



Disability Rights Advocacy Service Inc

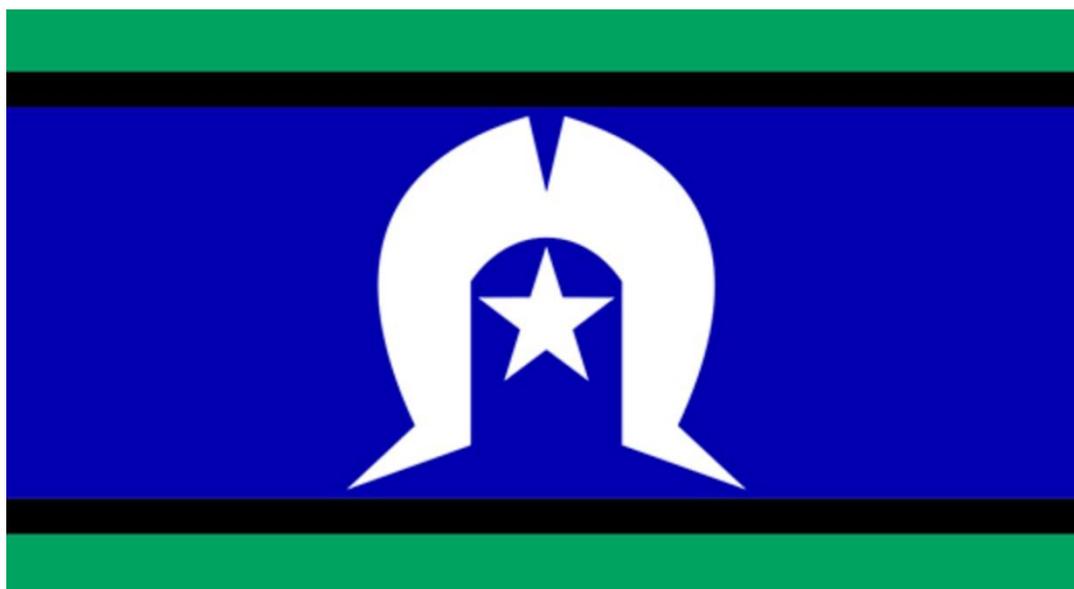
**Safeguarding and promoting the rights and interests
of people with a disability, their families and carers.**

SUBMISSION TO THE DISABILITY INCLUSION ACT 2018 (SA)
DISABILITY RIGHTS ADVOCACY SERVICE | 411 HENLEY BEACH ROAD BROOKLYN PARK SA 5032

Contents

Acknowledgement of Country	2
Questions 1-4: Definition of ‘disability’	3
Questions 5-8: Supporting the UNCRPD (section 7 under the <i>DIA</i>)	3
Questions 9-10: Supporting Australia’s Disability Strategy 2021-2031	4
Question 11: Local Councils	6
Questions 12-15: Objects and Principles under the Act	6
Question 16: Functions of Chief Executive and department	6
Questions 17-18: State Disability Inclusion Plan	7
Questions 19-20: Disability Access and Inclusion Plans	7
Question 21: NDIS worker screening	9
Questions 22-23: Related issues (promotion of themes)	10
Questions 24-29: Overall Operation of the Act	10
Question 30-34: Related matters and general questions	11
Recommendations	12

Acknowledgement of Country



[Image Description: Aboriginal flag and Torres Strait Islander flag]

The Disability Rights Advocacy Service Inc acknowledges that this submission was completed on Kaurua Land. We pay our respects to Elders past, present and emerging. We recognise the continuing relationship with the lands and seas and connection to culture.

Questions 1-4: Definition of 'disability'

DRAS position

It is our position that the definition of 'disability' under the Act is appropriate as it aligns with the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD). People with disability may struggle to be recognised as having a disability due to the high threshold that various pieces of State and Federal legislation and government policy sets for what a 'disability' means. Many State agencies require substantive diagnostic reports that may be difficult and expensive for persons with disability to obtain. However, these are often required to access disability-specific services. This can be a significant barrier to accessing supports on a State and Federal level.

Parliament may wish to include the definition of 'reasonable adjustments' or 'reasonable accommodations' as defined under the UNCRPD.¹ This may assist persons with disability in having a right of access to reasonable accommodations.

