Disability Inclusion (Review Recommendations) Amendment Bill 2022

Consultation Summary

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Background

The *Disability Inclusion Act 2018 (SA)* (the Act) commenced operation on 1 July 2018 and is an important part of South Australia's legislative scheme. It is designed to promote the full inclusion within the South Australian community of people with disability, and to support and enhance the ability of people with disability to achieve their full potential as equal citizens, and more generally to promote the wellbeing of people with disability through social inclusion.

The Act is intended to promote the recognition of essential human rights in South Australia in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and interacts with national strategies such as Australia's Disability Strategy 2021-2031 (ADS), state-wide initiatives including the State Disability Inclusion Plan (the State Plan), and other schemes such as the National Disability Insurance Scheme (NDIS) and Community Visitors Scheme (CVS).

The Act is underpinned by a range of rights-based principles that reflect the tone of the UNCRPD and the predecessor document to the ADS. These principles are based on a recognition that while people with disability have the same fundamental human rights as others, they often experience difficulty exercising their rights due to inaccessibility, including in areas such as the built environment, cultural approaches, and community attitudes. Through these principles, the Act gives visibility to the issues faced by people with disability.

Review of the *Disability Inclusion Act 2018 (SA)*

An independent review of the Act was conducted throughout 2022, including a state-wide consultation on the overall operation and effectiveness of the Act to date. The review was conducted by Mr Richard Dennis AM PSM, as required by Section 32 of the Act.

During the consultation period, Mr Dennis consulted extensively with key government representatives, peak organisations, individual stakeholders, members of the public, and accepted written submissions to inform his final report and the associated recommendations for government consideration. A public YourSAy process was also run during the consultation period, seeking community feedback on the operation and effectiveness of the Act, the State Plan and State authority disability access and inclusion plans (DAIPs).

The final report was delivered to the Minister for Human Services on 27 June 2022 and detailed 50 recommendations relating to legislation (20), policy (9) and operational (21) impacts.

According to the review, the Act appears to be working reasonably well, especially in connection with the development and implementation of the State Plan and State authority DAIPs. However, the consultation uncovered aspects of the Act where improvements could be made, whether by legislative amendment or by taking steps to enhance disability inclusion through the State Plan.

The review noted there are aspects of the Act that are still maturing since its initial commencement. This includes items that relate to the implementation of the NDIS, worker screening, restrictive practices, and the CVS. Therefore, relevant legislative amendments in relation to these items require further scoping in the future.

Of the 20 legislative amendments, 13 have since been actioned, through the drafting of the Disability Inclusion (Review Recommendations) Amendment Bill 2022 (the Amendment Bill 2022). Specifically, these amendments relate to:

- enacting provisions currently appearing in the Disability Inclusion Regulations 2019 as provisions in the Act
- including a definition of “barrier” in the Act
- including new paragraphs to provide expressly that people with disability, regardless of age, have a right to be safe, and to feel safe, through the provision of appropriate safeguards, information, services, and support
- amending sections within the Act to enhance clarity and/or definition of the principles as they relate to people with significant intellectual disability or who have high levels of vulnerability due to disability
- amending sections within the Act relating to the reporting requirements and timeframes for the State Plan and State authority DAIPs as well as the specific functions of the Chief Executive, Department of Human Services.

Drafting of the Amendment Bill 2022

The Amendment Bill 2022 was drafted by Parliamentary Counsel, in collaboration with the Department of Human Services (DHS), to respond to the legislative changes proposed in the final report provided by Mr Dennis.

The Amendment Bill seeks to legislate 13 of the 20 recommendations, with the remaining legislative recommendations to be considered as existing legislation matures. Recommendations relating to policy and operational impacts will be considered during the state-wide review and development of the State Plan for 2024 and beyond.

Engagement Summary

Between 27 February 2023 and 6 April 2023, DHS conducted a consultation through the YourSAy portal seeking community feedback on the proposed Amendment Bill 2022 and to commence discussions on the State Plan more broadly. Peak organisations, and those that had provided feedback in the first phase consultation, were invited to provide written submissions to the proposed Amendment Bill 2022. Feedback obtained was intended to support the introduction of the Amendment Bill 2022 into Parliament, subject to there being no significant changes required.

This consultation report evaluates the feedback received throughout the consultation as it relates to the items comprising the Amendment Bill 2022.

DHS would like to thank all those that participated in the consultation on the Amendment Bill 2022, by providing written submission or completing the YourSAy survey.

