

19 January 2024

Commonwealth Disability Royal Commission Taskforce
GPO Box 9820
Canberra ACT 2601

Via email: DRCResponseConsultation@dss.gov.au

Dear Commonwealth Disability Royal Commission Taskforce

Australian Government response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Thank you for the opportunity to provide a submission on the recommendations of the Disability Royal Commission Final Report (**Disability Royal Commission**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of 51,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits (**NFPs**), large and small and medium enterprises (**SMEs**) and government sector.

The recommendations of the Disability Royal Commission are far reaching and require transformational change across Australian society. Implementation will require significant time and resources to enable uplift in recruitment, training, service design and delivery, as well as sustainable and sequential changes in policy and practice.

We note that the Independent Review into the National Disability Insurance Scheme (**NDIS**) made 26 recommendations and 139 actions, which the government should consider together with the recommendations of the Disability Royal Commission.¹

Executive summary

The AICD's 2023 NFP Governance and Performance Study highlighted that NFP directors are being required to commit more time and rigorous focus to the operations of their NFPs, amidst the impact of tougher governance standards resulting from various Royal Commissions and workforce shortages.²

It is critical in our view that government, in implementing recommendations of the Disability Royal Commission, prioritise the delivery of capacity-building initiatives, targeted training and guidance to support NFP providers in the care sector meet the regulatory changes ahead.

The AICD's submission has been informed by engagement with senior NFP directors, including those of disability service providers. Given the scope of the 222 recommendations, the AICD focuses on several key recommendations of relevance to the governance of disability service providers, including Volume 4 (Realising the human rights of people with disability), Volume 5 (Governing for inclusion), and Volume 10 (Disability services).

¹ Independent Review into the National Disability Insurance Scheme – Final Report (7 December 2023) – Available [here](#).

² AICD Not-for-Profit Governance & Performance Study 2022-23 (1 February 2023). Available [here](#).

The AICD provides support and commentary for the following recommendations:

- **Recommendation 4.1 – Establish a Disability Rights Act.** The AICD supports the establishment of a Disability Rights Act (**DRA**). Under current Commonwealth, State and Territory laws, there is limited legal protection of the rights recognised in the *Convention on the Rights of Persons with Disabilities* (**CRPD**) and a lack of effective remedies when rights are breached.
- **Recommendation 4.4 – Future review of the Disability Rights Act.** The AICD supports a five-year review of the DRA to consider whether duties in the DRA should be extended to additional persons or entities, including private sector providers under the NDIS.
- **Recommendation 4.27 – Positive duty to eliminate disability discrimination.** The AICD supports in principle a positive duty under the *Disability Discrimination Act 1992* (Cth) (**DDA**) requiring duty-holders to take reasonable and proportionate measures that are commensurate to the entity's size, resources and operational context. The AICD encourages the development of practical and accessible guidance by the Australian Human Rights Commission (**AHRC**) on meeting this duty in practice.
- **Recommendation 5.5 – Establishment of a National Disability Commission.** The AICD supports the establishment of the National Disability Commission (**NDC**) which would provide oversight of the DRA and promote best practice to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector, and the broader community.
- **Recommendation 10.1 – Embedding human rights.** The AICD supports the NDIS Quality and Safeguards Commission (**NDIS Commission**) commissioning a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services. Developing tools, resources and training packages on promising practices will assist providers comply with obligations under the DRA and DDA, particularly given the complexity of the sector, diversity of providers, and resource constraints.
- **Recommendation 10.17 – Access to safeguarding indicators and expertise.** The AICD supports the NDIS Commission developing and publishing guidance about best practice governance models for NDIS providers, including the use of safeguarding indicators to be regularly monitored by boards and enable meaningful discussion of safety, quality and risk issues.
- **Recommendation 10.22 – Strengthened regulatory requirements.** The AICD supports in principle the intent behind strengthening practice standards and quality indicators for accountable governance by NDIS providers, subject to this providing greater clarity for providers to fulfil their obligations.

