



# National Disability Services Submission on the Disability Inclusion Bill Exposure Draft

October 2022

## About National Disability Services

National Disability Services (NDS) is the peak body in Victoria and Australia for non-government disability service providers, with over 270 members in Victoria and more than 1100 members nationally. We provide information and networking opportunities to our members and policy advice to State, Territory and Commonwealth governments. NDS has a diverse and vibrant membership, comprised of small, medium and larger service providers that deliver direct and indirect support to people with disability. Our members collectively offer the full range of disability services; from supported independent living and specialist disability accommodation services to respite, therapy, community access and employment. NDS is committed to building a more inclusive community and to improving the disability service system to ensure it better supports people with disability, their families and carers.

## Introduction

National Disability Services welcomes the opportunity to make a submission on the Disability Inclusion Bill Exposure Draft. NDS is one of many stakeholders who have contributed to the review of the Disability Act 2006, including through participation on the Disability Act Review Advisory Group. NDS has welcomed the Victorian Government's consultative approach to this reform, and recognises this reform process as a pivotal moment to shape the ongoing inclusion and empowerment of people with disabilities in Victoria.

The disability landscape has undergone a fundamental transformation in the period since the development of the *Disability Act 2006*, including through the adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and the introduction of the National Disability Insurance Scheme (NDIS). This re-development of the Disability Act is therefore timely, and provides an opportunity to bring the legal framework supporting the disability landscape in Victoria in line with contemporary understandings and treatments of disability, while also delivering pioneering commitments to inclusion and accessibility in Australia.

This submission will provide feedback on the Exposure Draft based on intelligence from disability service providers in Victoria, with the aim of ensuring that this central piece of legislation protects and strongly promotes the rights of people with disabilities while recognising the complexity of the broader disability service landscape.

## Definitions

The Disability Inclusion Bill Exposure Draft (Draft Bill) introduces a number of key terms and definitions which were not included in the Disability Act 2006. These include terms such as ableism, accessibility, barrier, intersectionality, universal design and disability inclusion. NDS strongly supports the inclusion of these terms within the Draft Bill, noting that their definitions reflect contemporary, social model understandings of disability as reflected in the UNCRPD.

NDS also notes fundamental changes to the definition of disability within the Draft Bill. While the previous definition of disability contained within the *Disability Act 2006* represented disability as an impairment which causes reduced capacity and requires significant support, the new definition of disability contained within the Draft Bill treats disability as an interaction between an impairment and a barrier which hinders a person's full and equal participation in society. Again, we applaud the Victorian Government for its commitment to upholding the social model of disability and the approach to disability contained within the UNCRPD.

## Scope of Defined Entities

NDS understands that the Disability Inclusion Bill Exposure Draft outlines a swathe of new requirements and accountability mechanisms which will apply to range of 'defined entities.' We broadly support the scope of entities which are considered 'defined entities' within the Draft Bill.

We do hold some concerns, however, about the limitations of the scope in the realm of education. While the list of defined entities includes universities, we note that other education institutions do not fall under the scope of the scheme, including early childhood education entities, primary schools, secondary schools, and other tertiary education entities including Technical and Further Education (TAFE) institutes. Victorian children and adults with disabilities have a right to an inclusive and accessible education. While it may be deemed inappropriate to include such entities within the scope of defined entities under this Bill, NDS would encourage the Victorian Government to continue addressing the significant issues around accessibility within the Victorian education system.

We would also like to note that we support the decision to exclude disability service organisations from the scope of defined entities. Given the complexity of the regulatory environment for disability organisations in Victoria, NDS would not support the extension of the requirements under the Draft Bill to the disability services sector at this stage, including extension to private or non-profit sector providers who are funded by a public sector agency (for example, disability services funded by the Department of Families, Fairness & Housing or Transport Accident Commission).

## Inclusion Principles

NDS welcomes the insertion of inclusion principles within the Draft Bill, and strongly supports the manner within which the proposed inclusion principles uphold and promote the right of Victorians with



disabilities to equality, inclusion, accessibility, safety from violence and abuse, and reasonable adjustments, amongst other rights. We also welcome the explicit acknowledgements that disability inclusion brings significant economic, social and health benefits for Victoria, and that advancing disability inclusion is a shared responsibility for all Victorians.

We strongly support clause (g) which recognises that people with disability provide valuable expertise in the design of programs, services and policies that affect people with disability. Disability services, advocates, carers and other persons who support people with disabilities also hold significant expertise, and can provide valuable insights in the design of programs, services and policies that affect the disability community. We would strongly support an extension of clause (g) to recognise these other parties. NDS is very aware of the complexity of the disability ecosystem, and argues that while the voice of people with disabilities needs to be at the forefront, the voices of other stakeholders also need to be heard and considered if we are to achieve good outcomes.

In respect to clause (g), we also note that co-design with people with disabilities must recognise that people with disabilities are not a homogeneous group; they come from vastly different backgrounds, face varying challenges, and often experience intersectional disadvantages. Commitment to co-design with a wide range of people with disabilities, with varying impairments and from diverse backgrounds, is therefore important to capture the breadth of experience and expertise of Victorians with disabilities.

