



Statutory review of the Disability Inclusion Act 2014

Discussion paper

January 2020



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1

We are reviewing the Disability Inclusion Act

The [Disability Inclusion Act 2014](#) (NSW) (the Act) started on 3 December 2014 – International Day of People with Disability. The Act replaced the previous Disability Services Act 1993.

We (NSW Department of Communities and Justice) are reviewing the Act on behalf of the Minister for Families, Communities and Disability Services, the Hon. Gareth Ward MP.

We are reviewing the Act to make sure it has achieved what it set out to do. The review will also look at what needs to be changed to bring it up-to-date.

The Act promotes the inclusion and participation of people with disability in the community in a number of ways. Currently it:

- requires the development of a State Disability Plan
- requires government bodies to prepare disability inclusion action plans
- helps the Disability Council NSW to advise the Minister on matters affecting people with disability.

1.1 Current disability reviews and reforms underway in NSW

NSW Ageing and Disability Commissioner

The NSW Ageing and Disability Commissioner has a vision for every older person and adult with disability in this state. The Commissioner wants them to feel safe, respected and dignified in their home, and in the community.

The Commissioner will work closely with other government and non-government services to better protect older people and adults with disability. Especially from abuse, neglect and exploitation from someone they know. This could be from a friend, family member, neighbour or someone in the community.

Review of disability advocacy in NSW

The NSW Ageing and Disability Commission has just completed a review of disability advocacy across the state. This was conducted to better understand the purpose, functions and future funding needs of the sector. The report, and a summary of the new Disability Advocacy Futures Program, are available on the [NSW Ageing and Disability Commission website](#).

Employment and inclusion within the NSW Government

People with disability face barriers to full inclusion in social and economic life. Increasing the representation of people with disability in the NSW public sector, and maximising opportunities for workforce participation, will mean more people with disability will be accessing employment opportunities and the financial and other benefits that come with this.

That is why NSW remains committed to increasing the representation of people with disability in the NSW public sector and is actively working toward the current Premier's Priority of having a world class public service through key diversity targets, such as ensuring 5.6% of government sector roles are held by people with disability by 2025.

The NSW Government plays an important role in shaping the culture of teams and workplaces. We need to encourage full participation from people with disability in our workforce and to retain staff who may acquire a disability during their employment.

Restrictive Practices and Behaviour Support

NSW is responsible for the restrictive practices authorisation process for NDIS registered providers operating in NSW and has recently developed a Restrictive Practices Authorisation Policy and the Restrictive Practices Authorisation Procedural Guide, to inform providers in NSW of their responsibilities regarding obtaining authorisation for the use of restrictive practices.

Information sessions have been held across NSW regarding the quality, safeguarding and reporting arrangements in place since 1 July 2018.

National Disability Insurance Scheme in NSW

NSW Government funding for specialist disability services is now provided through the National Disability Insurance Scheme (NDIS) for individual supports for people with disability.

On 25 May 2018, the Commonwealth and New South Wales governments entered into a Bilateral Agreement on the National Disability Insurance Scheme. The transition to the full scheme in NSW occurred in two stages from July 2016 to June 2018. The full scheme started in NSW in July 2018.

Information, Linkages and Capacity Building (ILC) NDIS

ILC is all about inclusion – it's about creating connections between people with disability and the communities they live in. Unlike the rest of the NDIS, ILC doesn't provide funding to individuals. ILC provides grants to organisations to deliver projects in the community that benefit all people with disability, their carers and families.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

On 5 April 2019, the Prime Minister, the Hon. Scott Morrison MP, and the then Minister for Families and Social Services, the Hon. Paul Fletcher MP, announced the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Commissioners have been directed to inquire into violence, abuse, neglect and exploitation of people with disability. The inquiry will cover all forms of violence against, and abuse, neglect and exploitation of, people with disability, in all settings and contexts.

National Disability Strategy

The National Disability Strategy (the Strategy), developed by Commonwealth, State and Territory governments in partnership with the Council of Australian Governments (COAG), and sets out a ten-year national plan for improving life for Australians with disability, their families and Carers.