Questions 5-8: Supporting the UNCRPD (section 7 under the DIA)

DRAS position

The *Disability Inclusion Act 2018* (SA) (*DIA*) is an important reform. There is some evidence that State authorities are considering section 7 of the Act in the development of their Disability Inclusion Plans. However, there remains significant areas of disadvantage that persons with disability face in South Australia. It is outside the scope of this submission to go into detail about each issue so we will list them briefly here and refer to them throughout our submission. As an advocacy service, we have frequently assisted persons with disability at a State level regarding the following key matters related to access and inclusion:

- Education (including school, TAFE and University);
- Housing and homelessness;
- Community treatment or mental health orders;
- Guardianship and administration orders;
- Child protection matters;
- Police or correctional services.

As an advocacy service we have found that State agencies are often inaccessible for persons with disability, which is a barrier to our full and effective participation and inclusion in society. State agencies appear to offer limited training and resources for frontline services

¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Article 2

staff in disability awareness or mental health first aid. This means that persons with disability are often misunderstood or feel that their concerns go unheard. This seems to be particularly true of persons with intellectual disability, autism spectrum disorder, psychosocial disability or other 'invisible disabilities'. Therefore, the extent to which awareness has been raised about issues associated with people with disabilities seems either limited or unclear.

Questions 9-10: Supporting Australia's Disability Strategy 2021-2031 DRAS position

The Strategy sets out seven Outcome Areas, being:

- Employment and Financial Security
- Inclusive Homes and Communities
- Safety, Rights and Justice
- Personal and Community Support
- Education and Learning
- Health and Wellbeing
- Community Attitudes

We will focus our contribution on these areas.

Australia's Disability Strategy 2021-2031 emphasises the social model of disability which is in line with the UNCRPD.² However, as touched on above, in our experience access to disability services or reasonable accommodations is reliant on strict diagnostic criteria requiring comprehensive assessments and reports from medical practitioners and allied health professionals. This diagnostic approach embeds the medical model of disability, rather than the social model. This is present on both a State and Federal level and includes the process of persons with disability accessing:

- The Federally-funded [Employment Assistance Fund](#) (EAF);
- [Disability modifications](#) for South Australia Housing Authority (SAHA) tenants;
- Reasonable adjustments throughout police, court or prison processes;
- The [National Disability Insurance Scheme](#);
- The [Disability Support Pension](#);
- [One Plans](#) during schooling;
- Disability Access Plans during TAFE or University;³

² Department of Social Services, *Australia's Disability Strategy 2021-2031*, 2021, Commonwealth of Australia, p 5

³ [Student access plan - Visit UniSA - University of South Australia](#); [Disability Support | University of Adelaide](#); [Disability services - Flinders University Students](#); [Disability Support \(tafesa.edu.au\)](#)

- A [Disability Parking Permit](#)

This is a non-exhaustive list and importantly the State Government is only responsible for the areas of housing, the justice system, schools and transport listed above. Persons with disability are often subject to scrutiny about their conditions from a range of government departments and officials when attempting to access the supports they require. This is despite the shortfalls in our public healthcare system where ‘treatment’ of conditions can be difficult to obtain. Comprehensive diagnostic reports can also be expensive if not covered by Medicare, and medical health professionals are not necessarily trained in writing reports against the legislative criteria that these programs require. Regardless of the policy or legislative rationale behind these diagnostic requirements, such an intensive focus on needing to obtain ‘medical evidence’ to access social support services and community does not align with the social model of disability.

Commonwealth and State Governments could possibly coordinate through shared funding arrangements in the following areas and issues of concern:

- Training for employers about disability awareness and reasonable accommodations;
- Increased investment in public and community housing that is appropriate for persons with disability using the principles of Universal Design;
- Funding for an intermediary program in South Australia where complainants and defendants going through the justice system would have access to Disability Advocates;
- Increased reviews and investment to ensure our buildings, public spaces and public transport system is accessible;
- Implementing the recommendations from the [2020 review into the Disability Standards of Education](#) and the [2020 Report from the Centre for Inclusive Education Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools](#) to build capacity in classrooms for schools to deliver inclusive education;⁴
- Increased investment in our public healthcare system so people with disability can access healthcare timely and equitably.

⁴ As an advocacy service we have also put together a separate report on the Operation of the Disability Standards for Education in South Australia [here](#).

Question 11: Local Councils

DRAS position

The SA Department of Human Services and the Local Government Association delivers a Local Government Information Linkages and Capacity Building Program. This includes education programs and support for councils to deliver Disability Access and Inclusions Plans. However, there are limited grounds to lodge a complaint if these policies are not followed. This makes it difficult to assess how they are supporting access and inclusion for people with disability. Councils should be embedding accessibility into their everyday practices, rather than thinking about it as an add-on or after-thought.

