination following transition to the NDIS has also been highlighted as an issue. For example, before the NDIS, people with disability in South Australia had an assigned case manager to work with them and connect them to disability and mainstream community supports.¹⁰¹ Following the introduction of the NDIS, this service is no longer available. Ms Anne Gale, South Australian Public Advocate and Principal Community Visitor, told us there is no single role with overall responsibility to help NDIS participants navigate different service systems.¹⁰²

A similar issue was raised in Public hearing 6, 'Psychotropic medication, behaviour support and behaviours of concern'. We heard evidence that previously collaborative approaches between the health and disability systems used before the NDIS to provide positive behaviour supports were now 'siloed and separated'.¹⁰³

One of the principles in the 'Principles to determine the responsibilities of the NDIS and other service systems' is:

The interactions of people with disability with the NDIS and other service systems should be as seamless as possible, where integrated planning and coordinated supports, referrals and transitions are promoted, supported by a no wrong door approach.¹⁰⁴

However, the Victorian Government submitted there is widespread evidence people who need coordinated supports across service systems are experiencing harm and neglect.¹⁰⁵ The Victorian Government states:

people's support needs are often perceived as distinct and separate, and viewed through the lens of different service systems, which filter their needs in and out of scope.¹⁰⁶

Interactions between the NDIS and the funding and supply of interpreters

In Public hearing 29, 'The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities', we heard that the NDIS does not fund spoken language interpreters, as these are not viewed as directly related to a participant's disability.

Ms Sarah Johnson, Acting Deputy Chief Executive Officer, Strategy and Service Improvement at the NDIA, said the NDIA should ensure that interpreters were present in meetings with participants where they were requested and needed.¹⁰⁷ Ms Johnson also referred to obligations on health and education systems to provide interpreters in those settings.¹⁰⁸ Ms Johnson accepted the possibility of someone falling through the gaps because they do not know who to contact for an interpreter, and indicated this would be examined in the work on the new NDIS Cultural and Linguistic Diversity Strategy.¹⁰⁹

Volume 6, *Enabling autonomy and access*, discusses access to interpreters in further detail.

Issues raised in other reviews

The Joint Standing Committee on the NDIS identified the interface between the NDIS and mainstream services as an issue in the transition to the NDIS.¹¹⁰ Particular concerns were raised in the areas of health, aged care, education, transport, crisis accommodation and justice.¹¹¹ It said that the Applied principles and tables of support was subject to different interpretations and lacked clarity, and the transition of Australian Government and state and territory government programs to the NDIS was contributing to service gaps and confusion between service responsibilities.¹¹²

The 2019 review of the *NDIS Act* said the lack of clarity in roles and responsibilities between the NDIS and mainstream services was resulting in:

boundary issues and funding disputes, service gaps and confusion for NDIS participants, poor quality planning and inconsistent decisions about when a support is reasonable and necessary.¹¹³

It recommended that governments and the NDIA clarify the definition of 'reasonable and necessary'.¹¹⁴ This included through updating the NDIS Rules to reflect agreements on service boundaries, and amending the *NDIS Act* to clarify that the NDIS is not responsible for funding

supports in the absence of that support being provided through another more appropriate service.¹¹⁵

The Productivity Commission's review of the National Disability Agreement highlighted concerns of service gaps created by previous service funding being rolled into the NDIS, such as for community mental health programs, carer supports and community access and inclusion programs.¹¹⁶

Resolving system boundary and service gap issues

The effective implementation of the three tiers of the NDIS, including Tier 2, is critical to ensure Australia fully realises the benefits of the NDIS for people with disability and the community as a whole.

There have been efforts to resolve some of these challenges. In 2019 the Joint Standing Committee on the NDIS reported progress on resolving issues had been slow.¹¹⁷

Progress has reportedly been made in addressing hospital discharge delays for people awaiting NDIS assessments and supports. The Disability Reform Ministerial Council reported as at 31 December 2022, hospital discharge delays had reduced to 33 days from 160 days in early 2022.¹¹⁸ This shows progress can be made on some issues if it is driven by leadership with political support.

In its 2017 review of NDIS costs, the Productivity Commission highlighted that further clarification of boundaries between service systems at the operational level will prevent duplication, gaps and cost shifting between the NDIA, the Australian Government and state and territory governments.¹¹⁹ In its review of the National Disability Agreement in 2019, the Productivity Commission stated that despite the plethora of legislation, agreements, principles and guidelines in place, the unclear interface between mainstream services and the NDIS has been a persistent issue.¹²⁰

Some of the slow progress resolving service boundary issues is related to the lack of clarity about the role of mainstream services in supporting people with disability, particularly those not eligible for NDIS plans. Mr Walsh has suggested that, within an environment of potential cost shifting, there is little reason to expect the ADS will be effective.¹²¹ He said that in this environment, little progress has been made to increase investment in mainstream services and move to inclusive settings.¹²²

We accept the Australian Government and state and territory governments have been trying to resolve the issues with the delineation of responsibilities between the NDIS and other service systems.¹²³

Nevertheless, people with disability and their families continue to experience service gaps. Clarifying the respective responsibilities of the NDIS and mainstream services is a matter of critical importance in improving outcomes for people with disability.

Independent review of the NDIS

As discussed in Chapter 1 of this volume, the independent review of the NDIS (the NDIS Review) is currently underway. It is considering the design, operations and sustainability of the NDIS, and ways to build a more responsive, supportive and sustainable market and workforce.¹²⁴

Ms Mitchell confirmed the NDIS Review is considering Tier 2 supports.¹²⁵ The terms of reference for the NDIS Review (Appendix 5B) include specific consideration of the effectiveness of the Information Linkages and Capacity Building program.¹²⁶ The NDIS Review will also be looking at ‘improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector’.¹²⁷ It will also be considering ‘whether there has been any service and financial impact, positive or negative, on other service systems and programs and the adequacy of supports for people with disability outside the NDIS’.¹²⁸

Given the NDIS Review is underway we do not propose to make a recommendation on these issues in this volume. However, Volume 8, *Criminal justice and people with disability*, makes a specific recommendation relating to clarifying the interface between the NDIS and the criminal justice system.

These issues link to the ability of governments to meet their obligations for providing inclusive and accessible mainstream services. It is essential strong national disability strategy and governance arrangements are in place that recognise this. These arrangements need to support governments to work together and effectively resolve critical national disability issues.

2.4. Structures to support national coordination and alignment

There are many national disability strategies and agreements in place. It is important there is a clear understanding of how they connect with each other and how governments work together to implement them. This section considers the outdated nature of current intergovernmental arrangements, and the need to update these to better support coordinated and connected national disability policy and strategy efforts.

Outdated structures

In Chapter 1 of this volume, we describe the National Disability Agreement in detail. This agreement ‘provides the national framework and key areas of reform for the provision of government support to services’ for people with disability.¹²⁹

The Productivity Commission reviewed the National Disability Agreement in 2019, concluding that the Agreement was no longer fit for purpose and had a weak influence on policy.¹³⁰ The recommendations of the review are outlined in Appendix 5C.

The Productivity Commission noted the National Disability Agreement, the NDS, and the NDIS were underpinned by different arrangements, with some overlap and duplication.¹³¹ Its report said:

The multitude of different agreements, strategies and plans are causing unnecessary complexity. Without a clear and logical link between the purpose and scope of each of these arrangements, there is a risk of confusion and reduced accountability for improving outcomes for people with disability and carers.¹³²

The Productivity Commission concluded:

An overarching agreement is needed to clarify the relationship between all aspects of the disability policy landscape, and to facilitate cooperation between governments and promote greater accountability.¹³³

The review argued a new intergovernmental agreement was the best vehicle ‘to influence and drive government policies and practices to achieve the agreed outcomes’.¹³⁴ The Productivity Commission said neither the National Disability Agreement nor the former NDS were ‘broad enough or comprehensive enough to perform an overarching role’.¹³⁵ The NDS did not outline roles and responsibilities or include a performance reporting framework; and the National Disability Agreement had a narrow service delivery focus and lacked a statement of policy actions by governments.¹³⁶

The Productivity Commission proposed that a new National Disability Agreement be ratified to provide overarching direction for disability policy, with the NDS and NDIS forming elements within it.¹³⁷ It recommended the agreement outline:¹³⁸

- ‘the purpose of the [National Disability Agreement], and how it links to the NDS and the [NDIS]’
- ‘the aspirational objective for disability policy’
- ‘the roles and responsibilities of governments in progressing that objective’
- ‘the outcomes being sought for people with disability and carers’
- ‘a nationally consistent performance reporting framework for tracking progress against those outcomes.’

In this proposed architecture, the NDS would be a schedule to the new National Disability Agreement.¹³⁹ The NDS schedule would detail the specific policy actions and reform priorities agreed to by governments that link to the outcomes of the new National Disability Agreement.¹⁴⁰ The purpose of the NDS would in turn be set out in the policy actions detailed in the new National Disability Agreement’s outcome areas.¹⁴¹

The agreements implementing the NDIS would remain separate to the new National Disability Agreement, but be explicitly linked through references in the agreement and, where relevant, be included as schedules.¹⁴²

As discussed in Chapter 1 of this volume, the National Disability Agreement does not have an end date and has not been replaced.¹⁴³ It currently has limited practical application.¹⁴⁴

Mr Luke Mansfield, Acting Deputy Secretary, Disability and Carers at the Department of Social Services, told us that elements of the National Disability Agreement and recommendations from the Productivity Commission had been considered in developing the ADS.¹⁴⁵

However, we consider significant benefits could still be achieved with a fit for purpose National Disability Agreement to complement the ADS. Realising the vision of the ADS requires coordination across governments. This can be supported through a new intergovernmental agreement.

A new National Disability Agreement

An intergovernmental structure for national disability reform

The Productivity Commission's 2019 review of the National Disability Agreement spoke about the unnecessary complexity of the differing national disability policy and strategy arrangements, and the lack of a clear link between them.¹⁴⁶

These issues still stand today. We agree with the Productivity Commission's assessment that this risks confusion and reduced accountability for improving outcomes for people with disability.¹⁴⁷

We also agree with the Productivity Commission's conclusion that an overarching disability agreement is needed to:¹⁴⁸

- clarify the relationships between the policy and strategy arrangements
- influence and drive government policies and practices to achieve agreed outcomes
- facilitate cooperation between governments
- promote greater accountability.

We recommend the Australian Government and state and territory governments develop and agree to a new National Disability Agreement. Such an agreement would provide a structure for coordinated government efforts to protect and advance the rights and equality of people with disability and promote their inclusion within Australian society. It would also provide a mechanism to link together different national disability policies, strategies and agreements, particularly the ADS and NDIS.

A strong ADS is a necessary partner to a strong NDIS. A key objective of the NDIS is to ensure access to inclusive mainstream services and community supports for people with disability. An aim of the ADS is to 'drive mainstream services and systems to improve outcomes for people with disability'.¹⁴⁹ However, as section 2.3 highlights, there are difficulties in improving access to mainstream services for people with disability. To achieve the objectives of the NDIS and ADS, strengthened national collaboration and coordination is needed.

Our recommendation for a new National Disability Agreement is not intended to diminish the position of the ADS as the key vehicle to drive cross government and cross sector actions to improve outcomes for people with disability. However, a new National Disability Agreement will provide the framework to coordinate government actions to implement the objectives of the ADS.

This *Final report* makes many recommendations, some of which will require careful consideration at a national level and close coordination across governments to ensure their effective implementation. By clearly articulating government roles and responsibilities, and governments committing to work together, national reforms are more likely to be achieved.

Components of a new Agreement

Given the Disability Reform Ministerial Council's role in overseeing national disability policy and priorities, this Royal Commission recommends that it develop the new National Disability Agreement. Members of National Cabinet, that is, first ministers of jurisdictions, should ratify the new National Disability Agreement. This is in line with the convention that first ministers of jurisdictions agree and are the signatories to all national agreements.

The new National Disability Agreement should be anchored by the objective for governments to advance equality, inclusion and the rights of people with disability in Australia. It should identify the outcomes being sought for people with disability and an appropriate performance reporting framework for tracking progress.

The agreement should link the key national disability policy and strategy arrangements, particularly the ADS and NDIS, through their roles in achieving the agreed objective and outcomes.

