

Senate Community Affairs References Committee

Inquiry into the Funding and Operation of the
Commonwealth State / Territory Disability Agreement

A submission by the Disability Council of NSW

August 2006

Introduction

This is a submission by the Disability Council of NSW to the Senate Community Affairs Committee's *Inquiry into the Funding and operation of the Commonwealth State/Territory Disability Agreement*. The Disability Council of New South Wales, operating under the Community Welfare Act 1987, is the official advisory body to the NSW Government on issues and policy that affect people with disability and their families in NSW. The Council also functions as the State advisory body to the Commonwealth, commenting on Commonwealth issues affecting people with disabilities and their families in NSW. The Council is appointed by the Governor and reports to the NSW Minister for Disability Services.

The Disability Council of NSW is familiar with and substantially agrees with the 2005 report of the Australian National Audit Office into the administration of the CSTDA; in this submission we seek to highlight key issues for the Disability Council, with respect to its role as defined under the current CSTDA and the Bilateral Commonwealth/State Disability Agreement. We will also make observations about progress, in NSW, against strategic priorities under the Agreements.

The responsibilities of the Disability Council of NSW under the CSTDA

The preamble to the current Commonwealth States & Territories Disability Agreement was developed as a joint statement of principles by the State and Territory Disability Advisory Councils, the National Disability Advisory Council and the National Disability Administrators. It states that the Agreement is based on the premise that "communities are enriched by the inclusion of people with disabilities and that positive assumptions about the gifts and capacities of people with disabilities, including those with high support needs, are fundamental to their experience of a good life and to the development and delivery of policy, programs and services."

The preamble concludes by setting out five strategic policy priorities. These are:

- to strengthen access to generic services for people with disabilities;

- to strengthen across-government linkages;
- to strengthen individuals, families and carers;
- to improve long-term strategies to respond to and manage demand for specialist disability services; and
- to improve accountability, performance reporting and quality.

The CSTDA provides the national framework for the provision of Government support to services for people with disability. Under the three Agreements signed to date, State and Territory governments have responsibility for the planning, policy setting and management of accommodation support, community support, community access and respite care services. The Australian Government has similar responsibilities for specialised employment assistance

The Disability Council of NSW has a legitimate role in considering and advising on national disability policy issues. This is legislated under the NSW Community Welfare Act 1987 section 16(2)(g). It is a role defined for all State and Territory advisory bodies in the Commonwealth State Territory Disability Agreement section 6(7), and is an explicit part of the strategy to encourage a more co-ordinated framework for consultation and advice between NSW and the Commonwealth in the NSW Bilateral Agreement section 3(5)(a).

The major Agreement that defines roles and responsibilities of Governments for the delivery, funding and development of specialist disability services is the CSTDA. The roles assigned to the Disability Advisory Bodies (or Councils) under the current CSTDA are to:

- provide advice to Government regarding planning, delivery and evaluation of services;
- advise their State or Territory Minister on progress against meeting the CSTDA objectives and priorities;
- advise on directions for research and development; and
- consult with the National Disability Advisory Council on matters of broader national significance.

Each State and Territory DAC receives the same amount of funding from the Australian Government to assist them in their advice provision role.

Operational issues

All the State and Territory Disability Advisory Councils are mentioned in the Bilateral Agreements for their jurisdiction, under strategies to strengthen and increase opportunities for individuals, families and carers to participate and influence the development and implementation of supports and service at all levels. Further, in the majority of Agreements, the Disability Advisory Councils are viewed as the principal bodies that can assist with collaboration and the forging of partnerships across Governments and the disability community.

The requirement to consult with the national advisory body is formalised in the legislation governing the activities of the Disability Advisory Councils in NSW and Western Australia, and in the terms of reference of other States and Territories.

The following observations are offered to provide context for the issues identified as problematic by the Disability Council of NSW. Firstly, the purview of the Disability Council of NSW is broader than that defined by the CSTDA, which focuses on specialist disability services, for a subset of the population of people with disability that is eligible for such services. Thus, for example, it has been observed by peak representative groups for people with psychiatric disability, acquired brain injury, or people with disabilities who are resident in aged-care facilities, that their clients have been largely overlooked by the CSTDA.

