



Office of the Public Advocate South Australia

Submission

Review of the Disability Inclusion Act 2018 – South Australia

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Review of the Disability Inclusion Act 2018 – South Australia

1. Introduction

The Public Advocate welcomes the opportunity to provide a submission to this important review of the *Disability Inclusion Act 2018*.

The Act was intended to activate change in community attitudes to people with disability through State and Local Government entities taking the lead. By government showing commitment to better access and inclusion for people with disabilities, all non-government organisations and businesses have the example of government to follow. Ultimately the goal is a society that respects people with disabilities of all ages by ensuring equal access to facilities and environments and inclusion in the social life of the community.

The Public Advocate is guardian for over 1600 adults with impaired decision-making capacity and no other person in their life able and willing to act as guardian. This represents some of the most vulnerable people in the State, for whom access and inclusion is a priority if they are to enjoy a good quality of life.

People with disability continue to face barriers and discrimination that prevents them from fully exercising their rights. The introduction of this Act was about recognising that without deliberate, coordinated planning by government, these barriers will continue to be a reality for people with disability. Whilst social inclusion of all people regardless of how they identify is an important policy endeavour that must be given attention by government, achieving the inclusion of people with disability in meaningful and enduring ways warrants particular focus and effort. This is the central purpose of the *Disability Inclusion Act 2018*.

2. Terms of reference

Section 32 of the Act provides that the review will be of “the operation of this Act”. In addition to broadly considering the operation of the Act, the review will consider:

- a) How well is the operation of the Act achieving or supporting the objects of the Act;
- b) The extent to which the principles set out in section 9 of the Act are being recognised and applied in the operation, administration and enforcement of the Act;
- c) Initiatives that could be adopted to enhance alignment of the Act with Australia’s Disability Strategy;
- d) The work of the department in fulfilling various functions under section 10;
- e) Consideration of how effective the State Disability Inclusion Plan, and the disability access and inclusion plans, have been to date in supporting the objects of the Act, recognising that there is a separate scheme for the review of these plans under sections 15 and 18 of the Act;

- f) Any changes that should be considered for Part 5A of the Act. In considering the effectiveness of the Act, the reviewer considers that there is some benefit in aligning aspects of the review with the themes and priorities that have been adopted by Inclusion SA on the basis of what people with disabilities have previously identified as being important to them. It would therefore be useful to receive specific comment or information about the extent to which the Act has assisted in promoting the following themes and priorities associated with disability inclusion in South Australia:
- Inclusive communities for all
 - Leadership and collaboration
 - Accessible communities
 - Learning and employment.

3.The Public Advocate

The Public Advocate in South Australia is a statutory official appointed by the Governor to implement the provisions of Section 21 of the *Guardianship and Administration Act 1993*, (the GAA). The Public Advocate is supported by the Office of the Public Advocate (OPA) to assume guardianship, and provide advocacy, support, and education for people with mental incapacity and the systems and services around them. This includes speaking for and on behalf of people and their families, carers, and supporters, educating the sector and identifying areas of unmet need for reporting to the Minister.

The Public Advocate acts as guardian of last resort for people with impaired decision-making capacity, when appointed by the South Australian Civil and Administrative Tribunal (SACAT) under the GAA. The SACAT will only appoint the Public Advocate as a person's guardian if it is satisfied that no other order would be appropriate. What this means in practice is that the Public Advocate will only be appointed if there is no one else in a person's life able or willing to make necessary decisions, or if there is family conflict meaning that agreement on decisions is difficult or not possible. Consequently, the Public Advocate often must make decisions for people who have complex needs or experience complex situations and who may be without support networks.

The Public Advocate's role as guardian is to make decisions, including giving the relevant consent about a person's care, where there is the requisite authority to do so under the guardianship order.

4. Disability Advocate

The Disability Advocate is a position located within the Office of the Public Advocate and was established in November 2018. The purpose of the role of the Disability Advocate is to "ensure that South Australians with a disability and their families are getting a good deal from the National Disability Insurance Scheme (NDIS)."

Throughout 2019 the Disability Advocate attended over 150 meetings with people with disability, family, advocates, and carers to speak with people about their experiences with the NDIS, what was working well and areas for improvement. Regular reports were presented to Ministers and senior State and NDIA officers.