The new National Disability Agreement should also provide clear information on the roles and responsibilities of governments. This should include, but not be limited to, responsibilities to:

- advance equality, inclusion and the rights of people with disability through the development and delivery of legislation, policies, programs and services, including by collaborating and coordinating across governments
- protect people with disability from violence, abuse, neglect and exploitation, through actions such as coordinating independent oversight and complaints mechanisms
- undertake genuine consultation and engagement with people with disability
- work with non-government entities and the broader community sector to deliver on the objective of the agreement and the ADS.

Key policy documents, including the ADS, relevant NDIS agreements and the 'Applied principles and tables of support', should be included as schedules to the new National Disability Agreement.

We recommend the new National Disability Agreement be in place by the end of 2024. This should provide reasonable time for appropriate consultations, negotiations and agreements. It would ensure the agreement is in place in a timely manner to provide momentum to implement the ADS and recommendations of this Royal Commission.

Recommendation 5.1

The Australian Government and state and territory governments should develop a new National Disability Agreement through the Disability Reform Ministerial Council, to be signed by first ministers. The fundamental objective of the Agreement should be to advance equality, inclusion and the rights of people with disability in Australia.

The Agreement should provide the framework for intergovernmental collaboration to:

- develop and implement reforms requiring national attention and coordination, including recommendations of this Royal Commission
- implement Australia's Disability Strategy 2021–2031 (ADS) and the National Disability Insurance Scheme (NDIS).

The ADS, NDIS national agreements and policies, and other national disability frameworks should be schedules to the new National Disability Agreement.

The Agreement should clearly set out roles and responsibilities of parties to the Agreement.

The new National Disability Agreement should be developed and finalised by the end of 2024.

2.5. Impact of Australia's Disability Strategy

As discussed in Chapter 1 of this volume, the ADS was released in December 2021, building on its predecessor the NDS as 'Australia's national disability policy framework'.¹⁵⁰ Section 2.3 of this chapter has described the importance of a strong ADS to ensure all people with disability are able to access the supports and services they need.

This section considers two main issues concerning the ADS:

- the ADS' ability to advance the rights of people with disability
- the effectiveness of the approach to implement the ADS.

We make recommendations designed to strengthen the ADS and facilitate its implementation.

Australia's Disability Strategy and human rights

Volume 4, *Realising the human rights of people with disability*, considers the effectiveness of current legislative frameworks in realising and protecting the human rights of people with disability. In this section, we consider these issues in the context of the ADS.

As highlighted in Chapter 1 of this volume, the ADS indicates it will 'play an important role in protecting, promoting and realising the human rights of people with disability'.¹⁵¹ Article 3 of the *CRPD* is the basis for the Guiding Principles in the ADS.¹⁵²

Following Public hearing 31, Counsel Assisting submitted that the alignment of the ADS with the *CRPD* should be improved, including:

- The rights of people with disability recognised in articles 5 to 30 of the *CRPD* are not clearly reflected in the language of the ADS.¹⁵³
- Connection to the realisation of rights does not consistently flow through the various layers of the ADS structure.¹⁵⁴ For example, Policy Priority 4 under the outcome area 'Safety, Rights and Justice' is 'the rights of people with disability are promoted, upheld and protected'.¹⁵⁵ But with no Targeted Action Plan addressing human rights, it is difficult to see what, if any, actions are targeted at realising particular rights and how these will be reviewed and evaluated.¹⁵⁶
- The Safety Targeted Action Plan recognises that reducing the risk of harm in service delivery and responding effectively when it occurs is key to upholding *CRPD* rights.¹⁵⁷ This Targeted Action Plan appears to take a safety and risk-based model.¹⁵⁸ Human rights are not explicitly identified in the 'Key Outcomes and Objectives' in the Targeted Action Plan nor in any of the identified Australian Government actions in the plan.¹⁵⁹

In response to these submissions, the Australian Government told us governments at all levels are committed to developing and implementing 'policies, programs, services, and systems which reflect the human rights principles of the *CRPD*'.¹⁶⁰ It also said people with disability, disability representative organisations, and representatives from key sectors informed the decision to develop the Targeted Action Plans under the ADS.¹⁶¹ The Australian Government advised that further Targeted Action Plans would be developed through engagement with people with disability.¹⁶²

In Public hearing 31, Ms Mitchell from the Department of Social Services was questioned about the ADS not having a strong enough focus on *CRPD* rights. She said the Guiding Principles augment the ADS, particularly by developing an understanding of the *CRPD* across the community, businesses and mainstream services.¹⁶³

Although governments have committed to using the Guiding Principles, Ms Mitchell confirmed her understanding that their implementation is not mandatory via legislation.¹⁶⁴

The ADS is not the sole mechanism to ensure that the rights of people with disability recognised in the *CRPD* are protected in domestic laws, practices and policies. The ADS

operates alongside, among other mechanisms, state and territory government plans, disability discrimination action plans, and national, state and territory legislation to implement the *CRPD*.¹⁶⁵ However, as the ADS itself recognises, it has an important role to play in protecting and promoting human rights for people with disability.¹⁶⁶

Implementing Australia's Disability Strategy

The ADS is being implemented in different ways, including through Targeted Action Plans and disability strategies and plans in each jurisdiction.

The ADS is relatively new, and it is difficult to assess its effectiveness on outcomes for people with disability. But we have identified issues concerning its implementation which raise questions about the ability of governments to take coordinated national action.

Effectiveness of Targeted Action Plans

Currently, there are five Targeted Action Plans, focusing on employment, community attitudes, early childhood, safety, and emergency management.¹⁶⁷

Ms Mitchell stated the ADS is designed to be adaptive and to pivot to meet future needs and areas identified by people with disability.¹⁶⁸ In line with this, different approaches to the ADS and Targeted Action Plans will be considered following publication of this *Final report* and on advice of people with disability.¹⁶⁹

However, many initiatives in the current Targeted Action Plans focus on individual jurisdictions, and existing programs and commitments that have been in place for some time. This can be considered limited and fragmented, particularly when more national coordination is needed to address some of the issues identified.

We asked the Australian Government what actions had been taken to date to facilitate a coordinated approach across governments when implementing the Targeted Action Plans. Ms Mitchell confirmed that although actions are generally taken by governments independently, there are examples of governments working together.¹⁷⁰ These include:

- data sharing agreements between the NDIA and state and territory governments¹⁷¹
- the Safety Targeted Action Plan requiring the Australian Government to lead and work in collaboration with state and territory governments¹⁷²
- funding of pilot programs in state and territory jurisdictions to strengthen the links between service systems to improve the safety of people with disability¹⁷³
- improving the capacity and confidence of key professionals who provide services and supports to people with a disability.¹⁷⁴

Given the multitude of reporting and implementation processes across governments, the Australian Government acknowledged work is needed to maintain national alignment with the ADS.¹⁷⁵ It pointed to several mechanisms in place to support national collaboration and coordination, such as:¹⁷⁶

- the central unit in the Department of Social Services
- the Disability Reform Ministerial Council
- engagement between Australian Government, state and territory government and local government officials.

But independent actions by different jurisdictions may affect the ability of the ADS to achieve national outcomes.

For example, the Victorian Government expressed concerns that the current Community Attitudes Targeted Action Plan relies heavily on state and territory governments to deliver national outcomes.¹⁷⁷ The Victorian Government argued implementation should involve collective efforts from all jurisdictions.¹⁷⁸ It also argued for greater national leadership to align ADS activities across jurisdictions.¹⁷⁹

Alignment of state and territory disability plans and strategies with the ADS

Disability plans and strategies of state and territory governments are critical tools to implement the ADS, particularly given the specific focus of Targeted Action Plans.

Some state and territory disability plans and strategies were released before the ADS:

- a Western Australia for Everyone: State Disability Strategy 2020–2030, which is supported by an Action Plan that is updated every two years¹⁸⁰
- the South Australian plan, Inclusive SA: State Disability Inclusion Plan 2019–2023 is due to be reviewed in 2023.¹⁸¹ It was subject to an interim review designed to align it with the ADS¹⁸²
- Accessible Island: Tasmania’s Disability Framework for Action 2018–2021 was released in 2018. We have been told that work has commenced to inform the next version, which will reflect the broad direction of the ADS.¹⁸³

Queensland’s Disability Plan 2022–27: Together, a better Queensland (QDP), was released just after the ADS. As noted in Chapter 1, the state plan is the primary mechanism to implement Queensland Government commitments under the ADS.¹⁸⁴ The QDP adopts the outcome areas of the ADS.¹⁸⁵

In preparation for Public hearing 31, state and territory governments provided information to the Royal Commission on steps taken to implement the ADS.¹⁸⁶ Counsel Assisting submissions following the hearing observed that this information indicated a range of approaches to

implementation.¹⁸⁷ Counsel Assisting acknowledged ‘each state and territory is different and will need an approach that accounts for their own unique and diverse communities’.¹⁸⁸

The New South Wales Government identified the lack of alignment in reporting schedules and requirements for the ADS and its jurisdictional action plan as a barrier to implementation.¹⁸⁹ As previously noted, the Victorian Government has raised the need for greater national leadership to align ADS activities across state and territory governments.¹⁹⁰

Following Public hearing 31, Counsel Assisting submitted that the varying arrangements reveal the potential for a lack of alignment with the broader vision of the ADS and national objectives.¹⁹¹ Counsel Assisting submitted that these arrangements also risk duplication of processes through the development of and reporting on multiple plans and strategies.¹⁹²

We agree that mechanisms by which national alignment, collaboration and coordination may be enhanced should be considered by all governments.

Aligning Australia’s Disability Strategy with our recommendations

We recognise significant efforts have been made in developing the ADS. These include considering ways to improve the implementation of the NDS, and consulting widely with people with disability and the broader community. However, there is room for further improvement.

As we have noted, the vision of the ADS is centred on an inclusive Australia.¹⁹³ The ADS looks to focus on removing barriers ‘so people with disability can fully and effectively participate in and contribute to society’.¹⁹⁴

Mr Gerard Quinn said inclusion is:

a defining theme of the entire [CRPD]. Every right, every obligation, is attuned to the achievement of inclusion. To be sure, it is a form of inclusion that takes personhood and choice seriously.¹⁹⁵

Counsel Assisting raised concerns regarding the effectiveness of the ADS in fully realising the rights contained in the CRPD. Counsel Assisting submitted, based on the current implementation approach, it is unlikely the objectives of the ADS will be realised by 2031.¹⁹⁶ Counsel Assisting submitted the ADS:

- ‘fails to make an express commitment to respecting, protecting and fulfilling the human rights of people with disability in the way described by Mr Quinn’¹⁹⁷
- ‘does not make an express commitment to develop and design policy that seeks to end segregated settings and practices that segregate and exclude people with disability’¹⁹⁸
- ‘does not make an express commitment to advancing substantive or transformative equality’¹⁹⁹
- ‘does not address the layers of ableism that exist in Australia’.²⁰⁰

Counsel Assisting also submitted actions are needed across all levels of government, which should be supported by more effective national leadership from the Australian Government and intergovernmental processes.²⁰¹

In response, the Australian Government submitted that it does not accept there is a real basis for these concerns.²⁰² The Australian Government said the ADS:

acknowledges and respects the diversity of people with disability. It recognises the importance of tailoring actions to take into account this diversity. Above all, the Strategy is focused on interrelated outcome areas with tangible, achievable policy priorities.

The Strategy is a commitment to create an inclusive community and speaks to Australia's national aspirations to enshrine and elevate the ideals of respect, inclusivity, and equality. It is an aspirational road map pointing the way ahead and represents the national commitment to enabling every Australian to meet their potential, to achieve, to have a fair go and to have real choices.²⁰³

This *Final report* shows that sweeping changes are needed to strengthen implementation of the *CRPD* and to better respect, protect and fulfil the human rights of people with disability. These changes need to be clearly captured in the ADS as the national disability policy framework.

Counsel Assisting submitted it was open to the Royal Commission to recommend that the Australian Government and state and territory governments enhance the effectiveness of the ADS by:²⁰⁴

- prioritising the involvement, leadership, direction and co-design of people with disability
- providing people with disability with opportunities that move beyond consultation and towards meaningful co-design and decision making
- examining how the ADS can more effectively address all forms of equality and build a human rights approach based on the *CRPD* (and other relevant international human rights obligations)
- requiring governments separately and collectively to better measure progress on improved outcomes by reference to human rights
- examining how governments can better promote and work in partnership with institutions and organisations in the private sector on the priority areas identified in the ADS
- amending existing or introducing new legislation or legislative instruments to underpin the ADS in terms of its administration, evaluation, and regular monitoring and public reporting on outcomes
- amending existing or introducing new legislation to better recognise the rights of people with disability to all forms of equality and non-discrimination and better protect their rights under the *CRPD*.

