



Senate Inquiry into Inclusive and Accessible Community
National Disability Strategy 2010-20

A Submission from Deaf Australia

12 May 2017

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Table of Content

1.	Terms of Reference	3
2.	National Disability Strategy (The Six Outcomes)	4
3.	Executive Summary	5
4.	Recommendations	8
5.	About Deaf Australia and our Constituency	10
6.	Auslan (Australian Sign Language)	11
	A. Early Childhood and Early Developments	12
	B. Education	14
	C. Employment	16
	D. Interpreter	17
	E. Justice	22
7.	Accessible Information and Communication	24
	A. Inclusive Communities	25
	B. Captions	26
	C. Broadcasting Auslan Programs	28
	D. Internet/ Websites	29
	E. Telephone/ Mobile Communication	30
8.	Legislation	32
	A. Disability Discrimination Act	32
	B. Broadcasting Service Act	35
	C. Telecommunication Act	35
9.	APPENDIX A: Disability Discrimination Act (1992)	36
10.	APPENDIX B: The Convention on Sign Language	37
11.	APPENDIX C: The Convention on Accessible Information and Communications	38
12.	APPENDIX D: Jury Acts (Summary)	40
13.	References	43

1. Terms of Reference

- A. The planning, design, management and regulation of:
 - i. The built and natural environment, including commercial premises, housing, public space and amenities;
 - ii. Transport services and infrastructures, and
 - iii. Communication and information systems, including Australian electronic media and emerging Internet of things;
- B. Potential barriers to progress or innovation and how might be addressed;
- C. The impact of restricted access for people with disability on inclusion and participation in economic, cultural, social, civil and political life; and
- D. Any other related matters.

2. National Disability Strategy

Deaf Australia supports the National Disability Strategy. The common issues, as highlighted, in this submission, does not limit to one Outcomes, but is across all outcomes. It is difficult for Deaf Australia to address individual outcome in this submission without the risk of missing out key issues.

Throughout this submission, each topic will be accompanied by a bracket that contains relevant outcomes in order as listed below.

The Six Outcomes:

1. Inclusive and accessible communities
2. Rights, protection, justice and legislation
3. Economic security
4. Personal and community support
5. Learning and skill
6. Health and wellbeing

3. Executive Summary

Deaf Australia appreciates the opportunity to present a submission into the delivery of outcomes under the National Disability Strategy 2010-2020 to Build Inclusive and Accessible Communities.

Deaf Australia, through its members, played a role in the development of the National Disability Strategy and has been monitoring implementation since the strategy has been in force. There has been some significant achievement with the introduction of the National Disability Insurance Scheme (NDIS) which Deaf Australia fully supports.

It is without doubt that the NDIS has made significant improvements to deaf and hard of hearing's capacity to be involved in the wider communities, however, Deaf Australia believes that issues that are not under NDIS's remit have been neglected, but instead, having to rely extensively with the Disability Discrimination Act to remedy barriers and discrimination experienced by deaf and hard of hearing people.

In this submission, Deaf Australia highlights two key issues facing deaf / hard of hearing people across wide ranging outcomes of the National Disability Strategy 2010-2020 not yet realised, which are:

1. The right to use Auslan in all areas (early childhood, education, economic, cultural, social, justice and political life); and
2. Accessible information (transportation, broadcasting, media, Internet/ website and public and commercial premises).

These issues are supported by over 1,000 complaints to the Australian Human Rights Commission by deaf and hard of hearing people. All complaints are conciliated through conciliation process and benefit only the complainant and are not system wide. Of the 1,003 complaints, 526 cases have been successfully resolved.

Deaf and hard of hearing children are still denied full inclusion in the education system where schools use their discretionary power to determine the level and type of supports the child needs funded within the school's budget. Consequently, there may be impacts on the child's future employment opportunities and burden on the Australian Government's welfare system.

Lack of legislative change, for example, in State or Territory Government's Jury Acts have continued to prohibit the use of Auslan interpreters if a deaf person is to be considered as a member of a jury.

The national Video Relay Service was introduced in 2013 (amended Telecommunication Act) but continues to operate on limited hours. The Commonwealth Government's review of National Relay Service in 2016 has not seen any improved access to the Video Relay Service because of growing demand.

Department of Social Services' intent to transition Auslan interpreting medical appointments into NDIS is counterproductive to Australian Medical Board's Code of Conduct and Rights to use qualified interpreters because there is no clear strategy from NDIS to ensure every deaf person will have access to a qualified interpreting service, thereby, lacking safeguard protections.

Some of the recent legislative changes, such as in the Broadcasting Services Act and Telecommunication Act, continued to place restrictions for deaf and hard of hearing people in accessing full services.

Captioning on television programs, for example, have attracted 279 requests from broadcasters seeking exemptions or target reductions for captioning to the Australian Communication and Media Authority (ACMA) between 1 July 2012 and 30 June 2016, and only 38 requests were declined.

Yet, there are no standards or requirements for captions on the internet, DVD, videos or on demand (e.g. Stan, Presto) and these services are not obliged to provide access. This demonstrates the lack of consumer protection (or universal standard) in ensuring contents are fully accessible through various media programs.

Deaf and hard of hearing people continues to rely on the Disability Discrimination Act 1992 to remedy these issues and, in many cases, through conciliation via the Australian Human Rights Commission (AHRC), and significant numbers of complaints have failed to reach agreement. Several cases went on to be settled out of court and confidentiality clauses are imposed on these settlements.

The Australian Government defunded Deaf Australia as a national peak organisation in 2014 thus making it difficult for Deaf Australia to make proper representation on behalf of our constituents in addressing issues and challenges across all areas of government.

These are some of many examples where rights, access and representation for deaf and hard of hearing people have failed which means that inclusive and accessible communities are not achieving its outcomes and are contributing to poor life outcomes, thereby, placing significant pressure on the sustainability of the NDIS and the onus of deaf and hard of hearing people in continuing making complaints to gain a 'reasonable accommodation' to services under relevant discrimination legislation.

Many of the issues raised in our response to the Australian Government's Discussion Paper on a National Disability Strategy (2008) remains the current challenges and issues experienced by deaf and hard of hearing people at present. These issues, regretfully, have not been effectively addressed.

Australian Government's activities such as legislation, policies, practices and funding have not significantly improved because deaf and hard of hearing people are not part of the decision-making processes that will influence their lives and continue under the influence by others who have commercial and financial interest.

Therefore, Deaf Australia calls for the establishment of an **Accessibility Office** to redress the national disability priority and focus on consumer's protections and rights.

The outcomes of the National Disability Strategy would be greatly improved where the Accessibility Office's primary roles are to:

1. Monitor the implementation and the progress of the National Disability Strategy; and
2. Ascertain that any policies, initiatives, programs and legislation take on board all disabilities issues through effective collaboration and partnerships with national peak bodies, government agencies and programs, commercial and community providers and interested parties.

The Accessibility Office should be an independent, regulatory body funded and managed by the Australian Government with oversight by people with disability. The Accessibility Office should be supported by relevant government ministers and have a key role in the Council of Australian Governments (COAG) across all areas.

Reflecting on the United Nations on the Rights of Persons with Disabilities (the Convention), it is Deaf Australia's mandate that the rights to use Auslan and full access to information is the norm of an inclusive Australia. The Australian Government have ratified the Convention in 2008.

This means that Deaf Australia needs to be properly funded as a national representative organisation to support the success of the National Disability Strategy whilst representing our constituents by bringing key issues and concerns at the highest level along with national initiatives such as National Disability Insurance Scheme as per Article 4(3) of the Convention which states:

In the development and implementation of the legislation and policies to implement the present Convention, and in other decision making processes concerning issues relating to persons with disabilities, State Parties (Australian Government) shall closely consult with and actively involve with persons with disabilities, including children with disabilities, through their representative organisations.

The current submissions process requires that this submission be prepared in written English, not in Auslan. Deaf Australia would like to outline the following which refers to Article 21 (b) of the Convention:

21. *State parties (Australian Government) shall take appropriate measures to ensure that persons with disabilities can exercise the rights to freedom of expression, opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present convention.*

(b) *Accepting and facilitating the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.*

This submission should provide you some idea of the challenges and issues that deaf and hard of hearing people are unable to progress positively under the National Disability Strategy.

All deaf and hard of hearing people have the desire in becoming an equal citizen of Australia and be dignified and respected in the Australian society.

Let's work together now and going forward.

With Regards,

Kyle Miers
Chief Executive

4. RECOMMENDATIONS

That the Australian Government:

1. Monitor and report regularly on the achievements (and failures) of the National Disability Strategy (2010-2020), including how the National Disability Strategy has affected inclusion of (or lack of) Deaf Australians and recommendations for the Australian Government to enhance such inclusion;
2. Establish an 'Accessibility Office' which is fully funded by the Commonwealth Government and Council of Australian Governments (COAG) which is run and managed by people with disabilities to:
 - a. Review all policies, initiatives and programs to be disability friendly prior to implementation;
 - b. Advise, recommend or direct Australian Government and members of COAG on policies, initiative and programs to be disability friendly; and
 - c. Monitor the National Disability Strategy.
3. Review/ amend the Disability Discrimination Act (1992) to:
 - a. align the Act with relevant United Nations Conventions including the Rights of Persons with Disabilities;
 - b. remove 'unjustifiable hardship' and redefine 'reasonable accommodation' in accordance with the United Nations' Convention on the Rights of Persons with Disabilities;
 - c. remove the onus of persons making complaints in accessing goods, services and facilities;
 - d. enforce systemic change and impose penalties to providers, services or facilities for failing to provide accommodation; and
 - e. the Commission to have the power to demand providers compensate individual wishing to proceed with court cases.
4. Amend the Telecommunication Act requiring the National Relay Service to provide all forms and formats of communication methods (including use of Auslan Video Relay) 24 hours per day, 7 days a week and 365 days a year and must be cost recovered.
5. Amend the Broadcasting Service Act (1992) to:
 - a. require that all contents (including all free to air, subscription TV, video on demand and online) be fully captioned;
 - b. require that all emergency announcements and government announcements be provided in Auslan and be shown on television screenshots; and
 - c. require information about complaint mechanisms is available in Auslan.
6. Requiring all states/ territory governments to amend various legislation (e.g. Jury Acts) to allow use of interpreter and/ or other communication support to enable effective participation as equal citizens.
7. Recognises that the National Disability Insurance Scheme should be limited within the definition of the NDIS's Act and to ensure that goods, services and facilities are provided with sufficient funding and resources to reduce false expectations of NDIS.

