



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: 11

Date Authorised for Publication: 26 March 2024



Ms Katie Langham
Committee Secretary
Standing Committee on Education and Community Inclusion
Via LACommitteeECI@parliament.act.gov.au

19 March 2024

Dear Ms Langham

Inquiry into the Disability Inclusion Bill 2024

Thank you for inviting the ACT Human Rights Commission to provide feedback in relation to the Disability Inclusion Bill. The Commission provides the following comments:

Scope of Bill

The Commission supports the intent of the Disability inclusion Bill 2024 (DI Bill) being to promote disability inclusion in the ACT. The DI Bill recognises that people with disability are an important and valuable part of the ACT community through this specific legislation which sets out a range of objects and principles for disability inclusion (DI principles). These build on internationally recognised human rights applicable to people with disability.

We support a clear statement of principles recognising that disability is a social issue which requires the community to adapt and make adjustments to remove structural barriers that prevent the full inclusion, participation and equality of people with disability. The DI principles largely align with those outlined in the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability RC) but fall short of scope of the proposed Australian Disability Rights Act – in that there are no enforceable individual rights under the DI Bill. The Bill notes directly that nothing in the scheme is intended to create in any person any legal right or give rise to any civil cause of action.¹ Indeed, it will remain the case that the existing mechanisms under the *Discrimination Act 1991*, our community service complaints function and the new human rights complaints pathway will provide the most effective means of people with disability enforcing individual rights and driving systemic change. We will look to the articulated disability inclusion principles as standards for treatment of and engagement with people with disability in considering, investigating and conciliating these complaints.

We also support the clear reference to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as a source of distinct and additional rights of people with disabilities that must be respected, protected, and fulfilled by Government, noting that these rights may already inform the interpretation of the rights to equality and non-discrimination under s 8 of the *Human Rights Act 2004* through the interpretative mechanism in s 31 of the Act. It may be

¹ Disability Inclusion Bill 2024, s 24.

worth considering whether the definition of ‘disability’ for this Bill could be aligned with the wider definition in the Discrimination Act.

Disability Inclusion Strategies and Plans

Beyond our support for disability inclusion objects and principles, the Commission notes that the Bill looks to address structural barriers by creating new requirements for disability inclusion strategies and plans to be developed by public sector entities.

Section 9 of the DI bill requires the responsible Minister to make a strategy for the priority inclusion areas (including those identified in the National Disability Strategy 2021-2031) to guide the implementation of the DI principles, in consultation with the responsible minister for the DI Bill. We note that the Disability RC has recommended a review and update of the Australian Disability Strategy by the end of 2024.² It may be worth aligning the timing of the commencement of the DI Bill or its reporting obligations with the work taking place nationally.

The priority inclusion areas are those mentioned in the national disability strategy as an area in which improvement must be made to achieve the strategy’s objective or an area declared by the Minister for the DI Bill. The strategies must be consistent with the disability inclusion principles and must promote disability inclusion, reduce, remove and prevent barriers to accessibility and address ableism, while also addressing overlap with other strategies and providing support for community organisations to support the strategy including how to make plans for disability inclusion under it. These strategies must be made in consultation with people with disability, families and carers, systemic advocacy organisations and the Ministerial Advisory Council established under the DI Bill. We query whether there will be additional funding made available to directorates and to community disability advocacy groups to meaningfully carry out and fulfil these additional consultation requirements.

While we consider that the new system of disability inclusion strategies is potentially a worthwhile mechanism for adopting a considered and systematic approach to identifying and addressing barriers to accessibility, we note that there is some complexity to the designation of Ministerial and Directorate responsibility for the identification of priority inclusion areas and the development of strategies. The fact that these inclusion areas may overlap multiple different portfolios is positive in the sense of allowing focus on the intersectional nature of barriers and addressing them in a collaborative way, but may also lead to unclear division of responsibility and uncoordinated actions to implement strategy actions (or buck passing). We are concerned that the division of responsibility by priority inclusion areas do not lead to siloed responses.

This is addressed somewhat by the requirement for each directorate to have a disability inclusion plan, dealing with how each directorate will promote disability inclusion. These are to be consistent with the disability inclusions strategies applicable to relevant priority areas.

We also query how the development of strategies and plans will be coordinated and monitored. Based on the framework and definitions in the Bill there are potentially 20+ strategies and plans required to be consulted on and developed across government (assuming 7 priority areas listed

² Commonwealth of Australia, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report* (28 September 2023) Recommendation 5.2, p 209.

in the bill as example,³ seven core directorates and a range of other territory public sector bodies. Public sector body is defined in the *Legislation Act 2001* as:

- (a) a body made up of public sector members; and
- (b) includes a body made up of 1 statutory office-holder.