In response, the New South Wales Government submitted that it is yet to be convinced the evidence available supports the extent of change recommended.²⁰⁵ The Australian Government responded that it did not ‘currently accept or reject’ the proposed recommendation.²⁰⁶

However, the Australian Government recorded that the ADS will be reviewed in light of the recommendations of this Royal Commission,²⁰⁷ in consultation with people with disability.²⁰⁸

The ADS has a range of reporting and evaluation processes.²⁰⁹ The Australian Government confirmed the ADS will be updated over its duration, and people with disability will be engaged to inform its implementation, monitoring and reporting and future policy direction.²¹⁰

We therefore accept that processes are in place for governments to continue to strengthen the ADS. We note governments have committed to review the ADS following the release of this *Final report*.

But it is critical any review carefully consider all the issues raised and recommendations made in this *Final report*. The ADS and its implementation should be fully aligned with the vision for an inclusive Australia that people with disability have articulated to us.

We recommend an updated ADS be released by the end of 2024. This should allow for appropriate engagement and review, with a reasonable period of time remaining in the current ADS lifespan (to 2031).

Recommendation 5.2

The signatories to Australia’s Disability Strategy 2021–2031 (ADS) (the Australian Government, state and territory governments and the Australian Local Government Association) should review and update the ADS to ensure it reflects the issues raised and recommendations made by this Royal Commission.

This review and update should:

- consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Engagement Plan, Outcomes Framework, Guiding Principles, reporting arrangements and Data Improvement Plan
- be undertaken in partnership with people with disability and their representative organisations.

An updated ADS should be released by the end of 2024.

Reviewing state and territory disability plans and strategies

A range of strategies and plans are in place at the state and territory government level to support implementation of the ADS.

Other volumes in this *Final report* make recommendations aimed at improving the effectiveness and responsiveness of specific service systems. We also make significant recommendations to strengthen governments' implementation of the *CRPD*.

In addition to reviewing and updating the ADS, all jurisdictions should ensure their plans and strategies adequately reflect the issues raised and recommendations made in this *Final report*.

Reviews should consider how governments can implement innovative policy approaches to help align whole-of-government decision making and service planning with the objectives of the ADS. Different portfolios and service systems need to improve outcomes for people with disability. Building on approaches in the ADS, including its Guiding Principles, the Australian and state and territory governments could consider using disability impact assessments and disability outcomes-focused budgeting approaches. These could be modelled on the approaches being considered and implemented in Victoria regarding disability inclusion and gender equality (Box 5.1). These embed impact assessment requirements in legislation, and make gender equality considerations a core component of central government budget processes.

Box 5.1: Policy and budgeting approaches to improve equality and inclusion

In September 2022, the Victorian Government released for consultation the Disability Inclusion Bill 2022 Exposure Draft (Vic). Among other provisions, the draft Bill proposes defining entities 'to conduct disability impact assessments when developing or reviewing a policy, program or service with a direct and significant impact on the public'.²¹¹ Disability impact assessments would aim to make sure disability inclusion is being thought about from the start.²¹²

The draft Bill proposes disability impact assessments must:²¹³

- 'assess how a policy, program or service would affect people with disability
- describe how a policy, program or service would be developed or changed to be accessible
- promote universal design
- reduce, remove and prevent barriers to disability inclusion
- consider barriers to disability inclusion that may be compounded by intersectionality
- promote disability inclusion.'

This approach is similar to the approach implemented in Victoria under the Victorian *Gender Equality Act 2020* (Vic). This legislation requires 'defined entities' to undertake gender impact assessments on all new (and up for review) programs, policies and services that have a direct and significant public impact.²¹⁴ The 'purpose of gender impact assessments is to create better and fairer outcomes, and make sure all people have equal access to opportunities and resources'.²¹⁵

As part of gender impact assessments, entities must assess the effects that the policy, program or service may have on people of different genders.²¹⁶ Assessments must explain how the policy, program or service will be changed to better support Victorians of all genders and promote gender equality.²¹⁷ Where practical, they must take into account that gender inequality may be compounded by disadvantage or discrimination that a person may experience on the basis of other factors such as age, disability or ethnicity.²¹⁸

Safe and Strong: A Victorian Gender Equality Strategy also speaks to implementing gender responsive budgeting.²¹⁹ The strategy highlights that 'gender responsive budgeting reviews and adapts budgetary processes and policies so that expenditures and revenues reflect gender differences and gender inequalities in income, assets, decision-making power, service needs and responsibilities for caring'.²²⁰ The Victorian Government releases Gender Equality Budget Statements as part of its state budget process.²²¹

The comprehensive policy and budgeting approach to gender equality in Victoria can be built on by all governments as part of an approach to improving outcomes for people with disability in Australia.

In addition to whole-of-government consideration of disability equality and inclusion, reviews of state and territory government disability strategies and plans should ensure governments are working in partnership together to deliver national outcomes.

Implementation under the former NDS was seen as most effective when it 'involved cooperation and collaboration between government portfolios and levels of government and with community organisations, disability representative organisations, business and services'.²²² Implementation activities were said to be most effective when they:²²³

- 'are led by people with disability and their representative organisations'
- 'occur at different levels of government to link local action with national coordination'
- 'lead to specific actions and projects with timelines and outcomes.'

We recommend the reviews and updates be completed by state and territory governments by mid-2025. This should allow sufficient time for appropriate engagement and development, and ensure they reflect an updated ADS in line with Recommendation 5.2.

Recommendation 5.3

State and territory governments should review and update their disability strategies and plans to ensure they reflect the issues raised and recommendations made by this Royal Commission.

These reviews and updates should:

- consider how these strategies and plans align with Australia's Disability Strategy 2021–2031, including outcomes of Recommendation 5.2
- be undertaken in partnership with people with disability and their representative organisations.

The reviews and updates should be completed by mid-2025.

2.6. Intersecting national agreements and strategies

Coordination of disability policy and other policy areas

People with disability use a range of different services and systems. As highlighted by the Productivity Commission, 'no one level of government is solely responsible for any one mainstream service system (such as health, education and housing)'.²²⁴ It states 'people with disability may receive support from some or all of these service systems'.²²⁵

The Productivity Commission states that:

All governments – the Australian, State, Territory and Local Government – share responsibility for improving their services so that they are accessible, inclusive and culturally responsive in meeting the needs of all people with disability, particularly those with complex needs who may need differentiated support.²²⁶

Our terms of reference acknowledge a person with disability's experiences of violence, abuse, neglect and exploitation are multi-layered.²²⁷ People's experiences are influenced not only by their disability, but also other factors such as their age, sex, gender identity, sexual orientation, intersex status, ethnicity or race.²²⁸

Policy and practice across different issues and service systems should take account of the different experiences of people with disability, including their experiences of discrimination and disadvantage.

We heard a fractured approach to strategies across service systems can lead to uncoordinated efforts and gaps in responsibility.

At Public hearing 4, 'Health care and services for people with cognitive disability', Dr Scott Avery spoke of a 'game of tennis' occurring between different plans and strategies, in relation to taking responsibility for the health of First Nations people with disability.²²⁹ He described the National Agreement on Closing the Gap and the then NDS as having a 'circular reference of avoidance'.²³⁰

At the time of making their statement, Mr Damian Griffis and Ms June Riemer from the First Peoples Disability Network raised concerns that strategies under the National Agreement on Closing the Gap did not adequately capture disability.²³¹ The First Peoples Disability Network has previously recommended links should be created between the former NDS and the Closing the Gap framework to enable coordinated policy and programs across governments.²³² It recommended these be established in partnership with First Nations people with disability and their organisations.²³³

Volume 9, *First Nations people with disability*, discusses the impact of fragmented approach to disability policy on First Nations communities.

When the ADS was being developed, Women with Disabilities Australia recommended implementing an intersectional framework and developing links with other national plans and frameworks.²³⁴ Our Watch also recommended creating links between policy instruments to enhance their impact on women with disability.²³⁵

The issue of needing to coordinate disability policy making with other policy areas was also raised during public consultation to inform the development of the ADS.²³⁶ Participants in the consultation said the NDS sat as a separate document, without sufficient linkages to other agreements and strategies.²³⁷

The Productivity Commission reviewed the National Housing and Homelessness Agreement (NHHA) in 2022 and considered the extent to which it met the obligations of governments under the ADS.²³⁸ The Productivity Commission concluded there is little evidence the NHHA, which predated the ADS, improved affordability and accessibility of housing for people with disability.²³⁹

The Productivity Commission noted housing policy intersects with other policy areas, including health, aged care, justice and disability, but said these overlaps were not recognised in the NHHA.²⁴⁰ It recommended the next agreement on housing and homelessness include provisions to align it with other agreements and policies, including the National Agreement on Closing the Gap and the ADS.²⁴¹

The need to connect agreements and strategies

National strategies and plans direct governments to address identified issues and priorities in a coordinated way. Intergovernmental agreements although not legally binding, express the commitment of the Australian Government and state and territory governments to work together to achieve particular objectives or goals.²⁴²

Combined, they provide crucial strategic direction to guide government and community actions.

The Productivity Commission has also put forward similar recommendations. Its 2017 review of NDIS costs recommended that governments agree to specific commitments and reporting obligations consistent with the former NDS at review points of national agreements and national partnership agreements.²⁴³

Ms Mitchell confirmed that the Department of Social Services is working to try and ensure people with disability are recognised across different national agreements, strategies and plans, by:

- ensuring the terms of reference for all major evaluations of national agreements by the Productivity Commission or an equivalent body require consideration of the extent to which the relevant agreement is meeting the obligations of governments under the ADS²⁴⁴
- developing an Australian Government implementation plan for the ADS outlining initiatives to support upcoming strategies, roadmaps, frameworks and blueprints ‘to embed a strong disability focus and be linked to the ADS as Associated Plans’²⁴⁵
- working with Australian Government departments and agencies to ensure they have a disability focus when taking actions to deliver on the National Agreement on Closing the Gap.²⁴⁶

To build on this work, we recommend further actions be implemented to ensure people with disability are adequately recognised across intersecting agreements and policies.

It is important that a proactive review is undertaken, rather than waiting for review points or development processes. Ensuring specific, comprehensive recognition of people with disability can help drive coordinated and comprehensive actions.

This issue has also been raised in the context of education in Volume 7, *Inclusive education, employment and housing*, which looks at the importance of aligning the National Schools Reform Agreement with disability priorities.

As noted previously, Volume 9, *First Nations people with disability*, discusses the impact of fragmented approach to disability policy on First Nations communities. When reviewing national agreements, strategies and plans, governments should consider the specific impacts on First Nations people with disability.

Considering the scope of agreements, strategies and plans that should be reviewed, we recommend reviews of current documents be completed by the end of 2025.

Recommendation 5.4

The Australian Government and state and territory governments, should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.

Reviews should consider:

- the alignment of national agreements, strategies and plans with Australia's Disability Strategy 2021–2031
- how funding allocations should recognise the needs and rights of people with disability
- the inclusion of specific outcome measures related to people with disability
- the development of specific action plans relating to people with disability.

National agreements that should be reviewed include the:

- National Agreement on Closing the Gap
- National Housing and Homelessness Agreement
- National School Reform Agreement
- National Health Reform Agreement
- National Mental Health and Suicide Prevention Agreement
- National Agreement for Skills and Workforce Development.

Other national agreements, strategies and plans to be reviewed should include, but not be limited to, those relating to:

- emergency management, such as those for pandemics and natural disasters
- children and young people, such as the National Framework for Protecting Australia's Children 2021–2031
- employment, education, training and skills, such as the National Workforce Strategy 2022–2027
- legal support, such as the National Legal Assistance Partnership 2020–2025
- health services, such as those for preventative health, community health, and mental health
- family and sexual violence, such as the National Plan to End Violence against Women and Children 2022–2032.

The reviews of current agreements, strategies and plans should be completed by the end of 2025.