As an advocacy service we have received individual complaints about local councils publicly disclosing constituents' disabilities against their consent, including to media organisations. It has been raised with our service that there is no provision under the *Equal Opportunity Act 1984* (SA) for people living with disability to make a complaint against a Council on the grounds of disability. The Act excludes this '*area of life*' unless the discrimination pertains to building access or goods or services operated by the Council. Concerns have also been raised that there are limited grounds to make a formal complaint where there has been a public disclosure of disability by representatives of local council. It is our understanding this includes the making of a complaint to the Ombudsman SA, an agency entrusted with receiving complaints relative to local government. We have also written to the Relevant Minister regarding this matter.

Questions 12-15: Objects and Principles under the Act

DRAS position

The inclusion of the Objects and Principles under the Act are welcomed by our organisation. The issue that we see as facing persons with disability in South Australia is that many of these Objects and Principles are not being enacted in practice.

Question 16: Functions of Chief Executive and department

DRAS position

The Chief Executive should ensure that any guidelines and reports developed for the purposes of the Act can be accessed transparently and easily by the public. The Chief Executive should be required under the Act to publish an annual report that is publicly available based on their monitoring of the implementation of the State Disability Inclusion Plan, disability access and inclusion plans from State agencies, and how compliant each organisation is with the Objects and Principles under the Act.

Under section 14 of the Act, the Chief Executive is required to report annually to the Minister and the Minister is required to have copies of a report laid before both Houses of Parliament. However, the Act does not outline a further requirement that the Annual Report should be released publicly. At the time of writing there is only one report on the *Inclusive SA* website, noted as the 2019-2020 Annual Report.

Questions 17-18: State Disability Inclusion Plan **DRAS position**

The State Disability Inclusion Plan (the Plan) sets out the government's policies and measures for achieving the Objects of the Act. The Plan covers the priorities and actions that State agencies and local councils have committed to. However, the Plan does not extend to private organisations, meaning the rights of persons with disabilities in these forums are not promoted under the Plan. This is problematic because persons with disabilities face significant barriers to accessing basic needs that are delivered by private organisations, such as in housing, employment and some education providers.

Questions 19-20: Disability Access and Inclusion Plans **DRAS position**

Currently there are 66 DAIPs from local councils, 23 from State Government Agencies, 3 from Government Bodies with Prescribed Authority and 15 from Bodies that do not have Prescribed Authority. Across the 2019-2020 period there seems to have been some progress made according to the Annual Report in terms of improvements made to built environs, events and facilities and access to information and communications. This includes in the following ways:

- The Department of Human Services has launched the Inclusive Play guidelines in December 2019 to assist local councils and other community groups in the development of accessible and inclusive playgrounds and spaces
- The Office for Recreation, Sport and Racing partnering with Inclusive Sport SA to develop Return to Sport accessible communications to support the playing of sports during COVID-Safe environments
- The South Australian Museum ran disability awareness training, autism-friendly training, dementia-friendly training
- Upgrades to put in place accessible facilities for the SA Museum, Art Gallery, Adelaide Festival Centre, Glenthorne National Park, Henley Beach and the Higher Courts Redevelopment Project

- The launch of the Inclusive SA website in December 2020⁵

However, there is ample evidence that many State Government Agencies are significantly lacking in access and inclusion for persons with disability. This includes:

- A lack of disability awareness training, mental health first aid training, trauma-informed practice and cultural awareness training for service staff across agencies;
- Limited numbers of new public or community housing stock overall, meaning the current goal of '75 percent of new public housing incorporating Universal Design principles' is still limited and does not match current housing needs.⁶ As an advocacy service we are increasingly seeing an influx of persons with disability requesting assistance with obtaining secure housing, and facing barriers in accessing public or community housing due to a lack of availability or suitable housing that meets their needs;
- A lack of specific and dedicated disability units or advisory groups comprised of professionals, specialists and stakeholders who can advise on policy and practice, as well as assist persons with disability directly;
- Bureaucratic and inaccessible services and information-sharing that is confusing for persons with disability;
- A lack of access to the criminal justice system for persons with disability, with particular concerns raised regarding the reduced funding of the intermediary program meaning vulnerable witnesses cannot access Disability Advocates unless they can afford to do so through the user-pays model;
- A lack of implementation regarding the *2020 review into the Disability Standards of Education* and the *2020 Report from the Centre for Inclusive Education Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools* outlining concerning practices by state government schools, meaning a lack of inclusive education;
- A focus on substituted decision-making by the Office of the Public Advocate as mandated under the Guardianship and Administration Act, with a lack of clarity

