



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION AND COMMUNITY INCLUSION
Mr Michael Pettersson MLA (Chair), Miss Laura Nuttall MLA (Deputy Chair),
Ms Nicole Lawder MLA (Member)

Submission Cover Sheet

Inquiry into Disability Inclusion Bill 2024

Submission Number: 06

Date Authorised for Publication: 26 March 2024



Rachel Stephen-Smith MLA
Minister for Health
Minister for Children, Youth and Family Services
Minister for Disability
Minister for Aboriginal and Torres Strait Islander Affairs

Member for Kurrajong

Mr Michael Pettersson MLA
Chair
Education and Community Inclusion Committee
LACommitteeECI@parliament.act.gov.au

RE: Inquiry into Disability Inclusion Bill 2024

Dear Mr Pettersson

I write to you in respect to the Disability Inclusion Bill 2024 (the Bill) which was presented in the Legislative Assembly on 8 February 2024 by Ms Suzanne Orr MLA, and referred to the Standing Committee on Education and Community Inclusion, per Standing order 174.

I wish to provide a submission to the inquiry as the Minister for Disability, which will provide the Committee with information regarding the policy context and impacts for the ACT Government.

National disability policy - current context

As a Human Rights jurisdiction, the ACT supports the principles and concepts outlined in the *United Nations Convention on the Rights of People with Disability* (UNCRPD), which promote, protect and ensure the full and equal enjoyment of all human rights, fundamental freedoms and inherent dignity of people with disability.

In consolidating its commitment to the UNCRPD, the ACT Government is also a signatory to *Australia's Disability Strategy 2021-31* (ADS), which provides the overarching policy direction for Australia and speaks to our national aspirations to enshrine and elevate the ideals of respect, inclusivity, and equality. The vision for the ADS is '*for an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community*'.

Governments across Australia, including the ACT Government, are currently considering the recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission or DRC) following extensive consultation; in

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



+61 2 6205 2661



stephen-smith@act.gov.au



[@RachelSS_MLA](https://twitter.com/RachelSS_MLA)



[rachelSSMLA](https://www.facebook.com/rachelSSMLA)



[rachelss_mla](https://www.instagram.com/rachelss_mla)

addition to the recommendations made in the National Disability Insurance Scheme (NDIS) Review Report. Both reports were released in late 2023 and have instigated disability policy reform across Australia, including in the ACT.

Of particular significance from the NDIS Review is the recent agreement by all First Ministers to develop a Foundational Supports Strategy as an initial response to the NDIS Review. Jurisdictions are actively exploring programs, initiatives and opportunities, both existing and potential, which could be considered or implemented as a foundational support to create better outcomes for all people with disability. The introduction of foundational supports, with significant investment from governments, will provide a stronger intersection between the NDIS and mainstream community.

The Bill is therefore being considered at an opportune time as the ACT Government seeks to position itself to implement impactful, effective and sustainable policies and practices, which will systematically and practically improve outcomes for people with disability.

Disability policy in other jurisdictions

Jurisdictions across Australia manage their disability-related strategies, plans and policies in various ways. Most jurisdictions (New South Wales, Victoria, Western Australia, South Australia and Queensland) have legislation in place which provides a framework for the development and implementation of a range of state and public authority strategies, plans and advisory bodies.

At present, the ACT is one of the three jurisdictions without a legislative framework in place for the development and implementation of disability strategies, plans and advisory bodies (the others being Tasmania and the Northern Territory). However, the Northern Territory is implementing its *Disability Strategy 2022-2032* and the supporting 3-year action plan 2022-2025, and Tasmania is reviewing its *Accessible Island: Tasmania's Disability Framework for Action 2018-2021*, which requires each government department to develop and publish Disability Actions Plans.

As such, there are a range of existing legislative frameworks with alignments and similarities to the framework described in the Bill. However, there is no precedence for these frameworks being implemented in an ACT context.

Disability policy currently in the ACT

The ACT has a strong commitment to actions to improve the lives of people with disability. To demonstrate its commitment to the ADS, the ACT Government is developing an *ACT Disability Strategy 2024-2033*. As the overarching disability strategy for the ACT, it will guide the development of new initiatives to improve outcomes for people with disability and brings together work already happening across the ACT Government, including the *ACT Inclusive Education Strategy 2024-2034*, the *ACT Disability Health Strategy 2024-2033*, and the *ACT Disability Justice Strategy 2019-2029*. Collectively, these are all part of the ACT Government's commitment to a community that welcomes and values people with disability.

In response to the first action plan of the *Disability Justice Strategy 2019-2029*, and increasing community awareness, there are also now a range of Disability Action and Inclusion Plans (DAIPs) being implemented by ACT Government agencies and community organisations in the ACT. These

include ACT Corrective Services, ACT Courts and Tribunals, and Legal Aid ACT. Canberra Health Services has also established a DAIP while the Disability Health Strategy was in development.

