

Disability Services and Inclusion Bill 2023

Community Affairs Committee hearing:

**A joint submission from Disability
Representative Organisations**

About this submission

This submission has been prepared by the Disability Advocacy Network Australia (DANA) as part of the National Coordination Function with a wide range of disability organisations listed below. We are all happy to discuss this further with the Committee at their earliest convenience.

The previous submissions are available on the DANA website, and the Exposure Draft submission is also attached to this submission for your information.

This submission is written in person first language (i.e., person/people with disability) to match the language commonly used by the Australian Government.

The authors, organisations and individuals supporting this submission acknowledge the Traditional Owners of the lands on which this submission was developed.

Signatories and contributors to this submission

The following individuals and organisations endorse this submission.

- Blind Citizens Australia
- Children and Young People with Disability Australia
- Darwin Community Legal Centre
- Deaf Australia
- Deafblind Australia
- Down Syndrome Australia
- Family Advocacy
- First Peoples Disability Network
- Inclusion Australia
- National Mental Health Consumer and Carer Forum
- National Ethnic Disability Alliance
- People with Disability Australia
- Queensland Advocacy for Inclusion

Introduction

A coalition of disability organisations have collaborated on two detailed submissions in the development of the Disability Services and Inclusion Bill.

We prepared a comprehensive submission to the initial consultation on a new Disability Services Act and made a range of recommendations to ensure both the modernisation of any potential legislation, and the harmonisation with other concurrent reforms. Organisations were particularly keen to see the actualisation of the Convention on the Rights of Persons with Disabilities, (CRPD), ratified by Australia in 2008.

The group also collaborated on a submission about the Exposure Draft of the Disability Services and Inclusion Bill, once more calling for significant investment in real inclusion of people with disability across the community, particularly in services and supports outside the National Disability Insurance Scheme (NDIS).

Disability organisations are pleased to see that some of our recommendations have been included in the updated legislation, particularly in the Objects and Principles, either in full or in part.

However, the majority of our recommendations have not been included or incorporated into the Bill. [See next section for details.]

In addition, we have concerns that this Bill, due to the timing, may not sufficiently include key recommendations for reform from both the Disability Royal Commission Final Report and the NDIS Review. We urge the Committee to outline how these two important reports will be incorporated into this legislation.

We welcome Minister Rishworth's second reading speech about the aims of the Bill and believe the legislation would more closely align with these intentions about inclusion with the addition of our recommendations.

Disability rights

We are disappointed that the Disability Services and Inclusion Bill does not embed the rights found in the CRPD and see this as a significant missed opportunity to enshrine this Convention into legislation to protect and promote the rights of people with disability.

While we understand that embedding the CRPD may require changes to other legislation, we believe that is warranted and should be explored by the Committee and enacted in future iterations of this Bill.

As we said in our previous submission:

The Bill must embed the principles of the CRPD and progress the major systemic and structural change needed to realise the purpose of the Convention (Article 1) of *“promot[ing], protect[ing] and ensur[ing] the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their human dignity”*.

The Bill must also set the basis for realising the CRPD vision and associated Articles by codifying the rights, duties, positive obligations and enforcement mechanisms required to realise these rights. These changes should ensure that policies, programs and supports that affect people with disability are aligned with the CRPD at every level.

We also believe that the United Nations Declaration on the Rights of Indigenous People (UNDRIP) must be included in the Objects of the Act 3 (i) alongside other international rights instruments.

First Nations Peoples with disability

Informed by the leadership of First Peoples Disability Network (FPDN), we firmly believe that the Disability Services and Inclusion Bill needs to have a clear and intentional focus on the needs and rights of First Nations peoples with disability. The Bill must embed and be implemented in line with the Closing the Gap (CtG) National Agreement Priority Reforms and the Disability Sector Strengthening Plan (DSSP) and its Guiding Principles.

The Priority Reforms focus on changing the way governments work with Aboriginal and Torres Strait Islander peoples and the Disability Sector Strengthening Plan outlines high-level priorities and actions at a national level to strengthen and build a Community Controlled Disability Sector. The Commonwealth government, including the Department of Social Services, the NDIA and NDIS Quality and Safeguards Commission, is a signatory and partner to the National Agreement and also the Disability Sector Strengthening Plan.