The Strategy draws on the findings of extensive consultation conducted in 2008-09 by the National People with Disabilities and Carer Council and reported in *Shut Out: The Experience of People with Disabilities and their Families in Australia* (2009).

The Strategy will finish at the end of 2020 and governments across Australia are working together to develop a new strategy for beyond 2020. The first stage of consultation took place in April and June 2019. More consultation will take place in early 2020 and we encourage everyone to have their say on the priorities and actions for the next strategy.

There has been a lot of change to disability policy and service delivery since the current Strategy started in 2011. A recent independent review has shown that many parts of the current strategy are working well and the Strategy's overall principles and goals are valuable and important. The review also showed there are still areas for improvement, particularly on how the strategy is implemented.

A new strategy reflects the changing policy environment and builds on opportunities available today as well as what may emerge over the next decade, this includes considering the findings from the Productivity Commission's Review of the National Disability Agreement.

1.2 About the Act

The Act is about creating a society that values equality for, and inclusion of, people with disability in the community. It sets out a clear statement of objects and principles consistent with the United Nations Convention on the Rights of Persons with Disabilities.

The Act:

- gives people with disability choice and control over the supports and services provided to them
- requires government bodies to prepare disability inclusion action plans
- ensures the Disability Council NSW continues to represent people with disability
- ensured people with disability received quality services and supports while the National Disability Insurance Scheme (NDIS) was rolled out.

You can find out more about the Act in this discussion paper.

About this discussion paper

This discussion paper is the first part of the review process. It provides information about what each part of the Act does.

We have included questions so you can tell us what you think about how the Act is working.

As identified in the section above, there is currently a lot of inclusion activity in the disability sector. This discussion paper is specifically asking about the Disability Inclusion Act 2014 (NSW).

1.3 How you can have your say

We want to hear from you.

It is important we hear from all different people to make sure the Act reflects what is needed to support inclusive communities. We encourage everyone to have their say, particularly:

- people with disability
- carers
- disability service providers
- members of the community
- local councils.

Online survey

You can respond to the questions in this discussion paper by completing an [online survey](#) on the DCJ website.

Written submissions

If you wish to send your feedback through a written submission, please email NSWDIP@facns.nsw.gov.au or post to: Department of Communities and Justice, Locked Bag 4028, Ashfield, NSW 2131.

Workshops

We are also planning workshops and roundtable discussions. You can keep updated on these through the [DCJ website](#).

Closing date

All survey responses, written submissions and feedback from our workshops must be received by 5pm 30 March 2020.

What happens with your feedback?

Your feedback will be considered and will inform a report on the review. The report will be tabled in NSW Parliament as required under section 51 of the Act.

Any formal feedback you give us will be available on our public website. You can let us know if you do not want your personal details or any part of your submission published. Please make sure you include your reasons why.

An automatically generated confidentiality statement in an email will not be considered as formal advice.

Please note: we will do our best to keep your information confidential if you ask us to do so, but we cannot promise this. Sometimes the law or public interest says we must disclose your information to someone else. An example of this is if someone requests information under the Government Information (Public Access) Act 2009.

More information

For more information about the review and how you can participate, please email NSWDIP@facfs.nsw.gov.au or phone 02 9716 3429.

2

How the Act started and the NDIS

2.1 Early consultations and the beginning of the Act

Thousands of people across NSW helped inform the Act by giving feedback. This started in 2011 with the Living Life My Way consultations. More than 4,000 individuals had the opportunity to share their views through this process.

In early 2013, about 600 people attended face-to-face consultations to discuss the review of the Disability Services Act 1993 (NSW). We also received 64 written submissions.

In December 2013, we released the exposure draft of the Disability Inclusion Bill 2014 (NSW) for feedback. We received more than 90 written submissions. We heard from:

- people with disability, their families and carers
- peak bodies
- service providers
- other organisations.

During this consultation process, we heard that a new legislative framework was needed. As a result, the Act introduced a rights-based inclusion framework.