Anti-discrimination laws at both the national and territory level make it unlawful to discriminate against people across a wide range of protected attributes, including disability. Amendments to the *Discrimination Act 1991* are being introduced progressively from April 2024, which will introduce positive duties designed to encourage proactive action to uphold rights: the first is a positive duty to make reasonable adjustments, the second is a positive duty to eliminate discrimination.

Passage of Ms Orr's Bill would provide a legislative framework to improve the experiences of people with disability in the ACT Government and in the ACT community through ongoing access and inclusion improvements, the removal of barriers, and actively challenging and addressing ableism.

The Bill would also provide a legislative framework to support the existing suite of disability-related strategies and DAIPs in the ACT. However, the Government recognises that there are a range of practical and logistical considerations which require further exploration to effectively operationalise the Bill. These are outlined in further detail below.

Developing a suite of strategies

The Bill proposes that the ACT Government develops a suite of 10-year disability strategies for each 'priority inclusion area' as outlined in the national disability strategy (which is currently the ADS). The priority inclusion areas of the ADS, called outcome areas, are employment and financial security; inclusive homes and communities; safety rights and justice; personal and community support; education and learning; health and wellbeing; and community attitudes.

The strategies would require the Minister responsible for the 'priority inclusion area' to produce an annual report setting out achievements made under the strategy over the financial year, to be published on an ACT Government website.

To operationalise this element of the Bill, the ACT Government would need to map its existing strategies to the priority inclusion areas of the Bill. Where there are domains that encompass multiple policy areas with shared responsibility, it is anticipated the Chief Minister will be responsible for declaring a Minister responsible.

How the requirements of the Bill will interact with existing disability strategies will require some consideration. While the existing disability strategies in the ACT broadly contribute to the outcomes of the ADS, they were developed prior to the drafting of this Bill and their scope was not defined by the outcomes of the ADS. For example: the *Inclusive Education Strategy: A Disability Inclusion Strategy for ACT Public Schools 2024-2034*, is for public schools only, whereas under this Bill which utilises ADS priority inclusion areas, "Education and Learning" could be interpreted more broadly to additionally include: early childhood education, non-government schools, and tertiary education as some examples. Transitional arrangements may be necessary to accommodate for such instances where there are existing strategies in place.

The Bill outlines the need for strategies to include information about how the strategy relates to any other significant strategy that applies in the ACT in relation to the priority inclusion area. It will therefore be necessary to ensure existing ACT Government policy documents continue to consider

and incorporate disability inclusion initiatives in their core work, to complement and align with the work of the respective disability strategies.

Developing disability inclusion plans

Disability inclusion plans (or equivalents) have been used around Australia for many years as a methodology and tool to drive practical improvements and demonstrate a commitment to disability access and inclusion. They are required for state and public authorities in many jurisdictions under a legislative framework.

In the ACT, several DAIPs, which are a variation or version of a disability inclusion plan, have been developed in recent years, following the launch of the *ACT Disability Justice Strategy 2019-2029*. In the absence of a specific framework, the scope of DAIPs can be variable, depending on many factors including how accessible and inclusive an organisation's systems and services already are, resource availability and the nature of the organisation's service to the community.

The Bill requires disability inclusion plans to be developed by public sector entities – administrative units (headed by a Director-General) and public sector bodies (headed by a Head of the public sector body). Disability inclusion plans will be required to be publicly available and statements relating to the progress of measures undertaken to develop, implement and support disability inclusion strategies, and the disability inclusion plans must be included in respective annual reports.

While the operationalisation of disability inclusion plans for many public sector entities is reasonably straightforward, there are instances where the application of the Bill may be less clear. For example, a process which allowed for recognition of those existing diversity, equity or social inclusion plans which are already delivering on the ends sought via the proposed Bill could allow for staff to continue to direct their efforts towards inclusion ends. Clarifying that annual reporting requirements may be incorporated into existing annual report requirements may also be beneficial and reduce administrative burden.

The Bill requires disability inclusion plans to be reviewed on the commencement of any new disability inclusion strategy that relates to the work of the public sector entity and at least once every three years after the plan is made. The intersection of these timeframes may result in administrative and resourcing inefficiencies. This is particularly relevant for entities whose work intersects with multiple strategies. In addition, as disability inclusion strategies are to span 10 years, disability inclusion plans with a three-yearly cycle will inherently undergo more frequent reviews. Requiring disability inclusion plans to instead be reviewed at least every five years may provide some flexibility in timing for inclusion plans to be reviewed in alignment with new disability strategies and any associated action plans.

The ACT disability community has demonstrated a strong and clear appetite for the implementation of more DAIPs in the ACT, including through the *Towards a 10-year ACT Disability Strategy – Listening Report 2022*. Of the top five specific activities people would like to see included in the ACT Disability Strategy, mandatory DAIPs for organisations ranked second.

Disability Advisory Council

The Bill proposes the establishment of a Disability Advisory Council. At face value, the proposed Disability Advisory Council appears to align closely with the existing ACT Disability Reference Group (DRG). The DRG has been in existence and operational in the ACT for many years in various iterations, providing advice to Ministers and the ACT Government on issues that affect people with disability in the ACT. The work plan of the DRG has been underpinned by the key outcome areas described in the ADS and the preceding *National Disability Strategy 2010-2020*.