Engagement – YourSAy survey

Total Visits	Informed Visits	Engaged Visits
936	297	30

During the consultation period, the YourSAy portal had a total of 936 visits. Of those visits, 297 people downloaded a document (Amendment Bill 2022, Easy Read documents) for review and 30 people provided responses to the YourSAy survey.

Informed Visits		
Document Name	Visitors	Downloads
Final Report on the Review of the Disability Inclusion Act 2018 (SA)	129	170
Disability Inclusion (Review Recommendations) Amendment Bill 2022	107	136
Easy Read Documents	164	204

Diversity Information – Survey Responses					
Person with disability	Person with lived experience	Support worker/sector worker	LGBTIQA+ person	First Nations person	None
17	9	5	4	1	5

Note: Participants could choose more than one option in terms of diversity information.

Engagement – Written Submissions

During the consultation period, DHS invited written submissions by interested organisations on the Amendment Bill 2022. Those organisations that had provided submissions during the first phase consultation (informing the Final Report by Mr Dennis) were contacted directly, along with an invitation through the YourSAy portal.

Written submissions were received from the following:

- Blind Citizens Australia
- JFA Purple Orange
- Deaf Connect
- Adelaide Hills Council
- Local Government Association of South Australia
- Four independent submissions from community members.

Engagement Outcomes

Proposed Amendment 1: Defining the term "barrier"

It has been proposed that a definition of the term "barrier" be included in the Act, as follows:

Barrier includes something that is –

(a) physical, architectural, technological, or attitudinal; or
(b) based on information or communications; or
(c) the result of a policy or practice.

As outlined in the Final Report, given the significance of the concept of "barriers" in the definition of "disability" and within the wider issue of achieving greater inclusion, defining the nature and scope of the barriers pertinent under the remit of the Act will enhance clarity and recognition of barriers that make life undoubtedly harder for people living with disability in South Australia.

We asked consultation participants whether they agreed with the proposed definition.

Agree	Disagree	Undecided
20	7	4

Overall, respondents through the YourSAy survey indicated that the proposed definition is consistent with the social model of disability and the regular barriers people with disability continue to encounter. As one participant highlighted in the YourSAy survey, *"It seems to cover the majority of barriers I encounter"*. Respondents agreed that the proposed definition is an accurate interpretation and supports its use throughout the Act, specifically where the Act aims to address barriers in improving overall access and inclusion outcomes for people with disability.

Feedback received in one written submission also indicated the definition adopts the societal model of disability, but does not consider the 'medical model of disability', which offers insights to what a

person with disability needs from health services to improve their physical and mental wellbeing, so that they can achieve better social connection.

Although the medical model of disability is an important consideration, it may be more appropriate for barriers relating to medical/health service provision to be considered by State authorities within the sector (SA Health as an example) through their agency specific DAIPs. This consideration is supported in a written submission, *"…it should be included in subordinate legislations, related Regulations, or other guidelines for detailed and technical operation, administration and enforcement of legislation."*

Other inclusions to the proposed definition of "barrier" that have been suggested, include:

- the inclusion of "financial barrier". One participant highlighted that *"people with disability are socioeconomically disadvantaged."*
- the inclusion of "the past impact of exclusion". One participant highlighted that *"past exclusion has limited access to education, employment, community and civic life, denying many people with disability the opportunity to develop the personal and social resources that people with similar abilities and characteristics would take for granted."*

It is noted that the proposed definition of "barrier" is specific to its use throughout the Act and in this context, the above "financial" inclusion is not necessarily appropriate for this purpose. Past impact of exclusion is an important consideration and the rationale for the introduction of the Act initially.

Inclusions to the proposed definition of "barrier" that one YourSAY respondent did not agree with, was:

- the inclusion of "attitudinal barrier". This participant noted that *"we are not here to change individuals' attitudes…individuals have the right to hold whatever attitude they choose."*

Noting that improvements to community attitudes is required under both the State Plan and the ADS, it is appropriate to retain "attitudinal barrier" within the proposed definition.

Proposed Amendment 2: Greater emphasis of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

It has been proposed that an additional paragraph be included under Section 8, as follows:

(f) making significant gains towards achieving an inclusive community where principles outlined in the United Nations Convention on the Rights of Persons with Disabilities underpin the development and delivery of services, especially by removing barriers so that people with disability, regardless of age, are able to access services and to participate in the community in the same way as other members of the community.