⁵ Inclusive SA, *State Disability Inclusion Plan 2019-2023 (Annual Report 2019-2020)*, Government of South Australia, p 14, 19, 20, 29, accessed: [Inclusive SA Annual Report 2019–2020](#)

⁶ SA Housing Authority, *Disability Access and Inclusion Plan 2020-2024*, 2020, Government of South Australia, p 15

currently on the progress of the planned Reference Group investigating a 'supported decision-making project' as outlined by Inclusive SA;⁷

- A lack of representation of persons with disability in decision-making, such as through genuine co-design in projects or representation on boards.

Our position is that more could be done to enforce implementation and penalise non-compliance if State agencies or Local Councils are not following their Plans. While Inclusive SA oversees regulation and quality control of plans, and they undertake quality checks and reviews, there does not appear to be any way to hold an organisation accountable externally if Plans are not followed or implemented. This has been suggested within the Safeguarding Task force Report 2020- Safeguarding Gap 13 that outlines that State and local government agencies have not yet invested sufficiently in achieving the goals of the Disability Inclusion Act 2018.⁸

There does not seem to be a big awareness of DAIPs in the general public so there should be a focus on each organisation with a DAIP to publicise them to ensure they are accessible. For example, DAIPs could be posted on each organisation's website with a landing page summarising the current projects, rather than simply on the Inclusive SA website. Furthermore, reviews of Disability Access and Inclusion Plans do not appear to be made publicly available, therefore this could be required under the Act. Furthermore, Reviews and Plans are not available in a range of languages, which creates a barrier for culturally and linguistically diverse groups and people of Aboriginal and Torres Strait Islander backgrounds.

[Question 21: NDIS worker screening](#) DRAS position

Worker screenings could be streamlined and made simpler to ensure that there is a strong workforce available on the ground. Currently there are a range of different checks, such as working with vulnerable people, working with children and general probity checks. There is also a specific NDIS clearance. Combining these into one clearance could make the process easier and less costly.

As an advocacy service concerns have been raised with us about State-based insurance schemes that support people with specific disabilities who have permanent and severe

⁷ Inclusive SA, *State Disability Inclusion Plan 2019-2023 (Annual Report 2019-2020)*, Government of South Australia, accessed: [Inclusive SA Annual Report 2019–2020](#) p 25

⁸ Kelly Vincent and David Caudrey, *Safeguarding Task Force*, July 2020, Government of South Australia, p 24, accessed: <https://dhs.sa.gov.au/_data/assets/pdf_file/0004/90832/Safeguarding-Task-Force-Report-31-July-2020.pdf>

injuries due to a motor vehicle accident, and there can be an overlap with the NDIS if a person had a previously disability before the accident. This can create complications in screening checks, such as if screenings are required for people working with vulnerable adults outside of NDIS support services.

Questions 22-23: Related issues (promotion of themes)

- **Inclusive communities for all**
- **Leadership and collaboration**
- **Accessible communities**
- **Learning and employment**

DRAS position

It is unclear as to the extent that the Act has assisted in promoting the above themes given the ongoing issues as outlined above.

Questions 24-29: Overall Operation of the Act

DRAS position

The *DIA* is an important reform and is a positive move forward for the disability community in South Australia. The *DIA* can assist in promoting the human rights of persons with disability, rather than the model put forward for the *Disability Discrimination Act 1992 (Cth) (DDA)* that is a measure of last resort. The *DDA* puts the onus on individuals to make a complaint if they think their rights have been breached, and it can be a high bar to prove disability discrimination. Alternatively, the *DIA* puts the focus on State Agencies or Local Government and how they can improve to become more accessible for persons with disability. This is a welcome improvement.

However, it does not appear that the implementation of initiatives under the Act since its commencement in 2018, have made a widespread and significant impact on improving the lives of people with disability, especially when considering disability inclusion. It cannot be said that issues relevant to people with disability are being widely discussed and considered in the community as a result of activities conducted under the Act. There seems to be a limited awareness of the *DIA* in the general public and the disability sector. There are also no penalties on State or Local Government agencies for not following the *DIA* or not implementing their DIAPs.

