

28 September 2023

Chair, Community Affairs Legislation Committee
C/o- Committee Secretary
Senate Standing Committees on Community
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Dear Chair,

Re: Inquiry regarding the Disability Services and Inclusion Bill 2023

Thank you for the opportunity to provide feedback regarding the Disability Services and Inclusion Bill 2023 and the Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Bill 2023.

There is much to commend within these bills. The Disability Services and Inclusion Bill 2023 includes an object to give effect to Australia's international human rights obligations to people living with disability. It also, by creating a new framework for the funding of services and supports outside of the NDIS, recognises the need for adequate funding mechanisms for the about four million Australians living with disability who do not qualify for an individual NDIS plan. We do, however, believe that the Bill can be improved, and, to this end, we make a number of recommendations to the Committee.

Model of Citizenship Support

The [Model of Citizenship Support](#), developed by our agency, provides a comprehensive contextual framework for organising policy and practice in support of people living with disability and provides a useful lens through which to approach the formulation of this Bill and amendments to it.

The Model sets out how people can be supported to build their chances of a good life and maximise their *Citizenship* through four different interrelated types of assets, termed the Four Capitals. These are: Personal Capital (how the person sees themselves), Knowledge Capital (what the person knows and learns), Material Capital (money and the tangible things in our lives), and Social Capital (having people in our lives whom we know and know us). These Capitals apply to any person and can reveal what types of investment and assistance might be helpful for someone to build a good life for themselves. These Capitals can be enhanced or diminished by the choices and supports available to people.

The concept of *Citizenhood* captures a situation where a person is an active and valued member of their local community, one of the key outcomes this Bill aims to support. They participate fully in the social, cultural, and economic life of society. Their lifestyle is informed by personally defined choices and they can grow through their involvement in meaningful activities and by their participation in a network of relationships characterised by acceptance, belonging, and love. They have roles that are valued by our communities, such as family member, friend, neighbour, worker, club member, customer, volunteer, and more. It means people live contributing and fulfilling lives as equal members of their communities without discrimination or segregation. *Citizenhood* is dynamic in that it can rise or fall depending on a person's circumstances and the opportunities available to them. The aim of the Bill should be to advance people's chances to live active valued lives of *Citizenhood*. More information about the Model of Citizenhood Support can be found on our [website](#).

Recommendation 1: In considering the Disability Services and Inclusion Bill 2023, the Committee should apply the Model of Citizenhood Support to ensure the Bill drives outcomes whereby Australians living with disability are supported to take up and sustain active valued roles in community life, thereby maximising their Four Capitals. The Bill should be underpinned by a whole-of-government, whole-of-life approach to disability inclusion and services.

Objects of this Act

We generally support the objects but believe there are some amendments that would give stronger purpose to the Disability Services and Inclusion Bill 2023, as outlined below.

It is essential the supports and services that will be provided under the new Act are accessible to all. This is in line with Australia's obligations under the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), noting that Subclause 3(a) of the Bill states it is an object to 'give effect' to this Convention. Yet, Subclause 3(g) indicates the intention is only to 'promote' accessibility of supports and services. To give genuine and full effect to the UNCRPD, the object should be to 'ensure' accessibility of supports and services. To this end, we also believe these services and supports should empower people living with disability, their families and carers, rather than only 'being for the benefit of' them, as currently stated in Subclause 3(b).

Recommendation 2: The Objects in the Bill should be amended at Subclause 3(g) to 'ensure' accessibility of supports and services, rather than merely 'promote' accessibility.

Recommendation 3: At Subclause 3(b), the objects of the Bill should be amended to state: 'provide supports and services that empower people living with disability...'

It is essential that a 'whole of government' approach be taken to the provision of supports and services for people living with disability and that all mainstream options are available and fully accessible to all Australians. While there continues to be many areas of public and social policy where outcomes for people living with disability fall well short of those for non-disabled Australians and therefore require significant targeted government

investment, people living with disability must not be restricted to only accessing separate segregated government supports and services.

Recommendation 4: Subclause 3(g) of the Bill should be amended to insert ‘ensure national consistency and a whole of government approach...’

The Bill envisions a continuation of segregation more generally in subclauses 3(h)(ii-iv), where the phrase ‘to the extent possible’ places caveats upon the provision of services and supports that are integrated with services generally available to the Australian community. By creating a ‘to the extent possible’ loophole in the legislation, there is significant danger this will distort perceptions of what should be provided and of what is possible for Australians living with disability.

Recommendation 5: Subclauses 3 (h)(iii-iv) of the Bill should be amended to remove the phrase ‘to the extent possible’.

General principles guiding actions under this Act

Subclause 4(7) of the general principles raises significant concerns, which are heightened by the fact its purpose is not explained in the Explanatory Memorandum accompanying the Bill. By stating people living with disability are to receive supports and services ‘in a manner which results in the least restriction of their rights and opportunities’, the principle seems to suggest some level of restriction of rights and opportunities is expected and allowed. When, why, and how this restriction of rights and opportunities can occur is not specified, therefore the interpretation of this principle is likely to be very broad and unlimited. Australians living with disability should receive supports and services under the new Act without any restriction to their rights and opportunities.

Recommendation 6: Subclause 4(7) of the general principles guiding actions under this Act in the Bill should be deleted. People living with disability should receive supports and services under the new Act without any restriction to their rights and opportunities.