It was broadly accepted by respondents that greater emphasis on the UNCRPD principles was a positive improvement to the Act and underpins the overall intention of the Act. Participants were

offered the opportunity to provide their top three barriers to achieving an inclusive community to assist State authorities when considering their next DAIP and the broader State Plan review. Respondents highlighted:

- community attitudes and lack of education on what it truly means to live with a disability
- lack of safe spaces within the community, and within local businesses
- accessibility of businesses, both the built environment and business policies/procedures
- lack of funding, especially related to the National Disability Insurance Scheme (NDIS)
- lack of accessible communication tools, especially for those who are non-verbal.

Several written submissions highlighted that greater emphasis on supporting the universal design approach to buildings and spaces that accommodate the needs of people living with disability and other groups with diverse needs is required. One respondent said, *"If people are shut out of society, they may question their ability to make a valuable contribution or feel too intimidated to try."*

As outlined in the Final Report, *"legislation itself can only go so far".* It therefore appears that an important outcome of the review, and the Amendment Bill 2022, is for steps to be taken to increase the extent to which barriers to achieving an inclusive community can be addressed within operational and/or policy improvements and State authority DAIPs.

When the State Plan consultation commences in mid-2023, it is anticipated that the principles outlined in the UNCRPD, as well as the ADS, and any other recommendations identified in the Royal Commission into Violence, Abuse and Exploitation of People with Disability (the Royal Commission) will form a significant component of the review and State authorities will be supported to consider these principles within their context to operationalise inclusion practically.

Proposed Amendment 3: Provision of appropriate safeguards (information and reporting mechanisms)

It has been proposed that an additional paragraph be included under Section 9(1), as follows:

(ja) people with disability have the right to be safe, and to feel safe, through the provision of appropriate safeguards, information, services, and support, and through appropriate and accessible reporting mechanisms in cases of neglect, abuse or exploitation.

Respondents to the YourSAy survey and through written submissions highlighted that the South Australian Government should invest in mechanisms to enhance the safeguarding of people living with disability and consider how this commitment can be reflected in the next State Plan. As one respondent outlined, *"…safeguards include natural safeguards like personal relationships and community connections, and that it is these safeguards that need to be built into the lives of every people living with disability in order to truly make inroads into preventing abuse and harm."*

Advocacy services and adequate funding for independence advocacy was highlighted in submissions as essential to protecting people living with disability from neglect, abuse and/or exploitation. The value that services providing independent advocacy can provide are critical to protecting the human rights and wellbeing of people living with disability. Submissions called for the State Government to consider how independent advocacy services can continue to support people with disability in

actively connecting with their communities, through both funding opportunities and systemic/policy improvements.

In South Australia (and Australia), there are various formal safeguarding mechanisms in place, including the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission and the Adult Safeguarding Unit (ASU). The State Government will consider further improvements to safeguarding policy when the Royal Commission is handed down in late 2023, along with the NDIS Review.

National disability reform is also underway, including a new national Community Visitor Scheme (CVS), that will shape additional safeguarding opportunities for South Australia.

It is also noted that Action 2.3 of the Safety Targeted Action Plan commits the Australian Government to lead the development of nationally consistent principles to guide the review of quality and safeguard legislation and policy, and seek disability ministers' agreement. This work will undoubtedly inform and strengthen South Australia's commitment to safeguarding.

Proposed Amendment 4: The right to participate in the design and delivery of inclusive policies and programs

It has been proposed that additional paragraphs be included under Section 9(1), as follows:

(p) people with disability, and their families and representatives as appropriate, have a right to participate in the design and delivery of inclusive policies and programs;

(q) insofar as people with disability may not be able to find out about their rights, or may not be able to understand their rights, because of their disability, State and local government should take reasonable steps to assist them to learn about their rights and to develop ways in which they can, or their families or representatives can report violations of those rights.

The rights of people with disability to actively contribute to the design and delivery of inclusive policies and programs was resoundingly supported throughout both YourSAy survey respondents and written submissions. Meaningful collaboration with people with a range of different experiences of disability, in addition to other aspects of diversity is important to ensure that policies and programs are responsive and demonstrates to the community that their voices are heard.

YourSAy respondents provided meaningful suggestions on how State authorities can engage with the disability community on matters concerning them, including:

- genuine co-design processes, whereby a diverse range of people with relevant skills, experience, or interests come together to provide advice and make decisions in a project, policy, program, or initiative
- engagement with relevant disability-led peer groups and organisations
- providing alternative forms of communication, including Auslan
- time and transparency.