8. Develop/ amend a 'Language Act' that recognises the citizen's rights to use language of choice, including Auslan, enshrining the UN Conventions on the Rights of Persons with Disabilities (2007), and Universal Human Rights (1948) and to incorporate the Act under 'Accessibility Office'.
9. Requiring providers to provide equivalent services, products, equipment at no additional cost for people with disabilities who are unable to utilise standard services.
10. Significant work be undertaken to raise awareness of and promote Auslan as a language right for every deaf person to fully realise the potential of an inclusive society.

That:

- a. Auslan to be legally recognised a language right for deaf people;
 - b. Census 2021 and onward to include 'Auslan' as one of the language option;
 - c. Commonwealth, state and territory governments must review practices for recruitment of persons with Auslan skills;
 - d. Broadcasters (ABC and SBS) to include Auslan as part of their language programs and that Auslan be available for news broadcasting and other programs; and
 - e. Auslan be essential in childhood language development.
11. In order to meet the demand for interpreter professionals, the governments need to work with the industry to devise and implement a National Strategy to, at least, triple the number of new accreditation of Auslan interpreters across Australia. Given the urgency, interpreter training initiative must be established immediately to help alleviate the concerns created by the National Disability Insurance Scheme.
 12. Clarify the parameters of the *NDIS Act (2013)* and the *Disability Discrimination Act (1992)*, in particular where providers are required to provide access under the Disability Discrimination Act and general community activities.
 13. Encourage the Australian Human Rights Commission to issue a legally binding standards document on Communication and Information Access under the Disability Discrimination Act (1992). Such standards will include provision of Auslan/ English interpreting and translations, and captioning of modalities such as cinemas, television, DVD, online and all digital mediums.
 14. Re-fund national peak and representative organisations listed under Disability Australia to provide direct expertise advice, support and strategies in addressing accessibility issues and conduct national awareness activities.

5. About Deaf Australia and our Constituency

Deaf Australia is for all deaf, hard of hearing and non-deaf people and organisations (not-for-profit, for profit or government) that use and/ or accept and respect Auslan (Australian Sign language).

Deaf Australia is the deaf-led peak organisation representing deaf people in Australia. We promote the advancement of human rights and equality for deaf people by collaborating with our members and stakeholders in implementing the United Nations Conventions and the National Disability Strategy.

For the purpose of this submission, Deaf Australia is focusing on deaf and hard of hearing people who are born or became deaf in childhood. This represents between 13,500 – 18,000 deaf Australians who use Auslan (Australian Sign Language) across all age groups.

This group of deaf and hard of hearing people identify themselves as a cultural and linguistic diverse (CALD), or a linguistic minority group and do not generally consider their deafness as a disability.

What 'disables' this group is lack of access to appropriate methods of communication within the community to enable them to effectively participate in the community, and the public attitude towards them in general and in everyday situations, and various legislation and policies do not promote the inherent dignity of the individual as effectively as possible.

Deaf Australia will not represent other deafness or hearing loss related issues such as Meniere's, acquired hearing loss (including sudden hearing loss) or ageing-related hearing loss, Tinnitus and/ or other ear disorders which are considered to be outside Deaf Australia's parameters. Deaf Australia believes there are organisations that better represent these groups and encourages these organisations to express their views in accordance with their constituents. Deaf Australia supports their positions.

Deaf Australia does not represent the views of parents of deaf people, medical professionals or service providers as they are not the primary focus of our constituents. Although the intention of these groups may be well meaning, Deaf Australia believes that the focus on deaf and hard of hearing people is lacking in those groups.

Web: deafaustalia.org.au
Facebook: DeafAustraliaInc
Twitter: @deafaustalia

6. Auslan (Australian Sign Language)

Auslan is the sign language of the Australian Deaf Community. Although the term was coined by Dr Trevor Johnston in the early 1980s, the language itself is much older. As with other languages, the grammar and vocabulary of Auslan is quite distinct from English. Its development cannot be attributed to any individual, rather, it is a natural language that developed organically over time.

The number of people for whom Auslan is their primary (or preferred) language is difficult to determine. According to the 2001, 2006 and 2011 Censuses published by the Australian Bureau of Statistics, the population of Auslan users in Australia has increased by 54.57%, thus debunking the speculation that Auslan is a dying languageⁱ.

The World Federation of the Deaf states that the global population of deaf people is at 70,000,000 (70 million)ⁱⁱ or close to 10% of world's population. Using this ratio against the Australia population of 24 million, Australia should have, at most (at least, in theory), 224,000 deaf people, who would (should) be using Auslan. This potentially would make Auslan the 6th largest population of non-English language users in Australia. The Australian Bureau of Statistics states that at present 18% of the Australian population use non-English languagesⁱⁱⁱ spread across 15 common languages, including Mandarin, Italian, Arabic, Cantonese, Greek, Vietnamese, Filipino/ Tagalog, Spanish, Hindi, and German (which are the top 10 languages used in order).

Deaf Australia is projecting that the 2016 Census result would be 13,500 Auslan users, however, based on world population, Deaf Australia believes that this number is significantly underestimated because the question in the Census does not specify 'Auslan' as one of many languages listed as an option, but as 'other'.

Being deaf is not necessarily just a medical condition per se. It is a social and community issue and the community needs a more holistic and whole of government approach to maximise the benefits of Auslan across a range of issues, including education, employment, health and more and should not be limited it to 'disability' issues and / or requiring interventive strategies.

Sign languages have been around for hundreds of years and humans have been using gestures to express basic ideas before verbal communication developed into the mainstream form of interaction. Today, many people still use their hands, gestures and facial expressions and other non-verbal communication to supplement verbal communication.

The Convention on the Rights of Persons with Disabilities recognises that language means 'spoken and signed language (Auslan) and other forms of non-spoken languages' (e.g. written).

Following the definition of 'language', the United Nations Universal Declaration of Human Rights (1948)^{iv} affirms that 'language is a human right', which thereby means that sign language, too, is a human right.

Australia has ratified both the United Nations Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

For many deaf people who use Auslan, it is a language in the same way as non-English speaking citizens use their own language, and can competently communicate using both languages, Auslan and English. Many Auslan users identify themselves as a language minority group because of the cultures and subcultures that accompany any language groups – commonly known as Cultural and Linguistic Diverse Communities (CALD). This needs to be embraced, promoted and celebrated in same way as other languages are embraced by wider communities, such as our National Week of Deaf People.

Yet, Auslan is not recognised as a language right for deaf people and it means there is a continual lack of access to Auslan throughout deaf people's lives. There is no incentive or funding for families, community or professionals to learn Auslan so that deaf members/ clients can communicate in a natural environment.

Auslan can be taught in post-secondary institutions and participants can obtain a Certificate, Diploma and / or degree in Auslan in the same way as other language education. There are many community based courses around Australia, however, Deaf Australia is careful in recommending these community courses as they are unregulated.

Auslan resources are continuously in need of development and redevelopment. The last significant Auslan resource developed 'Signs of Australia – A New Dictionary of Auslan' was produced in 1982 and republished several times since. Deaf Australia understands there is no immediate plan to republish or redevelop this important resource, which means once this dictionary is sold out, there is no plan on replenishing it.

Deaf people faced a myriad of barriers on a daily basis, ranging from lack of access to events such as Carols by Candlelight (Vision Australia) and other public events, children's school performances, graduations and awards ceremonies, public facilities and shops, essential supports including police and crisis supports (e.g. Domestic Violence), hospitals (both private and public) and government services (e.g. Centrelink) and so on.

Unfortunately, it is more difficult to objectively specify Auslan as an access requirement in similar way to many other people with disabilities e.g. where people with disabilities requiring physical access to premises where there are Building Standards in place.

Below are some of the common issues associated with Auslan facing deaf people and the impacts to delivery of several outcomes identified in the National Disability Strategy.

A. Early Childhood and Early Development (Outcomes 1, 4, 5 and 6).

Over 95 per cent of deaf children grow up in families have little or no knowledge about deafness and often are anxious about how their deaf child will be brought up. They ask wide ranging questions such as 'will s/he be able to communicate like me?', or 'will s/he be able to function well in the world?', or 'what if s/he can't respond to dangers?' and more.

Deaf Australia recognise that this is common and parents needs to be positively reassured. Their fears should be addressed in ways that focus on opportunity and growth through effective coordination of support across the deaf sector.

During 2015/16, Australian Hearing provided over 29,000 Australians under 21 years of age with hearing devices', with an annual budget of \$243 million. For these 29,000 Australians, there is no support for their families to learn Auslan.

Presently, Newborn Hearing Screening program is done when the baby is 2-4 days old. Once the newborn child is diagnosed with potential 'hearing loss', the family are automatically referred to Australian Hearing for further assessment and intervention.

Unfortunately, many Auslan services and programs are not available due to entrenched government policies and support for hearing services over the years. These hearing services have built the capacity to deliver the services through years of services provision and marketing, and therefore, deaf persons and their carer/ family are unable to access much needed Auslan services/ programs in their area.

Thanks to NDIS, deaf children and their family will be able to access and participate in Auslan programs at early stages, however, Deaf Australia is mindful on how powerful language can be during the time of diagnosis, and would prefer to say that the term 'born deaf' is used as the child was born naturally deaf (as child never experienced hearing before the loss occurred), an alternative is 'born with a hearing loss'.

From this point on, there is no referral for the family to the deaf community. Families, at times, have sought information and found that there is no program or funding for family to learn

Auslan. Families who wish pursue Auslan must pay out of their own pocket to do so. Deaf Australia believes this is counterproductive to the child's future health and wellbeing.

The dominant assumption that exclusive speech/ hearing training will help deaf / hard of hearing people to improve their chances in the future is always debatable. Outcomes vary due to a wide range of issues such as school and community support, family and friends, socio-economics, health, politics, religion and so on.

The widely held social assumption that deaf people want to hear and speak like others in society has been reinforced by the parent's desires for their children to 'speak' like them in the belief that this will give them a meaningful future.

Audiology Australia, in its submission to the Senate Select Committee on Health into Hearing Inquiry on July 2015 states:

'There is a risk that children who are unable to access services (i.e. audiology services) will have ongoing hearing loss which will impact on their educational outcomes and later employment outcomes'.

Audiology Australia has not provided concrete evidence to support this statement from Audiology Australia, yet there has been significant support and funding provided to support this position.

On the contrary, there are many examples of researches conducted overseas that shows people who learn sign language early in their childhood have consistently outperformed academically and in the workplace than those who don't. This is true when the person uses sign language without speech and when sign language is used in a complementary way with speech/hearing development. Yet sign language programs and complementary sign and speech/hearing programs receive little or no support and funding.

In the same Senate inquiry, Deaf Australia stated in our submission that:

'Deaf people, regardless of level of hearing loss, do benefit from both Auslan and speech/ hearing support. The traditional divide between speech and Auslan must stop'.