The Act supported a more flexible, person-centred approach. It was designed to give people with disability choice and control over their own supports and services.

2.2 The Act and the UN Convention

In 2008, Australia agreed to be bound by the United Nations Convention on the Rights of Persons with Disabilities (UN Convention).

The UN Convention recognises that people with disability should be treated equally to any other member of the community. It promotes that people with disability are entitled to enjoy all human rights and have these rights protected.

The Act ensures that policies and programs for disability services in NSW align with the UN Convention.

The Act uses the same definition of 'disability' as the UN Convention¹. It describes 'disability' as including a person with long-term physical, psychiatric, intellectual or sensory impairment that, in interaction with various barriers, may hinder the person's full and effective participation in society on an equal basis with others.²

¹United Nations, Convention on the Rights of Persons with Disabilities, Article 1.

²Section 7 (definitions) of the Disability Inclusion Act 2014 (NSW).

2.3 National Disability Insurance Scheme (NDIS)

The NDIS is established under the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act).

The NDIS Act provides eligible people with disability individual funding packages based on their needs and aspirations. It gives them choice and control over the disability supports and services they receive through personal plans.

It sets out a framework of quality standards and safeguards. Providers of disability supports and services must meet these to register for the NDIS.

The NDIS Act also established the National Disability Insurance Agency to oversee implementation and governance. The NDIS Quality and Safeguards Commission makes sure safety and quality standards across Australia are consistent.

As at 1 July 2019, the NDIS is fully operational in all states and territories, except Western Australia, where it is expected to start in mid-2020.

As at 30 September 2019, 106,819 people with disability in NSW are active participants in the NDIS under approved plans.

3

What the Act sets out to achieve

Section 3 of the Act sets out what it aims to achieve. The objects are to:

- a) acknowledge that people with disability have the same human rights as other members of the community and that the State and the community have a responsibility to facilitate the exercise of those rights
- b) promote the independence and social and economic inclusion of people with disability
- c) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services
- d) provide safeguards in relation to the delivery of supports and services for people with disability
- e) support, to the extent reasonably practicable, the purposes and principles of the United Nations Convention on the Rights of Persons with Disability
- f) provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme.

These highlight the human rights of people with disability including the right to dignity, respect and choose for themselves. They are still valid today.

However, some of the objects need to be reassessed because of the NDIS. Under the NDIS, the Australian Government regulates the delivery of disability supports and services to people with disability in NSW and administers the quality and safeguards framework for those services.

Questions 1 and 2 are asking about the objects and principles of the Act. This is the first part of the Act which sets out the most important elements of inclusion for people with disability. Question 1 and 2 are asking if all of the important features have been included.

Question 1:

What changes, if any, should be made to the objects outlined in section 3 of the Disability Inclusion Act 2014?

Is there anything missing that you would want added to the objects?

4

Rights for people with disability in the Act

Section 4 of the Act sets out the principles that give people with disability the right to:

- respect for their worth and dignity as individuals
- participate in, and contribute to, social and economic life and should be supported to develop and enhance their skills and experience,
- realise their physical, social, sexual, reproductive, emotional and intellectual capacities
- make decisions, as other members of the community do, that affect their lives (including decisions involving risk) to the full extent of their capacity to do so and to be supported in making those decisions if they want or require support
- respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs
- have their privacy and confidentiality respected
- live free from neglect, abuse and exploitation
- access information in a way that is appropriate for their disability and cultural background, and enables them to make informed choices
- pursue complaints, as other members of the community do
- have acknowledgement of, and respect for, the crucial role of families, carers and other significant persons in the lives of people with disability, and the importance of preserving relationships with families and carers and other significant persons
- have respect for the needs of children with disability as they mature, and their rights as equal members of the community
- respect for the changing abilities, strengths, goals and needs of people with disability as they age.

Rights for specific groups of people with disability

Section 5 of the Act sets out more principles that recognise the needs of particular groups of people with disability. These include:

- Aboriginal and Torres Strait Islander people
- minority cultural and linguistic groups
- women
- children.