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3. Reforming national disability governance

Key points

- As explained in Chapter 2 of this volume, strong national disability policy and strategy arrangements are required to improve outcomes for people with disability and protect and advance their rights recognised in the *CRPD*. These efforts should be supported by governance structures driving actions needed to prevent violence against, and abuse, neglect and exploitation of, people with disability.
- A key component of governance arrangements are structures for monitoring and reporting on actions and outcomes. Despite recent improvements, gaps remain in reporting on outcomes for people with disability.
- A new National Disability Commission should be established by legislation. The Commission should be responsible for:
 - monitoring and oversight of the recommended Disability Rights Act, as discussed in Volume 4, *Realising the human rights of people with disability*
 - monitoring and reporting on outcomes for people with disability, and the implementation of recommendations made in this *Final report*
 - promoting research and information sharing to promote best practice and innovative approaches that improve outcomes for people with disability.
- Dedicated leadership and innovation are needed to protect and advance equality, inclusion and the rights of people with disability. Currently, disability is included in a large portfolio that has a broad remit. The Australian Government should establish a new portfolio focused on disability, a new ministerial position focused on disability inclusion, and a new department responsible for disability and carers policy and programs.

3.1. Introduction

This chapter considers national disability governance arrangements and how they can best support the strengthened policy and strategy structures described in Chapter 2 of this volume. National disability governance arrangements need to be adequately focused so they can effectively drive efforts to advance equality, inclusion and the rights of people with disability.

Mr Gerard Quinn, the United Nations Special Rapporteur on the rights of persons with disabilities, endorsed a ‘paradigm shift toward the human rights model’ which he sees as in keeping with the tenets of the *Convention on the Rights of Persons with Disabilities (CRPD)*.¹ He spoke about the need for governments to innovate and act with intentionality if they are to realise inclusive equality for people with disability.²

This chapter discusses the arrangements in place in the Australian Government that currently guide and deliver national disability policy and priorities. It considers and makes recommendations regarding:

- the role of monitoring and reporting arrangements in driving government actions and improved outcomes
- the role of Australian Government administrative arrangements in leading national disability policy and priorities.

It builds on considerations in other volumes of this *Final report*, in particular Volume 4, *Realising the human rights of people with disability* and Volume 12, *Beyond the Royal Commission*.

3.2. Monitoring and reporting to influence actions

Performance measurement and reporting can help clarify government objectives and responsibilities and increase transparency.³ It can highlight opportunities for improvements and innovation, encouraging governments to make ongoing improvements in service delivery and effectiveness.⁴

Reporting on outcomes for people with disability, including reporting under the former National Disability Strategy 2010–2020 (NDS) and the National Disability Agreement, had limitations. There have been improvements achieved through the reporting arrangements that have been established under Australia’s Disability Strategy 2021–2031 (ADS). Chapter 1 of this volume provides further information on the reporting arrangements under the ADS. However, more is needed to fully realise the benefits of performance reporting.

Gaps in monitoring and reporting on outcomes for people with disability

NDS progress reports were developed in 2014⁵ and 2016.⁶ A third and final progress report covering the period from 2017 to 2021 was released after the NDS ended in December 2022.⁷

Disability Discrimination Commissioner, Dr Ben Gauntlett, told us that the NDS did not have a data framework implemented, meaning ‘a lot of the aspects of it were unfortunately not followed through as we would have hoped’.⁸ Mr Jim Simpson from the New South Wales Council for Intellectual Disability questioned the extent to which the NDS drove achievements, noting that unless strategies:

have clear accountable targets that people have to report against, and are perhaps, for example, in the key performance indicators of chief executives, I think it’s very difficult to – for them to be taken as seriously as they should be.⁹

When inquiring into the NDS and inclusive and accessible communities, the Senate Community Affairs References Committee reported that the NDS lacked accountability and evaluation

mechanisms.¹⁰ The committee stated NDS progress reports were infrequent, included largely anecdotal information, and lacked specific and quantifiable goals to help measure success.¹¹

The Social Policy Research Centre's review of the NDS also noted that although the NDS progress reports provided information on new policies and programs, there was little detail on the effects of their implementation.¹² Stakeholders identified the reporting process as an 'exercise in ticking boxes'.¹³ They also stated that the schedule of producing reports every two years meant information was often outdated by the time it was published.¹⁴

Responding to our issues paper on *Promoting inclusion*, peak arts and disability organisations said actions must have measurable targets, and undergo monitoring and evaluation.¹⁵ The response said a strategy without measurement would be 'pointless'.¹⁶ The Australian Human Rights Commission reiterated this during consultation on the development of the ADS. In its response to our *Employment* issues paper, the Commission supported the need for the next national strategy and the National Disability Agreement to include robust monitoring, reporting, evaluation, governance and accountability mechanisms.¹⁷

In 2019, the Committee on the Rights of Persons with Disabilities (CRPD Committee) raised concerns about the lack of an effective monitoring mechanism under the NDS.¹⁸ It recommended Australia develop 'a robust monitoring mechanism, a formal performance reporting framework, and evaluation, governance and accountability requirements'.¹⁹ It said this should happen in close consultation with, and with the effective participation of, diverse organisations representing people with disability.²⁰

Chapter 1 in this volume also describes the reporting arrangements under the National Disability Agreement. The 2019 Productivity Commission review of the agreement said there had been very little progress on achieving the outcomes and performance targets in the agreement.²¹ Most indicators and targets showed the situation had gone backwards or not changed significantly.²²

The Productivity Commission noted there are many possible reasons for the lack of progress.²³ One could be a weak link between government policy and outcomes, given the broad factors impacting some outcomes which can be difficult to measure and beyond the direct influence of policy.²⁴ However, others could be the low profile of the agreement and lack of understanding by governments of how to respond to performance reporting information.²⁵

The former Chair of the Council of Australian Governments Reform Council stated in 2013:

the use of performance information from the National Agreements is poorly understood – there is not a lot of evidence that governments are improving their performance in response to the findings. So, if governments are not using the performance information, it could suggest that the measures are not relevant or do not give enough information to spur action.²⁶

The Productivity Commission said a strengthened performance reporting framework is needed in the National Disability Agreement 'to improve accountability to people with disability, their families and carers and to the wider community'.²⁷

It is clear the ADS has better reporting arrangements than the NDS. Mr Luke Mansfield, Acting Deputy Secretary, Disability and Carers at the Department of Social Services, confirmed that outcomes measurement and data collection was a key focus during development of the ADS.²⁸ This included designing the reporting approach through consultation with the disability community, which identified the need for a commitment to improve data collection over time.²⁹

However, we have identified key gaps that should be addressed to strengthen the role of monitoring and reporting on government actions, designed to improve outcomes for people with disability.

Assessing what impacts on outcomes

Reporting frameworks not only need to include the collection and sharing of data; it is also critical they provide an analysis of what this data means. This also applies to reporting on implementation of initiatives, as understanding how initiatives are impacting outcomes enables governments to change their approach or expand on what is working well.

The Productivity Commission has argued:

reporting on outcomes serves as an essential vehicle for the community to determine whether governments have delivered services that are of value and provides impetus for necessary policy action.³⁰

The Productivity Commission points to the report on Overcoming Indigenous Disadvantage as ‘an example of a reporting system that aims to drive performance and prompt change’.³¹ The report aims to go beyond compiling statistics, by aiming to provide meaningful information to assist in targeting efforts to improve the wellbeing of First Nations people, and focuses on their lived experiences.³²

The Victorian Government also told us ‘reporting must move beyond tallying up the level of effort and resources expended’.³³

In its assessment of the National Housing and Homelessness Agreement (NHHA), the Productivity Commission stressed there was no agency undertaking performance analysis for the agreement.³⁴ As such, there is little consideration of what impacts on outcomes and how different government actions were or were not working together to achieve the objective of the NHHA.³⁵

As flagged, there have been significant improvements in reporting under the ADS compared to the NDS. This includes a commitment from governments to include key findings from evaluations of policies and programs in the ADS’ two-yearly implementation reports.³⁶ The first implementation report will be tabled in the Australian Parliament once developed and agreed to by the Australian Government and state and territory governments.³⁷ The ADS acknowledges that ‘evaluations of policies, programs and systems are key to understanding why current outcomes are being achieved and point to strengths and gaps in these interventions’.³⁸

Following Public hearing 31, 'Vision for an inclusive Australia', Counsel Assisting submitted that national comparisons of state and territory government performance in implementing the ADS seem to be absent.³⁹

The Australian Government said this was incorrect.⁴⁰ It pointed to the national reporting mechanisms in place under the ADS.⁴¹ It submitted that reporting arrangements provide 'a robust monitoring mechanism under the Strategy which will continuously improve throughout the life of the Strategy'.⁴²

However, in our view there is an opportunity to create a process that brings this information together. There can be a more comprehensive process assessing and comparing how or what efforts are impacting or not impacting outcomes for people with disability.

Monitoring and reporting to hold governments to account

A well designed performance reporting framework that provides information to the public is an important factor in holding governments to account.⁴³

One advantage of Australia's federal system of government is that the performance of one government can be assessed against the performance of other jurisdictions.⁴⁴ Lessons learned can encourage the development of more effective government programs and actions.⁴⁵ Unfortunately, the mechanisms needed to facilitate this process, including providing the public with reliable information to help them judge the performance of governments are 'chronically undersupplied'.⁴⁶

In its review of the National Disability Agreement, the Productivity Commission concluded:

For performance reporting to be an effective public accountability mechanism, progress against the [National Disability Agreement's] outcomes needs to be transparent to the community and have a credible and influential profile.⁴⁷

As part of its recommendations for a new National Disability Agreement, the Productivity Commission recommended the development of a National Disability Report to strengthen the influence and profile of reporting.⁴⁸ This report would:

outline progress against the outcomes of the new [National Disability Agreement]. But it would be more than just a description of data and indicators, and should include a qualitative assessment of progress towards the [National Disability Agreement's] outcomes, including findings from policy evaluation.⁴⁹

The Productivity Commission recommended this report be tabled in the Australian Parliament biennially.⁵⁰ It suggested the report could be developed through the Steering Committee for the Review of Government Service Provision, which includes the Productivity Commission and representatives from governments and data bodies, supported by a working group of experts.⁵¹ The Productivity Commission reiterated the importance including the perspectives of people with disability in this reporting.⁵²

Similarly, in its review of the NHHA, the Productivity Commission also concluded that an independent body should undertake performance monitoring and reporting of that agreement.⁵³ It argued that an independent body was needed because:⁵⁴

- credibility could be damaged if there are any real or perceived conflicts
- separating monitoring and reporting from policy and delivery provides clear mandates and obligations
- monitoring and reporting functions need a different culture and different set of skills compared to policy and program implementation.

As previously mentioned, there have been significant improvements in the ADS reporting process compared to the former NDS. However, the Australian Human Rights Commission submitted that additional arrangements are needed ‘to create a robust and formal monitoring mechanism’ for the ADS.⁵⁵ Currently, state and territory governments must agree to the terms of the ADS Outcomes Framework and Targeted Action Plans.⁵⁶ This ‘creates a disincentive to set goals or outcome measures that highlight areas of improvement for the different levels of government in Australia’.⁵⁷

Following Public hearing 31, Counsel Assisting submitted that the ADS does not include independent and external oversight to hold governments accountable.⁵⁸

In response, the Australian Government highlighted various mechanisms within the ADS that ‘promote continuous improvement, oversight and accountability’, in particular the role of:⁵⁹

- the Central Implementation Unit in the Department of Social Services
- the Disability Reform Ministerial Council
- continuing engagement between Australian Government and state and territory government officials
- the ADS Advisory Council.

The Australian Government stated the ADS Advisory Council was established following feedback from stakeholders asking for an independent body or council to monitor and oversee implementation of the ADS.⁶⁰ It said the ‘Advisory Council’s goal is to provide advice to governments on matters that are meaningful, relevant to their expertise and which can encourage change’.⁶¹

The Australian Government submitted that ‘[c]ontrary to the submissions of Counsel Assisting, the Strategy has addressed the benefit of independent and external oversight to hold governments accountable’.⁶²

We accept that a range of reporting and monitoring mechanisms are in place under the ADS. However, many of these mechanisms are internal to governments and therefore do not necessarily constitute independent reporting and monitoring systems.

The ADS Advisory Council members are not part of government.⁶³ The Council is supported by two research officers provided by the Department of Social Services.⁶⁴ However, it does not have legislative standing as an independent body, nor the bespoke skills or capacity to analyse actions and information to report on whether the desired outcomes are being achieved.