Secondly, the delineation of responsibilities to the Australian Government or State and Territory Governments under the CSTDA are arbitrary and do not fit with the lives and needs of people with disability and their families - which are not so easily delineated. Despite the development of a Commonwealth/NSW Bilateral Agreement on the Transfer of Services, it is frequently the case that issues for people with disability cannot be designated to only one tier of Government at any one time. Additionally, intersectional issues - those arising at the juncture of Commonwealth and State/Territory responsibilities, involving overlaps or gaps in services - remain unresolved and problematic for people with disability. The Disability Council of NSW welcomes the introduction of

alternative approaches, such as the recent COAG agreement to reduce the numbers of young people with disability living in nursing homes; however, advice on intersectional issues to both levels of Government remains an important area of work.

Finally, while the role of National Disability Advisory Council is to provide advice to the Australian Government and the primary role of the Disability Council of NSW is to provide advice to the State Government, via the Minister for Disability Services, we also have a role in providing advice to the Australian Government on national disability policy issues. While the Agreement creates the expectation that the Disability Council of NSW and the National Disability Advisory Council will consult, it is not the role of national body to be a conduit of advice from NSW to the Australian Government. The arrangements under the CSTDA do not prescribe how advice from a jurisdictional perspective can be provided to the Australian Government.

The National Disability Advisory Council's role has been to provide consumer-focused advice on disability-related issues to the Australian Government Minister for Family and Community Services, and to encourage consultation between the Australian Government and the disability sector. The Disability Council of NSW, together with the other State and territory bodies, has met annually with NDAC to share information and discuss issues.

The Commonwealth Minister announced in December 2004 that a new advisory body would be formed to replace NDAC: the National Advisory Council on Disability and Carer Issues (NACDCI). It was stated that NACDCI would provide advice on a broad range of issues affecting people with disability, their families and care providers.

Although it is understood that NACDCI will continue to consult with the Disability Council of NSW, the other State and Territory bodies and national organisations in the disability and carer sectors on issues of mutual concern, it is unknown whether the established mechanisms for dialogue will be maintained. Further, the formation of a new body appears to indicate a shift in emphasis, from a clear focus on disability-specific issues to carer issues.

However, the impact of the formation of the new council remains unknown: although expressions of interest were called and received, in mid-2005, the process of creating the National Advisory Council on Disability and Carer Issues appears to have stalled. At present, NDAC is represented by an "interim Chairperson" - who has no Council to convene. Thus, an important role identified for the Disability Council of NSW under the CSTDA – namely, consultation with NDAC on matters of broader national significance and, likewise, the Bilateral Agreement requirement that that "issues identified by the Disability Council of NSW will be communicated to the appropriate parties to achieve effective response" - cannot be fulfilled.

Structural changes at the Commonwealth level have posed further difficulties for the Disability Council of NSW. For example: while one CSTDA policy priority is to strengthen access to generic services, it does not suggest how to best provide across-Government and across-Department advice, in the context of emerging whole-of-Government responses to the needs of people with disability. Related to this is lack of clarity around how the responsibilities previously allocated under the Commonwealth Department of Family and Community Services Disability and Carers Branch are to be executed in light of recent Departmental changes.

In its recent report on the administration of the third CSTDA, the Australian National Audit Office referred to the role of the national network of State and Territory Disability Advisory Councils "that liaises with the community, Government officials and Ministers, and NDAC"¹. The ANAO supported the Department of Family and Community Services' involvement with the network as a coordination and awareness-raising mechanism, observing that the network of Disability Advisory Councils provided the Department with "an important mechanism with which to stay in touch with communities and to inform itself, and its Minister, of current issues for people with disability".

Similarly, under our Bilateral Agreement, the "appropriate parties" with which the Disability Council of NSW is to communicate includes "FaCS and DADHC representatives". Such communication is included as a performance measure. Nonetheless, regular communication with representatives of

¹ The Framework for the Joint Work of the State and Territory Disability Advisory Councils – Public Report (Disability Advisory Council Network Secretariat, April 2006) is included as an appendix to this submission.

the Commonwealth and State departments, and the content of such communication, remains problematic, subsequent to Commonwealth re-organisation.