There are concerns that some people with disability may 'fall through the gaps' if they cannot access support through the NDIS or a State-funded support system, and that the *DIA* or the NDIS legislation does not accommodate for these occurrences. From our experience as an advocacy organisation, there remains significant barriers for access and inclusion for

persons with disability who have 'invisible disabilities', such as people on the autism spectrum, people with intellectual disabilities, people with neurological or behavioural disabilities, or people with psychosocial disabilities. While we acknowledge the importance of physical accessibility, we need to ensure that access and inclusion goes beyond addressing physical barriers. As an advocacy service we have seen that people with disability with trauma histories often feel that engaging in government services can be re-traumatising because their disabilities may be disbelieved or dismissed, not accommodated for, and there is a lack of understanding.

Therefore, while we feel that the *DIA* is an improvement in approach, there needs to be more funding and resources put into implementing the goals of the *DIA* overall.

Question 30-34: Related matters and general questions **DRAS position**

Greater coordination and collaboration across government in the area of disability inclusion could be achieved by genuine co-design with stakeholders such as persons with disability, their families and carers, as well as advocacy and crisis organisations. For example, currently there is a reference group for people with disability in DHS and advisory groups in local councils. However, this could be improved overall, such as having representation of persons with disabilities overseeing the State Disability Plan through Inclusive SA. Each organisation with a DAIP should have a reference or advisory group comprised of persons with disability overseeing the DAIPs. Although it is important to note that concerns have been raised that people with disability or carers aren't always paid for their contributions in consultation in the same way that other groups might be, and this is a lot of emotional labour and time spent for them to contribute, and can be a barrier for people without the means to do so. In any case there should be *genuine* co-design in plans and projects, such as shared decision-making rather than tick-the-box consultation with the disability community. For example, mental health centres have recently scrapped security officers because people with disability trying to access mental health services reported that having security or police officers in these places can be traumatising/re-traumatising because they have often had poor experiences with these kinds of officers in the past – people with mental health conditions were listened to in this respect even though there was pushback.

Recommendations

1. The scope of the legislation should be extended to include private organisations that persons with disability engage with, such as in the fields of housing, employment, education providers and other essential services (i.e. banks, stores, self-care etc). For example, the next State Disability Action Plan could include an action point considering how the State Government will engage with private organisations operating in South Australia to ensure they are accessible for persons with a disability.
2. Enforcement and compliance with the legislation should be strengthened so there is increased follow-through for State agencies to meet their plans, as well as deter them from not implementing elements of DIAPs.
3. Safeguarding provisions should be expanded, such as to clarify how the *DIA* interacts with or supports the Community Visitor Scheme (CVS).
4. All State agencies covered by the Act should be required to deliver the following training to their frontline service staff members:
 - a. Mental health first aid training;
 - b. Disability awareness training;
 - c. Autism awareness training;
 - d. Cultural awareness training;
 - e. Trauma-informed practice training.
5. Implement training for employers about disability awareness and reasonable accommodations.
6. State agencies should establish dedicated disability units or advisory groups comprised of specialists, persons with disability and other stakeholders who can advise on policy and practice, as well as assist persons with disability directly.
7. Information-sharing between departments and units within departments should be simpler so services can be less bureaucratic and more accessible for persons with disability.
8. Websites, factsheets and forms requesting access to government services should be reviewed to ensure they include principles of universal design and are offered in a range of languages.
9. The State Government should either:
 - a. Recommend to the Commonwealth Government that Medicare should be extended to cover the cost of obtaining diagnostic reports to make it easier for persons with disability to get access to social support services or;
 - b. Provide a State-based grant for persons with disability or chronic health conditions to access medical evidence reports.

10. The State Government should increase investment in public and community housing that is appropriate for persons with disability using the principles of Universal Design.
11. The State Government should fund an intermediary program in South Australia where complainants and defendants going through the justice system would have access to paid Disability Advocates at no cost to the person with disability.
12. Councils and State Government should review and invest to ensure our buildings, public spaces and public transport system is accessible.
13. The Department for Education SA should ensure the implementation of the recommendations from the *2020 review into the Disability Standards of Education* and the *2020 Report from the Centre for Inclusive Education Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools* to build capacity in classrooms for schools to deliver inclusive education.
14. The State Government should increase investment in our public healthcare system, including hospitals and emergency services, so people with disability can access healthcare timely and equitably.
15. The State Government should increase investment in after-prison care to assist persons with disability.
16. The Office of the Public Advocate should provide an update on the progress of the planned Reference Group investigating a 'supported decision-making project' as outlined under the State Disability Action Plan.