A new National Disability Commission

A new National Disability Commission should be established as an independent statutory body. Its purposes should include:

- supporting the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act (see Volume 4, *Realising the human rights of people with disability*)
- driving improved outcomes for people with disability through independent monitoring and reporting
- promoting approaches to improve outcomes for people with disability through sharing information between governments, the community sector, the private sector and the broader community.

The National Disability Commission should have the capacity to develop an expert understanding of the systemic drivers of the violence against, and abuse, neglect and exploitation of, people with disability. An independent disability-focused body would enable a comprehensive approach to prevent harm to people with disability and drive the significant changes needed in national policy settings. The proposal allows for bespoke design, skills and capabilities, and for specific functions to be designed and established in partnership with people with disability.

As explained in Volume 4, *Realising the human rights of people with disability*, a dedicated body focused on people with disability would provide a number of advantages:

- **Specialist** – It would be able to build up the specialist skills required to guide best practice and provide robust oversight and reporting functions.
- **Strategic** – It would have a strategic and whole-of-government view of the levers required to drive transformational change.
- **Tailored** – It would enable statutory functions to be designed with and for people with disability so those functions are fit-for-purpose.
- **Coordinated** – It would be able to build deep relationships with duty holders under the Disability Rights Act and at different levels of government.
- **Dedicated** – Resourcing functions within a specialist body would help to ensure resources remain focused on the long-term reform effort required to realise the rights of people with disability in practice.

We recommend the new National Disability Commission be established by mid-2025.

Structure of the new National Disability Commission

The National Disability Commission should be an independent statutory body led by people with disability. Its role, functions and powers should be established under the Disability Rights Act.

It should be independent of Australian Government disability departments and entities but should fall under the new Disability portfolio (Recommendation 5.6).

The National Disability Commission should be able to collect information from the Australian Government and state and territory governments as part of its monitoring and reporting functions.

The Commission should engage closely with people with disability and disability representative organisations. It should work directly with the community to ensure the diverse voices of people with disability are represented throughout its work.

The functions proposed for the National Disability Commission supplement and do not replace the existing functions of the Australian Human Rights Commission. The Australian Human Rights Commission would continue to undertake its functions under the *Disability Discrimination Act 1992* (Cth) and *Australian Human Rights Commission Act 1986* (Cth). This would include the role and functions of the Disability Discrimination Commissioner.

The National Disability Commission should work collaboratively with existing bodies including the Australian Human Rights Commission and the Disability Discrimination Commissioner. This may include providing joint advice to government where appropriate. We note that further detail regarding the relationship with existing bodies will need to be considered in establishing the National Disability Commission.

The new National Disability Commission should play a significant role in implementing *CRPD* rights in Australia, including considering *CRPD* obligations through the lens of performance reporting, monitoring and research. This includes reflecting on implementation of the *CRPD* in Australia.

In undertaking its functions, the National Disability Commission should be guided by the *CRPD* and the proposed Disability Rights Act.

Functions of the National Disability Commission

The following sets out the three broad areas of functions proposed for the National Disability Commission.

Oversight of the Disability Rights Act

Volume 4, *Realising the human rights of people with disability*, shows that the current system of rights protection in Australia is failing to meet the needs of many people with disability and has

not prevented violence, abuse, neglect and exploitation. We recommend enacting an Australian Disability Rights Act. We also recommend the National Disability Commission be responsible for supporting implementation of and compliance with the Act.

Volume 4 recommends specific functions for the new National Disability Commission relating to implementation of the Disability Rights Act. These include:

- capacity-building functions – undertaking research, issuing formal guidelines, providing advice through voluntary compliance reviews, handling complaints and intervening in relevant court proceedings
- compliance functions – conducting inquiries, entering into enforceable undertakings, issuing compliance notices, and seeking injunctions to stop or prevent breaches of the Disability Rights Act.

The complaints mechanism should be co-designed with people with disability. This co-design process should consider not only the process for complaints-handling, but also the purpose, goals and potential range of participants, and the role of the National Disability Commission.

Volume 4 recommends the National Disability Commission be responsible for promoting disability rights and should be resourced accordingly. It should deliver educational and training programs to build understanding of the rights and duties under the new Disability Rights Act.

Establishing the National Disability Commission would bring a dedicated focus and resourcing to the realisation of the human rights of people with disability in practice.

Independent monitoring and reporting

A key challenge for performance reporting and benchmarking to be effective is completing the 'chain of influence'.⁶⁵ As stated by Professor Alan Fenna for the Grattan Institute's report on *A Federation for the 21st Century*:

Even the best performance-measurement system only provides information; somehow that information must feed into and influence the way jurisdictions do their jobs.⁶⁶

An independent monitoring and reporting process will best be able to deliver this for disability policy in Australia. The benefits of independent bodies to undertake monitoring and reporting has been recognised across different policy areas.

The Productivity Commission recommendation for independent reporting on the NHHA argued that an annual report developed by an independent body should include information on:⁶⁷

- governments' performance against performance indicators and targets under the agreement, including analysis and commentary about performance
- what governments are doing to improve outcomes, including information on new policies and programs

- expenditure on housing assistance
- evidence from stakeholders, including people with lived experience of homelessness, social housing or housing stress.

The National Mental Health Commission is an executive agency accountable to the Australian Parliament through the Australian Government Health portfolio.⁶⁸ Its mission is to ‘promote understanding of the outcomes that matter and drive transformational change across service systems for people with lived experience of mental health issues’.⁶⁹ It increases ‘accountability and transparency in mental health through the provision of independent reports and advice to the Australian Government and the community’.⁷⁰

The National Mental Health Commission:⁷¹

- monitors and reports on investment in mental health and suicide prevention initiatives
- provides evidence-based policy advice to government
- disseminates information on ways to continuously improve Australia’s mental health and suicide prevention systems
- acts as a catalyst for change to achieve those improvements.

A similar model is needed for people with disability.

Mr Damian Griffis from the First Peoples Disability Network told us the Closing the Gap reporting approach has been recommended to the Australian Government as a model for the ADS reporting framework.⁷² Under the National Agreement on Closing the Gap, governments table annual reports in their respective parliaments.⁷³ The Department of Prime Minister and Cabinet prepares the report for the Australian Government, which is tabled in the Australian Parliament with an accompanying speech by the Prime Minister.⁷⁴

Reporting on outcomes for people with disability and tabling this in the Australian Parliament can help drive action across governments. It could also provide a comprehensive understanding of how local government, the private sector, the non-government sector and the broader community are working to achieve change.

We have heard about previous reporting requirements under the South Australian state disability plan as a good example of reporting influencing government actions. Dr Graeme Innes AM, former Disability Discrimination Commissioner, explained the benefits of this reporting:

[E]very department had to report annually, I believe, it may have been biannually – on things to do with people with disability, not just on employment but on the delivery of services, et cetera, and the employment – the reporting was [a] red light, orange light, green light type reporting. These reports went to the South Australian Parliament each year, and Ministers had had to defend their [d]epartments at estimates or equivalent [b]udget hearings around these reports. There is nothing like getting the attention of senior bureaucrats on an issue, but to mandate them to report on it and how they’re delivering on it.

...

It's the only way to get people to stop doing what they have done for the last 30 years and talking about this, and actually taking some action on it.⁷⁵

We recommend a new National Disability Commission report on outcomes for people with disability in Australia. The National Disability Commission should prepare a biennial report on outcomes for people with disability and table it in the Australian Parliament. This should include reporting on implementing the ADS across jurisdictions, in addition to assessing other data and information sources.

The Commission's reporting would supplement ADS reporting requirements. Critically, the Commission's reporting would be independent and focus on what is and is not working across jurisdictions. The reporting would inform future actions taken by governments.

The report should:

- assess the measures reported on under the ADS Outcomes Framework
- assess performance of the Australian Government and each state and territory government in implementing the ADS. It should look at each jurisdiction and how actions have been effective or not in improving outcomes. This should include a traffic light reporting system to clearly show how each jurisdiction is performing in improving outcomes for people with disability, and achieving the vision of the ADS
- consider information from Australian Government and state and territory government evaluations of policies, services and programs and reports from the implementation of jurisdictional disability strategies and plans
- consider data and information reported by relevant oversight bodies in each jurisdiction, such as ombudsmen and other disability commissions and bodies
- include qualitative information, including experiences of people with disability.

ADS implementation reports will be produced every two years.⁷⁶ The National Disability Commission reporting should occur every alternate year, so it can include commentary on the information provided in the ADS implementation report and other ADS reporting.

Volume 12, *Beyond the Royal Commission*, also recommends that the National Disability Commission report on the implementation of this Royal Commission's recommendations, and assess the effectiveness of their implementation.

Promoting and sharing information and research

This volume has discussed the change and innovation required to advance equality, inclusion and the rights of people with disability. In addition to the reporting functions outlined above, the National Disability Commission should provide a vehicle for sharing information and

promoting research on best practice and innovative approaches to improve outcomes for people with disability.

An independent commission would be well-placed to partner with different bodies and collect and share information to help promote improved outcomes for people with disability.

These activities could include establishing different methods of communication and engagement, such as forums, networks and websites enabling the commission to:

- collaborate with bodies such as the National Disability Research Partnership (NDRP) and other research partners to promote recent research projects
- work with service providers and governments to disseminate information on pilot programs and program evaluations
- partner with community groups, non-government organisations, service providers, and private sector businesses to promote different approaches to improving outcomes for people with disability.

These activities could be undertaken in partnership with the Australian Human Rights Commission and its activities to promote the rights of people with disability.

Box 5.2 provides an overview of the proposed functions of the National Disability Commission.

Box 5.2 – National Disability Commission

Oversight of the Disability Rights Act

- Capacity-building functions – undertaking research, publishing formal guidelines, providing advice through voluntary compliance reviews, handling complaints and intervening in relevant court proceedings
- Compliance functions – conducting inquiries, entering into enforceable undertakings, issuing compliance notices, and seeking injunctions to stop or prevent breaches of the Disability Rights Act

Independent monitoring and reporting

- Outcomes for people with disability – Biennial report, tabled in the Australian Parliament
- Implementation of Royal Commission recommendations – Annual report, tabled in the Australian Parliament
- Effectiveness of implementing Royal Commission recommendations – Evaluation report no later than five and 10 years respectively after the release of the Final report, tabled in the Australian Parliament

Promoting and sharing information and research

- Collecting and sharing information that will help promote improved outcomes for people with disability, including through partnerships with different bodies

Recommendation 5.5

The Australian Government should establish the National Disability Commission as an independent statutory body under the Disability Rights Act (see Volume 4). The National Disability Commission should:

- support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act
- monitor and report on outcomes for people with disability across Australia
- promote best practice and innovative approaches to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community.

The Commission should be chaired by a person with disability and comprise a small group of commissioners. The majority of commissioners should be people with disability, and represent the diversity of people with disability.

The National Disability Commission should be established by mid-2025.

In addition to functions proposed in Volume 4 and Volume 12, its functions should include:

- developing an Outcomes for People with Disability report every two years and tabling it in the Australian Parliament. The report should:
 - detail outcomes achieved under Australia's Disability Strategy 2021–2031 (ADS)
 - provide comparative performance assessments on outcomes for people with disability, including the implementation of the ADS, through traffic light reporting across each jurisdiction
 - analyse data, including outcomes data from National Disability Insurance Scheme reporting and other relevant reporting from the Australian Government and state and territory governments. This includes reporting on jurisdictional disability strategies and plans, and reporting from relevant oversight bodies

- include the views and experiences of people with disability, as well as those of families and carers of people with disability
- recommend to governments actions needed to improve outcomes for people with disability.
- promoting and disseminating information, research and evidence on best practice models for – and innovative approaches to – improving outcomes for people with disability. This information should be shared across governments, the non-government sector, the private sector and the broader community
- partnering with a diverse range of people with disability, and their families and carers, to develop advice and key reports.

3.3. Australian Government disability leadership arrangements

Although responsibilities for services supporting or affecting people with disability are delivered and managed at various levels of government, the Australian Government has a critical role in coordinating and driving national disability priorities. This includes primary responsibility for delivering the NDIS, and a central role in developing and progressing the ADS.

In this section we argue that strengthened Australian Government arrangements are needed to discharge these responsibilities and implement the reforms we recommend. These will require strong and dedicated national leadership.