Progress in NSW

With respect to specific priorities for action under our Bilateral Agreement, Council notes that work is currently in progress, viz:

- *The intersection between the disability support and aged care system.* The Disability Council is aware that FACSIA has requested information from service providers and others, regarding innovative service delivery models for young people in (or at risk of entering) nursing homes. This was an agreement by COAG this year, but originates with the Commonwealth-State Bilateral Agreement terms of reference 3(2). It is intended that information obtained under this process should be shared across the States.
- *Employment, transitions and alternatives to work.* In 2005, DADHC introduced (i) the Transition to Work Program to provide time-limited support to school leavers, to assist them to move into employment, vocational education or higher education; and (ii) the Community Participation Program, to provide life-skills development and independence, as an alternative to paid employment in the community. These programs replace DADHC's Adult Training, Learning & Support Program; the draft guidelines for the Community Participation program are currently available for public comment.

Much of the ongoing progress in NSW has been described (and an ongoing commitment to further work made) in the recent State plan *Stronger Together: A New Direction for Disability Services in NSW 2006-2016*, although other work pre-dates this document. However, it should be acknowledged that the State plan has great significance for people with disability and their families in NSW because, importantly, it defines service provision according to functional need, rather than tying it to disability type. When translated into practice, this will have enormous positive impact on access to services by people who have "fallen through the gaps" of the CSTDA.

With respect to the CSTDA's strategic policy priorities, the Disability Council of NSW notes the following work being undertaken in this State:

(i) *Priority: Strengthening access to generic services.*

- There will be a more co-ordinated approach to early intervention and prevention support for children with disability and their families through co-operation and integrated planning between the NSW Government's cross-agency *Families First* program and the specialist disability Early Childhood Intervention Coordination Program. These programs involve the Departments of Health, Community Services, Education & Training, Ageing, Disability & Home Care, Housing and (in the case of ECICP) the Commonwealth Department of Families, Community Services & Indigenous Affairs, together with non-government agencies.
- The NSW Government's *Partnership against Homelessness* program works across agencies develop a coordinated approach to the delivery of support services for people who are homeless, or those at risk of homelessness, including people with disabilities.

(ii) *Priority: Strengthening across-government linkages.*

- DADHC, together with NSW Departments of Health and Housing, have developed the *Integrated Services Project for Clients with Challenging Behaviour*. This is a 3-year project that provides intensive assistance to people with complex needs and challenging behaviours

(iii) *Priority: Strengthening individuals, families & carers.*

- State-wide training has been provided to facilitate the implementation of *Children's Standards in Action: A Resource for Service Providers Working with Children and Young People with a Disability* – with a view to building and maintaining family resilience.

- Under *Stronger Together*, DADHC will provide 200 new therapy places and 80 additional respite beds in 2006-2007.

(iv) *Priority: Improving strategies to respond to demand for specialist disability services.*

- In 2006-2007, DADHC will create 180 new places for innovative supported accommodation, 400 new therapy places, and 670 additional flexible respite places, for adults with disability.
- NSW will continue to close its large residential centres over time, with a \$23 million commitment, over five years, to the development of specialist accommodation services.

(v) *Priority: Improving accountability and quality.*

- DADHC has developed an *Integrated Monitoring Framework* to help ensure that its funded (and operated) services deliver quality services consistent with client needs.
- The NSW Government's *Stronger Together* plan makes an explicit commitment to fairer and clearer ways to access services, greater accountability and transparency.

This priority is critical. The report of the Australian National Audit Office, referred to above, noted that the CSTDA lacks "indicators of the quality of life of people with disabilities, their participation in the community, their value in the community, or any related parameters". While the State plan's commitment to quality and transparency is admirable, clear guidelines on how these things will be achieved, at a State and National level, will be a welcome addition to the next CSTDA.

Finally, to return to the Disability Council's responsibilities under the CSTDA, as part of the "progress of work in NSW":

This Council has a demonstrated capacity to provide advice regarding planning, delivery and evaluation of services; to provide advice to the Minister on progress against CSTDA objectives and priorities; and to suggest future research and development priorities. More broadly, the State and Territory Disability Advisory Councils are all advantageously positioned at the points of intersection between Government, the community, and policy-making. They are, therefore, well-placed to be used in a developmental capacity by every other party to the CSTDA, by providing advice at key points in the policy and decision-making process. This is implicitly acknowledged in the roles assigned to them under the CSTDA. Communication with their national counterpart is an explicit part of these roles. It is, however, unable to consult and co-operate with an entity that no longer exists. The Disability Council of NSW is confident that this situation will not be allowed to persist.