Definitions

We believe the definitions provided under Clause 8 could be improved in the following ways:

The accessibility of physical and social environments is very important. We believe it would also be appropriate to include digital environments given the extent to which so many aspects of our lives now occur, in part or in full, online.

Recommendation 7: The definition of ‘accessibility supports and services’ under Clause 8 of the Bill should be expanded to include the ‘digital environment’.

We are pleased that Clause 8’s definition of ‘accommodation supports or services’ does require that accommodation be suitable and residential. We remain concerned that the definition may still be too broad. We fear that this could be used to provide inappropriate transitional and/or long-term accommodation for Australians living with disability,

particularly those currently stuck in hospitals and aged care facilities. People living with disability should be able to live in accessible affordable housing that is suitable for their needs and should not be placed in institutionalised facilities or long-term forced shared living arrangements, such as group houses, that other Australians are not compelled to live in. The definition should be further clarified by defining what is 'suitable residential' accommodation.

Recommendation 8: The definition of accommodation supports or services in Clause 8 should clearly state that accommodation in institutionalised facilities, hospitals or rehabilitation services (beyond having genuine clinical needs met), or long-term forced group living arrangements, such as group houses, is not suitable.

Australians living with disability should have opportunities to participate in the mainstream economic life of their communities on the same basis as non-disabled people. Therefore, it is essential the definition of 'employment supports or services' that can receive public funding, especially 'incentives', is made more specific. These supports and services should only receive funding to advance mainstream employment under mainstream wages and conditions. Indeed, immediate steps should be taken to transition Australian Disability Enterprises (ADEs) to a new model that ends the segregation and exploitation of people living with disability.

We note this is inconsistent with the Federal Government's position in its recently released 'Working Future: The Australian Government's White Paper on Jobs and Opportunities' (see, in particular, page 68 where the White Paper endorses segregated employment approaches), but we urge the Committee to recognise this is the antithesis of the stated purpose of the Bill; that is, inclusion not exclusion.

Recommendation 9: The definition of 'employment supports or services' under Clause 8 of the Bill should be limited, at (a), to 'mainstream paid work', and, at (c), to those that 'employ persons with disability in mainstream workplaces under mainstream wages and conditions'. Additionally, the 'provision of incentives' to Australian Disability Enterprises (ADEs) and for arrangements under the so-called 'Supported Wage System' should be explicitly precluded in this Subclause.

We have made Recommendation 9 in response to the content of the Bill as it has been introduced. However, we believe there is a broader question to be considered regarding whether this Bill is the most appropriate positioning for 'employment supports or services' into the future. As with ADEs and the Supported Wage System, reform of the current Disability Employment Services (DES) approach is urgent and must be substantial if the employment gap for Australians living with disability is to be addressed effectively.

Therefore, we believe that 'employment supports and services' should not be included in this Bill, and, instead, the core responsibility for employment outcomes should be transferred to the Department of Employment and Workplace Relations. This would co-locate a reformed employment support model with mainstream employment services, known as Workforce Australia, and help to shift the focus from welfare provision to achieving genuine employment outcomes for people living with disability that are meaningful, sustainable, and subject to mainstream Award wages and conditions.

Recommendation 10: Subclause 13(1) should not include employment supports and services, including Disability Employment Services (DES) and the Supported Wage System, which should instead become primarily the responsibility of the Department of Employment and Workplace Relations under a substantially reformed model with specific legislation.

Arrangements and grants

In order to ensure the new Act gives genuine effect to Australia's obligations under the UNCRPD, as well as achieving the commitments made by all tiers of government in *Australia's Disability Strategy 2021-2031*, Clause 13 of the Bill should be amended under 'Exception' to prevent the Minister from making a funding arrangement that has the effect of creating or continuing circumstances of segregation of Australians living with disability in employment, education, and housing.

Recommendation 11: Subclause 13(5) of the Funding arrangements in the Bill should be amended to add an additional paragraph: 'Despite subsection (1), the Minister must not make an arrangement for the making of payments, or make a grant of financial assistance, to a new or continuing activity under subsections (1)(b), (1)(h), or (1)(i) that has the effect of segregating persons with disability from other members of Australian society'.

Adopt a genuine co-design process

In developing the Code of Conduct under Clause 20 that will apply to funding recipients and the regulations under Clause 36, the Minister should be required to undertake a genuine co-design process with people living with disability. A co-design process would not only ensure the views of Australians living with disability are heard, but that the intended beneficiaries of the funded activities are directly involved in shaping and making decisions about the Code.

Indeed, Ministers and government departments should proactively consider how genuine co-design processes can enhance policy development across all areas of their work. We are concerned many of the processes that governments are currently referring to as co-design fall well short of best practice and do not include active involvement in decision-making. We encourage the Minister and Department to access our Guide to Co-Design with People Living with Disability, which was itself co-designed, via our [website](#).

Recommendation 12: Clauses 20 and 36 of the Bill should require that the Code of Conduct and regulations are developed through a genuine co-design process involving a diverse range of Australians living with disability to ensure that funded activities produce beneficial outcomes.

Thank you again for the opportunity to provide feedback to this important inquiry. We are available to discuss the issues raised in this submission further. To arrange this, please contact Tracey Wallace, Strategy Leader, JFA Purple Orange, on _____ or _____.

Yours sincerely,

Tracey Wallace
Strategy Leader
JFA Purple Orange