The role has since been extended with funding until 2023. COVID-19 and other work (such as the Safeguarding Taskforce) made it difficult to undertake face to face meetings in 2020 however the Disability Advocate managed to conduct over 270 virtual meetings with external stakeholders during the year. Meetings continued in 2021 and regular reports were prepared for the NDIA and State ministers. All reports are available on the OPA website at opa.sa.gov.au.

5. Responses to the Review

5.1 Intent

The original intention of the *Disability Inclusion Act 2018* (the Act) was to promote the full inclusion in the community of people with disability by establishing a framework to support a whole of government approach to improving inclusion in South Australia. Mandated access and inclusion planning across State and local government is the primary mechanism in the Act to achieve this aim.

Prior to the Act, Disability Access and Inclusion Plans (DAIPs) were already a policy requirement for State government agencies, and local councils were also committed as part of their efforts under the National Disability Strategy 2010-2020 (NDS). However, the Act sought to formalise these requirements and maintain momentum during a period of significant change in the State's responsibility around disability. During the Bill's development, the State Government was transferring responsibility for specialist disability service provision and funding to the NDIS.

It was through the creation of the Act that the State Government sought to clarify its ongoing role, reaffirming its commitment and obligations to the disability inclusion agenda in line with the NDS (now Australia's Disability Strategy 2021-2031).

As the Act has evolved over time, its original purpose has become lost, overshadowed, in particular, by NDIS worker screening provisions. This situation will be exacerbated further once the restrictive practices provisions take effect.

Recommendation 1: In order to retain the integrity of the original intentions of the Disability Inclusion Act, it is recommended that the technical and detailed provisions in the Act regarding worker screening and restrictive practices be captured in separate standalone legislation covering any outstanding responsibilities of the State government in relation to the NDIS.

In the absence of standalone legislation for worker screening and restrictive practices provisions, the Act could be strengthened in other ways to reinforce its original intention to be the vehicle for South Australia's disability inclusion agenda. For example, see Recommendations 6 and 8 in relation to placing greater emphasis on the inclusion component of DAIPs and under the functions of the Chief Executive and department.

5.2. Principles

The principles within the Act provide an important reference point for making visible the issues facing people with disability that prevent their full and equal participation in everyday life.

Whilst it is important to ensure the built environment is accessible to people with disability, addressing attitudinal barriers and discriminatory practices requires more considered planning and targeted approaches if we aim to be truly inclusive. This is particularly important for people with profound intellectual disability or those who may be at heightened risk of vulnerability for a range of reasons, including lack of social connections, relying on a sole carer or having communication difficulties. The Public Advocate spoke about these matters in her appearance at the *Royal Commission into Abuse, Violence, Neglect and Exploitation* at Public Hearing 14 – Preventing and responding to violence, abuse, neglect and exploitation in disability services (A Case Study) in Adelaide in June 2021. The Public Advocate's statement is on the [Commission's website](#).

These people are often forgotten and do not always have a voice because they rely on others to advocate for them. Greater recognition of people with profound intellectual disability or at heightened risk of vulnerability in the Act is required to acknowledge the additional barriers to their inclusion in the community.

Recommendation 2: It is recommended that the principles be amended to include acknowledgement of the additional barriers faced by people with profound intellectual disability and people who are at heightened vulnerability due to a range of circumstances.

5.3. Definitions and scope

As outlined in the discussion paper, the definition of *disability* is fundamental to the scope of the Act.

The current definition aligns with the social model of disability, which reflects a more contemporary understanding of disability. Moving away from the medical model, which located the problem within the individual themselves and their limitations, the social model recognises that disability results from the interplay between a person's impairment *and* the social barriers created by society. This is important given the intention of the legislation to create more accessible and inclusive communities through proactive planning across State and local government.

The definition could be strengthened to clarify that the Act applies to *all* people with disability regardless of age and regardless of eligibility for the NDIS.

Recommendation 3: It is recommended that the terms 'regardless of age' and/or 'not limited to' be incorporated within the definition of disability, to emphasise that the true scope of the Act is all people with disability.

The access and inclusion planning scheme established by the Act is currently limited to State and local government as per the definition of 'state authority'. It is acknowledged that the non-government and business sectors also play an important

role in creating accessible and inclusive communities, particularly in relation to social and economic participation. Expanding the remit of the Act to at least include enterprises employing in excess of 100 people would greatly improve the impact of the Act.