Prepared on behalf of The Disability Council of NSW
by Robert Lawson, Senior Policy Officer

APPENDIX

**Framework for the Joint Work of the State and Territory
Disability Advisory Councils**

Public Report

April 2006

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Table of Contents

1.	Introduction.....	12
2.	Disability Advisory Councils.....	12
3.	Legislated role in the provision of advice.....	13
4.	Disability Advisory Council Network	14
5.	Improving external stakeholder relations	15
5.1	Relationship with Disability Advisory Councils.....	15
5.2	National issues	16
5.3	Communication	17
5.4	Adding-value	18
6.	Conclusion.....	19
7.	Appendix	20

Introduction

In 2005 an extensive process of consultation and negotiation was undertaken to inform the development of a framework to facilitate a coordinated approach to the provision of advice on national disability policy by the Disability Advisory Council (DAC) Network. This framework has been drafted and will be trialled by the Network during 2006.

The *Framework for the Joint Work of the State and Territory Disability Advisory Councils Public Report* summarises the findings from this consultation with external stakeholders. This report was integral to the development of the DAC Network's framework.

The context in which the Disability Advisory Councils operate is first explained and then findings from the consultation with external stakeholders are reported.

Disability Advisory Councils

Disability Advisory Councils are not incorporated organisations with a membership or governance board, as are most non-government organisations. Instead, each Council is required to act in accordance with the legislation, or terms of reference, each has been established under by their State or Territory government. The membership of each DAC is made up of people who have been selected by their Minister to advise government. Typically these people have been chosen because they are well connected in the disability sector and because of their knowledge and expertise in relation to disability policy.

On a day-to-day basis, the Australian Government's relations are principally focused at the service provider and advocacy agency level, rather than at the level of people with disability, or the wider disability sector. So, government is often not in the position to judge whether the advice received is impartial from the interests of the organisation. In contrast, the DACs can provide more considered advice, that is freer from sectional or vested interest, particularly about what government needs to be aware of when seeking to achieve its objectives.

DACs are uniquely positioned, in the policy environment, as primarily ‘thinking’ organisations that advise government. The provision of advice is not an adjunct to other roles. In the government and non-government sectors they are well positioned to bring parties together, acting as a broker or catalyst, especially in the more challenging issue areas. Also, DACs are advantageously positioned at the points of intersection between government, community and policy making. They are therefore well placed to be used in a developmental capacity by providing advice at various points along the policy process, especially at key stages before decisions are made.

Legislated role in the provision of advice

The DACs have a legitimate role in considering and advising on national disability policy issues. This role is specified in the Commonwealth State Territory Disability Agreement (CSTDA), Bilateral Agreements between the Commonwealth and all State and Territory jurisdictions, and the legislation or terms of reference of each Disability Advisory Council.

The major agreement that defines roles and responsibilities of governments for delivery, funding and development of specialist disability services is the CSTDA. The roles assigned to the Disability Advisory Bodies² (or the DACs) under the current CSTDA are to: provide advice to government regarding planning, delivery and evaluation of services; advise their State/Territory Minister on progress against meeting the CSTDA objectives and priorities; advise on directions for research and development; and consult with NDAC on matters of broader national significance. Each State and Territory DAC receives the same amount of funding from the Australian Government to assist them in their advice provision role.

All the State and Territory DACs are mentioned in the Bilateral Agreements for their jurisdiction, in the section on strategies to strengthen and increase opportunities for individuals, families and

² Many of the Disability Advisory Councils were not in their current form when the last CSTDA was drafted. In the following 2 years a few were disbanded and reformed and often renamed, with none retaining the title of disability advisory body. Consequently the term Disability Advisory Council is now used for members of this group.

carers to participate and influence the development and implementation of supports and service at all levels. Furthermore, in the majority of Agreements, the DACs are viewed as the principal body that can assist with collaboration and forging partnerships across governments and the disability community.

The requirement to consult with the national advisory body³ is formalised in the legislation governing the activities of the DACs in NSW and WA and the terms of reference of the remaining States and Territories, except NT and SA. A relationship with the DACs in other States and Territories is mandated in the legislation or terms of reference of WA, NSW, Victoria and Tasmania.

Disability Advisory Council Network

The Disability Advisory Councils of each State and Territory form a national Network of advisory bodies that liaise with the community, Ministers and government officials and the National Disability Advisory Council (NDAC). The Network meets regularly to discuss common disability policy issues.