Deaf Australia believe it is imperative that families of deaf children be free from biased and ill-formed information and the lack of programs/ support for learning Auslan, especially at the time of early diagnosis. The focus on providing only speech/ hearing support often lead to wide ranging health issues later in life. Consequently, many deaf and hard of hearing people have become depressed and isolated and often struggle to find adequate services to support their needs, most mental health services are not equipped with the knowledge and/ or skills required for working with deaf and hard of hearing people.

Deaf Australia believe the Auslan dictionary should be provided for each family who have a deaf child so they can immediately access information about Auslan and subsequently the deaf community, through supported programs funded by the NDIS.

With the NDIS, many families or carers of deaf children are able to access Auslan programs such as mentoring, tutoring or classes at early stages. These families are able to obtain both Auslan and hearing supports through NDIS, not either/ or, Auslan and hearing support through NDIS.

B. Education (Outcomes 1, 4, 5 and 6)

Deaf Australia believe that language acquisition is crucial to every child (deaf and non-deaf), yet the focus for deaf education has always been on aural/ oral (speech and listening) skills. Although speech skill is an important goal, Deaf Australia believe that the primary goal must be for deaf children to acquire at least one **fluent** first language. The most accessible first language for deaf child - without barriers and can be used without additional help and support^{vi} – is Auslan. Without a **fluent** first language, education becomes problematic.

Generations of deaf children educated in a system that excludes Auslan have demonstrated that deaf and hard of hearing having poor academic results over and over again, but the Australian education system continues to ignore this evidence of the need for a fluent first language.

Deaf people, in general, lag behind non-deaf people mainly because the education systems fail to effectively facilitate the learning of Auslan and the promotion of linguistic identity of the deaf community. Schools around Australia have in place various policies and practices; however, provision of support for deaf children is at each school's discretion. When support is provided, it is often minimal and favours aural and oral education over Auslan based education.

In the education of deaf children, sign language is generally discouraged by influencers such as medical professionals and educators, and sometimes parents. They argued that Auslan is not an English-based language and instead, they advocate educating deaf children using a phonetically based system of speech sounds that the child accesses inadequately.

As an example of these influencers, recently a qualified teacher of the deaf (who is proficient in Auslan) applied for a teacher position in South Australia and was asked by a recruitment agency if she would promote the use of Auslan in her teaching. The applicant advised that she has proficiency in Auslan. The recruitment agency did not select her because it is understood that 'a well-known deaf organisation in South Australia strongly discouraged the use of Auslan in the education system'. This seems to be an acceptable practice in South Australia and in many schools throughout Australia.

There are sufficient researches overseas to show that deaf children who access sign language in the early development years have made positive growth, self-esteem and confidence through academic years and into adulthood.

Deaf Australia believes that the current Australian practice of education for deaf children amounts to '*language deprivation*' which is associated with a lack of the linguistic stimuli that are necessary for the language acquisition processes in an individual^{vii}.

In California, a bill^{viii} was passed that requires the Education Department to use the benchmark for tracking the progress of deaf and hard of hearing students in language and literacy development rather than benchmarking speech and listening skills, which are entrenched in Australia's education model.

Deaf Australia notes with irony that "baby signs" are widely supported by non-deaf community for teaching non-deaf babies to communicate through gestures before they able to communicate audibly. However, when it comes to a deaf child this approach is discouraged. Deaf Australia fails to understand why it is acceptable for a non-deaf child but not acceptable for a deaf child to learn sign language.

Over 80% of Teachers of the Deaf are not appropriately skilled to use or teach deaf pupils in Auslan. This negates the child's need for fluent language acquisition and development.

The National Association of Australian Teachers of the Deaf (NAATD) recently developed Teacher of the Deaf Standards^{ix} which do not require Teachers of the Deaf to possess minimum proficiency in Auslan, but requires all Teachers of the Deaf to have knowledge of the 'working of the ears' and understanding of hearing augmentation systems (such as loop, hearing devices).

A deaf Teacher of the Deaf advised Deaf Australia that she has not yet been permitted to work as a lead or independent teacher, but only can teach as a support teacher. This has had a significant impact on this teacher's professional confidence and her subsequent wellbeing.

Recently, another Teacher of the Deaf applied for a teaching position in South Australia's Public School system, was denied a position based on her use and support of Auslan, due to the advice of a 'well known deaf organisation' in South Australia^x. Deaf Australia strongly believes that this 'well known deaf organisation' is an anti-Auslan advocate, especially for deaf children.

When a deaf child requires an Auslan/ English interpreter, the school often provides 'communication support' and does not necessarily require a person to be an accredited interpreter, and often provide remuneration which is equivalent to support staff or teacher's aide.

Deaf people have doctorate degrees, many have masters, many more have bachelors degrees – all in various disciplines, including education. Yet, deaf people are not given the responsibility for the education of deaf children. There are also accredited Auslan/ English interpreters who have doctorate, masters and bachelor's degrees to complement their Interpreter accreditation, but are not given the opportunity to be part of a deaf child's education.

1. NAPLAN

In 2012, Deaf Australia provided government with policy advice on the National Assessment Program on Literacy and Numeracy (NAPLAN)^{xi} and noted that there is a significant decline in the participation of deaf students in Year 9 assessment because schools were concerned that the school's overall achievement scores would be lowered if deaf and hard of hearing students participated in the assessment.

In this policy advice, Deaf Australia recommended that all deaf/ hard of hearing students must participate in the testing regime, that there should be monitoring and reporting on the results of this cohort^{xii}. However, this recommendation has yet to be implemented.

2. Auslan CURRICULUM (Auslan as a LOTE)

Auslan is not an English-based language, and is a language in its own right in the same way as spoken and written languages that are widely embraced by many schools teaching Languages other than English (LOTE) in the Australian Education system. There are at least 69 languages on offer across the system throughout Australia^{xiii}. It is proven that children who acquired two or more languages have been shown to have a range of benefits such as delaying the onset of brain related diseases, opening up new opportunities, and more importantly, having greater understanding of their first language^{xiv}.

Deaf Australia is pleased that National Auslan Curriculum has been approved by the Commonwealth Government Department of Education and all the state/ territory's Ministers of Education (via COAG) to commence Auslan LOTE curriculum for K – Year 10 starting in 2017.

3. TAFE (Post- Secondary School)

Deaf Australia provided a submission to the House Standing Committee on Education and Employment inquiry into the role of the Technical and Further Education system and its operation in April 2013^{xv}.

In this submission, Deaf Australia highlighted several issues that deaf people face when accessing TAFE. These are:

- Lack of adequate support in TAFE;
- Variable skill levels of Auslan interpreters and note takers;
- Lack of choices in courses studies;
- Lack of courses to improve the deaf person's language, literacy and study skills;
- Impact of restructures and funding changes on deaf students;
- Change to requirements for staff qualifications – impacting on deaf students;
- Disadvantaged students finding it difficult to complain; and
- Provisioning of Auslan courses.

Deaf Australia believes these issues have not been addressed and that there continues to have long-lasting impacts to deaf people seeking meaningful employment and consequently; their wellbeing as they are not achieving their aspirations and passions.

C. Employment (Outcomes 1, 3, 5)

Employment for many deaf people, as with everyone else, is essential to enable them to make an everyday living, pay mortgage/ rent, bills and other living expenses.

Deaf Australia provided a submission to the discussion paper on improving the employment participation of people with disability in Australia in February 2013^{xvi}. It covered communication issues; employer attitudes and perception of workplace risks; lack of deaf-specific employment training and assistance programs; resources for deaf people seen to be costly by employers; and lack of provision of communication access tools. In this submission, Deaf Australia offered strategies which are yet to be implemented.

Many deaf people find employment a frustrating experience mainly because of communication issues. Deaf Australia places the responsibility squarely on the employers' lack of knowledge about deaf people and the communication issues they experience. Because of this lack of knowledge, deaf people are often reluctant to ask for interpreters for job interviews or to disclose their deafness when applying for jobs out of fear that they will not be shortlisted.

The Disability Employment Service (DES) is often inaccessible for deaf people. There is a small number of specific DES providers who have skills and knowledge in working with deaf people. Anecdotal evidence shows that, on average, DES have taken twice as long to place deaf people in the workplace than other disability groups^{xvii}.

When deaf people apply for a job, their first barrier is writing the job applications. Most deaf people's English is not equivalent to non-deaf people's and placed them at an immediate disadvantage. Many deaf people have applied for countless of positions before landing a position that is less desirable.

The deaf person's second barrier is the job interview. They often responded to questions focusing on communication issues and not the job itself.

Even at the workplace, many deaf people are not included in workplace meetings or team meetings because employers and other employees are not inclusive. This often causes frustration and angst for deaf people as they are not 'included', which leads to lost opportunities for promotion, taking up new tasks, or undertaking onsite training to develop other skills. In other words, deaf people have often hold same position for much longer periods compared with non-deaf persons.

Promotion within the workplace is also difficult and deaf people are often overlooked in favour of someone newer or less experienced. Many of these deaf people feel they are indirectly discriminated against. But often they will not make complaints out of fear that doing so will make things even more unfavourable for them.

Employers are often unaware of the Commonwealth Government's Job Access (Department of Social Services) provisions which allows employers to access capped funding for interpreters, Auslan training and workplace awareness programs.

However, the cap in funding Auslan interpreters in the workplace can lead to further issues as it is often considered inadequate for professional workplaces which have frequent workplace/ team meetings, which consequently leads to the issues discussed earlier such as being excluded from promotion opportunities.

D. Interpreting (Outcomes 1, 2, 3, 4, 5 and 6)

Access to Auslan interpreting is a necessity for deaf people to receive and impart information. Auslan interpreting is not only for deaf people, but also for non-deaf people to provide support, information and/ or services effectively to deaf people.

Deaf people use interpreters for a wide range of activities, including, but not limited to: education, employment and training, entertainment and leisure.

At present, many deaf people often are unable to access community-based activities because most community clubs, organisations or groups are unable to afford the costs of interpreting services. Deaf people are often left out in these situations – Deaf Australia believes that NDIS will address this gap.

However, the current supply level of Auslan/ English interpreters will not address this gap.

At present, there are 961 accredited Auslan/ English interpreters, but, not all of them work in a full-time capacity. Deaf Australia believes there are as many as 300 to 350 interpreters working full time (or approximately 30% of the accredited workforce).

The table below shows the number of Auslan interpreters by state/ territory^{xviii}.

	Paraprofessional	Professional	Total
ACT	20	2	22
NSW	190	51	241
NT	3	1	4
Qld	118	46	164
SA	27	16	43
Tas	23	4	27
Vic	209	58	267
WA	142	13	155
Unknown	35	3	38
	767	194	961

The National Accreditation Authority for Translators and Interpreters (NAATI) which is responsible for all language translators and interpreters, and have over 33,000 accredited interpreters spanning 117 languages^{xix} including Auslan.