Recommendation 4: It is recommended that the scope of the Act be expanded to include large non-government enterprises so that other sectors can also participate and benefit from collaboration with State and local government on access and inclusion initiatives.

5.4. Alignment with the UNCRPD

The United Nations Convention on the Rights of People with Disability (UNCRPD) is a useful policy document in terms of setting a framework for achieving a more inclusive and accessible society where people with disability can exercise their right to be treated as equal members of the community.

By implementing the Act, State authorities are proactively pursuing the vision of the UNCRPD. It is important that the Act drives meaningful action and not just symbolism.

The current guideline created under section 12 of the Act to support State authorities in preparing their disability access and inclusion plans references the UNCRPD. However, state authorities would benefit from improved advice on what needs to be in an effective plan so that the vision of the UNCRPD becomes a reality.

Recommendation 5: It is recommended that the guidelines established under part 12 of the Act be strengthened to reiterate the principles of the UNCRPD and provide additional context to better support their translation into practical strategies by State authorities.

5.5. Access versus inclusion

There are many different approaches by State and local government when it comes to disability access and inclusion. Many confuse “access” with “inclusion”, but these are two very different concepts. Inclusion is more than just merely having access to buildings, spaces, and services. Inclusion is about attitudes and acceptance of difference. Negative attitudes about people with disability stemming from an ableist view continue to be pervasive. Prejudices, low expectations, and unconscious bias need to be challenged through things like awareness-raising and education of staff and the wider public. Strong leadership at all levels is also important to model behaviours and reinforce the principles of respect and inclusion. Increased visibility and meaningful partnerships with people with disability in designing and delivering services can also break down barriers and influence attitudes towards inclusion.

Apps to assist with access and inclusion issues have a place, but cannot be relied upon to create change. This approach also has the tendency to place the onus on people with disability themselves to call out poor behaviour. Genuine inclusion requires proactive measures that address systemic problems, such as negative

attitudes. State authorities need advice and support to develop practical and enduring solutions to achieve this. Whilst there is a wealth of research to guide policy in this area, the Disability Royal Commission has recently released a report [‘Changing community attitudes to improve the inclusion of people with disability’](#) which provides a useful and timely overview of what the literature and people from across business, government, community and advocacy organisations say regarding changing community attitudes about people with disability.

Recommendation 6: It is recommended that greater emphasis be placed on the *inclusion* component of DAIPs. It is also recommended that the guidelines established under Section 12 of the Act be strengthened to promote a greater understanding of the characteristics of an inclusive society and effective strategies for achieving this.

5.6. Measuring outcomes

Although reporting on the State Disability Inclusion Plan and DAIPs is a legislative requirement, determining the effectiveness of the Act in fostering respect for the rights of people with disability, improving access and creating an inclusive society is not a straightforward task. Measuring inclusion is particularly challenging as it can be subjective to an individual’s perception. There are also other factors which make communities inclusive outside of these plans. Furthermore, achieving the legislation’s vision for accessible and inclusive communities involves cultural and attitudinal change which requires long-term and sustained effort.

Notwithstanding these challenges, clear and consistent measuring of outcomes is critical for both monitoring the effectiveness of the legislation and maintaining momentum.

Recommendation 7: A clear and consistent outcomes framework is required, linking back to the individual actions contained within each DAIP, to support the ongoing effectiveness of the legislation.

5.7. Monitoring and Accountability

Sustained implementation, driven by strong leadership, is key to achieving the Act’s objective of a more accessible and inclusive society for people with disability.

The annual reporting process is currently the primary mechanism for monitoring implementation of the Act and ensuring compliance by State authorities.

There is a danger that the access and inclusion planning process and annual reporting will become a ‘tick and flick’ exercise or the designated task of an individual person or area within the organisation.

To truly achieve the vision of the Act there needs to be appropriate time and resourcing for the process. When it comes to disability access and inclusion planning, the journey is as important as the destination. State authorities need

adequate support and advice to ensure they are developing quality DAIPs, which reflect what people with disability have told them through genuine consultation.

There also need to be champions and leadership driving DAIP implementation at every level, but in particular at the executive level to influence meaningful change. Ultimately, State authorities need to adopt disability-informed thinking across all levels and decisions within an organisation so that access and inclusion planning is embedded rather than seen as something separate or extra.