It is not clear if the intention is for each statutory office holder to have a separate disability inclusion plan. In any case there is potential for a lot of overlap, duplication and expenditure of resources which might otherwise be spent on measures that directly support people with disability. The Bill provides that where other strategies produced by government directorates (for example the existing Disability Justice Strategy) overlap with the thematic areas of the Disability inclusion Strategies and Plans, those may be consolidated into a single report.

We also note that there is no clear mechanism for people with disability to raise concerns if the strategies and plans are not developed or implemented. Implementation is required to be reported on in annual reports. Presumably the responsible Minister for the Bill will bear the responsibility of ensuring other ministers, directorates and public sector bodies progress and implement the Bill's requirements. Community advocacy groups may be able to bring pressure to bear though their elected representatives in the Assembly. However, there is no scope for individual action where a person is aggrieved by actions or decisions that are contrary to the disability inclusion principles or to inclusion strategies or plans. We suggest that (in)action in relation to these obligations could become a ground for, or factor assessed by the Human Rights Commission in, a complaint about disability discrimination (see e.g. s 40 *Human Rights Commission Act 2005* – when may someone complain about a disability Service).

Overlap with Discrimination Act duties to make reasonable adjustments

We note that there are already a range of mechanisms that support the same aims.

Notably the *Discrimination Act* prohibits both direct and indirect discrimination against people with disability in a range of public settings. Recent changes to the *Discrimination Act*, commencing in April 2024, expand the duty to make reasonable adjustments to accommodate the needs a person has because of their disability to all protected attributes, recognising the intersectional nature of barriers to full inclusion. The duty will now be 'positive' requiring organisations to take steps to make adjustments to accommodate particular needs, unless doing so would cause unreasonable hardship.⁴

In 2025 the positive duty to eliminate discrimination, sexual harassment and victimisation will apply to ACT public authorities.⁵ This positive duty will require public authorities to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification. What is reasonable and proportionate will be determined in the circumstances having regard to the nature and size of the organisation or business; the resources of the organisation, business or individual; the business or operational priorities of the organisation, business or individual and the practicability and cost of the steps. Essentially these duties require public authorities to respond to requests for reasonable adjustments or to

³ Disability Inclusion Bill 2024, s 8.

⁴ *Discrimination Amendment Act 2023*, clause 30, new s 74.

⁵ *Discrimination Amendment Act 2023*, clause 30, new s 75.

anticipate adjustments that may be needed to support and include people with disability or people with other protected attributes.

To the extent public authorities can outline how these duties will be implemented organisation-wide we support the scope of the new disability inclusions plans required to be made under the DI Bill. However, we are concerned that the requirement to make disability inclusion strategy should not come at the expense of actual work to take actions under the plans and to make reasonable adjustments on an individualised basis. We note that having a disability inclusion strategy would go some way to addressing the general duty to eliminate discrimination but would not replace the need for policies that guide how public authorities actively receive and consider requests for adjustments. These changes to the *Discrimination Act 1991* align with recommendations made by the Disability RC.⁶

We consider that that another change that would have a clear impact would be to embed a general supported decision-making framework in an overarching ACT law. While the *Guardianship and Management of Property Act 1991* was amended in 2023 to refer to requirements for decision makers under that Act to (as far as practicable) provide or facilitate support necessary for the protected person to understand the decision to be made, participate in decision making and communicate their wishes, this falls short of the statement of principles recommended by the Disability RC.⁷ Supported decision making is at essence about strengthening rights to equality, freedom of opinion and expression that are relevant in many ACT legal frameworks and any situation where there is a power imbalance between a decision maker and those affected by those decisions.

We recommend consideration of articulating a clear statement of supported decision-making principles that promote participation and inclusion of people with disability, people from diverse backgrounds, children and young people, people experiencing vulnerability or other protected attributes.

Conclusion

The passage of the Disability Inclusion Bill by the Assembly would be welcomed by the Commission and would represent a positive step forward in setting a clear standard in terms of the principles that must inform engagement and consultation with, treatment of and services provided to, people with disability. These principles already inform our application of the Discrimination Act and the Human Rights Act under our Human Rights Commission Act complaints and oversight functions.

While we are less certain about the positive impact of the proposals for disability inclusion strategies and plans in the absence of additional funding for their development and implementation, we look forward to being able to have these principles set out as standards informing our review of services provided by ACT government directorates and agencies.

⁶ Commonwealth of Australia, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report* (28 September 2023) p 64.

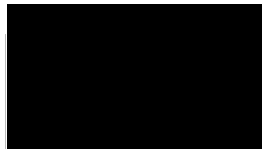
⁷ *Ibid*, Recommendation 6.6 p 219

Should you wish to discuss this matter further or provide feedback regarding our advice, the contact in our office is Alex Jorgensen who may be reached on 6205 2222. We would be happy to give further evidence in any hearings the Committee might establish to assist in its inquiry.

Yours sincerely



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President and Human
Rights Commissioner



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Public Advocate and
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Karen Toohey
Discrimination, Health
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