

NDA Submission on Statement of Strategy 2024 – 2026 for Department of Justice[[1]](#footnote-1)

October 2023

# Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and evidence-informed advice to Government and officials in the public sector on disability matters, and to promote Universal Design. This submission on the Statement of Strategy 2024 - 2026 addresses issues related to this department’s remit which fall within the NDA’s competencies and expertise.

The NDA recommends that the Department of Justice include clear commitments in this new Statement of Strategy with regard to how services and supports within its remit will be provided to members of the public with disabilities. A clear statement confirming the Government’s policy of ‘mainstreaming’ and referencing how the Department of Justice will recognise and meet the needs of disabled persons when delivering services is a useful approach. This will require the department to disability-proof the policies and supports it provides, thereby also ensuring that the Department of Justice is playing its part in the delivery of the State’s commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

## Policy Commitments

The National Disability Inclusion Strategy ended at the end of 2022. A successor strategy is to be developed during 2023. While the development of the Strategy will be coordinated by the Department of Children, Equality, Disability, Integration and Youth, there will be obligations and actions for all government departments and across the public sector, in order to ensure the rights of persons with disabilities are recognised and realised. Articles of the UNCRPD that are particularly relevant to the Department of Justice include;

* Article 5 Equality and non-discrimination
* Article 6 Women with disabilities
* Article 12 Equality recognition before the law
* Article 13 Access to Justice
* Article 14 Liberty and Security of Persons
* Article 15 Freedom from torture or cruel, inhuman or degrading treatment of punishment
* Article 16 Freedom from exploitation violence and abuse
* Article 17 Protecting the integrity of the person
* Article 18 Liberty of movement and nationality

It will be important that the Department of Justice fully engage in the development of a new cross government strategy.

## Participation and Engagement

The UNCRPD also places an obligation on states to ensure that people with disabilities are included in policy development and decision-making. The NDA welcomes the department’s consultation with stakeholders, including Disabled Persons’ Organisations (DPOs), through its Disability Consultative Committee which was active when the National Disability Inclusion Strategy was in progress. The NDA advises that meaningful engagement and participation should feature throughout the lifetime of the next Statement of Strategy, so that policy interventions planned and delivered by the department are disability-proofed from the outset. The NDA published ‘Participation Matters: Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision making’ in 2022 to support public bodies in achieving meaningful engagement with disabled people, especially through their representative DPOs.[[2]](#footnote-2) The NDA also produced an ‘Advice Paper on Disability Language and Terminology’ which is intended as a practical guide for departments and public bodies on the use of language about disability.[[3]](#footnote-3)

### Crosscutting Strategies and Working

Consideration of some of the key issues set out within the UNCRPD Articles identified above will require input from more than one department, and the NDA looks forward to continued collaborative working across government in the lifetime of this Statement of Strategy. One route to underpinning this approach is to ensure that commitments in relation to disability are articulated in this Statement of Strategy and that annualised business plans of your department are aligned with other crosscutting strategies and national policies that are of relevance.

The NDA would like to take this opportunity to highlight the following key areas of focus relevant to your department, which we suggest could be incorporated within this new Statement of Strategy and has organised them under the following two headings;

* Issues of importance to Justice
* Statutory Obligations

# Key issues of importance to Justice

## Assisted Decision Making Capacity (Amendment) Act, 2022

The enactment of the ADMA Act in April 2023 will lead to a significant change in the workings of the Justice system. A mind set change will be required to shift from a ‘best interests’ approach to a ‘will and preference’ approach. The changes in how capacity is assessed will also lead to significant changes. While these changes will take some time to bed in it is important that there is oversight to ensure that there is learning across the system and that the underlying principles of this legislation is adhered to. The NDA are undertaking research to examine the experiences of Wards of Court before and after leaving the wardship system and hope that the information obtained will be inform further improvements in the justice system.

## Intermediaries

The NDA welcomes the establishment of a Professional Diploma in Intermediary Studies and had previously shared an advice paper with the Department on this issue.[[4]](#footnote-4) It will be important that once intermediaries start working in the courts system that this is evaluated and any challenges identified and addressed early to ensure the success of this innovation.