Recommendation 8: It is recommended that the functions of the Chief Executive and department outlined in Section 10 of the Act be strengthened to place greater emphasis on (a) the inclusion elements of the Act by supporting the development of quality DAIPs (as per Recommendation 6) and (b) monitoring implementation by State authorities and local government beyond the annual reporting process.

5.8. Collaboration

As outlined in the discussion paper, the Act's objects and principles closely align with Australia's Disability Strategy 2021-2031 (ADS).

In fact, the Act was originally developed with the NDS in mind, which was the precursor to the ADS. The Act was always intended to be the vehicle to achieve South Australia's commitment under the NDS. Therefore, collaboration with the Commonwealth in this regard is critical to meeting the objectives of the Act.

The Information Linkages and Capacity Building Grants (ILC) scheme, which was originally administered by the National Disability Insurance Agency, was moved to the Department of Social Services to ensure its alignment with broader national disability policies such as the ADS. A raft of promising work/programs/projects and ideas have come out of these grants, but there is no way to capture the knowledge and information generated from these projects once complete. These are valuable resources that could be built upon for future projects and initiatives. There is a need to avoid disjointed projects by sharing learning and best practice for the benefit of all people with disability.

Recommendation 9: The State government should strengthen collaboration with the Commonwealth Government to ensure coordinated effort in implementing their shared access and inclusion agenda, in particular by considering opportunities presented through initiatives like ILC grants.

Collaboration between State and local government is an important element of the State Plan under section 13(3). Indeed, the State Plan is intended to provide for a whole-of-government approach to access and inclusion. There are many great examples of innovations that challenge the *status quo* but there needs to be more effort directed towards shared actions and collaboration and ensuring that best practice improvements are sustained and replicated. The Inclusive SA website as a central portal is a good starting point but requires ongoing commitment to maintain it as the site for capturing and sharing best practice. A "communities of practice"

approach where State authorities regularly come together to share ideas and build on success is another way to promote a whole-of-government approach. People with lived experience must be able to drive this process – they are the arbiter of whether initiatives work in practice.

A State government expert unit in disability access and inclusion is also needed as a resource to all State and local government entities to develop quality plans and to assess their effectiveness.

An example of this is the Office for Ageing Well established under the *Ageing and Adult Safeguarding Act 1995* (formerly the *Office for the Ageing Act 1995*), which includes functions relating to, among other things, leading the development and coordination of State government policies and strategies affecting older people and ensuring the voices of older people are included in the development and implementation of policies, services and programs affecting them.

Recommendation 10: Continue to build on important initiatives like the Inclusive SA website and “communities of practice” to drive a whole-of-government approach to access and inclusion to support effective implementation of the Act.

Recommendation 11: A State government unit specialising in disability access and inclusion is created to further the work of Inclusive SA and assist State and local government entities to develop quality DAIPs and evaluate their effectiveness.

5.9. Regulations

The Disability Inclusion Regulations 2018 provide additional detail around the manner in which the government must prepare the State Plan, including that consultation be publicly promoted and delivered in a manner that is accessible. The Regulations also detail the manner in which DAIPs should be prepared.

Section 15 and 18 require that the State Plan and DAIPs be reviewed every four years.

Recommendation 12: The review period set out in Sections 15 and 18 of the Act should be shortened, requiring that the State Disability Inclusion Plans and DAIPs be reviewed at least every three years.

Recommendation 13: Greater clarity is needed around requirements for reviewing the State Plan and DAIPs, including that they be conducted in the same manner as the preparation, i.e. follow the same consultation requirements. Furthermore, Sections 15 and 18 should be strengthened in terms of the purpose of a review, which should be to undertake rigorous and transparent analysis of the effectiveness of the State Plan and DAIPs to inform improvements.

The Regulations are also empowered to prescribe an agency, instrumentality or any other body as a state authority (and therefore captured by the requirement to

prepare a DAIP). Currently, the Regulations allow the Minister to declare additional state authorities by notice in the Gazette.

Locating these additional state authorities is not a straightforward task or widely known. There is a risk that overtime this will become lost. Greater transparency is required in identifying additional state authorities declared by the Minister.

In New South Wales, additional entities captured by access and inclusion planning requirements under the *Disability Inclusion Act 2014* are prescribed (and listed) in the Regulations.

Recommendation 14: In line with the approach taken in NSW, additional state authorities declared by the Minister should be named in the Regulations rather than by notice in the Gazette.