Ensuring the right people follow the principles

Section 6 tells service providers and other organisations, whose work fits under the Act, to follow these principles. This includes government agencies who must prepare disability inclusion action plans.

Question 2:

Do the general principles in section 4 and section 5 of the Act sufficiently cover the principles guiding modern practice and policy for people with disability? Are there additional principles that you think should be added here or some that should be removed?

5

Disability inclusion planning in NSW

5.1 State Disability Inclusion Plan

As part of sections 10 and 11 of the Act, the NSW Government must develop a four-year State Disability Inclusion Plan. The Act says the plan must guide how the whole government works towards inclusive communities for people with disability. It also must say how access to mainstream services and community facilities can be better.³

The [NSW Disability Inclusion Plan](#) (NSW DIP) was launched on 26 February 2015. The plan is our commitment to making sure people with disability have the same opportunities as everyone else. It identifies and breaks down the barriers that stop that from happening.

The plan aligns with the Australian [National Disability Strategy](#) and obligations under the UN Convention. The NSW DIP focuses on four action areas identified by people with disability, the NSW Government and the community. These action areas are:

1. developing positive community attitudes and behaviours
2. creating liveable communities
3. supporting access to meaningful employment, and
4. improving access to mainstream services through better systems and processes.

New initiatives under the NSW DIP have included:

- the Employable Me series for ABC TV
- training packages and awareness campaigns for employers
- inclusive tourism strategies
- community-based partnerships and grants
- employer and employee networks
- new committees, plans and agreements to steer progress.

³ Section 10 of the Disability Inclusion Act 2014 (NSW).

5.2 Reviewing the NSW Disability Inclusion Plan

In June 2018, we asked the Sax Institute to review the NSW DIP after its first four-year period. This review was required under the Act. The Sax Institute partnered with the Centre for Disability Policy and Research at the University of Sydney.

We wanted to understand if the goals set out in the NSW DIP support people with disability by:

- building inclusive communities
- improving their access to mainstream services and facilities.

As part of the review, we looked at existing documents and heard from over 150 stakeholders. This included people from:

- NSW Government agencies
- local councils
- peak bodies
- community organisations
- disability sector organisations
- people with disability.

The review found that we are making progress in achieving the goals of the NSW DIP. However, there is still more to be done. We need to work better and more consistently across NSW Government agencies and local councils. Only then will we be able to achieve the goals. The [review report and its key findings](#) are available on the NSW Parliament website.

The current Act required NSW to have a State Disability Inclusion Plan. The following question is asking if this is still important and what needs to be included in the plan.

Question 3:

Are the provisions relating to the State Disability Inclusion Plan still correct and relevant?

Do you think a State plan is necessary, and if so, what do you think is most important to be included in the plan?

5.3 Disability Inclusion Action Plans

Section 12 of the Act is about Disability Inclusion Action Plans (DIAP). These plans make sure people with disability are included and can participate fully in the community.

Only government agencies that are 'public authorities' are required to develop DIAPs. More information on public authorities is available below.

The plans must be consistent with the NSW DIP. Public authorities must set out the steps they will take to make sure people with disability have access to:

- general supports and mainstream services
- specific supports
- buildings, facilities and information within the community
- employment opportunities.

Section 14 says people with disability must be consulted to make sure DIAPs focus on the right priorities.

Who needs to have a DIAP?

A public authority is defined in section 7 of the Act as:

- a government department – see Schedule 1, Part 1 of the Government Sector Employment Act 2013. There are currently eight government departments.
- a local council
- an entity prescribed in the Disability Inclusion Regulation 2014, including:
 - Australian Museum Trust
 - Destination NSW
 - Library Council of New South Wales
 - Office of Finance and Services.
(Note: the Office of Finance and Services is now within a government department and therefore clause 5(d) of the Regulation is redundant).