On an average, NAATI accredits between 50 to 55 new interpreters on an annual basis. Deaf Australia believes that to meet increasing demands for interpreters, NAATI need to, at least, triple (x3) the Auslan accreditations per annum.

There are approximately 20 Auslan/ English interpreting agencies throughout Australia. Many Auslan/ English interpreters are contracted to one or more interpreting agencies as well as freelancing (providing interpreting service without an agency involved).

In the financial year 2015/16, these agencies filled between 85-93% of booking requests and provided in excess of 2,000 bookings per week (or 104,000 per annum) generating more than \$18.2 million a year (averaging \$175.00 per booking).

The remaining 7-15% represents an excess of 250 bookings per week (or 13,000 bookings per annum) that were unable to be filled due to unavailability or suitability of interpreters or location of venue (interpreters having to travel between bookings), generating a loss of \$2.27 million a year.

Deaf Australia would like to assert that not all interpreters are suitably qualified to undertake some assignments as they do not possess sufficient knowledge to articulately convey the topic. Unfortunately, the NDIS does not take this into account, which can ultimately have serious consequences, particularly in the case of medical and legal assignments.

The provision of Auslan access is a human resource and therefore require specific standards which are lacking in Australia, with the exception that Auslan interpreters are accredited through the NAATI and individuals obtaining certificates/diplomas in Auslan from various education providers.

It is imperative that interpreters are provided with adequate and monitored training and are provided with supports (e.g. mentoring, coaching, etc) and networks. Such support could be provided by an agency similar to the Australian Medical Board which monitors and provides

training for doctors in upkeeping their medical registrations, and if necessary, discipline and/or deregistration for breaching codes of conduct/ ethics.

1. Population of Auslan users and Auslan Interpreters

The Australian Bureau of Statistic's Census has been recording the number of Auslan users since 2001. NAATI has provided information on the number of accredited interpreters. Below is a table of corresponding figures of Auslan users and accredited interpreters in the Census years. Also, the ratio of per interpreter and actual number of interpreters who are providing Auslan/ English Interpreting for Auslan users is shown in the table below.

Census Year	Population of Auslan users	# of accredited interpreters	Ratio	Actual # of interpreter working (30%)	Ratio
2001	5,306	466	1:11.4	140	1:37.9
2006	6,944	694	1:10.0	208	1:33.4
2011	9,723	893	1:10.9	268	1:36.3
2016	*13,612	961	1:14.2	290	1:46.9
2021	*19,056	**1,200	1:15.9	350	1:54.5
2026	*25,727	**1,400	1:18.4	420	1:61.3

*projected Auslan user population growth based on average increase of Auslan users from previous Censuses.

**projected number of accreditation interpreters based on average annual increase of accredited interpreters as advised by NAATI.

Deaf Australia met with NDIS to discuss what would be the minimum hours per week for deaf community members to access Auslan interpreters. Deaf Australia advised that a minimum of 2 hours per week (or 104 hours per annum), rather than 1.5 hours as advised by another organisation. Many Auslan interpreter services have minimum hours due to various reasons such as Sydney's cost of living, Perth's distance between client and interpreter, and availability of interpreters to 2 hours per assignment.

Based on actual number of interpreters working (Census 2001), and the minimum 2 hours of interpreting per week, this means interpreters would need to be working at least 72.6 hours a week continuously, covering all types of assignments (e.g. education, employment, health, and et cetera). This is based on assumption that every accredited interpreter is actively interpreting.

However, as mentioned above, not every interpreter is actively interpreting. This place significant pressure on meeting the demand, which will increase from 72.6 hours to 93.9 hours (Census 2016), 108.9 hours (2021) and 122.5 hours (2026) per interpreter per week.

With the rollout of the NDIS, the demand for interpreters for community based activities will increase, and therefore pushing the breaking point further where the interpreting industry will have become unsustainable and unviable. It means that deaf people who need access to Auslan/ English interpreters will increasingly be faced with a lack of available qualified interpreters, leaving Auslan users vulnerable in education, employment, health and more.

Deaf Australia believe that there is no strategy in place to address growing demands for interpreters as a result of rolling out of NDIS.

2. Medical appointments

The National Auslan Interpreting Booking and Payment Services (NABS) commenced providing Auslan users with accredited Auslan/ English interpreters for private medical consultations in 2005. This enables NABS Auslan users to communicate with doctors or health professionals. The service covers appointments with general practitioners, specialists and a range of other private health care providers that attract a Medicare rebate. This program, however, does not provide access to Auslan/ English interpreters for admissions into public and private hospitals.

NABS provides various and specific training for interpreters to enable interpreters to perform effectively in these medical settings, and meet the needs of doctors providing appropriate care in accordance with their ethos and code of conducts

NABS is averaging between 7,500 and 10,000 bookings per quarter and is funded by the Australian Government's Department of Social Services (DSS) at an operating cost of between \$5-6 million per annum.

The continued provision of NABS is currently under threat because of the Department of Social Services (DSS) decision to transition NABS into the NDIS and NABS funds are gradually reducing until NDIS is fully rolled-out in 2019.

Deaf Australia met with the DSS in June 2016 to express concerns and urge that NABS remain separate from the NDIS as it does not fit under the NDIS remit. However, DSS is of the view that Auslan interpreting is a '*disability service*' (see **Appendix A**) and therefore fits under the remit of the NDIS.

It is worth mentioning that the Australian Government's Department of Immigration and Border Protection's Translating and Interpreting Services (TIS) provides all interpreting needs for non-English speaking migrants, including medical bookings^{xx}. Medical bookings are funded by the Department of Social Services. This fund is not under review nor is being considered for transitioning to the NDIS or elsewhere.

Deaf Australia believes that the action demonstrates that there is little or no understanding of Auslan and the Convention on the Rights of Persons with Disabilities.

3. Hospitals (Public and Private)

The inconsistency of hospital interpreting across both private and public hospitals means deaf people are frequently left out and do not receive essential information including information to enable them to provide adequate care and support for themselves or their partners. The provisions for '*Effective Communication*' in the Doctor's Code of Conduct are not being met.

By providing substandard interpreting services, hospitals are breaching the Medical Board of Australia 'Good Medical Practice: A Code of Conduct for Doctors in Australia'^{xxi}.

State and Territory Government are responsible for providing funding for public hospitals to provide Auslan/ English interpreters for deaf patients. Each state/ territory has different ways to manage these services and it is often confusing for deaf people who need them. For example, in Victoria, each public hospital manages its own booking and payment system, whereas NSW has a centralised interpreting service that provides all interpreting needs for public hospitals.

Private hospitals manage their own systems without Commonwealth or State/Territory government support. There is inconsistency between private hospitals. In NSW, the Australian

High Court is currently hearing a case against Westmead Private Hospital because that hospital refused to provide an interpreter for a patient's husband who is deaf. The hospital argued that it is the patient they are looking after, not the patient's partner.

Should NABS be transitioned into NDIS, Deaf Australia believes that public and private hospitals will be burdened by the need to absorb the additional costs of providing interpreters when deaf people (who may not be eligible for NDIS) seek medical services through their Emergency Department as they can no longer access Auslan interpreters for private medical appointments, thereby undoing the earlier and successful work in creating the NABS program. This will likely be at the cost of the deaf person's health and wellbeing, and may impact the overall cost of health services affecting the wider community.

4. Education

According to the Disability Discrimination Act (1992) (see **Appendix A**), assistance animal (e.g. guide dog) is required to be accredited/ qualified through its accreditation authority (subsection 2), where interpreter is not required (subsection 1).

Deaf Australia believes that due this interpretation of the Disability Discrimination Act (Cwth 1992) provides schools the discretion in provisioning of non-accredited interpreter/s in education settings, particularly in primary and secondary schools where schools employs a person who can use Auslan but do not have any formal qualification in Auslan.

When a deaf child requires an Auslan/ English interpreter, the school often provides 'communication support' which does not necessarily require a person to be an accredited interpreter and is considered to have satisfied the requirements outlined in the DDA.

This clearly does not align with the United Nations on the Rights of Persons with Disabilities (see **Appendix B**) and Convention on the Rights of Child^{xxii} where a child has the right to access professional interpreter and /or teacher of the deaf who possess Auslan skills and to education.

5. Seniors

Deaf and hard of hearing Auslan users who are over 65 years of age who are assessed as being ineligible for the NDIS do not have access to any Auslan Interpreting services other than medical appointments (funded by the Department of Social Services).

The Department of Health's recent release of 'Continuity of Service' guidelines made a reference that '**Auslan interpreting is not available**' for citizens needing access to interpreting services under the Translation and Interpreting Services (TIS)^{xxiii}. Yet TIS continues to offer interpreting support for non-English speaking seniors.

Aged Care Assessments Team (ACAT) are managed by state/ territory's medical and allied health professionals who assess physical, psychological, medical, restorative, **cultural and social** needs of frail older people and help them and their carers to access appropriate levels of support^{xxiv}.

However, interpreting and communication support is not part of the assessment processes and therefore, deaf seniors who needs access to Auslan interpreters for social and community activities will not be provided for.

Deaf Australia believe there is no actions or strategies to address this significant lack of service provision for deaf seniors.

6. Video Relay

As Auslan is first (or primary) language for many deaf people, they have daily challenge in communicating with governments, business and providers because of limited access to Auslan.

The National Relay Service was established in 1995, but it wasn't until 2013 that Video Relay Service (VRS) was included in the National Relay Service. Unlike all other type of services for the National Relay Service (e.g. internet relay, emergency, voice to text, text to voice), which operate 24/7, VRS still operates on restricted times (i.e., 8am to 6pm Monday to Friday).

Video Relay Interpreter (VRI) services are increasing and are provided by interpreting agencies (fee for service) on an 'on demand basis' throughout Australia using Video over Internet Protocol (e.g. Skype) especially when local interpreters are not available. Access to interpreters from different parts of Australia can be achieved.

VRS is provided through National Relay Service as part of the Telecommunication Act and was amended in 2012 after National Relay Service has been in service since 1995. This service operates on limited hours during business week.

This service is funded by Department of Communications and the Arts through levy to telecommunication providers. Telecommunication providers then pass on the costs to consumers to offset the costs for provisioning the National Relay Service.

In 2016, Department of Communications and the Arts has prepared consultation paper on *Communication accessibility; 2016 and beyond* that discuss potential options to ensure the sustainability of the National Relay Service and improve communications for people with disabilities.

The consultation highlights that the demand for the National Relay Service has increased since 2012 due to new ways that deaf, hard of hearing and speech impaired people can use, however funding for the service is locked until 2018 under current contract.

