



## Review of the Disability Inclusion Act 2014

The Ethnic Community Services Co-operative (ECSC) thanks the NSW Government for the opportunity to provide input into the review of the NSW Disability Inclusion Act 2014. ECSC is a community-based not-for-profit organisation that provides multilingual/multicultural services and support to meet the needs of culturally and linguistically diverse (CALD) people across NSW. Driven by strong engagement and partnerships with CALD communities, we develop and deliver innovative programs for children, families, people with disability, the aged and carers, such as developing the first disability advocacy service for people with disability from Culturally and Linguistically Diverse backgrounds in NSW. For over 40 years we have, through community development, community engagement, research and partnerships with other like-minded organisations, collaborated with all levels of government and service providers both in NSW and across Australia to support our vision of equal opportunity, participation and inclusion for every Australian.

Our submission below will focus on three key areas. Firstly, the Objects and Principles of the Act, as well the parts of the Act referring to the delivery of Supports and Services, need to ensure that all people with disability in NSW continue to have access to the supports and services they need, including disability advocacy. Secondly, we discuss key concerns in relation to Disability Inclusion Action Planning and the NSW Government's Disability Inclusion Plan, drawing on our own consultation with CALD people with disability with whom we work. Thirdly, we discuss the role and functions of the NSW Disability Council. Throughout, our core concern is that the human rights of people with disability from every background are upheld.

### Objects, Principles, Supports and Services

ECSC applauds the focus of the Disability Inclusion Act on the human rights and inclusion of people with disability. We also welcome the recognition in the Act of rights of groups facing multiple barriers to inclusion including people with disability from Culturally and Linguistically Diverse (CALD) backgrounds. We agree that the rights of people with disability, as expressed in the UN Convention on the Rights of Persons with Disability, remain valid today and affirm the responsibility of the State and the community to facilitate the exercise of those rights.

However, we are concerned by the suggestion that the introduction of the NDIS means that the NSW Government no longer has any role in providing or safeguarding disability services. We note that there are more than 500,000 people with disability under 65 in NSW who are ineligible for NDIS Individual Funded Packages<sup>1</sup> but who may require supports at some level to facilitate their inclusion in the community and the full realisation of their human rights. We believe the Act is improperly restrictive in first defining "disability" in the same terms as the UN Convention<sup>2</sup>, but then describing the provision of services and supports only to people

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<sup>1</sup> Compare "Persons with disability" aged under 65 in NSW in 2018 ([4430.0 - Disability, Ageing and Carers, Australia](#), Bureau of Statistics, Commonwealth of Australia 2020) with the expected number of NDIS participants in NSW at full scheme ([NSW Market Position Statement](#), NDIS 2016, p. 10).

<sup>2</sup> United Nations, Convention on the Rights of Persons with Disabilities, Article 1 compared with Section 7 (definitions) of the Disability Inclusion Act 2014 (NSW).



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within a “target group” based on eligibility for, and during the transition to, the National Disability Insurance Scheme (NDIS)<sup>3</sup>. Furthermore, people with disability in NSW will continue to experience barriers to participating in mainstream services such as housing, healthcare, education and transport, and so there is a continued responsibility for the NSW Government to fund advocacy services for its own residents in relation to these issues. In light of this, we recommend that Object (f) be amended to read as follows: “to provide for responsibilities of the State to provide supports and services for people with disability, including specialist disability advocacy services” and that an additional Principle be added to Section 4 which reads as follows: “People with disability have the right to access specialist disability advocacy”.

ECSC affirms the recognition in several of the Principles in the Act of the important role of families and carers, and that CALD people with disability have the right to respect for their cultural and linguistic diversity and to access information that enables informed choice. However, we are concerned that Section 5 implies that the only barriers experienced by CALD people with disability are caused by their own cultural and linguistic difference, rather than being caused by the interaction of individuals and communities with service systems and social contexts which carry their own biases and present structural barriers to inclusion. We recommend that the Principle 3a (in Part 1, Division 2, Section 5) be amended to read as follows: “recognises that people with disability from culturally and linguistically diverse backgrounds may experience additional barriers to accessing supports and services”.