The Priority Reforms are:

1. Formal partnerships and shared decision-making;
2. Building the community-controlled sector;
3. Transforming government organisations; and
4. Shared access to data and information at a regional level.

By applying the Closing the Gap approach to disability as a cross-cutting outcome through the Priority Reforms, the Bill can help ensure First Nations people with disability will have:

- a greater say in how policies and programs are designed and delivered;
- access to community-controlled services and sectors that deliver culturally safe, accessible and inclusive, and disability rights informed services;
- access to mainstream organisations and services, such as NDIS services, hospitals, schools and government agencies, that are culturally safe, accessible and inclusive, and disability rights informed;
- access to, and the capability to use, locally relevant, First Nations disability informed, data and information.

Inclusion

People with disability for many decades have fought to be included in mainstream and public services and society. In 2023, many of the barriers to our inclusion remain, with few mechanisms to enforce existing legislation such as the Disability Discrimination Act. By including stronger elements to both promote and ensure inclusion in this Bill will be a significant step towards equality for people with disability.

As we said in our previous submission:

We welcome the more inclusive nature of the Bill. However, the Bill still does not set out an overall vision for an inclusive Australian society that ensures people with

disability can fulfill their potential, as equal members of the community.¹ The Bill maintains the same fundamental purpose as the *Disability Services Act 1986* (Cth) which is to allow the Australian Government to fund services and programs for people with disability. Failing to set out an overall vision for an inclusive Australian society signifies a missed opportunity to set standards for inclusion and for the Bill to reflect the inclusive intention of other significant commitments by the Australian Government such as Australia's Disability Strategy 2021-2031.

Expertise and oversight of people with disability

The implementation of this Bill, and the associated delegated legislation, must be co-designed with people with disability, families, supporters and our organisations. We believe structured governance or advisory mechanisms will be useful in ensuring that people with disability are the majority voice in decision-making.

Compliance and code of conduct

Both the Disability Royal Commission and the NDIS Review are likely to make significant recommendations to overhaul the current complaints and regulatory frameworks. People with disability have found neither remedy nor adequate responses in the current systems.

This Bill does not detail how the compliance measures will be designed to ensure they are centred around the needs of people with disability. In addition, people with disability must be part of evaluating the new system.

As we said in our previous submission:

The intention is the Code of Conduct will largely mirror the NDIS Code of Conduct. This will make it easier for providers to meet requirements and focus on service delivery which will benefit people with disability who receive services. However, the NDIS Quality and Safeguards Commission has a specific role in oversight of quality and safety across NDIS-funded services, including compliance with the NDIS Code of Conduct. It is not clear in the Bill how compliance with the new Code of Conduct will be monitored and enforced. We are of the view a mechanism/regulatory body monitors and enforces compliance, to ensure accountability, transparency and a culture of compliance across providers.

It is insufficient to rely on complaints provided by people with disability, families, or supporters. It is also insufficient (and undermines impartiality) to rely on personnel associated with or engaged by a service to identify and report a breach. Additionally, there must be clear expectations about what will happen - and real consequences - for breaches of the Code of Conduct.

The disability community's experience in the Disability Employment Services (DES) program has shown that effective quality monitoring and management requires codesign, commitment, and adequate resourcing.¹

Segregation

One of the key features of the Disability Services Act was the entrenching of segregation for people with disability in accessing employment and education services particularly. We

¹ Committee on the Rights of Persons with Disabilities (15 October 2019), [Concluding observations on the combined second and third periodic reports of Australia](#), CRPD/C/AUS/CO/2-3.

strongly welcome the move to remove segregation from the current Bill but are concerned that without a strong positive onus towards inclusion, many segregated services will remain in place.

The Community Affairs Committee may want to consider including a time limit on existing segregated services, to be reviewed annually and the implementation of transition plans for all segregated services.

From our previous submission:

Segregated employment

We welcome the removal of specific reference to ‘supported employment services’ from the existing Actⁱⁱ and to the overall commitment to inclusion. However, to be consistent with human rights principles and comply with Australia’s international legal obligations, the Bill/delegated legislation needs to expressly state it cannot authorise or endorse any employment supports or environments that segregate and isolate people with disability. The Australian Government must ensure the Bill ends provisions that exploit the labour of people with disability.