It is noted that for this recommendation to be realised, guidelines should be developed to assist State authority's in understanding what 'reasonable steps' may be and supporting resources are developed in collaboration with people with disability. In addition, greater clarity through the State Plan and underlying DAIPs may be required to determine what, if any, legal requirement this may place on State authorities.

Significantly, respondents commended the Minister for Human Services on the announcement of the Disability Minister's Advisory Council (DMAC). This was seen as sending a clear message to the rest of government, across portfolios, that people living with disability must be involved in government policy, programs, and services. Of critical importance to the community is that groups such as the DMAC are not tokenistic and have a genuine opportunity to contribute to the conversation.

When the Department of Human Services, and in turn, State authorities commence review and consultation on the new State Plan and DAIPs, feedback gathered on this topic will be considered further.

Proposed Amendment 5: Supporting people with significant intellectual disability or high levels of vulnerability due to disability

It has been proposed that additional paragraphs be included under Section 9(3), as follows:

(5a) In addition to the principles set out in any other provision of this section, the following principles are to be acknowledged and addressed in the operation, administration, and enforcement of this Act as it relates to people with significant intellectual disability or who have high levels of vulnerability due to disability:

- *(a) people with significant intellectual disability or who have high levels of vulnerability due to disability have a right to feel safe, to enjoy dignity in their lives, and to participate in the community in meaningful ways;*
- *(b) people with significant intellectual disability or who have high levels of vulnerability due to disability may face major barriers which they may not be able to understand and so need support from others to advocate on their behalf when seeking to remove, or deal with, those barriers.*

Section 9 of the Act includes separate and important principles that apply to certain groups of people who may face additional barriers, inequities and other challenges associated with disability inclusion. During the consultation to inform the Final Report, a submission indicated that people within the community with profound intellectual disability, or who have heightened vulnerability, need special recognition, resulting in this proposed amendment.

The inclusion of this new priority cohort reflects the additional challenges and vulnerability they face and ensures that the Act places greater priority on the needs of these groups *"where their situation may compound various barriers to disability inclusion." (Final Report, 2022)*

The Final Report identified that those with profound intellectual disability, or who have heightened vulnerability may need to rely on others to advocate for them, or may face additional barriers that

require additional protections or assistance for them to lead their lives. This proposed amendment will "support greater recognition of their situation."

It was suggested in one submission that use of the phrase “people living with heightened vulnerability” should be changed to “high levels of vulnerability due to disability” and that use of the term “significant intellectual disability” singles this group of people out and is likely to lead to limiting their decision-making opportunities. This is somewhat in contrast to the intention of this amendment, where this group will be specifically prioritised.

Another submission supported the inclusion of these groups within the set of principles and noted it as an appropriate step in acknowledging the additional recognition these groups require to participate meaningfully within the community.

The overall intention of Section 9 is to highlight the need for State authorities to observe select principles in the operation, administration, and enforcement of the Act, and for those principles to be acknowledged and addressed, where relevant, when enforcing various aspects of the Act. This will be achieved through State authority DAIPs.

During consultation and when developing the Final Report, Mr Dennis considered the terminology used within the recommendation, and the subsequent Amendment Bill 2022 has incorporated this feedback in the design of the amendment.

Proposed Amendment 6: Functions of the Chief Executive, Department of Human Services

It has been proposed that additional paragraphs be included under Section 10(1), as follows:

(ga) advising the Minister on systemic or emerging accessibility and inclusion issues; and

Section 10 of the Act currently outlines the functions of the Chief Executive, Department of Human Services under the Act, specifically:

- preparing reports as may be required under the Act
- monitoring the extent to which the objects and principles of the Act are being achieved
- monitoring the State Plan
- monitoring State authorities DAIPs
- making recommendations to the Minister, as required.

Minimal feedback was received on this proposed amendment, noting it is mostly administrative. It is noted that the Department of Human Services is responsible for keeping the Minister abreast of activity relating to access and inclusion under the State Plan and there is already significant reporting requirements within both the Act, and State Plan.

One submission did suggest an additional requirement be inserted into this section that stipulates that the Minister must respond in a timely manner to advice from the Chief Executive about systemic or emerging accessibility and inclusion issues raised.

Respondents were asked to consider what top three issues people with disability faced the most, when considering accessibility and inclusion in South Australia. The top three issues were:

- Lack of understanding (attitudes)
- Accessing the environment
- Having a voice.

These themes have been consistent throughout various consultation activities and will form a significant component of the State Plan.

This additional amendment also makes it clear that the department is responsible for any potential out-of-scope systemic or emerging accessibility and inclusion issues and will be considered further during the State Plan review.