In the Consultation Paper, Deaf Australia believes that the Government has expressed certain views and expectation of how the National Relay Service will go beyond 2016, such as placing a cap (or limiting) some services. It is the belief of Deaf Australia that many organisations that responded to the consultation papers did not support that views and expectations.

Deaf Australia's response strongly advised that the Video Relay Service must be uncapped and unlimited, i.e., operate on a 24/7/365 basis^{xxv}.

At the time of writing this submission, Department of Communication and the Arts has yet release its decision on going forward, however, Deaf Australia believe that the Department has made changes in the way the funding is allocated, for example, to reduce the functions (but maintain its information service and helpdesk) of the Outreach Program and to increase the function of the Relay Service to meet growing demand.

E. Justice (Outcomes 1 and 2).

Deaf people are unable to afford costs of legal cases, let alone for interpreter and solicitors often pass the costs to deaf people to cover interpreting costs. This means that the legal services are failing to adhere to the Disability Discrimination Act and/ or relevant discrimination legislation.

In criminal case where a deaf person is accused, Auslan interpreters will be provided.

However, as a potential member of a juror, the state and territory's Jury Acts currently prohibit use of Auslan interpreting for deaf jurors. Deaf Australia has reviewed all Jury Acts and noted that all state and territory's prohibited use of Auslan interpreting for deaf jurors,

with an exception of Commonwealth's Federal Court as there has had been no jury trials to date as the legislation providing for criminal jury at that level is new and untested^{xxvi}.

In 2016, Ms Gaye Lyons lost a High Court of Australia bid to become a juror when the Queensland Government argued the law did not allow an interpreter to be in the jury room and in a unanimous ruling the High Court of Australia ruled that Ms. Gaye Lyons would not be capable of performing the functions of a juror^{xxvii}.

7. Accessible Information and Communication

Access to information and communication needs are a basic need for every individual to make informed choices and make decisions whilst maintaining their dignity and independence in everyday activities and undertakings.

When sounds are the only means of receiving information, deaf and hard of hearing people are excluded from making informed choices and decisions.

Unfortunately, the Australian society's reliance on sounds have little forethought for people who are unable to access information in the same way as majority of society expects to receive it.

Assistive hearing devices, contrary to popular myths, are not a solution but are only an assistive device (as aptly called). However, not all assistive hearing devices are suitable for every deaf and hard of hearing people because the interpretation of sound varies from one person to another. Many do not wear hearing aids, and to 'expect' them to wear hearing devices is counterproductive to the Convention.

There is no Accessible Information and Communication Standards that requires information to be fully accessible in a same way that facilities must conform to Building Standards to enable access to facilities (e.g. requiring a lift if more than 2 stories, ramp access, appropriate door width, accessible toilets and so on).

Although providers and services have their own policies and practices, there is not a uniform or holistic approach to access information. In New South Wales, for example, the Government has recently launched a new service that allows deaf/ hard of hearing people to access any government services by using an on-demand video interpreting service or live-captioned services.

Deaf Australia believes this could be duplicated across all government, private and corporate providers giving deaf / hard of hearing employment opportunities to effectively engage deaf/ hard of hearing people to enable them to access their services in their own language.

Access to information covers wide-ranging activities, from watching programs (on TV, cinema, Internet), visiting tourist venues, emergency announcements, and public and facility infrastructure (transportation, roads, buildings, etc.).

One of the common exemptions approved by the AHRC and the Australian Communication and Media Authority are for providers in the area of accessible information for deaf and hard of hearing people. Unfortunately, those exemptions are enshrined in the legislation.

Society's reliance on the public announcement system continues to hinder deaf and hard of hearing people's access to information and as of today, there are no standards requiring the that all public announcement must be visually accessible. Members of the deaf and hard of hearing community continue to advocate for equal access for information and often have to resort to using the Disability Discrimination Act 1992 to remedy simple requests for access to information.

The road/ traffic system is more accessible for deaf and hard of hearing people than any other public and government services and infrastructures.

Members of the public even communication with each other through visual means such as dipping the lights to warn other drivers of police presence (although considered to be an illegal practice), or to allow trucks to safely pull in front of you when passed. This non-verbal communication is commonly shared and understood for all road users.

To effect positive accessible information on good communication technology, supports and infrastructure, Deaf Australia believe that government need to look at examples of road/ traffic systems and how non-verbal and visual communication can be used throughout all its services and infrastructure.

The perception that NDIS will absorb the functions of this provision is unrealistic and an abhorrent strategy that places responsibility squarely onto deaf and hard of hearing people and is not sustainable, holistic or justified.

The teletype typewriter device (TTY) is now obsolete due to digital communication as the device relied on analogue communication. Telstra and Optus are looking to close the Disability Equipment Program (DEP) that provides deaf and hard of hearing people (and vision and speech impaired) people access to subsidised telecommunication devices in order to use a telephone.

There is no plan to replace DEP, however, there are various communication devices, such as laptops, smartphones and etc. that will offer a wider range of access to communication needs, Deaf Australia believes that it will be NDIS that will provide this equipment. Deaf Australia is concerned that if this is the case, then seniors over 65 who are not eligible for NDIS will miss out on equipment replacement, thereby placing the seniors in a more vulnerable position.

A. Inclusive Communities (Outcomes 1, 4 and 6).

Local councils who are fully committed to providing access to Auslan at public events including for example Whitehorse Council's Christmas Carols and Australia Day ceremonies are examples of good practice. This is fully appreciated by deaf people living in these council areas. Schools, on the contrary, have been reluctant to provide access for deaf/ hard of hearing parents of non-deaf children to school activities such as awards, ceremonies and/ or performances and parent teacher meetings.

There are difficulties in booking interpreters when an interpreter is requested. The service will ring one interpreter provider which cannot fill in the request, and the deaf person is told that there isn't one available. Even when the interpreter is requested beforehand, often the service makes the contact at the last minute (thereby increasing the chance of the interpreter's unavailability), which consequently mean that deaf people are unable to participate effectively.

In 2013, Deaf Children Australia, together with 10 other deaf organisations, developed an Accessible Communication Guidelines for Public Events and Meetings^{xxviii} so to make conferences, expos and public meetings more accessible for deaf and hard of hearing people. This document proved to be a useful tool, but however it has not been widely adopted by host organisers and planners due to cost.

Currently, the Australian Electoral Commission (AEC) is working with Deaf Australia to develop accessible communication guidelines similar to the accessibility guidelines for Public Events and Meetings for the purpose of the AEC. Deaf Australia expects to have this guideline ready for the next federal election scheduled for 2019/20.

In 2016, a group of deaf people wrote a letter to Australian Football League (AFL) seeking to include an Auslan interpreted National Anthem at the Grand Final only to be denied by the AFL because of a perceived unjustifiable hardship. Deaf Australia has calculated that providing an Auslan interpreted National Anthem at an AFL Grand Final would be less than .005 cents per person (total capacity of 110,000). This is hardly a 'unjustifiable hardship' under Section 11 of the DDA^{xxix}.

However, the National Rugby League (NRL) provided an Auslan interpreted National Anthem at its 2016 Grand Final^{xxx}. AFL will include this in their 2017 Grand Final.

Elsewhere, access to a range of community activities is minimal. Members of the deaf community often have to make request for interpreter so they can participate in the activities. Some requests are successful, other are not.

Deaf Australia believe there are hundreds, if not thousands, of refused requests on an annual basis. Only a few deaf people would proceed and make a complaint about refusal to access an interpreter with the AHRC (or state/ territory based disability commission).

With the introduction of the NDIS, it is assumed that deaf people who have an interpreting fund in their package would be expected to cover the costs for interpreter for these activities. Deaf Australia believes this is inappropriate because of the Disability Discrimination Act 1992 that requires 'goods and services' to provide accommodation as outlined in the DDA. This means that the boundaries between NDIS Act and the DDA have become muddled about 'who is responsible to ensure that service is accessible?'.

Deaf Australia recently prepared an extensive submission to the Productivity Commission into NDIS Costs ([Submission #183](#)) covering this issue.

B. Captions (Outcomes 1, 2, 4, 6)

Access to captioning is essential for all deaf and hard of hearing people. We rely on receiving information visually that cannot be compensated by hearing devices. Access to caption have much wider audiences appeal than expected, which include:

- non-English speaking citizens;
- people with Dyslexic;
- noisy environment (e.g. shopping centre, airports, pubs); and
- for children.

One of Deaf Australia's significant achievements is the inclusion of captioning in the Broadcasting Service Act (BSA) as a result of a long campaign by Deaf Australia and the members of the deaf and hard of hearing community based on the Disability Discrimination Act. The BSA requires broadcasters to provide a specific percentage of captioning throughout the year and the Act was recently amended to include captioning standards that focuses on readability, comprehensibility and accuracy.

The BSA currently outlines provider responsibility in providing captions on free-to-air and subscription programs and the levels of standards expected as outlined in the legislation. However, the BSA does not include provisioning of captioning on website, DVD, cinema and or other places.

Australian Communications and Media Authority (AMCA) is the responsible organisation in the governance of the Broadcasting Service Act, including managing complaints.

The BSA includes provision for exemptions of captioning if the broadcasters can demonstrate rationale for not having the programs captioned.

Between 1 July 2012 and 30 June 2016, the ACMA has only refused 38 out of 279 applications for exemption or target reduction^{xxxi}.

This represents over 85% of exemption and target reduction orders being implemented, irrespective of the community's response in objecting the exemption and target reduction orders.

The consumers only have less than 15% success rate.

Deaf Australia believes that the legislation clearly is not designed for the consumers protection, and therefore, Deaf Australia calls for a legislation overhaul to ensure consumer's protection and enforce providers to caption all content so that National Disability Strategy can be achieved.

1. Broadcasting Programs (Free to Air, Subscription and on-demand)

The *Broadcasting Services Act* requires broadcasters to caption programs on primary channels from 6am to midnight, and its networks (multi-channels) if shown on parent channels.

The Act do not include on-demand (or web-based subscription program) video.

What this means is that captioning on television programs is subjected to various regulations and rules across various platforms (e.g. prime channels, subscription channels, multi-channels (Free-TV) and, web-based networks, all have varying level of captioning requirements. This causes significant confusion for deaf and hard of hearing people in identifying which programs are (or should be) captioned across various platforms, adding an unnecessary barrier for deaf and hard of hearing people.

Deaf Australia attempts to explain the nuances and complexities of these laws to the deaf community when they ask why they cannot access program like everyone else. Deaf Australia believe this is a reasonable question.

Deaf Australia believes these laws are necessary, but they have the unintended effect of allowing the industry to legally provide the required services within the scope of the legislation but do no more than is required. This demonstrates a lack of respect and understanding of deaf and hard of hearing peoples' needs for equitable access to information across all communication mediums.