The Bill and any subsequent Rules must also recognise the evidence about effective and inclusive employment supports and environments, so that the Australian employment service system can learn from good international practice and respond to individuals’ needs and circumstances. There is significant international evidence about effective policy and practice approaches for inclusive employment, such as customised employment and the Employment First policy approach in the United States. The development of a Bill in Australia provides a unique opportunity for the Australian Government to consider legislative support for, and enablement of, evidence-based approaches like customised employment.

The Bill must allow space for the reform of employment services (currently DES) which is being reviewed by the Australian Government. The UN Committee has already recommended reform to DES, in its 2019 review of Australia’s work to realise the rights of people with disability through the CRPD.

Customised employment must be a core feature of the new model. These services must be genuinely inclusive and person-centred. Customised employment must focus on supporting appropriate, accessible, and sustainable employment outcomes for people with disability, rather than promoting segregation or focusing on providers’ interests at the expense of ‘service users.’ People with disability must be given equitable opportunities rather than the current focus on under/low paid ‘volunteering’ or ‘work experience’ which is common. Many of the organisations and individuals contributing to this submission have provided substantial input to the Department on DES reform in recent years.

Segregated education

To be consistent with human rights principles and comply with Australia’s international legal obligations, the Bill needs to expressly state it cannot authorise or endorse any education supports or environments that segregate and isolate people with disability.

Research evidence consistently demonstrates that children and young people with disability fare less well than their peers in education. ‘School aged students with disability are segregated, suspended, and expelled at higher rates. Over the last

fifteen years, the highest level of educational attainment for people with disability . . . remains lower than children and young people without disability. These inequities can have lifelong implications.’²

To ensure that policies, programs and supports that affect people with disability are aligned with the principles of the CRPD at every level, we recommend the Bill recognises the importance of:

- embedding the rights of students as set out in the CRPD by aligning with ‘Driving change: A roadmap for achieving inclusive education in Australia’³
- realising inclusive education to ensure all students with disability are fully included in their education; and
- demobilising segregated education.

Further, the CRPD Committee has clarified that the realisation of the right to inclusive education contained in Article 24 of the CRPD ‘is not compatible with sustaining two systems of education: mainstream and special/segregated education systems.’

In addition, the CRPD General comment No. 4 on Article 24 - the right to inclusive education⁴ says:

Ensuring the right to inclusive education entails a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to removing the barriers that impede that possibility.

² Dickinson, H., Smith, C., Yates, S., Faulkner, A. (2022), [Taking the first step in an inclusive life – experiences of Australian early childhood education and care](#), Report prepared for Children and Young People with Disability Australia (CYDA), Melbourne, p.2.

³ Australian Coalition for Inclusive Education (2020), [Driving change: A roadmap for achieving inclusive education in Australia](#), accessed 19 January 2022.

⁴ CRPD General Comment 4, Article 24, [The right to inclusive education](#), CRPD/C/GC/4, 25 November 2016.

Recommendations and response

Disability organisations responded to the Bill survey questions and also made a series of detailed recommendations about necessary further changes to be considered.

Some of our recommendations have been incorporated into the current Bill, which we appreciate. Particularly, several recommendations to strengthen and broaden the Objects and Principles in the Bill have been included.

We believe that these recommendations need to be incorporated into the Bill in the relevant sections as indicated. The overarching recommendations should be included in the principle section of the Bill.

These are:

- Recommendation 2 - The first object of the Bill should be: (a) *'advance the inclusion and participation in the community of people with disability'*.
- Recommendation 3 - Clause 3(e) should be expanded to include the need to address and overcome barriers to inclusion (not just raising awareness about them).