NDAC is not a member of the Network. While NDAC has the primary role to provide advice to the Australian Government, the DACs also have a clear and separate role in providing advice to government, including the Australian Government, on national disability policy issues. The DACs and NDAC frequently consult on national disability policy issues, however it is not NDAC's role to be a conduit of advice from the DACs to the Australian government.

The Network does not have a Secretariat. The office of the Disability Council of NSW has, since 2003, provided a national coordination role for the Network, by facilitating communication between Network members. This mainly has involved arranging and supporting DAC Network teleconferences.

³ Currently NDAC – the National Disability Advisory Council.

Improving external stakeholder relations

Developing productive and mutually beneficial relationships with key Australian Government Ministers and Departments serving the interests of people with disability, and other influential stakeholders in the policy process, is integral to the success of the DAC Network.

With this rationale in mind, major stakeholders on national disability policy were contacted and invited to provide input to this project. Those who provided input are listed in the Appendix. Their feedback is summarised below.

Relationship with Disability Advisory Councils

The overwhelming response from national disability policy stakeholders was that they had no relationship, or a very limited relationship, with the DACs. One person observed that, thus far, neither party had really invested in the relationship. Some reported having an incidental relationship with one or more DAC members, after meeting at another forum. So, relationships had developed by accident and not by design. A minority of respondents reported that they had a relationship with one DAC (usually the DAC in their State or Territory). One reported that members of their peak organisation had also been appointed to a DAC.

Where relationships were established, they tended to be valued. A few people commented that their relationship with different DACs varied; some relationships were good and some poor. Many considered that being contacted for this project was a good start to relationship-building and, overall, a good initiative. Thus, the profile of DACs at a State and national level is not uniformly high, and increasing the profile of DACs across Australia may be an important component of increasing the profile of the DAC Network.

Some expressed the view that the DACs should maintain contact with the local State body of the peak, rather than the national body. Others welcomed a closer working relationship with the DACs and more frequent interactions. One representative from a national peak organisation commented that they tend to have relationships with other organisations for

strategic reasons, so a positive systemic outcome needed to be apparent for them to invest in a relationship. Another commented that he could see benefit to having a more formal relationship with the DACs, but it was important that this was constructed so as not to drain mutual resources.

Observations specific to the DACs included the criticism that it appears that the role of DACs differs across the country, contributing to confusion about the DACs. Generally, understanding of the role of DACs is poor. Some believed that the DACs have a history of being unresponsive, demonstrated by their failure to take up issues that the sector saw as important. Some saw this as the major failing of advisory councils, in that their work program focussed on what their Minister saw as important and not necessarily what the sector saw as important. Some thought that the DACs had, in the past, shied away from harder or more contentious issues, and were perceived as 'lacking guts'. Finally, some were critical that, when issues were taken to DACs, they never heard if the issues were taken to government or, if issues were taken up, what happened as a result. Feedback to the sector by State and Territory DACs was seen as poor.

Most respondents queried whether the DAC Network and NDAC were the same, and what the nature of the relationship between the DACs with NDAC was. Many were, incorrectly, under the impression that NDAC represented the State and Territory DACs at a national level.

National issues

All respondents considered that there would be benefit to dialogue with the DACs Network on national issues with a State and Territory implementation component. Principally, they cited grey areas, or those policy areas at Commonwealth/State boundaries, where they anticipated there would be an overlap of their priorities with those of the DACs Network. Many indicated that they would communicate with NDAC on issues specific to the Australian government.

Largely, the national peaks did not perceive that the State and Territory DACs work on national issues. It was suggested that the DACs Network should communicate that it is working on

national issues, how it is working on national issues with NDAC, what links it has with the Australian Government, and what capacity it has to influence change in a whole of government (cross-portfolio) context. One commented *"if we are not clear on what the role of the DACs is, what it is that they do, and what their capacity is to influence change, then it is difficult to engage with them on broader issues"*.