Many deaf people do not subscribe to subscription programs such as Foxtel, Fetch TV and Stan simply because programs are inaccessible. The legislation requires broadcast programs be captioned, but not fully. Why, many asked, do they need to pay in full when they access a lower level of content? Common-sense would be that if they offer less, then the costs should be less.

Netflix is the only 'on-demand' video network that offers captions on all its content. This is a result of the US National Association of the Deaf lawsuit against Netflix under the American Disability Act (ADA)^{xxxii}.

To date, subscription providers refused to decrease the fees to reflect the percentage of accessible contents.

2. Cinema

Attending to movies is one of the major entertainment options yet this cannot be fully enjoyed by deaf and hard of hearing people simply because it is inaccessible for deaf and hard of hearing people.

For years, deaf and hard of hearing members have been in discussion with the cinema industry to provide captions for movies so deaf and hard of hearing people can enjoy watching newly released movies rather than wait for a DVD to come out, about 6 to 12 months after its release. Cinema captions were introduced in 1998 with limited schedules and movies (e.g. Friday evening, Sunday afternoon or Wednesday morning) to just one screen in all capital cities.

Deaf Australia has been involved with many discussions with the cinema industry through the AHRC and are constantly being stalled by a lack of action from the cinema industry. As a result, Deaf Australia and collected members of deaf organisations lodged a complaint against the cinema industry in the hope of increasing venue availability and movies for deaf people. Australian Government intervention was necessary.

The major cinemas entered negotiations with the Commonwealth Government and the AHRC without the involvement of the Deaf community and implemented a system which is totally inappropriate for deaf consumers.

Today the deaf community still must endure a sub-standard quality of captioning and many have opted not to attend movies. Attending movies like everyone else is not a reasonably accessible option for them.

As a result, the deaf community has resorted to returning to earlier days where a small group of dedicated deaf individuals organise open-captioned movie in all capital cities and these movies are well attended by deaf and non-deaf people. In the beginning, one cinema had refused to provide captioned movies for fear of breaching the copyright act. This group successfully lodged a complaint through the AHRC and the cinema now allows this group to source open-captioned movies to be shown on their premises.

Like DVDs and Videos (discussed below), there is no legislation for cinemas to be content accessible.

3. DVDs and Videos

There is no legislation in place for DVD and videos to be content accessible. Distributors often advised that it is producers who determine whether or not the contents are captioned. Those producers are from overseas and distributors are powerless to demand that DVD and Videos are content accessible.

However, many of the titles are produced in United States and United Kingdom where there is legislation that requires content to be accessible. For example, a distributor may decide to bring video contents but not caption files.

This laissez-faire leadership of Australian government and the distributors are 'hands off' when importing content from overseas and expects that members of the deaf community to solve this problem.

Deaf Australia believes that caption files for programs aligns with the Marrakesh Treaty^{xxxiii} that requires contents to be accessible. The Australian Government ratified the Marrakesh Treaty in 2013.

C. Broadcasting Auslan Programs (Outcome 1, 3, 4, 5, and 6)

Auslan is not even broadcasted on any network with exception of some emergency announcements. Even the emergency announcements are met with frustrations by deaf people because the network did not include interpreter in the screenshot.

Deaf Australia refers to Federally funded broadcast programs; Special Broadcasting Services (SBS) and the Australian Broadcasting Corporation (ABC) that includes 'languages' in its charter.

The Special Broadcasting Service (SBS)^{xxxiv} has in place a Charter that states:

1. The principle function of SBS is to provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.
2. SBS, in performing its principle function, must:
 - a. Contribute to meeting the communications needs of Australia's multicultural society, including ethnics, Aboriginal and Torres Strait Islanders Communities; and
 - c. Promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and
 - d. As far as practicable, inform, educate and entertain Australian in their preferred languages; and

The Australian Broadcasting Corporation (ABC)^{xxxv} has in place a Charter that states:

1. The functions of the Corporation are:
 - a. To provide within Australia innovative and comprehensive broadcasting services of a high standards as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the forgoing, to provide:
 - i. Broadcasting programs that contribute to a sense of national identity and inform and tertian, and reflect the cultural diversity of, the Australian community.
2. In the provision by the Corporate of its broadcasting services within Australia:
 - a. The Corporation shall take account of:
 - iv. The multicultural character of the Australian community

Neither SBS and ABC provide Auslan translated news broadcasts for deaf Australians.

D. Internet/ Website (Outcomes 1, 2, 3, 4, 5, and 6)

As Auslan is a visual communication, a range of resources and equipment are needed to accommodate effective communication. Many telecommunications and Internet Service Providers (ISP) offer capped data plans and unlimited calls. Many deaf people require higher data plans but have voice plans which they do not need and end up paying more (for data) so they can access use of Auslan effectively.

Australia is rapidly moving into the digital age where information is increasingly available chiefly through the internet. This requires high speed connectivity and data yet deaf people are often faced with watered down programs such as the National Broadband Network, mobile/data plans that are not 'deaf' appropriate as basic services will not meet the deaf person's needs and therefore require higher plans which become expensive for deaf consumers, considering their level of income and lack of employment opportunities.

Australian Government's National Broadband Network (NBN) is an important infrastructure for deaf people, it guarantees better connectivity where many of our video calls are often poor in quality, especially when connecting to rural and remote communities where access to Auslan supported services are negligible. Yet, current government made changes to NBN infrastructure save costs that may reduce the quality of connectivity and is not helpful to an inclusive society.

As a minimum, deaf people need access to high quality / high speed technology communication infrastructure that will enable them to access a range of services and supports in all areas. This service must be available for all deaf people at a reasonable cost.

Deaf Australia believe that some of the costs can be offset by NDIS as this becomes a 'reasonable and necessary' to access higher Internet capacity.

In addition, many e-forms on websites do not accommodate deaf people's communication needs. For example, when forms ask for a mobile phone number, they do not ask how the person wishes to be contacted, for example, text only. Many providers, e.g. banks, electricity and gas companies constantly try to ring our mobile number where the owners only use SMS.

Deaf Australia believe a simple addition of a 'text only' tick box to e-forms would solve this issue.

Example of good practice:

In New South Wales, the government has recently launched a new service that allows deaf/hard of hearing people to access any government services by using on-demand video interpreting service or live-captioned services.

E. Telephone/ Mobile Communication (Outcomes 1, 2, 3, 4, and 6).

Deaf and hard of hearing people requires visual communication in forms of video and/ or text and many providers offers deaf/ hard of hearing various plans that are mostly inappropriate.

1. Data usage

Telecommunications and Internet Service Providers (ISP) offers capped data plans and unlimited calls. Many deaf people require higher data plan so they can access use of video (via FaceTime, Skype, etc) or internet (via National Relay Service) to make calls effectively and rarely use voice calls.

When using mobile phones to make video calls, use of data applies to end of both users. This is not 'equivalent' for non-deaf/ non-hard of hearing person when making calls (using voice) as data is not applied.

Deaf people must become aware of their data usage when using mobile phone as they need for browsing, network and video calls.

Deaf people who are on pension or low income based employment do not have the capacity to purchase data rich plans and often purchase pre-paid plans that have limited data. When using video calls, their data is depleted quite quickly and they cannot afford to top up their plan until the next pay day. This is significant a concern because when they do not have a data plan, they are unable to make video calls, or use internet when contacting the National Relay Service to make an emergency call.

Again, this is not equivalent to emergency calls where mobile phone, even without credit (for pre-paid plan), can still contact emergency services using '000'.

2. Voice mail (or equivalent)

Some telecommunication providers offer 'voice mail' system which enables person to leave message on phone and can be retrieved by intended person by dialling specific number and password. For deaf/ hard of hearing people, voice mail does not work because it will not accept deaf person retrieving message through National Relay Service.

The equivalent would be 'Voice to SMS' which is offered as a premium but this incurs a monthly charge, as low as \$6.99 per month. This service allow caller to leave message in the voice mail, and then provider to send user the text message.

For deaf/ hard of hearing person, access 'Voice to SMS' is essential, yet this is not offered as an equivalent to voice mail. A deaf/ hard of hearing person needs to contact the carrier through the National Relay Service to arrange exemption. It takes as long as 2 hours to waive a monthly fee for a certain period of time.

Using this example, the cost of a call for a request for exemption would be approximately \$500.00, which would then waiving an annual fee of approximately \$84.00. The cost of the call is calculated using the following components:

- 2 hours National Relay Service call at approx. \$2.50 per minute = \$300.00 (including 30-45 minutes waiting in the queue);
- Salaried and overhead costs (teleco) = \$70.00;
- 12-months 'Voice to SMS' premium at \$6.99 per month = \$83.88;
- Not including data usage when making the call; and
- GST not included.

Clearly, it makes no economic sense to argue what is an essential and equivalent service for deaf and hard of hearing, yet, providers are willing to take up the time (and costs) then pass it on to customer though other levies and service fees.

8. Legislation

As highlighted in above submission the Broadcasting Services Act (1992), Telecommunication Act (1996), various state/ territory Jury Acts (see **Appendix D**). and the Disability Discrimination Act (1992), Deaf Australia believe that many of these acts has effectively restrict deaf and hard of hearing people to be an equal citizen of Australia.

The Australian Government ratified the United Nations convention on the Rights of Persons with Disabilities in 2008. It is Deaf Australia's view that the Australian and State/ Territory governments have not actively pursued amending various legislation to remove barriers as required by the Convention.

For this reason, Deaf Australia believes that implementing of the National Disability Strategy in terms of amending various legislation to remove barriers and to ensure equity and equal participation for deaf and hard of hearing people has hardly scratched the surface.

A recent amendment to Broadcasting Services Act (amended 2012) have seen that broadcasters are given additional protections by not having contents captioned by way of requesting Australian Communication and Media Authority (ACMA) to seek exemption or reduction of target on captioning on its broadcast program.

A. Disability Discrimination Act (Outcomes 1, 2, 3, 4, 5 and 6).

Since the Disability Discrimination Act (1992) was legislated, many members of the deaf community have made complaint to range of services that have refused to provide access or make accommodation with mixed success. Only captioning in legislated in the broadcasting Service Act as a result of deaf sector complaints through Australian Human Right Commission (AHRC).

The complaints that have not been successful often in cases where it is the complainant's responsibility to consider pursuing further in the courts. We believe this has imposed unnecessary burden and costs for the complainants' cases. Unfortunately, the AHRC does not keep records of those cases, so we are unable to source information as to how many of these cases have proceeded further. However, Deaf Australia is aware of a few cases that were successfully progressed.

In the High Court of Australia in the Lyons v. State of Queensland, Ms. Lyons claimed to be discriminated against because the court refused to provide interpreter in her role as jury member. However, the High Court of Australia found that Queensland's Jury Act does not permit the use of 13th person in the jury room, which consequently means that deaf people are unable to serve as a juror if they request an interpreter.