## Cost of Disability

The Cost of Disability research report by Indecon consultants, commissioned by the Department of Social Protection, found that the financial cost of disability can be significant and varies from person to person, depending on the type and severity of disability, meaning that a one-size-fits-all approach is not always appropriate.[[5]](#footnote-5) Full implementation of the report recommendations is a cross departmental undertaking. The NDA advises that the Department of Justice disability proof any policies or procedures introduced to ensure that they are considering the cost of disability. For example, there may be opportunities to look at eligibility requirements for access to free legal aid and other costs related to accessing the legal system.

## Disability Data

During 2023 it is intended that the Equality Data Strategy will be finalised and implementation will begin. This strategy supports the ‘collect once use often’ approach and will recommend using data linking as much as possible. Linking of various administrative databases facilitates more in-depth data analysis to inform policy. The Equality Data Strategy promotes data disaggregation, data linking, using more standardised approach in relation to indicators and targets, and identifying and addressing data gaps.

NDA suggests that research could be progressed by the Department in a numberof areas including the prevalence of disability among prisoners or those in the probation system, the prevalence of disability among domestic violence and other violent crime victims, and experiences of disabled people in interacting with the justice system.

The NDA would welcome if the Statement of Strategy included a commitment to continue to strengthen data collection, address data gaps and enhance the collection of data that allows analysis of intersectionality, specifically disability with other equality grounds. NDA are willing to provided guidance on any of these issues.

# Statutory Obligations

## Compliance with Part 5 of the Disability Act 2005

Part 5 of the Disability Act 2005 details the obligations public bodies have to promote and support the employment of persons with disabilities. The NDA is pleased to note the record of the department in relation to the employment of persons with disabilities, achieving 8.9% in 2021. In addition, nine of the 12 public bodies under the aegis of the department also exceeded the minimum 3% target. It is important to continue maintaining compliance with Part 5 of the Disability Act as a key focus of the department's HR strategy and articulating a commitment to same in the department’s overall Statement of Strategy can also demonstrate the department’s standing as an employer invested in equality, diversity and inclusion (EDI).[[6]](#footnote-6) The Assisted Decision Making (Capacity) (Amendment) Act 2022 increases the minimum target from 3% to 4.5% in 2024 and 6% by 2025.

## EU Web Accessibility Obligations

The [EU Web Accessibility Directive](https://nda.ie/monitoring/eu-web-accessibility-directive/eu-web-accessibility-directive-monitoring-reports), which came into force in September 2020, requires Member States to ensure that websites and mobile applications of public sector bodies are fully accessible to persons with disabilities and comply with the harmonised standard EN 310 549 (v3.2.1). The Directive further requires public bodies to maintain an [Accessibility Statement](https://nda.ie/monitoring/eu-web-accessibility-directive/accessibility-statements) in a prominent location on all its websites.  This must include a clear feedback mechanism for users to ask for assistance with inaccessible content and features as well as the statutory complaints mechanism through which a person can make a formal complaint about the website’s accessibility in-line with the Disability Act 2005 or the Equal Status Act 2000-2015, whichever so applies. The National Disability Authority is named in Irish Regulations as the National Monitoring Body for the purposes of monitoring compliance with and reporting on the EU Web Accessibility Directive. The NDA has submitted [two monitoring reports](https://nda.ie/publications/monitoring-report-eu-wad-ireland-2021-nda-report) to the European Commission in December 2011 and 2022 in this regard.

In 2023, NDA conducted Simplified (automated) Reviews on the Department’s web presence on GOV.ie as well as for two agencies “International Protection Appeals Tribunal” and “International Protection Office” whose websites the department manages. NDA has issued Notice of Monitoring to the department and its agencies so to provide the monitoring results and guidance on remediating the errors identified and improving compliance with the Directive.

The Department has engaged positively with NDA.  However, NDA’s monitoring data shows that there have been no improvements in the compliance of the PDF published by the Department on GOV.ie. The websites of the two agencies named above have shown no improvement in compliance since monitoring began.

NDA recommends that the Department’s officials with responsibility for its content on GOV.ie as well as the websites of agencies under its aegis engage with NDA to develop a systematic and comprehensive approach to improving the accessibility of all websites it currently manages.  NDA will continue to monitor these websites and the websites of other agencies under the Department’s aegis into the future.