We strongly support clause (m), which recognises the significance and need for preservation of the relationships between people with disabilities and their families, carers and other significant persons. We would strongly support explicit mention of disability service providers within this clause.

We would also like to make a specific mention of our support for clause (n), which recognises the essential role of advocates in advancing disability inclusion. We work closely with advocacy organisations, who play an important role in safeguarding and advocating for the rights of people with disabilities. Many of our members also play a key role in advocating for the rights of the people they support.

## State Disability Plans

NDS is very supportive of the State Disability Plan as a method to foster a strategic whole-of-government approach to promoting the rights and needs of Victorians with disabilities. NDS embraces the opportunity to engage with the Victorian government in the development of state disability plans, and therefore welcomes the requirement that the Minister must consult with the public in the preparation and amendment of the State Disability Plan.

NDS strongly supports the strengthened mechanisms to ensure that the Minister is held accountable for the outcomes of the State Disability Plan, including through the requirements that the Minister prepares a State Disability Plan Progress Report biannually, and table this within both houses of Parliament. We

would also support the linking of the State Plan with the National Disability Strategy, as much as possible, and suggest an alignment in reporting.

## Defined entity duties & other requirements:

NDS broadly supports the duties prescribed for defined entities within the Draft Bill, and has summarised some feedback under key areas.

### Duty to promote disability inclusion:

We support the requirement that defined entities must consider and promote disability inclusion within the development and delivery of policies and programs to the public. We also support the commitment to consultation with persons with disability, and reiterate our push for this recognition to extend to a key stakeholders in the broader disability landscape, including informal carers, service providers and advocates. We welcome the requirement that communications are provided in accessible formats where consulting or engaging with people with disability, and would like to see an extension of this commitment to accessible information within all community engagement and consultation activities. Accessible communications do not just benefit people with disability, but also members of our society who have low literacy or are from culturally and linguistically diverse backgrounds.

### Disability Impact Assessments:

We welcome the requirement on defined entities to conduct disability impact assessments where a policy or program has direct and significant impact on the public. We are concerned however, that this could increase red tape for defined entities, who must already comply with significant expectations around assessment of social, environmental, and other impacts.

### Disability Action Plans:

We broadly support the requirement that defined entities must develop Disability Action Plans (DAPs) every 4 years. This mechanism should serve to drive inclusion, accessibility in mainstream services, employment of people with disabilities, and integration of mainstream services with disability services provided under the NDIS. We also welcome the requirement that adequate resources are allocated to preparing and implementing a DAP.

In a similar vein to our comments on Disability Impact Assessments, however, we note that there are already a number of requirements on public entities to develop Action Plans to meet the needs of other cohorts, including those that support reconciliation with first nations peoples. We would hope that the processes associated with these plans do not add considerable red tape which may have unintended negative consequences for the impacted communities.

We broadly support the accountability mechanisms to ensure that commitments in a DAP are seen through. We do note some concern, however, that fear of the consequences associated with failure to meet targets or commitments may constrain some defined entities from setting ambitious goals or

targets. We would like to see support provided to defined entities (perhaps by the office of the Disability Inclusion Commissioner) to set and reach ambitious goals to further the inclusion of Victorians with disabilities.

## Commissioner for Disability Inclusion

NDS members have expressed some concern about the impact of the significant multitude of Commissioners acting in the Victorian landscape and interfacing with disability support provision. These include the Victorian Disability Worker Commissioner, the Disability Services Commissioner, the Human Rights Commissioner, and the Commissioner for Children and Young People amongst others. The multitude of actors operating within the disability space have contributed to significant confusion amongst people with disability, families, support workers and service organisations, raising particular concerns about a lack of clarity surrounding where complaints and incidents should be directed. NDS would like to see consolidation across Commissioner roles where practicable to promote a reduction in the complexity of the safeguarding framework in Victoria.

## Victorian Disability Advisory Committee

NDS strongly believes that the Victorian Disability Advisory Committee plays an essential role in ensuring that the goals and strategies of the Victorian Government, particularly in the area of disability policy, are informed by people with lived experience of disability. NDS is very supportive of the requirement within the Draft Bill that the members of the committee reflect a diversity of disability cultural backgrounds, including first nations peoples.

NDS supports the provision that at least 75% of the VDAC should be comprised of people with disability. NDS also encourages the VDAC to have representation from service provider organisations and informal carers who also have unique expertise. NDS would also encourage drafters of the final Bill to consider the introduction of a high-level commitment to representation of a diverse range of impairments (eg. physical, mental, intellectual, cognitive, learning, communication or sensory) and representation of individuals experiencing intersecting marginalisation due to factors such as age, gender identity, sexual orientation, race, ethnicity, religion, age, or other protected attributes.

## Conclusion

National Disability Services appreciates the opportunity to provide feedback on behalf of our members to shape this extremely important piece of legislation. We are pleased by the progressive nature of this Exposure Draft, and look forward to continuing to work with the Victorian community to strive for inclusion and accessibility for Victorians with disabilities.

For queries in relation to this submission, please contact me or Clare Hambly, Senior Policy and Projects Officer, NDS on [clare.hambly@nds.org.au](mailto:clare.hambly@nds.org.au).



Kind regards,

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