We begin by outlining previous calls for strengthened national leadership and then review the current arrangements. This leads to recommendations for enhanced administrative structures and arrangements that are able to drive change and influence different service systems and settings across governments.

Previous calls for strengthened national leadership

Limited awareness among governments of the former NDS has been described as impeding its implementation. In his evidence, Mr Jim Simpson from the New South Wales Council for Intellectual Disability told us:

my experience as an advocate, you know, regularly quoting the National Disability Strategy when I go and see senior bureaucrats or politicians, the response over the years has tended towards being a blank face, which says to me this document, despite it being a [former] Council of Australian Governments] document ... it just does not have a sort of profile or a feeling of power within governments.⁷⁷

Ms Frances Quan Farrant from People with Disability Australia gave evidence that the former National Disability Strategy was not well known or understood outside of the Department of Social Services.⁷⁸ Ms Quan Farrant told us the implementation of the new NDS was ‘siloe away’ in the Department of Social Services.⁷⁹

The Social Policy Research Centre conducted a review of the implementation of the NDS in 2019. This review included consultation with stakeholders involved in designing and implementing the NDS and those representing people with disability and their families, carers and allies.⁸⁰ The review reported that most stakeholders identified unproductive governance arrangements as an issue impacting the effectiveness of the NDS.⁸¹ Although the NDS aimed to overcome ‘siloe of disability policy within disability-specific areas’ of government, stakeholders said this had not been achieved.⁸² The review’s report identified the perception that there was no single agency responsible for coordinating implementation.⁸³

Stakeholders identified central leadership, coordination and specific targets as critical to integrating the NDS into the core business of government.⁸⁴ They suggested a dedicated central unit to facilitate a systematic and integrated approach to implementation.⁸⁵ Some suggested a need for strengthened leadership from the Australian Government; others felt this was needed from state and territory governments; and some contended strengthened leadership was needed at both levels.⁸⁶ There were suggestions that a central agency like the Department of Prime Minister and Cabinet should have responsibility for the NDS.⁸⁷

In 2017, the Senate Community Affairs References Committee inquired into the delivery of outcomes under the NDS to build inclusive and accessible communities. The committee concluded that with no centralised agency responsible for coordinating implementation of the NDS, there was a risk of gaps in access for people with disability.⁸⁸ It recommended establishing an Office of Disability Strategy.⁸⁹

The Australian Government did not support the recommendation of the Senate Community Affairs References Committee to establish an Office of Disability Strategy.⁹⁰ It argued that existing intergovernmental structures were in place to support coordination across governments.⁹¹

During consultations to inform the development the ADS, People with Disability Australia submitted that responsibility for it should sit with the Prime Minister and the Department of Prime Minister and Cabinet, along with first ministers and their departments in state and territory governments.⁹² The 2019 Australian Civil Society Shadow Report to the CRPD Committee also raised the issue of government responsibility.⁹³

Some submissions and issues paper responses to this Royal Commission also advocated centralising Australian Government responsibility for the former NDS and current ADS within an agency such as the Department of Prime Minister and Cabinet.⁹⁴ The Department of Prime Minister and Cabinet is seen as affording a higher status to disability strategy and having a greater ability to coordinate across governments.⁹⁵

Review of current arrangements

Following Public hearing 31, Counsel Assisting raised concerns regarding leadership arrangements within the Australian Government. Counsel Assisting submitted:

the complexity and scale of disability policy and reform in Australia requires focused and increased capacity across governments. Actions are needed across all levels of government. In addition to national leadership through the Australian Government, intergovernmental structures provide a key mechanism to do this – but in their current form, have not effectively done so.⁹⁶

The Australian Government did not accept this concern.⁹⁷ It pointed to the intergovernmental structures in place supporting national collaboration and coordination.⁹⁸ In terms of working with state and territory governments and coordinating implementation of the ADS, it also pointed to the Australia's Disability Strategy Branch within the Department of Social Services.⁹⁹

Ms Debbie Mitchell PSM, Deputy Secretary of Disability and Carers at the Department of Social Services, has told us the Australia's Disability Strategy Branch:

operates as a central policy and implementation unit that works with Australian Government departments and agencies to support them in their role to drive actions against specific [ADS] responsibilities. This includes identifying opportunities to collaborate with state and territory governments to progress [ADS] commitments.¹⁰⁰

We remain concerned about the location of disability policy responsibilities within the Australian Government. The Department of Social Services sits in a large and complex portfolio with responsibilities including social security payments and delivery; housing and homelessness policy; and other policies and programs relating to individuals, families, children and communities.¹⁰¹ At the time of writing this report, the Social Services portfolio includes one department, five portfolio bodies and four ministers.¹⁰²

For some time there have been conflicting views on the merits of large departments. Some see them as presenting opportunities for greater efficiency, pooled resources and breaking down silos. For others, the breadth and size of these arrangements lock out expertise and innovation. Mr Terry Moran AC, National President of the Institute of Public Administration Australia, said:

There are of course some benefits in having a few larger departments, compared to lots of small departments. But the risk of the former is that you end up with some departments that are vast, complex public sector conglomerates that inevitably tend to: lose their strategic focus and innovative edge; and end up being a lot less efficient than we, and their leaders, want them to be.¹⁰³

Ms Mitchell gave us information on the Department of Social Services' efforts to work with other Australian Government departments and agencies, and state and territory governments, to implement the ADS.¹⁰⁴ As previously noted, the Australian Government has also pointed to the structures in place supporting national collaboration and coordination.¹⁰⁵

However, the remit of the Social Services portfolio is broad. In our view maintaining responsibility for disability policy and programs within that portfolio limits the ability of the Australian Government to concentrate on the measures necessary to advance equality, inclusion and the rights of people with disability.

Enhancing Australian Government structures

We acknowledge the Department of Social Services has a unit for supporting implementation of the ADS.¹⁰⁶ However, the broad and complex remit of the Social Services portfolio does not provide disability reform with the dedicated leadership required to effect change.

We recommend changes to Australian Government portfolio, ministerial, and departmental structures governing disability policy. These changes will encourage strong leadership within the Australian Government dedicated to improving the lives of people with disability.

Disability portfolio and ministerial position

We recommend disability policy and programs be shifted from the Social Services portfolio into a new portfolio specifically responsible for disability. This new portfolio will give disability equality, inclusion and human rights the status and attention required to drive reforms and change practices and attitudes.

The new department (described further below) should be the Department of State in the portfolio. Entities in the new portfolio would include the National Disability Insurance Agency (NDIA), the NDIS Quality and Safeguards Commission, and the recommended new National Disability Commission (Recommendation 5.5).

In 2017 the Productivity Commission stressed the importance of the independence of the NDIA to operate the NDIS on a day to day basis.¹⁰⁷ The Productivity Commission also noted that governments are responsible for determining the scope and high level funding of the NDIS.¹⁰⁸ While the NDIA should remain an independent statutory agency responsible for the day to day implementation of the NDIS, it should be included within the new disability portfolio. The NDIA should be responsive to the legislative, policy and strategy settings developed through national governance arrangements.

We recommend a dedicated, senior ministerial position be responsible for national leadership on disability issues, policy and programs. This position, the Minister for Disability Inclusion, would take on the disability related responsibilities currently in the remit of the Minister for Social Services.

We note there is currently a Minister for the NDIS. We are not making any specific recommendation regarding the merging of this position with the recommended new ministerial position; this may be a matter for the Prime Minister to consider alongside our recommendations.

A new Australian Government department focused on disability

As part of a new disability portfolio, a new department dedicated to improving outcomes for people with disability should be established to help facilitate a genuine pathway to equality and inclusion.

We recommend the new portfolio, ministerial position and department be established by the end of 2024. This will allow for administrative arrangements and changes to be made, noting structures and capacity within the new department will likely need to be built up over time.

The Department of Disability Equality and Inclusion

The new Department of Disability Equality and Inclusion should be responsible for the disability and carers-related policies and programs of the Department of Social Services. The responsibilities currently held by the Disability and Carers stream would be transferred to the new department. This would include broader disability and carer policies and programs; NDIS related policy; implementation of the ADS; national advocacy; and disability employment services.

The new department would also have responsibilities related to other recommendations of this Royal Commission.

Issues relating to income security payments for people with disability and their carers should remain with the Department of Social Services.

The Department of Disability Equality and Inclusion should innovate, drive departments and jurisdictions to work together, and partner with the private sector and community. It must put people with disability at the heart of its actions, and have the capacity and capabilities to influence and drive equality and inclusion. It should also have a strong leadership and coordination role across government, and be consulted on all policy issues and program reforms that significantly impact people with disability.

In recommending this new department, we are not proposing to change the responsibilities of other Australian Government agencies or departments.

Our recommendations on Australian Government leadership should not be seen as diminishing or removing the responsibilities of other agencies or levels of government. We are aiming to bolster national leadership to help deliver actions to take the necessary actions to improve outcomes for people with disability.

Leadership of people with disability in the new department

It is critical to establish, as a key way of working, how this new department will engage and consult with people with disability on the issues that impact them.

The new Department of Disability Equality and Inclusion should actively recruit people with disability for all types of positions and roles, including leadership positions.

As the Disability Leadership Institute told us:

Until we address the lack of leadership, the lack of presence in decision-making spaces, we will remain unequal. It will continue to be assumed that we are not able to make decisions, that we are not able to assess risk, that we do not understand what might be best for us and our broader community, and we will therefore be subjected to appalling levels of violence and abuse.¹⁰⁹

In 2022, the Australian Government appointed a person with disability as Chair of the Board of the NDIA.¹¹⁰ This is a step towards achieving the goal of ensuring more people with disability are in leadership positions in organisations leading policies, services and programs that impact people with disability.

The new department should build dedicated capabilities focused on improving outcomes for people with disability. This includes ensuring the department's work is driven by people with disability. As the Victorian Government told us:

People are experts in their own lives. Policies, programs, and services are more likely to be effective when designed with the people that are impacted by them.¹¹¹

We have heard about the importance of co-design processes in shaping more inclusive and more effective policies and practices.¹¹² Embedding a co-design approach at the national level requires a shift in the mindset of decision makers and governments, and putting in place the right settings and structures.¹¹³ Establishing a new portfolio, ministerial position and department would provide the opportunity to do this.

The Royal Commission into Victoria's Mental Health System recommended mental health reform initiatives be led by people with lived experience of mental illness or psychological distress.¹¹⁴ It recommended embedding lived experience leadership throughout the mental health system.¹¹⁵ These recommendations aimed to ensure people with lived experience were central to designing and delivering the new mental health and wellbeing system in Victoria.¹¹⁶

Following these recommendations, a Lived Experience Branch was established within the Victorian Government Department of Health.¹¹⁷ This branch is led by senior executives with lived experience.¹¹⁸ Of the 26 roles in the branch, 12 are specifically identified or designated for people with lived experience.¹¹⁹ The branch provides advice across the Victorian Government mental health reform agenda.¹²⁰ It works to ensure that the expertise of consumers, carers, families and supports is integrated into the policies and programs the Department of Health develops.¹²¹ Units within the branch include:¹²²

- the Lived Experience Policy Team, which 'leads the development of policies and programs within the [Mental Health and Wellbeing Division] to facilitate lived experience workforce development, partnership and leadership'.

- the Lived and Living Experience Advisory Hub, which ‘provides strategic lived experience advice to the Lived Experience Executive, and to all staff across the [Mental Health and Wellbeing Division]’.
- the Program Design and Management Team, ‘responsible for the implementation of key recommendations made by the Mental Health Royal Commission’s interim and final reports related to the establishment of new lived experience-led entities and services’.

Ms Mary O’Hagan MNZM, Executive Director of the branch, described the opportunity to lead the branch as:

an unprecedented opportunity for lived experience to be embedded right in the core of bureaucracy, driving decision making and the allocation of resources during a time of very, very profound reform.¹²³

The Victorian Government told us there is an opportunity for the Australian Government to lead and drive support for co-design, underpinned by intersectional approaches, at the national level.¹²⁴

A similar branch could be established within the new Department of Disability Equality and Inclusion, led by people with disability. It could ensure the new department embeds lived experience in its work and undertakes true co-design and co-production on disability issues and initiatives.

