

Submission to the statutory review of the
Disability Inclusion Act 2014

April 2020

Background

The NSW Ageing and Disability Commission (ADC) commenced on 1 July 2019. The ADC is an independent statutory body, which is focused on protecting adults with disability and older adults from abuse, neglect and exploitation, and protecting and promoting their rights. Our roles include:

- responding to allegations of abuse, neglect and exploitation of adults with disability (18 years and over) and older adults (65 years and over or, if Aboriginal and/or Torres Strait Islander, 50 years and over), including by providing advice, making referrals and conducting investigations
- following an investigation, taking further action that is necessary to protect the adult from abuse, neglect and exploitation
- raising awareness and educating the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults
- inquiring into and reporting on systemic issues relating to the protection and promotion of the rights, or the abuse, neglect and exploitation, of adults with disability and older adults
- monitoring, assessing and reporting on the NSW implementation of the National Disability Strategy
- meeting other obligations as outlined in the *Ageing and Disability Commissioner Act 2019* (the ADC Act).

The ADC includes the Ageing and Disability Abuse Helpline (formerly the Elder Abuse Helpline and Resource Unit).

The ADC also has a general oversight and coordination role in relation to the Official Community Visitor (OCV) scheme in NSW. OCVs are independent Ministerial appointees who visit accommodation services where an adult with disability, older adult or child in care is in the full-time care of the service provider, and assisted boarding houses.

Introduction

The review of the *Disability Inclusion Act 2014* (the DIA) provides a valuable opportunity to focus on the actions that NSW needs to take to advance and realise the genuine inclusion and participation of people with disability as valued citizens of this State. The shift from the *Disability Services Act 1993* to the rights-based DIA in 2014 was an important and necessary step; following the full roll out of the NDIS in NSW, it is timely to consider the further legislative changes that are required to give best effect to the rights of people with disability in their contact with mainstream services and facilities.

Overall, it can be difficult for parties to understand how the DIA links to the National Disability Strategy and the United Nations Convention on the Rights of Persons with Disability (UNCRPD). There would be merit in considering options in the legislation to clarify and strengthen the link between the DIA, the National Disability Strategy and the UNCRPD. We note that this action would also assist the ADC in fulfilling our role in monitoring, assessing and reporting on the NSW implementation of the National Disability Strategy.

Definition of disability

The definition of disability in the DIA is appropriately broad and largely inclusive. The definition of disability in the ADC Act refers back to the DIA, and enables the ADC to accept reports about alleged abuse, neglect and exploitation of adults with disability with a diverse range of needs, unhampered by a need to meet overly restrictive criteria of disability. In the view of the ADC, the definition remains appropriate and should be retained.

Objects of the Act

In the main, the ADC supports the existing objects of the DIA, but makes the following suggestions to strengthen the focus on the rights of people with disability:

- In relation to 3(b), there would be merit in changing 'promote' to 'advance'. While 'advance' requires more active effort, it also enables greater reward. We note that the Victorian *Disability Act 2006* similarly includes the objective to 'advance the inclusion and participation in the community of persons with a disability'.
- It is not clear to us why section 3(e) seeks to support the purposes and principles of the UNCRPD only 'to the extent reasonably practicable'. We consider that this part of the section is unnecessary and should be removed.

Disability planning

We support the purpose of the disability planning part of the DIA, including the focus in relation to the Disability Inclusion Plan on a coordinated whole-of-government approach to creating an inclusive community with accessible mainstream services and community facilities to enable people with disability to achieve their full potential.

Implementation of both the NSW Disability Inclusion Plan and the agency Disability Inclusion Action Plans (DIAPs), and the reporting and monitoring obligations associated with disability inclusion planning, is crucial. In this regard, consideration should be given to strengthening the legislation to provide greater clarity on the purpose and nature of the review processes. The current requirements for 'review' of the plans appear to be largely limited to examining whether the plans are fit for purpose. In our view, the goals of the reviews should be to:

- assess whole-of-government and individual agency progress towards achieving the intended goals/ strategies and any barriers to implementation
- evaluate the effectiveness of the identified strategies
- identify any changes that are required to the plans and how any barriers to achieving the goals will be overcome.