The NDA recommends that the Department articulates its statutory obligation to ensure all its websites, comply with the EU Web Accessibility Directive, in the Statement of Strategy. The department should encourage the agencies under its remit to take further steps to improve their compliance with the Directive.

The NDA recommends that this obligation and an action plan to address access issues is referenced in relevant strategic objectives and that the Statement of Strategy itself is published in a fully accessible PDF.

## Compliance with Part 3 of Disability Act 2005

Part 3 of the Disability Act details obligations public bodies have to ensure that information and service are accessible to persons with disabilities. Where practical and appropriate, public bodies should ensure that services provided to disabled persons and persons without disabilities are integrated. The Centre for Excellence in Universal Design at the NDA developed a Customer Communications Toolkit for Services to the Public, which provides guidance for public servants on how to communicate with the public using the simplest and clearest language possible and to ensure that all services are accessible and meet the diverse needs of all customers.

Earlier this year the NDA forwarded the findings of the Part 3 Monitoring Report to the Secretary General of the Department of Justice, which contains the results of a desk-based exercise, assessing the websites of public bodies as defined by Part 3 of the Disability Act. Initial findings showed that out of 29 public bodies under the aegis of the Department, there were 7 public bodies (24.1%) that met all criteria of the standard indicator regarding Section 26(2) - Access Officers. This was below the average (33.9%) of public bodies overall. However, the NDA provided Departments and public bodies with time to revert with updated information and amendments before final publication of the report.

Following this exercise, the Department of Justice informed NDA of some changes to public bodies under its aegis which resulted in an amended total of 26 public bodies under the Department’s aegis. Of these 26 public bodies, 25 (96.2%) promoted the appointment of an Access Officer on their public websites all 25 of these public bodies had contact details available. Of these 25 public bodies 23 (92%) provide communication channels which would facilitate both spoken and written communication. Therefore, out of 26 public bodies under the aegis of the Department, there were 23 (88.5%) that met all criteria of the indicator regarding Section 26(2) - Access Officers.

This represents a great improvement within the Department, however there is still room for more improvements to be made. The NDA also wishes to commend the establishment of an Access Officer Network undertaken by the Department of Justice. The NDA look forward to continued work on the recommendations detailed in the report, to ensure best practice is followed, and in assisting public bodies who do not meet this indicator to address gaps.

## Requirement for Accessible Public Buildings under Section 25 of the Disability Act 2005

Section 25 of the Disability Act requires all departments and public bodies to ensure that the parts of their buildings which are accessed by the public, apart from heritage sites, are brought into compliance with Part M of the building regulations, which deals with access and use. The requirement is to upgrade older public buildings so that they comply with Part M, within a ten-year time-frame of any amendment to part M. Part M 2010 commenced on 1 January 2012 and was subsequently reviewed and replaced again with Part M 2022, which commenced on 1 January 2023. Under Section 25 therefore, public bodies are required to bring their public buildings into compliance with Part M 2010 by 1st January 2022 and Part M 2022 by 1st January 2033. The new requirements under Part M 2022 relate to the provision of changing places toilets.

The NDA advise that each department and agency should develop an action plan including access audits, planned improvements works, timeframes for implementation and earmarked funding, to work towards achieving compliance with these legal obligations. This may involve engaging with other authorities as appropriate, including for example, the OPW. We also advise that compliance with Section 25 should be factored into performance framework agreements with agencies as a governance matter to comply with legal duties. The NDA recommends that the department develops a plan to implement Section 25 recommendations in buildings within its remit, including public buildings such as court houses, and that this commitment is clearly articulated in the Statement of Strategy. The NDA acknowledges that some older court houses may come under the remit of the Code of Practice for Heritage Sites. This Code allows for adaptations to make the building accessible once certain conditions are complied with and plans should also be put in place to make these buildings accessible where possible.

An Operational Review of the Effectiveness of Section 25 of the Disability Act 2005 was published by the NDA in 2019 providing guidance on how public bodies can comply with Section 25. Under Part 3 of the Disability Act. The NDA is developing a statutory Code of Practice on Accessible Public Buildings at the request of the Minister, informed by the findings of the Operational Review. When completed, the NDA will have a role to monitor compliance with same, and to provide advice to departments on areas requiring further action or focus. We anticipate submitting the Code to the Minister by year end.