It would mean the only way for deaf person to serve on the jury is for State Government to change the Jury Act to allow use of interpreter in the deliberation room. This applies to all states and territories (see **Appendix D**).

Captioned movies in cinemas were introduced in 1998. During the transition from analogue film to digital film in the mid's 2000, we saw venues increase from 8 to only 10 and this number had remained unchanged for over 10 years. The cinema industry had continued to refuse to make more use of captioned movies outside their set schedules (Friday evening, Sunday afternoon and Wednesday morning) and make more venues accessible.

After series of failed discussions, Deaf Australia has left with no choice but to lodge a complaint to increase the number of venues and increased access to captioned movies outside set schedules.

AHRC then conducted a conciliation meeting between the industry and the deaf sector to see an increase of venues from 10 to 70. At the conciliation meeting, industry continued to refuse to negotiate for most of the discussion. It was not until the last minutes, they agreed to 35 venues.

Deaf Australia believe it was the first significant step forward after years of failed discussions and negotiations with the industry. However, the deaf community believed it was not enough.

As a result, the government has intervened and began discussions with the industry and the AHRC and initiated a rollout of the accessible cinema initiative which saw increase of accessible venues to 425 screens, using the technology that can support both captions and audio-description.

The decision on use of caption technology (equipment) to use at the cinemas was made by the Australian Government, AHRC and the Cinema industry, and was agreed to be implemented at a cost of Australian Government's 10 million dollars. This decision was made without consultation with Deaf Australia or with any members of the deaf community. Yet the current caption equipment is considered to be a 'reasonable accommodation'.

Many deaf people feel that the current equipment is 'a step backward' from an enjoyable experience as many experience a wide range of problems and issues when using this equipment and they are not enjoying movies as they should, and therefore, is not reasonably accommodated.

Deaf Australia has recently met with Mr Alistair McEwin, the Disability Commissioner, and enquired as to how the Disability Discrimination Act measure 'reasonable accommodation' because the cinema captions, in many deaf peoples view, are not reasonable. He agreed that the interpretation of 'reasonable accommodation' is subjective.

The Disability Discrimination Act 1992 has a Complaint Register List on its website, listing all conciliated complaints from 2009 onward. Deaf Australia sought through the Freedom of Information Act (1982) for the AHRC to provide Deaf Australia with number of complaints made by people who are deaf or hard of hearing, both solved and unresolved, from 1992 to present.

The Commission reported that a total of 1,003 complaints received since 1992.

The table below identifies how many complaints were made in each year and how many complaints were successfully resolved in respective years.

Year	Number of Complaints	Cases Resolved	Percentage of resolved cases
1992	0	0	0
1993	11	2	18.1%
1994	20	10	50%
1995	11	1	9.1%
1996	11	3	27.3%
1997	12	3	25%
1998	19	8	50%
1999	34	8	23.5%
2000	28	11	39.3%
2001	38	16	42.1%
2002	28	13	46.4%
2003	45	21	46.7%
2004	34	19	55.9%
2005	31	13	41.9%
2006	30	21	70%
2007	46	28	60.8%
2008	61	38	62.3%
2009	125	75	60%
2010	96	58	60.4%
2011	53	31	58.4%
2012	71	34	47.9%
2013	51	34	66.7%
2014	46	25	54.3%
2015	40	26	65%
2016	52	28 (6)	53.9%
2017 – Current	11	0 (8)	0
TOTAL	1,003	526	52.4%

Numbers in brackets in 2016 and 2017 are complaints are still under conciliation.

While the National Disability Strategy is in effect, a total of 420 complaints (between 2010 and current) was received by the AHRC.

Of the 420 complaints received since the National Disability Strategy has come into effect (i.e. since 2010) 230 (54.8%) of the cases has been resolved. Of the 582 complaints received between 1992 and 2010 when the National Disability Strategy was implemented, 290 (49.8%) of the cases has been resolved.

Deaf Australia is unable to identify why complaints were not resolved. It is Deaf Australia's belief that no resolution has been achieved on many cases based on unjustifiable hardship.

Based on the current Complaint Register List of all conciliated complaints, as listed on the website (from 2011 to present), Deaf Australia have reviewed all complaints and identified that there are 3 key areas of common complaints, which are:

1. Access to information: where services fail to provide captions (TV, DVD, Video, Website).
2. Access to Auslan: where services fail to provide access to Auslan supported services (e.g. interpreter).

3. Others: where services/ providers discriminated on the ground of being deaf (e.g. refuse to board plane unaccompanied, promotion in workplace, or dismissal from employment).

There is a small number of complaints relating to assistive devices (such as augmentative loop), which often is not working due to a lack of maintenance. These are often resolved through equipment update and/ or training.

These complaints are consistent to the issues that Deaf Australia have raised over the years.

Deaf Australia has concluded that most of these complaints were registered during the life of the National Disability Strategy which clearly indicate that the National Disability Strategy is not effectively removing the barriers so that deaf and hard of hearing people can be included and can access services.

Deaf Australia must stress that the number of complaints received from the AHRC is smaller than expected. This is due to the fact that the mechanism does not support the use of Auslan and expects deaf people to use English (often their English is their 2nd language) when lodging complaints (see Article 21(b) of the Convention). This is, therefore, not an equal opportunity for deaf people.

Deaf Australia believes that a legally binding communication and information access standard must be developed. This standard should include provision of Auslan/ English interpreting and translation, captioning of modalities such as cinema, television, DVD, and on online services.

B. Broadcasting Services Act (amended 2013) (Outcomes 1, 2, 4, 5 and 6).

As discussed under Section 7 (C) in this submission, Deaf Australia believe that Government need to enforce use of policy under the charters to ensure Auslan is included as one of the language options when broadcasting language other than English programs.

C. Telecommunication Act (amended 2013) (Outcomes 1, 2, 3, 4, 5 and 6).

As discussed under Section 6 (D)(6) in this submission, Deaf Australia believes that Government need to require National Relay Service to provide all forms and formats of communication methods (including use of Auslan Video Relay) 24 hours per day, 7 days a week and 365 days a year and must be cost recovered.

9. APPENDIX A: Disability Discrimination Act, 1992

Section 9: Carers, assistance, assistance animal and disability aid definitions

Meanings of carers or assistance, assistance animal and disability aid

- (1) For the purpose of this Act, a carer or assistance in relation to a person with a disability, is one of the following who provides assistance or services to the persons because of the disability:
 - a. A carer;
 - b. An assistance;
 - c. An interpreter;
 - d. a reader.
- (2) For the purpose of this Act, assistance animal is a dog or other animals;
 - a. Accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or
 - b. Accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph (Section 53); or
 - c. Trained:
 - i. To assist a person with a disability to alleviate the effect of a disability; and
 - ii. To meet standard of hygiene and behaviour that are appropriate for an animal in a public place.
- (3) For the purpose of this Act, a Disability Aid, in relation to a person with a disability, is equipment (including a palliative or therapeutic device) that:
 - a. Is used by the person; and
 - b. Provides assistance to alleviate the effect of disability.

- (4) The following table has effect:

Having a carer, assistance animal or disability aid		
Item	For the purposes of this Act, a person with a disability has...	If the person ...
1	A carer or assistance	(a) Is presently accompanied by the carer or assistance; or (b) Was previously accompanied by the carer or assistance; or (c) May be accompanied by the carer or assistance in the future; or (d) Is imputed to be accompanied by the carer or assistance.
2	An assistance animal or disability aid	(a) Is presently accompanied by, or possesses, the animal or aid; or (b) Was previously accompanied by, or possessed, the animal or aid; or (c) May be accompanied by, or possess, the animal or aid in the future; or (d) Is imputed to be accompanied by, or to possess, the animal or aid.

10. APPENDIX B: UN Convention on Rights of Persons with Disabilities on 'sign language'

Article 2 (Definitions)

*'Language' includes spoken and **signed language** and other forms of non-spoken languages.*

Article 9 (Accessibility)

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties (Australian Government) shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles or barriers to accessibility, shall apply to, inter alia:
 - (e) To provide forms of live assistance and intermediaries, including guides, readers and **professional sign language interpreters**, to facilitate accessibility to buildings and other facilities open to the public.

Article 21 (Freedom of expression and opinion, and access to information)

State Parties (Australian Government) shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (b) Accepting and facilitating the use of **sign languages**, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (e) Recognising and promoting the use of **sign languages**.

Article 24 (Education)

- 3) State parties (Australian Government) shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as member of the community. To this end, State Parties (Australian Government) shall take appropriate measures, including:
 - (b) Facilitate the learning of **sign language** and the promotion of linguistic identity of the deaf community.
- 4). In order to help ensure the realisation of this right, State Parties (Australian Governments) shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in **sign language** and/or Braille, and to train professionals and staff who work at all level of education. Such training shall incorporate disability awareness training and the use of appropriate augmentative and alternative mode, means and formats of communication, educational techniques and materials to support persons with disabilities.

Article 30 (Participation in cultural life, recreation, leisure and sports)

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including **sign languages** and deaf culture.

11) APPENDIX C: UN Convention on the Rights of Persons with Disabilities on 'communication and accessible information'

Article 2 (Definitions)

'Communication' includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

'Universal design' means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need of adaptation or specialised design. 'Universal design' shall not exclude assistive devices for particular groups or persons with disabilities where this is needed.

Article 9 (Accessibility)

2. To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties (Australian Government) shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles or barriers to accessibility, shall apply to, inter alia:
 - (c) Information, communications and other services, including electronic services and emergency services.
 - (g) To promote access for persons with disabilities to new information and communication technologies and systems, including the Internet;
 - (h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 21 (Freedom of expression and opinion, and access to information)

State Parties (Australian Government) shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through Internet, to make their services accessible to persons with disabilities.

Article 24 (Education)

- 3) State parties (Australian Government) shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as member of the community. To this end, State Parties (Australian Government) shall take appropriate measures, including:

- (a) Facilitate the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - (b) Facilitate the learning of sign language and the promotion of linguistic identity of the deaf community;
 - (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and mode and means of communication for the individual, and in environment which maximise academic and social development.
4. In order to help ensure the realisation of this right, State Parties (Australian Governments) shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all level of education. Such training shall incorporate disability awareness training and the use of appropriate augmentative and alternative mode, means and formats of communication, educational techniques and materials to support persons with disabilities.

Article 25 (Health)

State Parties (Australian Government) recognises that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. State Parties shall take all appropriate measures to ensure access for persons with disabilities to health services are gender-sensitive, including health-related rehabilitation. In particular, State Parties shall:

- (d) Require health professionals to provide care of the same quality to persons with disability as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disability through training and the promulgation of ethical standards for public and private health care.
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable matter.

