



THE LAW SOCIETY
OF NEW SOUTH WALES

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27 August 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: geetanjali.ganguly@lawcouncil.au

Dear Dr Popple,

Australia's Disability Strategy 2021-2031

The Law Society is grateful for the opportunity to provide input to inform the Law Council's submission to the review by the Department of Social Services into Australia's Disability Strategy 2021-2031 (**Strategy**). The Law Society's Human Rights, Criminal Law and Diversity and Inclusion Committees have contributed to this submission.

Our comments are focused on the outcome area related to 'Safety, Rights and Justice'.

The Law Society agrees that the three nominated areas, namely addressing disability rights, violence against women and girls with a disability, and overrepresentation in the criminal justice system, are appropriate priorities for future work under the Strategy. We note that it will be important to respond to multilayered and intersectional experiences of disability when developing policy and legislative reforms that respond to these priority areas.

Advancing the priority areas in practice demands a holistic approach which emphasises cross-sector collaboration, coordination across all areas of government, proper consultation and adequate funding, and resources to address systemic issues and scale solutions. Investment in data collection, research, and evaluation, is also critical in ensuring transparency, identifying need, and measuring success.

We note that, while only 13 of the 172 recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**) were accepted in full, and another 117 accepted in principle, we emphasise that the task of determining actions under the Strategy should be guided by the comprehensive analysis and recommendations made by the Royal Commission, which were co-designed by persons with disability.

Disability Rights

To improve disability rights, we suggest that the Strategy should promote consultation and shared decision-making. As set out in Volume 4 of the Royal Commission Final Report, a 'nothing about us, without us' approach is central, whereby the agency of people with disability

as ‘active citizens and rights holders’ is emphasised.¹ Establishing and embedding formal mechanisms through which to consult on policy measures that directly affect people with disability is important to ensure full participation in this area.

A focus on accessibility will also assist in improving disability rights. People with disability should be able to inform themselves about their rights through accessible information. When they seek to enforce their rights, accessibility is also central to enabling their engagement with the justice system. In this respect, we highlight the issues previously raised in the Law Council’s submission to the Royal Commission regarding systemic and structural barriers to access to justice, particularly the focus on accessible information, communications and proceedings.²

It is important that the Strategy supports rights-based legislative reforms for people with disability. The Royal Commission Final Report highlighted the need for a more comprehensive legal framework to advance the rights of people with disability and recommended the introduction of an Australian Disability Rights Act, together with amendments to the *Disability Discrimination Act 1992* (Cth).³ The Law Society continues to hold the view that a Commonwealth Human Rights Act would be the preferred approach to promoting human rights protections, including for persons with disability. At the same time, it will be important to ensure that the rights and obligations highlighted by the Royal Commission to be included in an Australian Disability Rights Act are reflected in any broader human rights legislation proposed at the Commonwealth level.

Given the recommendation in the inquiry report, tabled by the Parliamentary Joint Committee on Human Rights in May 2024, on the establishment of a Commonwealth Human Rights Act, coupled with the recommendations of the Royal Commission, it is important that rights-based legislation is an area of focus for the Strategy.⁴ In our view, piecemeal legislation will not achieve the transformation that could occur through a more comprehensive approach.

In line with Article 8 of the *Convention on the Rights of Persons with Disabilities (CRPD)*, education and awareness raising about the rights of people with disability should continue to be emphasised. Such campaigns should not only be directed to people with disability, their carers, allies and the general public, but also needs to target employers, and any other businesses who may have obligations with respect to people with disability who are their employees or otherwise engage with their services.

Eliminating violence against women and girls with disabilities

Actions under the Strategy should be aligned with the National Plan to End Violence against Women and Children 2022–2032, to ensure a nationally consistent, whole-of-government approach. Similarly, alignment with the Aboriginal and Torres Strait Islander Action Plan 2023–2025 is desirable.

It is important to recognise that women and girls with disability who experience gender-based violence can be impacted in particular ways, for example if they are from Aboriginal and Torres Strait Islander, culturally diverse, migrant and refugee backgrounds. Any actions in this area should be tailored to take account of this intersectional experience.

The action item should guide States and Territories to implement the recommendations in the Royal Commission Final Report, which calls for the establishment of an independent ‘one stop

¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report - Volume 4, Realising the human rights of people with disability](#), 29 September 2024, 70.

² Law Council of Australia, [Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in relation to the ‘Criminal Justice System – Issues Paper’](#), 17 August 2020, 29.

³ Royal Commission, Final Report – Volume 4 (above n 2), Chapters 3 and 4.

⁴ Parliamentary Joint Committee on Human Rights, [Inquiry into Australia’s Human Rights Framework](#), May 2024, Recommendation 2.

shop' complaint reporting, referral and support mechanism to receive reports of violence, abuse, neglect, and exploitation of people with disability.⁵ Any reporting/referral mechanisms must be co-designed with women and girls with disability, who can provide insights on barriers to accessing support.

Criminal Justice System Response

To the extent they are relevant to NSW, we support the recommendations in Volume 8 of the Royal Commission Final Report, and consider that these should guide policy and legislative reform for this priority area.⁶ Volume 8 provides important findings on the overrepresentation of people with disability, including cognitive disability, in the criminal justice system, as well as a discussion of the criminalisation of disability. Australia's treatment of people in youth and adult detention centres should be in accordance with our obligations under key human rights legislation to which Australia is a party, including the CRPD, the *Convention on the Rights of the Child* and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Where a person with disability comes into contact with the criminal justice system, their needs should be identified and they should be connected with proper supports, including being provided with throughcare when leaving those systems.

Thank you for the opportunity to contribute to the Law Council's submission. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Brett McGrath
President

⁵ Royal Commission, [Final Report - Volume 11, Independent oversight and complaint mechanisms](#), Recommendation 11.3.

⁶ Royal Commission, [Final Report - Volume 8, Criminal justice and people with disability](#), Recommendations 8.1 – 8.24.