All NSW government departments were required to have their DIAPs in place by 1 December 2015, and all local councils were required to have their DIAPs in place by 1 June 2017. Other agencies not considered a government department are not required to develop a DIAP. These include:

- Institute of Sport
- TAFE NSW
- Information and Privacy Commission.

Many agencies not required to develop a DIAP still participate in disability inclusion planning. This showed in the review of the NSW DIP by the Sax Institute.

Making sure DIAPs are on track

Under section 13 public authorities must report to the Minister on the progress of their DIAPs each financial year. This is usually part of their annual report.

Section 13 requires the Minister to table a report about the progress of DIAPs in Parliament each financial year.

Like the NSW DIP, all DIAPs must be reviewed every four years. Section 14 further requires that, in reviewing its DIAPs, each public authority must have regard to guidelines issued by the Secretary.

Questions 4, 5, 6, 7 and 8 relate to Disability Inclusion Action Plans which all government departments and local councils are required to have in place to document the work they are doing to promote the inclusion of people with disability.

Question 4:

The Sax institute review reported on NSW Government agencies and local Government Disability Inclusion Action Plans (DIAPs).

Should the Act cover more than just NSW Government agencies and local government DIAPs? If so, what other groups do you think should be required to have a DIAP?

Question 5:

Are Disability Inclusion Action Plans effective in achieving greater community participation and inclusion for people with disability? If not, how do you think they could be made to better to ensure participation and inclusion of people with disability?

Question 6:

What improvements, if any, could be made to help agencies prepare their Disability Inclusion Action Plans? What are the steps you think they should be required to complete before drafting their plans?

Question 7:

Are the elements included in Disability Inclusion Action Plans still appropriate, or are there parts you think should be removed or added to make them more effective?

Question 8:

Are the reporting requirements for Disability Inclusion Action Plans enough? If not, how do you think they should report and who should they be reporting to?

6

Disability Council NSW

6.1 What the Disability Council does

The Disability Council NSW is the peak body that represents people with disability in NSW. The council gives the Minister for Families, Communities and Disability Services independent advice. It started under the Community Welfare Act 1987 and now operates under the Act in section 15.⁴

Under the Act, the Disability Council is responsible for:⁵

- monitoring the implementation of government policy in relation to people with disability and their families
- advising the Minister on emerging issues relating to people with disability
- promoting the inclusion of people with disability in the community
- promoting community awareness of matters concerning the interests of people with disability and their families
- consulting with people with disability, other peak bodies, and undertaking research about matters relating to people with disability
- advising public authorities and the Minister about content and implementation of DIAPs
- requesting information or advice from any public authority in order to exercise its functions
- reporting to the Minister about the exercise of its functions, including any information requested by the Minister.

Questions 9, 10 and 11 are asking about the Disability Council NSW. What should the Council be focused on and who should be a member of the Council.

Question 9:

Do the functions of the Disability Council remain appropriate? Are there any additional functions that should apply to the Council to make it more effective or accessible?

⁴ Section 15 of the Disability Inclusion Act 2014.

⁵ Sections 17 and 19 of the Disability Inclusion Act 2014.

Question 10:

What impact, if any, has the roll out of the NDIS in NSW had on the work of the Disability Council? Should their role be refocussed, and if so how?

6.2 Who is part of the Disability Council?

The Disability Council must consist of between eight and 12 members. The majority of the council must be made up of people with disability. The chairperson must be a person with disability, and have suitable qualifications and experience.

Members hold their role for a maximum of four years. The chairperson and deputy chairperson hold their executive positions for one year. All can be reappointed. Members must be appointed (and removed) by the Governor.⁶ This is based on the recommendation of the Minister of Families, Communities and Disability Services. The chairperson and deputy chairperson (if they are existing members) are appointed by the Minister.⁷

Question 11:

Do the provisions relating to membership of the Disability Council NSW remain appropriate? If not, what should the membership consist of?

⁶ Section 16(1) and Schedule 1, clause 4(2) of the Disability Inclusion Act 2014.

⁷ Clause 14 of the Disability Inclusion Regulation 2014 (NSW).