These recommendations have been partially included:

- Recommendation 4 - The inclusion of people with disability should be promoted in the Bill without qualifiers. The wording *'to the extent possible'* in subclauses 3 (h)(ii-iv) contravenes the concept of full inclusion and should be removed. ***[Included except subclauses 3 (h) (iii) and (iv)]***
- Recommendation 5 - Add the following object to 3(h): *'support people with disability to access supports and services that do not give rise to segregation or isolation.'* ***[Included partially with clause iii) 'to the extent possible, are integrated with services generally available to other members of Australian society']***
- Recommendation 6 - Subclause 3(h)(v) should be expanded to acknowledge other aspects of intersectionality – diversity of disability, First Nations people, location/geographic diversity, migrant and refugee people with disability, people with disability who have diverse gender and sexuality. ***[Mostly included, with slightly different language and elements of recommendation 8.]***
- Recommendation 8 - Reflect the requirement for supports and services to be trauma-informed and culturally safe in subclause 3(h). ***[Included in part with response to recommendation 6]***

These recommendations have not been included:

- Recommendation 1: The Bill should 'embed and give effect to' the Convention of the Rights of Persons with Disabilities (CRPD) rather than just 'give effect'¹ to the CRPD – subclause 3(a).

- Recommendation 9 - The Bill should recognise the gaps in the various schemes and programs of support for people with disability and the need for continued development of programs to fill these gaps, and better delineate government departmental responsibilities for support provision.
- Recommendation 10 - The Bill should make a commitment that the Australian Government will provide ongoing funding for DROs and advocacy services.
- Recommendation 11 - The following be added to the General principles under subclause 4: ‘people with disability are equal before and under the law and are entitled to protection against discrimination on all grounds, including protection from facilities or activities that result in segregation or isolation.’
- Recommendation 12 - The following eligible activities should be added to subclause 13(1):
 - provision of legal services to promote and protect legal rights;
 - provision of disability services and supports detention, youth justice, prisons and immigration;
 - Information Linkages and Capacity Building - need for increased disability services outside of the NDIS, and inclusion in mainstream services and the community; and
 - Transport.
- Recommendation 13: The wording in the following subclauses be altered to read:
 - Subclause 13(1)(d) - ‘the provision of supports that facilitate participation in mainstream education settings’; and
 - Subclause 13(1)(e) - ‘the provision of supports that facilitate participation in open employment settings
- Recommendations 14:
 - Recommendation 14a: The Bill should state how a service’s compliance with the Code of Conduct will be proactively monitored
 - Recommendation 14b: The Bill should state how and to whom a breach of the Code of conduct will be made.
 - Recommendation 14c: The Bill should state who will act and what the action will be in response to a breach of the Code of conduct. (We note “Subsection 14(3) provides that the terms and conditions set out in a funding agreement with a person may contain obligations to provide information or reports to the Secretary in relation to alleged breaches, or actual breaches, of the code of conduct and to action taken in response to those alleged or actual breaches”)
 - Recommendation 14d: Monitoring and compliance activities under this Bill should align with, and complement, activities undertaken by other agencies, rather than duplicating effort or diluting resources
 - Recommendation 14e: A subclause at clause 20 be introduced that provides that all funding agreements will include measures to enable the Government to be satisfied the service provider is complying with the Code of conduct, and/or for the service provider to report or be audited against those measures. A contractual term would enable compliance checks to be tailored

to each service provider, depending on whether it is appropriate having regard to the nature of the service.

- Recommendation 14f: Provision be made in the Bill under clause 20 stating that the Code of conduct must not contain any provisions that constrain advocacy activities of funding agreement recipients.
 - Recommendation 15: Decisions of the Minister under subclause 14(6) be subject to merits review.
 - Recommendation 16: The period for a person who does not have a certificate of compliance for a regulated activity to seek and obtain such a certificate should be no more than 12 months (subclause 9(3))
 - Recommendation 17: The Bill should specify a requirement for the Department to make information about the performance of services publicly available on an annual basis and directly available to people who access the service or program.
 - Recommendation 18: The Bill should make a requirement that people with disability are involved in the evaluation of funded services, and that resourcing for the evaluation and compliance activities of a service be included in a service's funding contract.
 - Recommendation 19: The Bill should specify that the development of the Rules (and any delegated legislation) be codesigned with people with disability and the DROs.
 - Recommendation 20: The Bill should establish an overall vision for an inclusive Australian society to reflect the inclusive intention of other significant commitments by the Australian Government such as Australia's Disability Strategy 2021-2031.
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