6. Conclusion

The *Disability Inclusion Act 2018* is about a proactive approach to improving access and inclusion for all people with disability of any age. The goal is “inclusion” (hence the title of the Act). “Access” is a *necessary* feature of society’s facilities and spaces, but it is by no means *sufficient* for people with disabilities to be able to exercise their human rights and to be fully participating members of the community.

It is necessary to emphasise that this Act is not limited to NDIS participants – it includes all people with disabilities (short-term or long-term) of any age and therefore impacts on the citizenship of about a quarter of South Australia’s population.

The Act is proactive – it differs from the Cwlth *Disability Discrimination Act 1992* or the State *Equal Opportunity Act 1986*, which are acts dealing with the rectification of unfair exclusions of people with disabilities. These Acts also rely on individuals themselves raising complaints against what are often structural or systemic problems. The *Disability Inclusion Act 2018* is about getting matters correct to enable people with disabilities to fully exercise their rights.

It is time to consider how the provisions of the Act could be extended outside of Government at least to larger non-government organisations and businesses.

The single biggest issue is identifying whether plans by State and local government entities are (a) good quality comprehensive plans, (b) have been developed across the organisation so that the journey to develop is widely shared and causes values changes within the organisation, and (c) best practices are identified and promulgated to other entities so that they are sustained and replicated.

To achieve this, the State government needs to commit to a unit to assist State government and local government agencies to develop quality plans and to assess their effectiveness.

7. Recommendations

Below is a summary of the recommendations:

Recommendation 1: In order to retain the integrity of the original intentions of the Disability Inclusion Act, it is recommended that the technical and detailed provisions in the Act regarding worker screening and restrictive practices be captured in separate standalone legislation covering any outstanding responsibilities of the State government in relation to the NDIS.

Recommendation 2: It is recommended that the principles be amended to include acknowledgement of the additional barriers faced by people with profound intellectual disability and people who are at heightened vulnerability due to a range of circumstances.

Recommendation 3: It is recommended that the terms 'regardless of age' and/or 'not limited to' be incorporated within the definition of disability, to emphasise that the true scope of the Act is all people with disability.

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Recommendation 5: It is recommended that the guidelines established under part 12 of the Act be strengthened to reiterate the principles of the UNCRPD and provide additional context to better support their translation into practical strategies by State authorities.

Recommendation 6: It is recommended that greater emphasis be placed on the *inclusion* component of DAIPs. It is also recommended that the guidelines established under Section 12 of the Act be strengthened to promote a greater understanding of the characteristics of an inclusive society and effective strategies for achieving this.

Recommendation 7: A clear and consistent outcomes framework is required, linking back to the individual actions contained within each DAIP, to support the ongoing effectiveness of the legislation.

Recommendation 8: It is recommended that the functions of the Chief Executive and department outlined in Section 10 of the Act be strengthened to place greater emphasis on (a) the inclusion elements of the Act by supporting the development of quality DAIPs (as per recommendation 6) and (b) monitoring implementation by State authorities and local government beyond the annual reporting process.

Recommendation 9: The State government should strengthen collaboration with the Commonwealth Government to ensure coordinated effort in implementing their shared access and inclusion agenda, in particular by considering opportunities presented through initiatives like ILC grants.

Recommendation 10: Continue to build on important initiatives like the Inclusive SA website to drive a whole-of-government approach to access and inclusion to support effective implementation of the Act.

Recommendation 11: A State government unit specialising in disability access and inclusion is created to further the work of Inclusive SA and assist State and local government entities to develop quality DAIPs and evaluate their effectiveness.

Recommendation 12: The review period set out in Sections 15 and 18 of the Act should be shortened, requiring that the State Disability Inclusion Plans and DAIPs be reviewed at least every three years.

Recommendation 13: Greater clarity is needed around requirements for reviewing the State Plan and DAIPs, including that they be conducted in the same manner as the preparation, i.e. follow the same consultation requirements. Furthermore, Sections 15 and 18 should be strengthened in terms of the purpose of a review, which should be to undertake rigorous and transparent analysis of the effectiveness of the State Plan and DAIPs to inform improvements.

Recommendation 14: In line with the approach taken in NSW, additional state authorities declared by the Minister should be named in the Regulations rather than by notice in the Gazette.