12. APPENDIX D: Jury Acts (summary)

Jurisdiction	Relevant legislation	Comments on jury service to date
New South Wales	<p><i>Jury Act 1977</i> (NSW) s 14; Schedule 1</p> <p>Sheriff required to delete from jury roll the names of those persons he or she determines are disqualified or ineligible to serve as jurors.</p> <p>These are set out in Schedule 1, and include ‘<i>a person who is unable, because of sickness, infirmity or disability, to discharge the duties of a juror</i>’.</p>	To date, the Sheriff has determined that people who are blind or deaf or have significant impairment to their sight or hearing are unable to discharge the duties of a juror, and thus are ineligible to serve.
Queensland	<p><i>Jury Act 1995</i> (Qld)</p> <p>Section 4(3)(k) of the Act exempts a person who ‘<i>is not able to read and write in the English language</i>’, and section 4(3)(l) exempts a person who ‘<i>has a physical or mental disability that makes the person incapable of effectively performing the function of a juror</i>.’</p>	Queensland Court of Appeal held (in <i>Lyons v State of Queensland</i> (2015) QCA 159) that under existing legislation, deaf jurors who requires an Auslan interpreter are ineligible to serve. Ms Lyons has been granted special leave to appeal the decision by the High Court. The Queensland Courts Services has advised that legislative reform may be considered pending the outcome of the appeal. No blind people have applied to serve to date.
Northern Territory	<p><i>Juries Act</i> (NT)</p> <p>Schedule 7 exempts a ‘<i>person who is blind, deaf or dumb or otherwise incapacitated by disease or infirmity from discharging the duties of a juror</i>.’</p> <p>The Act also permits the Sheriff to question any chosen juror to ascertain whether that juror is able to ‘<i>read, write and speak the English language</i>.’</p>	The Northern Territory reports that, while a number of jurors have been summoned who are deaf or blind, to date all have contacted the Sheriff’s office to make an exemption application.
Western Australia	<p><i>Juries Act 1957</i> (WA) s 34G(2)</p> <p>A judge or summoning officer may excuse a person if satisfied that a person who is summoned ‘<i>is not capable of serving effectively as a juror because he or she has a physical disability or a mental impairment</i>. The Act also provides that a person is unable to serve if they do ‘<i>not understand spoken or written English, or cannot <u>speak</u> English, well enough to be capable of serving effectively as a juror</i>.’</p>	The first deaf person requiring Auslan interpreter in Australia was selected for trial empanelment on 14 January 2014 in the Perth District Court. She was ultimately not selected for a trial. The Sheriff’s Office subsequently received legal advice which confirmed that deaf people could not <u>speak</u> English adequately to fulfil the requirements of the Act. To date there have been no

		enquiries about whether a blind person is able to serve.
South Australia	<p><i>Juries Act 1927 (SA) s13</i></p> <p>A person is ineligible for jury service if he or she is mentally or physically unfit to carry out the duties of a juror. A person is also ineligible if he or she has insufficient command of the English language to enable him or her properly to carry out the duties of a juror.</p>	To date, no deaf people have applied to serve. Even if they had, the facilities are inadequate at this stage to accommodate an interpreter and any additional requirements that the person may need. The Sheriff's Office noted that inadequate facilities have also previously resulted in a blind person being excused who was keen to serve. While concerns were expressed about the ability of a blind person to access evidence, The Office considered that it would be easier to accommodate a blind person than a deaf person.
Australian Capital Territory	<p><i>Juries Act 1967 (ACT)</i></p> <p>Under the Act, people who are <i>'totally or partially deaf or blind'</i> may claim exemption from serving as a juror. Section 10 provides that a person is not qualified to serve who <i>'is unable to read and speak English language'</i> or <i>'is, because of mental or physical disability, incapable of serving as a juror.'</i></p>	In 2008 amendments to the Juries Act, the explanatory statement noted that <i>'it is no longer appropriate to exclude people who are blind or deaf from participating in one of the rights and responsibilities of citizenship purely on the basis of a disability and without any enquiry as to the actual ability of a member of that class to perform as a juror.'</i> The ACT reports that no blind person have applied to serve, almost all 'hearing impaired' people who received a jury summon claim the exemption and are excused. There have been no instances of a deaf person requiring Auslan interpreter requesting to serve.
Tasmania	<p><i>Juries Act 2003 (Tas)</i></p> <p>Section 6(3) and Schedule 2 provide that people <i>'who have a physical, intellectual or mental disability that renders the person incapable of effectively performing the duties of a juror'</i> or <i>'who are unable to communicate in, or understand, the English language adequately'</i></p>	Prospective jurors who are deaf and wish to participate are currently advised that the Court does not have the capability to cater for someone who is profoundly deaf for jury service. On some occasions, potential jurors have been excused from jury service on the basis of hearing impairment.

Victoria	<p><i>Juries Act 2000 (Vic)</i></p> <p>There is no legislative provision that expressly excludes a deaf or blind person from serving as a juror. Schedule 2 to the Act lists person who are ineligible to serve as jurors for the purpose of section 5(3). Clause 3(a) excludes a person who <i>'has a physical disability that renders the person incapable of performing the duties of jury service'</i>, while clause 3(f) excludes a person who <i>'is unable to communicate in or understand the English language adequately'</i>.</p>	<p>It is arguable that these provisions would not exclude a deaf person, as these issues can be overcome by using an Auslan interpreter. The strongest impediment arises from the long-held common law principle that a non-juror is not permitted as a thirteenth person in the jury room.</p>
Federal Court	<p><i>Federal Court of Australia Act 1967 ss 23DQ and 23DR</i></p> <p>The Sheriff may excuse a potential juror because of the potential juror's inability, in all the circumstances, to perform the duties of a juror to a reasonable standard (s 23DQ), or if satisfied that the potential juror is, in all the circumstance, unable to perform the duties of a juror to a reasonable standard (s 23DR). The note to each of these sections provides that the Sheriff must have regards to the <i>Disability Discrimination Act 1992 Cth</i>.</p>	<p>The Federal Court has had no jury trials to date. Legislation providing for criminal jury trials is new and untested.</p>

Source: Discussion paper: equality and fairness in jury section, Victoria Government (Department of Justice and Regulation) 2016.

13. References

- i Felicity Bleckly, [‘History of Auslan – Australian Sign Language’](#), n.d. (accessed 8 December 2016).
- ii World Federation of the Deaf, [About us](#), n.d. (accessed 12 December 2016)
- iii .id The Population Experts, [‘Language spoken at home’](#), 2011 (accessed 12 December 2016).
- iv United Nations, [‘Universal Declaration of Human Rights’](#), 10 December 1948, (accessed 2 December 2016).
- v Australian Hearing, [‘Annual Report 2015-16’](#), September 2016, (accessed 6 December 2016).
- vi World Federation of the Deaf, [‘WFD Position Paper on the Language Rights of Deaf Children’](#), 7 Sept 2016 (accessed 10 Jan 2017).
- vii William Vicars, [‘Deaf Children: Language Deprivation’](#), 30 October 2000, (accessed 4 May 2017).
- viii State of California, ‘SB-210, Special Education: Deaf and Hard of Hearing Children: Language Benchmarks’ 19 July 2015, Amendment Bill.
- ix National Association of Australian Teachers of the Deaf, [‘Competencies for Teachers of the Deaf’](#), 2009, (accessed 4 May 2017).
- x Facebook posting by June Statis, November 2016.
- xi Deaf Australia, [‘Policy on the National Assessment Program – Literacy and Numeracy \(NAPLAN\) for Deaf People in Australia’](#), September 2014, (accessed 6 December 2016)
- xii Deaf Australia, [‘Policy on the National Assessment Program – Literacy and Numeracy \(NAPLAN\) for Deaf People in Australia’](#), September 2014. (accessed 4 May 2017).
- xiii Aussie Educator, [‘Language Other Than English’](#), n.d., (accessed 2 December 2016)
- xiv Jennifer Smith, [‘The benefits of learning a second language’](#), n.d., (accessed 2 December 2016).
- xv Deaf Australia, [‘Submission to TAFE Inquiry’](#), 18 April 2013, (accessed 12 December 2016).
- xvi Deaf Australia, [‘Increasing employment opportunities for people with disabilities’](#), 15 February 2013, (accessed 13 December 2016).
- xvii Deaf Australia, [‘National Mental Health and Disability Employment Strategy Discussion Paper’](#), June 2008, (accessed 4 May 2017).
- xviii Kevin Bleasdale, Email correspondence, 28 February 2017.
- xix NAATI, [‘Our Industry’](#), n.d., (accessed 2 December 2016).
- xx Australian Government, [‘About the Free Interpreting Service’](#), n.d., (accessed 4 May 2017).
- xxi Medical Board of Australia, [‘Good Medical Practice: A Code of Conduct for Doctors in Australia’](#), March 2014, (accessed 8 December 2016)
- xxii United Nations, [‘Convention on Rights of Child’](#), 2 Sept 1990, (accessed 4 May 2017).
- xxiii Commonwealth Government’s Ageing and Aged Care, [‘CoS Translating and Interpreting Services’](#), 22 March 2017, (accessed 4 May 2017).
- xxiv Western Australia Government, [‘Aged Care Assessment Team \(ACAT\)’](#), n.d., (accessed 4 May 2017)
- xxv Deaf Australia, [‘Communication Accessibility: 2016 and Beyond’](#), May 2016, (accessed 4 May 2017).
- xxvi Jury Rights for All, [‘Current Legislation Summary’](#), n.d., (accessed 4 May 2017).
- xxvii ABC News, [‘Deaf Queensland woman Gaye Lyons loses High Court bid to become juror’](#), 5 October 2016, (accessed 4 May 2017).
- xxviii Deaf Children Australia, ‘Communication Accessibility Guidelines for Meeting and Public Events’, August 2013.
- xxix Commonwealth Consolidated Acts, [‘Disability Discrimination Act 1992 – Section 11’](#), n.d., (accessed 4 May 2017).
- xxx Deaf Australia, [‘An open letter to the National Rugby League \(NRL\)’](#), 8 October 2016, (accessed 4 May 2017).
- xxxi Email correspondence from Janet Lau, Senior Investigations and Compliance Officer (ACMA) dated 27 April 2017.
- xxxii National Association of the Deaf, [‘Landmark Precedent in NAD vs. Netflix’](#), 19 June 2012, (accessed 9 May 2017).
- xxxiii World Intellectual Property Office, [‘Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled’](#), 27 June 2013, (accessed 8 May 2017).
- xxxiv Commonwealth Government, [‘The SBS Act 1991’](#), 1991, (accessed 10 January 2017).
- xxxv Commonwealth Government, [‘The ABC Act 1983’](#), 1983 (accessed 10 January 2017).