As the ACT Government's suite of disability-related policies has grown and evolved, so too has the range and number of reference and advisory groups. It is well established that effective early engagement with people with disability is critical to the success of any strategy, plan or activity which aims to create outcomes for people with disability. Along with the DRG, other reference or advisory groups currently being facilitated across ACT Government include:

- The Disability Education Reference Group;
- The Transport Canberra and City Services Accessibility Reference Group;
- The ACT Health Strategy Reference Group; and
- The Disability Justice Reference Group.

Noting the Bill is prescriptive in respect to the role and structure of the Disability Advisory Council, it would be pertinent for the ACT Government to map and synergise the role of an incoming Disability Advisory Council with existing disability reference or advisory groups across government. Specific consideration may be given to the ongoing role and relevance of the DRG in its existing format.

The deliverables of the Disability Advisory Council described in the Bill have an elevated focus on the issues of the NDIS compared to the existing Terms of Reference and workplan of the DRG. In view of the significant reform occurring in the national disability policy space – including in respect of the recommendations made in the DRC Final Report, NDIS Review Report, and the recent agreement of First Ministers to establish a Foundational Support Strategy – the inclusion of NDIS issues into the core work of the Disability Advisory Council appears reasonable.

Consultation

The Bill prescribes a minimum demographic and diversity of stakeholders to be consulted in the development of both disability inclusion strategies and disability inclusion plans. This includes people with disability, families, and carers of people with disability, the council, disabled people's organisations and systemic advocacy organisations.

All practicable steps must be taken to consult with people who represent the diversity of the ACT community, including the diversity of disabilities and impairments, sexual and gender identities, age groups, culturally and linguistically diverse identities, Aboriginal and Torres Strait Islander people, and people from diverse socioeconomic backgrounds. The Bill sets out that consultations must be collaborative, accessible and information delivered in a way people can understand and contribute to the process.

The achievability of conducting public consultation adhering to these parameters has already been demonstrated through the public consultation for the development of the ACT Disability Strategy. With this precedent, I am confident the consultation requirements specified in the Bill can be operationalised. It will be important for ACT public servants to have disability confidence and the ability to proactively enable, and respond to, reasonable adjustment requests.

It is pertinent to note that there may be a sensitivity in the disability community relating to the number of public consultations they have been, and will be, asked to participate in, should the Bill come into effect. Consultation fatigue for people with disability, and the diverse communities who would be approached for input, is a real risk. The disability community has been asked to contribute to a huge range of consultations recently, some related to reform agendas such as the NDIS Review and DRC Report recommendations, as well as a range of more local consultations, including the ACT Disability Strategy. For people with lived experience, the toll of such engagements must be at the forefront of all consultation considerations.

Therefore, the ACT Government should be mindful of consultation fatigue and should the Bill pass, perhaps consider if the recent, comprehensive *Toward a 10-year Strategy - Listening Report 2022* may be used to inform some of the work outlined in this Bill.

Administration

There are a range of administrative tasks which would be necessary to resource in order to implement and maintain the obligations described under the Bill, and to genuinely achieve the intended objectives of the legislation. Many of these have already been described or referenced in this submission.

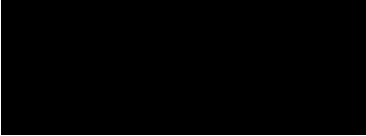
Administrative tasks would include the preparatory work necessary to operationalise each disability inclusion strategy, including determining each strategy's parameters and appointing responsible ministers. Further administrative resourcing would be necessary to conduct robust public consultation to then develop, resource, implement and report on all disability inclusion strategies and all disability inclusion plans. As such, it may be appropriate to consider the commencement date of Ms Orr's Bill to ensure it can be operationalised effectively.

Strategies produced under the Bill will further be required to include information for non-government entities about ways to support disability inclusion, including how to make a disability inclusion plan. This leads to an expectation there will be adequate expertise, resources, and knowledge available in government to support this work.

Another administrative consideration is the function of support and monitoring of the implementation of the Bill. This includes education and awareness across government of the Bill itself, as well as supporting any upskilling of officers with an appropriate level of disability awareness and disability confidence necessary to conduct accessible public consultations, and to develop, implement, review and report on the strategies and plans as required. Adherence to the requirements of the Bill will likely need ongoing monitoring, given there are no compliance mechanisms proposed. Therefore, it is likely the success of this Bill will rely on robust governance and organisational leadership to ensure the Bill is implemented in accordance with the mandated requirements and to achieve the intended objectives of the legislation.

In conclusion, this Bill would provide a legislative framework to achieve better outcomes for people with disability, their families and carers, as well as a framework to support the ACT Government to practically meet existing commitments and obligations to the UNCRPD, ADS, and the ACT's suite of disability strategies and DAIPs. I welcome the inquiry by the Standing Committee on Education and Community Inclusion and I look forward to the Committee's findings to inform the Legislative Assembly in its considerations of the Bill.

Yours sincerely



Rachel Stephen-Smith MLA
21 March 2024