In relation to public reporting on the DIAPs, we support the view of the NSW Law Reform Commission that it is 'important that the annual reports outline not only the organisations' positive achievements in implementing their...plans, but the areas in which the plans have not

been implemented or in which the organisations have experienced problems.¹

We note the findings in the Sax Institute review of the NSW Disability Inclusion Plan (including DIAPs), that identify problems with the existing review and reporting process, including that:

- reporting was recognised as problematic, and ‘largely anecdotal, giving little sense of impact or outcomes’
- stakeholders noted that ‘agencies had not reflected on their DIAP enough, particularly in terms of areas for further work’, and ‘there was little documentation of the challenges and limitations they faced’
- ‘most agencies were not actively monitoring or collecting data that could demonstrate meaningful outcomes’.²

It is important that reviews are focused on assessing whether the plan(s) are delivering meaningful and systemic change for people with disability. We support the existing mandatory requirement in the legislation that agencies consult with people with disability. However, it is important that this is not limited to the same pool of individuals that are able to be more easily accessed via advocacy or representative agencies, or restricted to one person on an agency’s DIAP committee. Maximum efforts should be made to identify people with disability who engage (or may seek to engage) with the agency, and to hear diverse voices. Indeed, actions by agencies to identify and engage people with disability to enable meaningful and informed consultation and evaluation should be a measurable goal/action in DIAPs. Without concerted and specified actions in this regard, it will be difficult to achieve real progress.

It is imperative that measurement and evaluation of progress and outcomes adequately considers the extent of the impact on people with disability. For example, a range of agency DIAPs include actions to improve the accessibility of some of their public information. In our view, it is not sufficient to only report on whether the information has been made accessible or not – the agency should also be (among other things):

- obtaining feedback from people with disability to ascertain whether it is accessible in practice
- considering the extent of the take-up of the revised publication by people with disability
- identifying any barriers to access or understanding that need to be addressed.

Without the more comprehensive evaluation and review process, there is a risk that the DIAPs will achieve only shallow improvements that can be ticked off on a plan but do not cut through to achieve real change or advancement for people with disability.

The NSW Disability Inclusion Action Planning Guidelines provide useful and practical guidance for agencies in developing, implementing and monitoring their DIAPs. However, information on the evaluation and review process is scant. For example, in relation to evaluation, the guidelines identify that FACS will develop a whole-of-government evaluation framework for reporting on the DIP and DIAPs. In addition to strengthening the legislative requirements relating to reviews of the DIP and DIAPs, there is a need to provide clear and comprehensive guidance to agencies on how to undertake this work.

¹ NSW Law Reform Commission (1999) *Report 91 – Review of the Disability Services Act 1993 (NSW)*; s4.36

² Sax Institute (2019) *Review of the NSW Disability Inclusion Plan 2018*, p21.

The Disability Council of NSW

The Disability Council plays a critical role in advising the Minister on issues relating to people with disability, with representation by a majority membership of people with disability. The ADC values the role and insight of the Disability Council, and recognises the importance of this legislated mechanism for ensuring that key emerging and continuing issues affecting people with disability are raised with government.

The ADC has formed an Ageing and Disability Advisory Board, and held the first meeting of the Board on 13 March 2020. Under section 29 of the ADC Act, the function of the Board is to advise the Commissioner on any matter that the Board considers appropriate, or that is referred to the Board by the Commissioner. The ADC Act provides for the Commissioner to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults. We note that, while the Board plays a key role in providing advice to the Commissioner, it is a very different role to that fulfilled by the Disability Council. We support the continuation of the Council.

We appreciate the role that the Disability Council plays in advising public authorities about the content and implementation of DIAPs. However, we also recognise that the scope and scale of this work would present challenges to a small Council and secretariat. Given the importance of the disability inclusion planning activities, there would be merit in considering whether changes or additional supports are required to enable the Council to perform this role to the maximum extent needed.

Funding of non-NDIS supports for people with disability

We note that the main sections of the DIA that relate to the provision of funding to people with disability and eligible entities (Part 5) were only intended to be in place until the full roll out of the NDIS in NSW. This was based on the understanding that all specialist disability supports would be funded under the NDIS.

The period since the full roll out of the NDIS in NSW has identified a range of supports and services for people with disability that are not covered by the NDIS (such as advocacy support), or that appropriately sit with mainstream NSW agencies to provide.

We support the continued inclusion of section 37 in the DIA, for the Secretary to provide financial assistance to a government department, local council or another entity for the purposes of promoting the objects of the Act. However, more broadly there would be benefit in considering whether this sufficiently covers the extent of the disability and inclusion-related supports that will continue to be required by citizens of NSW and, if not, whether additional funding provisions are warranted.