Volume 4 – Realising the human rights of people with disability

Recommendation 4.1 – Establish a Disability Rights Act

The AICD supports the establishment of a Disability Rights Act (**DRA**) which would give effect to Australia's obligations under the *Convention on the Rights of Persons with Disabilities* (**CRPD**).³ It is clear from the Disability Royal Commission that a lack of awareness and understanding of disability rights is a significant issue in Australia. We recognise that under current Commonwealth, State and Territory laws, there is limited legal protection of the rights recognised in the CRPD and a lack of effective remedies when rights are breached.⁴

³ Convention on the Rights of Persons with Disabilities (2006) – Available [here](#).

⁴ Company Director magazine – Disability rights reforms and director responsibility (1 November 2023) – Article available [here](#).

Recommendation 4.4 – Future review of the Disability Rights Act

The AICD supports a future review of the DRA within five years of commencement. The five-year review would consider, in particular, whether and how duties in the DRA should be extended to additional persons or entities, including private sector providers under the NDIS.

We note that the Commissioners were divided on whether or not to extend the DRA to private sector providers delivering services through the NDIS from the outset. In the AICD's view, it should not matter who is delivering the service when upholding the rights of people with disability. Excluding additional duty-holders until the five-year review raises the issue of inconsistent coverage of the DRA, contrary to the policy intent of the DRA and general principles under the CRPD.

The AICD however recognises the legal and policy complexity, cited by the Commissioners in the Final Report, involved with extending the DRA to additional duty-holders from commencement due to the interaction with the *Human Rights Act 2019 (Qld)*. We encourage government to consider undertaking or commissioning further analysis on this aspect to prioritise the extension of the DRA to private sector service providers at the five-year review.

Recommendation 4.27 – Positive duty to eliminate disability discrimination

The AICD supports in principle the introduction of a positive duty to eliminate disability discrimination, harassment and victimisation under the DDA. Such a reform would be similar to recent amendments made to introduce a positive duty to eliminate sexual harassment and other harmful conduct under the *Sex Discrimination Act 1984 (Cth)* (**SDA**).

The AICD supports, in particular, a positive duty under the DRA requiring duty-holders to take reasonable and proportionate measures commensurate to the entity's size, resources and operational context.⁵ It is critical however that accessible guidance be provided on what constitutes 'reasonable and proportionate measures' in discharging the positive duty, similar to the Australian Human Rights Commission (**AHRC**) detailed guidance on the positive duty to eliminate sexual harassment.⁶ Targeted guidance should also be developed for NFPs, Aboriginal and Torres Strait Islander organisations and small and medium enterprises (**SMEs**).

It is also important that the AHRC is appropriately resourced to support capacity-building, awareness, and enforcement of a positive duty under the DDA.

Volume 5 – Governing for inclusion

Recommendation 5.5 – Establishment of a National Disability Commission

The AICD supports the establishment of a National Disability Commission (**NDC**) as an independent statutory authority under the DRA, which would amongst other functions provide oversight of the DRA and promote best practice to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community.⁷

Targeted initiatives focused on capacity building, training and guidance on compliance with the DRA for NFPs and SMEs, which often have limited time, resources and expertise, should be a priority for an NDC once established. It is also critical that the NDC be adequately funded and resourced to effectively

⁵ AICD Submission – Options to progress further Respect@Work Report recommendations (23 March 2022) – Available [here](#).

⁶ AHRC Guidelines for Complying with the Positive Duty under the *Sex Discrimination Act 1984 (Cth)* (August 2023) – Available [here](#).

⁷ Disability Royal Commission (29 September 2023) – Final Report. Volume 4. Page 12. Available [here](#).

deliver on its compliance and enforcement functions and meet expectations of the community, regulated population, and government.

Volume 10 – Disability services

Recommendation 10.1 – Embedding human rights

The AICD supports the NDIS Quality and Safeguards Commission (**NDIS Commission**) commissioning a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services. The Final Report acknowledges that the NDIS Commission holds many of the levers to address identified practice deficiencies and strengthen sector-wide practice.