Many reflected on the current uncertainty at a national level, due to shifts in responsibilities between key Commonwealth Departments. They felt there was still a lack of clarity about how roles and responsibilities are being worked out for national disability policy issues, especially across portfolios. Many expressed concern about the new national council replacing NDAC, especially the increased emphasis on carers and carers' providers. There was the general perception that the new national council will have less capacity to provide advice from a disability perspective. This comment summarises a number of concerns raised: *"How can fewer people represent the diversity of the disability sector, in terms of the range of disabilities and the range of interests?"*

Communication

Overall, respondents were keen to improve communication between their organisation and the DACs Network. One commented *"it is always good to put issues on the table and talk them through together"* and another commented that *"it is reassuring to know that advice will be sought when needed"*.

Some respondents stressed that the DACs Network should use the peaks as a source of expertise on national policy issues of interest. Others suggested that there would be value in formalising links between the DACs Network and their organisation, so that key projects could be identified and that more regular dialogue could occur on these specific issues, or within the specified parameters. Overall, there was agreement that increased awareness of what issues were on the others' agendas, and what each was doing to respond to these issues, was considered essential information to communicate. A focus on outcomes was stressed as

central to any communication, such that communication should not be pursued simply for the sake of communicating.

Communication options suggested include:

- Task specific contact i.e. sharing information on an issue
- Regular e-bulletin (with an Australia-wide focus) reporting on the activities of the DAC Network
- Occasional but periodic, structured meetings, that are focused on achieving specified outcomes
- The DACs signing up to receive regular e-bulletins from stakeholders on national disability issues
- Website to facilitate the tracking of emerging issues and as a repository of reports and submissions

Adding-value

Some stakeholders thought it would be beneficial if they were to receive advice directly from the DAC Network on common issues of interest. They also thought it would be valuable to receive information on experiences at the State and Territory level as policy initiatives were being implemented. Most recognised that it was important to know when Australian Government Ministers or Departments had been provided with advice, about national issues as they impact at the State and Territory level, by the DAC Network.

Many viewed collaboration as an important means of pooling scarce resources, through the provision of outcome-focused assistance and/or partnerships. One person emphasised that national peaks often have just one person in the office, so adding-value involves facilitating the most effective solution which most efficiently uses scarce resources. Another believed that the extensive State- and Territory-level partnerships that the DACs Network can bring to the relationship added value.

Many believed that the DAC Network was well-positioned to get their organisation's messages out to a wider audience and to raise community awareness of the latest initiatives in the sector. *"The DACs need to know what the national bodies are doing so that they can get information out there."* Some also felt that the DACs could assist them by conveying information from Government, thus providing an additional mechanism to ensure that new developments or initiatives were not missed. The majority recognised that the DAC Network adds value when it works together with other national disability policy stakeholders. *"We're all here to do the same job, it is just they we have different ways of doing it"*.

Conclusion

The consultation provided a variety of suggestions for improvements to the way the DAC Network works with other national disability policy stakeholders. There was considerable evidence that the DAC Network will be in a better position to do their work if a more planned approach is taken to fostering and maintaining relationships.

Ultimately, the test of the effectiveness of the DAC Network is that its endeavours successfully influence the policy that impacts on people with disability and, hence, contribute positively to the lived experience of people with disability in Australia. It is with this overarching principle that the framework for the Disability Advisory Council Network has been designed.

Appendix

The following external stakeholders participated in the consultation phase:

- Chris Kerr, Acting Chair, National Disability Advisory Council
- Barry Sandison, Assistant Secretary, Commonwealth Department of Employment and Workplace Relations, Disability Policy Branch
- Chris Wojtas, Executive Officer to Disability Employment Services Branch Head, Commonwealth Department of Employment and Workplace Relations
- Michael Small, Human Rights and Equal Opportunities Commission
- Maryanne Diamond, Chief Executive Officer, Australian Federation of Disability Organisations
- Lucy Macali, Executive Officer, ACE National Network
- Ken Baker, Chief Executive, ACROD
- John Power, National Policy Officer, Blind Citizens Australia
- Suzanne Varghese, Executive Officer, Brain Injury Australia
- Jennifer Bowers, Chief Executive Officer, Carers Australia
- Brian Rope, Chief Executive Officer, Deafness Forum of Australia
- John Mendoza, Chief Executive Officer, Mental Health Council of Australia
- John Rule, Policy Analyst, National Association of People Living with HIV/AIDS
- Diana Qian, Executive Officer, National Ethnic Disability Alliance
- Alanna Closely, Deputy Director Advocacy, People with Disability Australia
- Carolyn Frohmader, Executive Director, Women with Disabilities Australia