Recommendation 5.6

The Australian Government should establish:

- a portfolio responsible for the disability and carers policies and programs currently the responsibility of the Social Services portfolio
- a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs that are currently under the remit of the Minister for Social Services
- a Department of Disability Equality and Inclusion, responsible for the national disability and carers policies and programs that are currently the responsibility of the Department of Social Services.

People with disability should be recruited to positions within the new department, including into leadership positions.

These new arrangements should be established by the end of 2024.

3.4. National implementation of disability rights

Ensuring national governance arrangements can drive actions across different levels of governments is critical to successfully implementing the *CRPD* in Australia.

As discussed in Volume 4, *Realising the human rights of people with disability*, article 33(1) of the *CRPD* requires states parties to designate one or more focal points within government for matters relating to implementation of the *CRPD*.¹²⁵ It also requires states parties to consider establishing or designating a coordination mechanism within government to facilitate action related to *CRPD* implementation.¹²⁶ The specific structure and role of these mechanisms is not defined in article 33(1) and states parties may take an approach that suits their 'system of [organisation]'.¹²⁷

While states parties have flexibility in the approach they take, there is guidance on the potential structure and roles of *CRPD* focal points and coordination mechanisms. For example, the Office of the United Nations High Commissioner for Human Rights has suggested that *CRPD* focal points should undertake a wide variety of actions, including:¹²⁸

- advising the head of state or government, policymakers and program planners on the development of policies, legislation, programs and projects on their impact on people with disability
- coordinating the activities of various ministries on human rights and disability
- coordinating activities on human rights and disability at federal, national, regional, state, provincial and local levels of government.

In 2014, guidance from the Conference of States Parties to the *CRPD* spoke to the structure, location and potential functions of *CRPD* focal points. Among other things, it identified a preference for locating focal points in ministries responsible for human rights, social affairs and justice, as opposed to ministries of health or welfare.¹²⁹ This approach reflects the shift away from the medical model of disability to the human rights model.¹³⁰

Designating focal points across jurisdictions

As discussed in Volume 4, we heard there are opportunities to strengthen focal point arrangements, at both the Australian Government and state and territory government levels, to improve coordination and better implement the *CRPD* in Australia.¹³¹

At the Australian Government level, we recommend the new Department of Disability Equality and Inclusion should be the designated *CRPD* focal point and coordination mechanism, alongside the Attorney-General's Department.

It is also important for state and territory governments to designate a focal point for matters relating to implementing of the *CRPD*. Implementation of many *CRPD* rights and obligations calls for action by state and territory governments.¹³²

We asked each state and territory government whether they had designated *CRPD* focal points. All jurisdictions other than the Northern Territory answered in the negative.¹³³ We therefore recommend that each state and territory government designate a *CRPD* focal point. This aligns with guidance from the CRPD Secretariat that focal points should be designated at all levels of government.¹³⁴ In some instances, the CRPD Committee's concluding observations expressed concern about federal states not having focal points at the sub-central level.¹³⁵

We recommend each jurisdiction, the Australian Government and each state and territory government, designate *CRPD* focal points by the end of 2024. This aligns with timeframes recommended for establishing the new Australian Government Department of Disability Equality and Inclusion.

People with disability should be represented among the employees of each designated *CRPD* focal point, in particular in leadership positions.

Recommendation 5.7

The Australian Government and state and territory governments should ensure each jurisdiction has a designated focal point for matters relating to implementation of the *Convention on the Rights of Persons with Disabilities (CRPD)*.

At the Australian Government level, this should be the new Department of Disability Equality and Inclusion, alongside the Attorney-General's Department.

Each *CRPD* focal point should include people with disability in leadership positions.

Each jurisdiction should designate focal points by the end of 2024.

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Appendices

Appendix 5A – Principles of the *National Disability Insurance Scheme Act 2013* (Cth)

General principles guiding actions under the Act

- (1) People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development.
- (2) People with disability should be supported to participate in and contribute to social and economic life.
- (3) People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.
- (4) People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.
- (5) People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.
- (6) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.
- (7) People with disability have the same right as other members of Australian society to pursue any grievance.
- (8) People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives.
- (9) People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.
- (9A) People with disability are central to the National Disability Insurance Scheme and should be included in a codesign capacity.
- (10) People with disability should have their privacy and dignity respected.

(11) Reasonable and necessary supports for people with disability should:

- (a) support people with disability to pursue their goals and maximise their independence; and
- (b) support people with disability to live independently and to be included in the community as fully participating citizens; and
- (c) develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment.

(12) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.

(12A) The relationship between people with disability and their families and carers is to be recognised and respected.

(13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:

- (a) promoting their independence and social and economic participation; and
- (b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and
- (c) maximising independent lifestyles of people with disability and their full inclusion in the community.

(14) People with disability should be supported to receive supports outside the National Disability Insurance Scheme, and be assisted to coordinate these supports with the supports provided under the National Disability Insurance Scheme.

(15) In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted.

(16) Positive personal and social development of people with disability, including children and young people, is to be promoted.

(17) It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the [Chief Executive Officer], the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to the need to ensure the financial sustainability of the National Disability Insurance Scheme.

Source: *National Disability Insurance Scheme Act 2013* (Cth) s 4.

General principles guiding actions of people who may do acts or things on behalf of others

It is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with both the general principles set out in section 4 and the following principles:

- (a) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves;
- (b) people with disability should be encouraged to engage in the life of the community;
- (c) the judgements and decisions that people with disability would have made for themselves should be taken into account;
- (d) the cultural and linguistic circumstances, and the gender, of people with disability should be taken into account;
- (e) the supportive relationships, friendships and connections with others of people with disability should be recognised;
- (f) if the person with disability is a child—the best interests of the child are paramount, and full consideration should be given to the need to:
 - (i) protect the child from harm; and
 - (ii) promote the child's development; and
 - (iii) strengthen, preserve and promote positive relationships between the child and the child's parents, family members and other people who are significant in the life of the child.

Source: *National Disability Insurance Scheme Act 2013* (Cth) s 5.

Appendix 5B – NDIS Review Terms of Reference: Building a strong, effective NDIS

Context

The NDIS aims to improve the wellbeing of Australians by investing and empowering people with disability and supporting them to achieve their goals and participate in the community and economy.

The NDIS takes a lifetime approach to achieving these outcomes, investing in people with a disability early to improve outcomes later in life and improve system sustainability.

An effective NDIS will improve outcomes for:

- people with disability and their families and carers, helping them achieve their life goals and participate in social and economic life; and
- society, by strengthening communities and reducing avoidable system costs, including social security, employment, health, housing and justice.

There will be two parts to the Review:

Part 1 will examine the design, operations and sustainability of the NDIS covering issues outlined in the full-Scheme bilateral agreements between the Commonwealth and jurisdictions.

Part 2 will examine ways to build a more responsive, supportive and sustainable market and workforce.

An overarching objective for both parts of the Review will be to put people with disability back at the centre of the NDIS, restoring, trust, confidence and pride in the NDIS amongst them and their families and carers as well as the broader Australian community, while ensuring the sustainability of the scheme so that future generations receive the benefit of the NDIS.

Part 1: Design, operations and sustainability of the NDIS

Objectives

The Independent Review Panel will make findings and recommendations to Disability Reform Ministers on:

- the participant experience and costs of engaging with the Scheme and opportunities to rebuild trust and improve key scheme design and administration, including by examining:
 - the user journey, including awareness and access to the scheme, assessment, planning, review processes, and navigation of supports and key transition points

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- ways to improve the evidence-based understanding and usage of services covered in a plan now and over time;
 - ways to improve and make more timely decision making in relation to home modification, assistive technology and accommodation; and
 - ways to ensure participants are well informed and supported as relevant remaining in-kind services are transitioned into the NDIS.

With a view to putting people with disability back at the centre of the NDIS.

- the effectiveness and sustainability of the NDIS, including the achievement of participant meaningful employment and lifetime outcomes and broader social and economic benefits, through the provision of reasonable and necessary supports and consider:
 - the effectiveness of: Information, Linkages and Capacity Building; Local Area Coordination and Community Connectors; and early childhood early intervention; and
 - the suitability of the NDIS outcomes framework and data to measure effectiveness, and options to improve the ongoing monitoring and evaluation of the Scheme's effectiveness, including economic and social participation for participants and their families;
 - the fiscal sustainability of the scheme, including the longer term fiscal trajectory.
- ways to better ensure the delivery of value and outcomes for participants and government, including capacity building and assistive technology supports;
- scheme governance arrangements and the extent they support effective operation of the scheme, including the roles and interaction between the NDIA and NDIS Quality and Safeguards Commission and [Department of Social Services], and the NDIA's and the NDIS Quality and Safeguards Commission operational models and costs;
- efficiencies within the Scheme and improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector;
- whether there has been any service and financial impact, positive or negative, on other service systems and programs and the adequacy of supports for people with disability outside the NDIS; and
- financial risks and the drivers of cost pressures, and the most appropriate levers to manage these risks and cost pressures.

Part 2: Building a more responsive and supportive market and workforce

Objectives

The Independent Review Panel will make findings and recommendations to Disability Reform Ministers on reforms to:

- foster and steward an innovative, effective and sustainable market where providers (commercial or otherwise) invest, grow and improve outcomes for participants and the Scheme;
- improve the pricing and payment system to incentivise providers to improve outcomes for participants, improve productivity, support workforce development and ensure market and system sustainability;
- improve access to supports in thin markets – including cultural and regional, remote and very remote communities and service categories – and ensure participants with complex needs have continuity of support where a provider withdraws from the market;
- attract, build and retain a capable workforce, including employment and training models that enhance participant experience and worker attraction, retention and career pathways;
- ensure adequate supply of appropriate and cost-effective accommodation and supports, including specialist disability accommodation, medium-term accommodation and supported independent living and individualised living options;
- improve consumer information and dissemination on supports / services (type of service, price, quality and availability) and the role of intermediaries to make it easier for participants and carers to find value for money supports that meet their needs and deliver outcomes;
- ensure the adequacy and effectiveness of the operation of the Quality and Safeguards Framework in ensuring quality, addressing conflicts of interest, and providing appropriate protection for participants;
- improve the efficiency and effectiveness of current price setting and regulatory functions (market oversight, monitoring and enforcement), including interaction with other relevant Commonwealth, state and territory regulatory systems; and
- improve performance monitoring, compliance, reporting and responses to breaches, unscrupulous behaviour, including the detection of fraud and sharp practices.

The Independent Review Panel will consider interactions across the broader care and support sector, including aged care, veterans' care and primary health care, as well as broader community based activities, and identify how programs could achieve better outcomes through an integrated approach.

Approach

The Review will:

- **analyse** challenges to the effectiveness of the NDIS and the NDIS market and workforce, and opportunities to improve their effectiveness to support people with disability and their families and carers, helping them achieve their life goals and participate in social and economic life. This includes analysis of barriers to accessing and navigating the NDIS;
- **consult** widely to ensure participant, provider and community feedback and, where necessary, draw on specialist expertise while managing demands on those consulted;
- **examine** barriers that have affected the operation of the NDIS and the NDIS market and the development of a capable workforce, including an assessment of the impact of major policy changes, regulation and interaction with other systems;
- **co-design directly with participants, carers and their families, and providers and workers, and prioritise** potential reforms to improve the responsiveness and capability of the NDIS and the NDIS market to ensure they deliver for Australians with a disability and their families and carers, and society more broadly; and
- **review** the reasons for ongoing significant upward revisions of cost pressures on the scheme and **identify** options to ensure scheme sustainability and manage future financial risks, including growth in scheme costs.

The Independent Review Panel will be guided by Australia's commitments under the *United Nations Convention on the Rights of Persons with Disability*, Australia's Disability Strategy 2021–2031, and the National Agreement on Closing the Gap.

It will apply best practice for designing policy that supports people with disability. This will include consideration of the needs of First Nations participants and participants with a range of lived experiences including in relation to gender, culture, socio-economic status, age, and sexuality to ensure the NDIS is catering to the diversity of participant needs and intersections between them. The Independent Review Panel will also have careful regard to the findings and proceedings of previous and ongoing reviews and inquiries, including the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the National Autism Strategy, so that input already provided by the disability community is fully taken into account.

The Panel will also identify and provide advice on ways to monitor and manage implementation risks.