In the AICD's view, developing tools, resources and training packages on promising practices will assist providers to comply with obligations under the DRA and DDA, particularly given the complexity of the sector, diversity of providers, and resource constraints. We also note the challenges of recruiting skilled and available board directors, especially in regional and remote areas, which the NDIS Commission should have regard to when tailoring support for providers on disability leadership.⁸

The AICD continues to develop our own suite of Director Tools that provide practical guidance on a range of care governance topics.⁹ For example, in response to the reforms arising from the Aged Care Royal Commission, we published *Governing for quality aged care – A director's guide*, aimed at assisting directors to meet new governance obligations in the aged care sector. It also includes relevant concepts for directors of disability service providers such as care and clinical governance, and dignity of risk.¹⁰

Recommendation 10.17 – Access to safeguarding indicators and expertise

The AICD supports the NDIS Commission developing and publishing guidance about best practice governance models for NDIS providers, including the use of safeguarding indicators to be regularly monitored by boards and enable meaningful discussion of safety, quality and risk issues.

We also strongly support boards of NDIS providers having guidance on regular access to specialist safeguarding expertise in considering issues arising from complaints and incidents.

Recommendation 10.22 – Strengthened regulatory requirements

The AICD supports in principle the intent behind strengthening practice standards and quality indicators for accountable governance by NDIS providers, subject to this providing greater clarity for providers to fulfil their obligations.

Feedback from members who have served on the governing bodies of disability service providers have reflected concern with the increasing regulatory and reporting burden, without demonstration of the value added to quality and safe service provision. Similar concerns are shared by members involved in the governance of aged care providers regarding the impact of the legislative reforms arising out of the Aged Care Royal Commission, with a new Aged Care Act currently undergoing public consultation.¹¹

As a general point, government should have regard to the Council of Australian Governments (**COAG**) Principles during the drafting of legislation concerning director liability and any associated penalties. The COAG Principles provide clear rationale for when it is appropriate for directors and officers of an entity to

⁸ Disability Royal Commission (29 September 2023) – Final Report. Volume 10. Page 114. Available [here](#).

⁹ AICD – Director Tools (2020). Available [here](#).

¹⁰ AICD Governing for quality aged care – A director's guide (18 December 2023). Available [here](#).

¹¹ AICD Submission – A New Aged Care Act: The Foundations (22 September 2023). Page 3. Available [here](#).

be liable for an offence committed by the organisation.¹²

We also note the following findings from the NDIS Commission's July 2023 Regulatory Burden Consultation Insights Report, which in our view should be addressed as a priority:¹³

- On reportable incidents, providers said it often was not clear when the NDIS Commission closed reportable incidents. This had an effect on providers' internal reporting to Executives and Boards.
- Impact of duplicate reporting obligations from State and Territories, and the regulatory requirements associated with work, health and safety.
- Complexity of meeting NDIS and child safe standards, particularly when supporting children and young people also accessing supports funded through States and Territories.
- Challenges with the audit process and inconsistent practice with auditors in regards to the interpretation of Practice Standards.

We agree with the suggestion by NDIS providers for the "NDIS Commission to provide more support, resources, tools and clarifying information on how to comply with obligations." Boards should have the flexibility to determine the best application within their organisation and remaining accountable.

General comments


The AICD continues to equip directors of social care organisations with tools, support and education. Recently, the AICD launched our inaugural Care Governance Webinar Series, including a webinar on *Strengthening Care Governance: Implications of Royal Commissions*.¹⁴ In 2024, the AICD will release the third edition of our NFP Governance Principles, which will include guidance on how boards can elevate the client voice/lived experience in their governance.

The AICD is also committed to improving the capability of leaders with disability. In FY23, the AICD launched the Disability Leadership Program in partnership with Australian Network on Disability and with support from the Commonwealth Government for 200 scholarships for leaders with disability to be delivered over a 2-year period.¹⁵

Next Steps

We hope our submission will be of assistance. If you would like to discuss any aspects further, please contact Sean Dondas, Policy Adviser at sdondas@aicd.com.au or Laura Bacon, Senior Policy Adviser at lbacon@aicd.com.au.

Yours sincerely,



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¹² COAG Principles (2012). Available [here](#).

¹³ NDIS Quality and Safeguards Commission – Regulatory Burden Consultation Insights Report (July 2023). Available [here](#).

¹⁴ Care Governance Webinar Series (20 December 2023). Available [here](#).

¹⁵ AICD disability scholarship winners (30 May 2023). Media release available [here](#). Minister for Social Services Amanda Rishworth said, "I'm so pleased to announce the awarding of a further 108 scholarships under the Disability Leadership Program, taking the total number of scholarships awarded to 208."