## Irish Sign Language Act

The Irish Sign Language Act 2017, which recognises the right of ISL users to use ISL as their native language, and to develop and preserve it, was enacted in December 2020. This Act places a statutory duty on all public bodies to do all that is reasonable to provide ISL users with free ISL interpretation when availing of or seeking to access statutory entitlements and services provided by or under statute. The NDA notes that in the report on the operation of the Act (conducted by the NDA), the Department of Justice had assessed themselves as partially compliant with the Act.[[7]](#footnote-7) Public bodes under the aegis of the department self-assessed as either compliant (n=8), partially compliant (n=5) or not compliant (n=4). NDA would be keen to see action taken to ensure compliance.

The report on the operation of the ISL Act, in relation to Section 4 of the Act on the use of ISL in legal proceedings, found that there is a need for information and awareness raising in relation to ISL interpretation, for clarity on eligibility for access to an ISL interpreter (in certain court contexts such as the Coroners Court) and for the publication of procedures for ISL users to access interpreters in the civil courts. The NDA did not make specific any recommendations under Section 4, instead advising that the above issues should be addressed through the more general recommendations that apply to all public bodies under Section 6 of the Act. These recommendations note the need to incorporate the specific context of the courts in implementation, for example, in establishing procedures and the provision of information.

# Conclusion

The NDA would be happy to engage with officials from the Department of Justice on any of the points raised in this submission.

## Summary of Key Recommendations to the Department

The NDA advise that the Department of Social Protection include the following clear commitments in the Statement of Strategy 2023 - 2026;

* Engage with the development of new national disability strategy
* Continue meaningful engagement with disabled people
* Support the mindset change required for full implementation of the ADMA
* Ensure the Intermediaries innovation is evaluated with challenges identified and addressed
* Disability proof policies and procedures to ensure they are taking account of the cost of disability
* Continue to strengthen research and data collection and address data gaps
* Maintaining compliance with Part 5 of the Disability Act as a key focus of the department's HR strategy
* Work towards compliance obligations of the department under the EU Web Accessibility Directive and an action plan to address access issues, and that the Statement of Strategy itself is published in a fully accessible PDF
* Continued work on the implementation of the recommendations of the Part 3 Monitoring Report, in assisting public bodies under the aegis of the department who do not meet their requirements
* Maintaining compliance under Section 25 of the Disability Act, requiring all public bodies to bring their public buildings into compliance with Part M Part M 2022 by 1st January 2033, including the new requirements under Part M 2022 in relation to the provision of changing places toilets
* Implement recommendations in relation the operation of the ISL Act and take actions to ensure that the Department and its aegis bodies are compliant with its implementation
1. [gov.ie - Public consultation on the development of the Department of Justice Statement of Strategy 2024 -2026 (www.gov.ie)](https://www.gov.ie/en/consultation/63e29-public-consultation-department-of-justice-statement-of-strategy-2024-2026/) [↑](#footnote-ref-1)
2. <https://nda.ie/publications/participation-matters-guidelines-on-implementing-the-obligation-to-meaningfully-engage-with-disabled-people-in-public-decision-making> [↑](#footnote-ref-2)
3. <https://nda.ie/publications/nda-advice-paper-on-disability-language-and-terminology> [↑](#footnote-ref-3)
4. [The Use of intermediaries in the Irish justice system - National Disability Authority (nda.ie)](https://nda.ie/advice-paper-on-the-use-of-intermediaries-in-the-irish-justice-system) [↑](#footnote-ref-4)
5. [gov.ie - The Cost of Disability in Ireland – Research Report (www.gov.ie)](https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/) [↑](#footnote-ref-5)
6. <https://nda.ie/publications/nda-annual-reports-on-compliance-with-part-5-of-the-disability-act> [↑](#footnote-ref-6)
7. See Technical Annex 2 on the Public Body Survey: [Report on the Operation of the Irish Sign Language Act 2017 (December 2021) - National Disability Authority (nda.ie)](https://nda.ie/publications/report-on-the-operation-of-the-irish-sign-language-act-2017-december-2021) [↑](#footnote-ref-7)