Proposed Amendments 7 - 13: State Disability Inclusion Plan and reporting requirements

A number of amendments have been proposed relating to the State Plan and the associated reporting requirements.

As these proposed amendments relate mostly to operational updates for State authorities, feedback was sought on how the State Government can most effectively inform the community on the work we are doing to improve access and inclusion.

Feedback received indicates that initiatives such as the 'See Me for Me' campaign is valuable for educating the community about what it truly means to live with disability, but that it needed to extend further than just observing "visible disabilities". Some respondents were also unsure about what the campaign was, indicating that any future campaigns may need to consider a wider audience scope.

It was reiterated by submissions specifically from State authorities that they would welcome tools to assist them with evaluation of their plans and strategies, including examples of good practice amongst agencies to support collaborative action. In addition, better collaboration between State and Commonwealth Government to ensure coordinated efforts in implementing the shared access and inclusion agenda is crucial, and how opportunities presented through initiatives like the Information, Linkages and Capacity (ILC) grants can support successful project outcomes.

The Department of Human Services has committed to ensuring that future iterations of the State Plan are supported with guidelines and tools to support effective reporting, implementation and delivery of actions (where relevant). These tools will be designed in conjunction with State authorities during the consultation process.

Other submissions, specifically from non-government organisations, made recommendations that future iterations of the State Plan and State authority DAIPs be elevated by the inclusion of:

- Measurable targets and/or outcomes
- Independent auditing and reviews (to ensure progress is made)

- Accessible variations of the reports, including Easy English, screen reader formats and languages other than English.

The role of the DMAC, along with the Department of Human Services' Disability Engagement Group will provide a strong avenue for State Government and State authorities to engage with people with disability on the development and review of the State Plan and DAIPs.

Although some written submissions recommended that the above items be contained within the Act, it appears more relevant that these be considered as part of State Government policy and/or operational improvements.

It is noted that the new reporting requirements within the Amendment Bill 2022, relating to the shift from financial to annual years does not always align with State authority reporting and budget processes. Furthermore, the new review requirements which would require State authorities to revise their DAIPs within six months of the State Plan being updated was not supported by some State authorities.

The Amendment Bill 2022 would require agencies to 'publish' their new DAIPs within a six month period, which the Department of Human Services, as administrators of the State Plan, will build into the reporting and reviewing timeline when required. To support this, ongoing consultation and collaboration amongst State authorities on any reviews undertaken will allow State authorities to consider revisions, if required, during the process rather than waiting for a new published plan to be made available.

Other emerging themes for consultation during State Plan review and redesign

Although the primary purpose of this consultation was to seek feedback on the Amendment Bill 2022, participants also had the opportunity to respond to the final report by Mr Dennis and the recommendations made relating to policy and/or operational improvements.

This feedback has been collated and will be reviewed further when the Department of Human Services commences the statewide consultation on the State Plan for 2024 and beyond. However, there were some valuable emerging themes to consider further, including:

- Extending the DMAC remit to allow engagement by the Local Government Association of South Australia and local councils more broadly
- The importance of making State authority DAIPs visible to the community, and published in accessible formats
- The purpose and intent of annual reports on the State Plan and DAIPs
- Acknowledgement of the diversity of disabilities captured by the State Plan and DAIPs and the intersection with other priority groups (Aboriginal and Torres Strait Islander people, Culturally and Linguistically Diverse people, young people and women)
- Consider other priority groups to include in future iterations of the State Plan and DAIPS, including LGBTIQA+ people
- Strengthening the collaborative efforts between Local, State and Federal Government's in disability access and inclusion planning.

The consultation on the State Plan for 2024 and beyond will be a significant opportunity to address the above emerging themes to ensure South Australia's position on disability access and inclusion planning continues to drive meaningful change for the community.

Conclusion and next steps

Based on the feedback received throughout the consultation period, it appears appropriate that the Amendment Bill 2022 progress for introduction, without revision. The valuable feedback received on the Amendment Bill 2022, will be further considered within the updated State Plan which, as a legislative publication under the Act, will hold the State Government and public sector/local councils accountable for ensuring an accessible and inclusive community.

Overall, the operation of the Act has seen many positive outcomes for people with disability in South Australia, with further opportunities to be realised. The State Government, in collaboration with local councils, people with lived experience of disability, and the broader disability sector, will continue to drive disability access and inclusion through the next iteration of the State Plan.

We welcome further engagement with the disability community through the statewide consultation on the State Plan later this year.