Governance

An Independent Review Panel – comprising Professor Bruce Bonyhady AM (co-chair), Ms Lisa Paul AO PSM (co-chair), Mr Kevin Cocks AM, Ms Judy Brewer AO, Dr Stephen P King, Mr Dougie Herd and Ms Kirsten Deane OAM – will report directly to Disability Reform Ministers. Professor Bonyhady will lead Part 1 of the *Review, Design, operation and sustainability*,

and Ms Paul will lead Part 2 of the *Review, Building a more responsive and supportive market and workforce*.

The Independent Review Panel will be supported by a Secretariat in the Department of the Prime Minister and Cabinet comprising Commonwealth, State and Territory officials as well as people with sector and workplace relations experience. The Secretariat will seek expert opinions where needed, including independent actuarial advice.

Timeframe

A final report is to be provided by the Independent Review Panel to Disability Reform Ministers by October 2023. Where specific opportunities for reform are identified prior to the final report, the Independent Review Panel may bring forward recommendations and a supporting paper on these to Disability Reform Ministers ahead of the final report.

Source: 'Terms of Reference: Building a strong, effective NDIS, *NDIS Review*, web page, 18 October 2022. <www.ndisreview.gov.au/about/terms-of-reference>

Appendix 5C – Recommendations – 2019 Review of the National Disability Agreement

A new overarching agreement is needed

Recommendation 2.1

The Australian, State and Territory Governments should develop and enter into a new National Disability Agreement (NDA) by the beginning of 2020.

The new NDA should become the overarching agreement for disability policy in Australia. Its scope should be broad to capture all people with disability, their families and carers, and all services to people with disability, including mainstream services. It should outline:

- the purpose of the NDA, and how this links to the National Disability Strategy (NDS) and the National Disability Insurance Scheme (NDIS)
- the aspirational objective for disability policy
- the roles and responsibilities of governments in progressing that objective
- the outcomes being sought for people with disability and carers
- a nationally consistent performance reporting framework for tracking progress against those outcomes.

The purpose of the NDS should be to set out the agreed government policy actions in relation to each of the new NDA's outcome areas and the NDS should become a schedule to the NDA. The NDIS related instruments would remain separate to the NDA, but their link to the NDA should be explicitly outlined through references in the NDA and, where relevant, schedules to the NDA.

Recommendation 2.3

There should be a single set of outcomes across the National Disability Agreement (NDA) and the National Disability Strategy (NDS). As the overarching agreement, the outcomes should be outlined in the NDA. The new NDA should adopt the six outcome areas of the current NDS, with the addition of a seventh outcome for families and carers.

A modern, person-centred disability agreement

Recommendation 6.1

In drafting the new National Disability Agreement (NDA), signatory governments should commit to a person-centred approach to disability policy, which seeks to recognise and address the rights, needs and aspirations of people with disability. The preliminaries of the new NDA should affirm this approach.

The preliminaries should also explicitly acknowledge the United Nations Convention on the Rights of Persons with Disability and articulate how and to what extent the new NDA is intended to fulfil Australia's commitments under that convention.

Recommendation 2.2

The current objective of the National Disability Agreement (NDA) – that people with disability and their carers have an enhanced quality of life and participate as valued members of the community – is aspirational and broad enough to capture all elements of disability policy and should be reconfirmed in the new NDA.

Recommendation 6.2

To enshrine the cross-cutting nature of the National Disability Agreement (NDA), the obligations of governments under the NDA should be reflected in other National Agreements – and, where relevant, other Commonwealth–State agreements.

To facilitate this, the new NDA should include a commitment to reflect, in those other agreements, the responsibilities, performance targets and policy commitments of governments under the NDA.

Recommendation 6.3

The new National Disability Agreement (NDA) should be a 'living document' and make use of schedules to set out more detailed arrangements or operational matters, with the schedules amended as circumstances warrant.

It should also include an explicit commitment to independently review the agreement as a whole every five years.

Clarifying roles and responsibilities of governments

Recommendation 3.1

The new National Disability Agreement (NDA) should outline the role of the National Disability Insurance Scheme (NDIS) in providing supports to people with permanent and significant disability. It should make clear that the Australian, State and Territory Governments share responsibility for the NDIS, including a shared responsibility for stewardship of the NDIS market. Such responsibilities, as are set out in NDIS related instruments (such as Bilateral Agreements, NDIS Rules and the *National Disability Insurance Scheme Act 2013 (Cwth)*), should be referenced in the NDA.

Recommendation 3.2

The new National Disability Agreement should clearly and in detail reflect the role of the Information, Linkages and Capacity Building (ILC) program in supporting all people with disability, their families and carers.

In order to do so, the Australian, State and Territory Governments, in conjunction with the National Disability Insurance Agency, should clarify the role of the ILC program and the types of services that it will fund, before the ILC program is fully rolled out in 2019–20.

Recommendation 3.3

The new National Disability Agreement (NDA) should include a statement that affirms governments' commitment to a shared responsibility for, and an agreed approach to, workforce development (noting that this requires coordination across the health, community services and aged-care sectors).

The Australian, State and Territory Governments should also work together to immediately clarify, and make public, their responsibilities for developing the disability care workforce. This includes responsibilities for advancing the capabilities of all disability care and mainstream service workers to deliver accessible, inclusive and culturally responsive supports to people with disability. These responsibilities should then be reflected in the NDA.

Recommendation 3.4

The new National Disability Agreement should set out the responsibilities of the Australian, State and Territory Governments to provide disability services outside the National Disability Insurance Scheme (noting that these could be provided through mainstream systems), in particular where there is lack of clarity including for:

- services to people with psychosocial disability
- advocacy services, including systemic, individual, legal and self-advocacy
- carer services, in particular respite services
- community access and inclusion programs.

Recommendation 3.5

The Australian, State and Territory Governments should, through the COAG [Council of Australian Governments] Disability Reform Council, undertake a comprehensive gap analysis, which involves identifying community needs and government objectives, and assessing these against the services that are available or planned.

As a first step, governments should immediately articulate and publish:

- which programs will be discontinued as funding is rolled into the National Disability Insurance Scheme (NDIS)
- how they will discharge their continuity of support obligations
- exactly what services they will provide to people with disability who are not eligible for the NDIS or covered by continuity of support arrangements.

So that it can inform the drafting of the new National Disability Agreement (NDA), the gap analysis should be completed by no later than the end of 2019, and the results made public. The NDA should include a provision for a gap analysis to be undertaken at least every five years, and be updated accordingly following each gap analysis.

Recommendation 3.6

The new National Disability Agreement (NDA) should include a statement that affirms governments' commitment to clarifying what supports to National Disability Insurance Scheme (NDIS) participants are to be provided through mainstream service systems and what are to be provided through the NDIS.

The new NDA should also incorporate the Principles to Determine the Responsibilities of the NDIS and Other Service Systems and the accompanying Applied Principles and Tables of Services via a schedule to the NDA.

Recommendation 3.7

The new National Disability Agreement (NDA) should assist with addressing barriers that people with disability face in accessing mainstream services by:

- clearly stating that the Australian, State, Territory and Local Governments share responsibility for ensuring their mainstream services make reasonable adjustments so that the services they provide are accessible, inclusive, and culturally responsive in meeting the needs of people with disability, particularly those with complex needs who may need differentiated support
- recognising the important role Local Governments have to play in improving the lives of people with disability, especially through their role in planning and building regulations, and involvement in many community programs and services
- detailing in the National Disability Strategy the agreed policy directions and commitments of governments (including those to improve mainstream services) (recommendation 2.1) and incorporating the evaluation of policies to improve mainstream services into the policy making cycle (recommendation 4.1)
- ensuring governments commit to reflect in other agreements their commitments and obligations under the new NDA (recommendation 6.2).

Improved reporting for enhanced accountability

Recommendation 5.1

The new National Disability Agreement (NDA) should adopt a person-centred performance reporting framework that measures progress towards the outcomes of the new NDA.

The Senior Officials Working Group of the COAG Disability Reform Council should develop a comprehensive set of performance indicators (and any associated targets) to measure progress against the outcomes of the revised NDA, based on transparent criteria for selecting performance indicators, and drawing on advice from policy and data experts, and people with disability.

Performance indicators should strike a balance between providing comprehensive information about the lives of people with disability, families and carers, and utilising the minimum necessary number of indicators.

To enable indicators to be revised as new data becomes available, the performance indicators of the new NDA should be listed in a schedule to the agreement, and be updated as warranted.

Recommendation 5.2

The new National Disability Agreement (NDA) should establish a clear strategy for the collection, funding, and reporting of data required for the agreement's performance reporting framework. This should include:

- a commitment to the collection of data on the use of, and experiences with, mainstream services — including health, education, public transport, justice, and housing — by people with disability where this does not already occur
- ensuring funding to enable the triennial collection of the [Australian Bureau of Statistics'] Survey of Disability, Carers, and Ageing (or equivalent) with a sample size at least comparable to that of the 2015 survey
- outlining the data held by the NDIA and data sharing arrangements
- a framework governing the linking of data sets based on the recommendations of the Productivity Commission's inquiry into *Data Availability and Use*.

An appropriate working group (as in recommendation 5.4) should support the Senior Officials Working Group of the COAG Disability Reform Council to ensure that strategies are in place to collect necessary data for performance reporting where those data are currently unavailable, and thereby prevent the emergence of sustained data gaps. The strategy and operational details relevant to the working group should be outlined in a schedule to the NDA.

Recommendation 5.3

Performance reporting under the new National Disability Agreement (NDA) and National Disability Strategy should be merged, utilising a single national performance reporting framework, and resulting in a single performance reporting document.

Performance reporting under the National Disability Insurance Scheme should utilise the same performance framework as (or at a minimum a framework that is not inconsistent with) the framework of the new NDA.

Recommendation 4.1

The new National Disability Agreement (NDA) should include a commitment to undertake policy and program evaluation, in addition to its performance reporting requirements. Detailed arrangements for the policy evaluation program should be set out in a schedule to the NDA, and should include:

- a timetable that specifies when and what types of policies and programs will be evaluated
- protocols for undertaking the evaluations.

The Steering Committee for the Review of Government Service Provision should have ongoing responsibility for the administration of the policy evaluation program.

The results and findings from evaluations should be publicly reported and disseminated through the National Disability Report (recommendation 5.4).

Recommendation 5.4

Progress towards the outcomes of the new National Disability Agreement (NDA) should be publicly disseminated via a biennial National Disability Report, which the relevant Commonwealth Minister responsible for disability should table in the Australian Parliament. The report should include analysis of:

- progress towards the NDA's outcomes and associated performance metrics
- whether selected policies and programs are achieving improved outcomes for people with disability, their families and carers (using the policy evaluation process outlined in recommendation 4.1).

The National Disability Report should also become the formal reporting mechanism for the National Disability Strategy beyond 2020.

COAG should direct the Steering Committee for the Review of Government Service Provision to develop the report, supported by a (permanent) working group made up of representatives from Australian, State and Territory Governments, people with disability, the [Australian Bureau of Statistics], National Disability Insurance Agency and Australian Institute of Health and Welfare.

Arrangements for the development and tabling of the report, and the operation of the working group, should be outlined in the new NDA.

Source: Australian Government Productivity Commission, *Review of the National Disability Agreement*, Study report, January 2019, p 29–38.

Acronyms and abbreviations

AC – Companion of the Order of Australia

ACT – Australian Capital Territory

ADS – Australia’s Disability Strategy 2021–2031

AM – Member of the Order of Australia

AO – Officer of the Order of Australia

COAG – Council of Australian Governments

COVID-19 – Coronavirus disease 2019

CRPD – Convention on the Rights of Persons with Disabilities

DSP – Disability Service Plans (Queensland)

IGA FFR – Intergovernmental Agreement on Federal Financial Relations

MNZM – New Zealand Order of Merit

NDS – National Disability Strategy 2010–2020

NDDA – National Disability Data Asset

NDRP – National Disability Research Partnership

NDIA – National Disability Insurance Agency

NDIS – National Disability Insurance Scheme

NDIS Act – National Disability Insurance Act 2013 (Cth)

NDIS Review – Independent review of the NDIS

NHHA – National Housing and Homelessness Agreement

NSW – New South Wales

PSM – Public Service Medal

QDP – Queensland’s Disability Plan 2022–27: Together, a better Queensland

SA – South Australia

SDAC – Survey of Disability, Ageing and Carers



Royal Commission

**into Violence, Abuse, Neglect and
Exploitation of People with Disability**