7

Funding for supports and services

Parts 4 and 5 of the Act include information about funding supports and services to people with disability. This is only short term, until the full roll out of the NDIS in NSW.

7.1 Ensuring providers meet a set of standards

Part 4 of the Act allows the Minister to make disability service standards and accommodation standards for supported group accommodation and centre-based respite by regulation. Disability service standards are set out in Schedule 1 of the Disability Inclusion Regulation 2014. No accommodation standards have been made.

The Act required disability service providers, funded by the NSW Government, to comply with the disability service standards.

The NDIS practice standards

The NDIS Quality and Safeguards Commission now regulates the quality and safety of NDIS supports and services. This includes making sure all registered providers comply with the NDIS practice standards.

The disability service standards made under the Act are not required. They have been replaced by the NDIS practice standards.

7.2 Supports and services

The Secretary of the Department of Communities and Justice may provide services, supports and/or individualised funding to a person in the 'target group'. This is part of Section 5 of the Act.

The Secretary may also provide funding to 'eligible entities'. This is so they can provide supports or services to people in the 'target group'. This is part of section 29 of the Act.

What is the ‘target group’?

The definition of the ‘target group’ is based on the NDIS eligibility. It refers to a person who has a disability that:

- is caused by intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of impairments, and
- is permanent or likely to be permanent, and
- results in a significant reduction in a person’s ability to function in life, and
- results in the need for support, which might be greater at some times than at others.

What are ‘eligible entities’?

‘Eligible entities’ include:

- government departments or agencies
- local councils
- corporations or a body corporate (which includes non-government organisations)
- sole traders
- partnerships
- other entities set out in the Regulation.

Conditions of funding for some ‘eligible entities’

There are some conditions of funding for ‘eligible entities’. These act as a quality control mechanism, or safeguard against poor service and abuse. Conditions include:

- proving they comply with disability services standards under Part 4 of the Act
- doing probity checks on certain workers, volunteers and board members
- advising how funding will be used.

Under sections 33 and 34 of the Act, the Secretary can pause or stop funding. This can also be known as suspension or termination of funding. Section 34 includes ending funding where the Secretary considers it is no longer required because of the NDIS rollout.⁸ Reviews of these decisions can be done by the NSW Civil and Administrative Tribunal.⁹

⁸ Section 34(1)(b) of the Disability Inclusion Act 2014 (NSW).

⁹ Section 35 of the Disability Inclusion Act 2014 (NSW).

¹⁰ The National Disability Insurance Scheme (Worker Checks) Act 2018 (NSW) commenced on 28 November 2018.

The NDIS replaces the interim safeguards

The NDIS replaced the administration and funding of disability supports and services by the NSW Government. This started on 1 July 2018, when the NDIS became fully operational in NSW.

The NDIS Quality and Safeguards Commission started on 1 July 2018. The commission replaces the interim system of safeguards set up under the Act. For example, if a provider wants to register for the NDIS in NSW, they must do checks for their workers. These include nationally consistent worker screening checks.

These have been legislated in NSW under the new National Disability Insurance Scheme (Worker Checks) Act 2018 (NSW).¹⁰ Under the Worker Checks Act, any registered providers must do NDIS Worker Check clearances for their employees.

Question 12 is asking about the parts of the Act that set out requirements for service delivery. Given individual services are now delivered through the NDIS, do any parts of these sections need to be included in the new Act?

Question 12:

What, if any, role do Parts 4 and 5 of the Disability Inclusion Act 2014 play since the rollout of the NDIS in NSW? Are there any elements that should be retained, and if so, why?

8

Miscellaneous provisions

The Act contains a number of additional provisions, including to:

- delegate responsibilities under the Act – only the Minister and Secretary can do this
- create an offence for wrongful disclosure of information
- protect people from personal liability for any matter or thing done in good faith in executing the Act
- give power to make regulations under the Act.¹¹

Question 13:

Do you have any other comments about the Act that you would like to raise?

¹¹Sections 42-51 of the Disability Inclusion Act 2014 (NSW).