## Recommendations: Objects, Principles, Supports and Services

1. The Objects should continue to reflect the responsibility of the NSW Government to safeguard the delivery of supports and services to people with disability in NSW.
2. The Objects should be amended to provide for responsibilities of the State to continue to provide supports (as required) for people with disability into the future. For example, Object (f) should be amended to read as follows: “to provide for responsibilities of the State to provide supports and services for people with disability, including specialist disability advocacy services”.
3. The right of all people with disability to disability advocacy should be explicitly protected in the Act. For example, a Principle should be added to Part 1, Division 2, Section 4 that reads as follows: “People with disability have the right to access specialist disability advocacy”.
4. The General Principles should continue to affirm the right to respect for people in relation to their diversity and the important role of carers, families and other significant people in the lives of people with disability.
5. Principle 3a (in Part 1, Division 2, Section 5) should be amended to read as follows: “recognises that people with disability from culturally and linguistically diverse backgrounds may experience additional barriers to accessing supports and services”.
6. Part 5 of the Act should be amended to allow for the ongoing provision of supports and services (where required) to people with disability by the NSW Government beyond the transition to the National Disability Insurance Scheme. The “target group” of people for

<sup>3</sup> See the Disability Inclusion Act 2014 (NSW), Sections 23 and 24, compared with the National Disability Insurance Scheme Act 2013, Section 24



such supports and services should be amended to be consistent with the definition of “disability” used elsewhere in the Act.

## Disability Inclusion Planning

ECSC believes that Disability Inclusion Action Planning is essential for both the whole of NSW Government to promote the inclusion of people with disability in the economy and community, and for government agencies to address barriers to service access experienced by people with disability. The NSW Government should be a leader in promoting the inclusion of people with disability. The Disability Inclusion Plan should be renewed, with new priorities identified in consultation with people with disability and community-based organisations. As part of our preparation for this submission, ECSC consulted with people with disability with whom we work, about what things are getting better for people with disability; what things haven't changed or are getting worse; and what the NSW Government should have in its Disability Inclusion Plan. Some of the common themes were that people are finding it easier to use public transport, find job opportunities and make choices about their services (the latter identified as being due to the NDIS). However, many people commented that they often encounter negative attitudes towards them from other people in the community; that they would like to be able to participate in a greater range of community activities; and that there should be services available for people with disability who are not eligible for the NDIS. In light of this, we recommend that the NSW Government continues its focus on “developing positive community attitudes and behaviours” and on “creating liveable communities” as these have some of the most significant impacts on the day to day lives of people with disability.

We also urge the NSW Government to heed the findings from the SAX Review of the NSW Disability Inclusion Plan 2018<sup>4</sup> in order to address the great disparity in the quality of Disability Inclusion Action Plans (DIAPs) and to ensure meaningful accountability. We believe that all government agencies (including the Institute of Sport, TAFE NSW and the Information and Privacy Commission) as well as organisations receiving substantial government funding for the delivery of social services should be required to develop a Disability Inclusion Action Plan, proportionate to their size and scope. Disability Inclusion Action Planning must be properly integrated into each agency's core planning, operations and reporting, rather than being siloed in a department such as Human Resources. The NSW Government should also facilitate access to appropriate expertise and opportunities for collaboration to support agencies to develop and implement their DIAPs. Finally, the reporting requirements for DIAPs need to be reviewed to ensure meaningful reporting and review of outcomes and impact. Agencies should be required to elucidate their Theory of Change in relation to the strategies outlined in their DIAPs, and to report against Key Performance Indicators to show their progress in implementing their strategies. The NSW Government should establish an office (or otherwise increase the resourcing of the NSW Disability Council, see below) dedicated to disability inclusion which is resourced appropriately to oversee the development, implementation and review of DIAPs.

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<sup>4</sup> Dawson G, Tait H, Redman A, Drinkwater A, Dickinson S, Smith-Merry J. *Review of the NSW Disability Inclusion Plan 2018. A report by the Sax Institute and the Centre for Disability Policy and Research for NSW Family and Community Services*, Sydney, 2019



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## Recommendations: Disability Inclusion Plan and Disability Inclusion Action Plans

7. The NSW Disability Inclusion Plan should be renewed, with priorities identified in consultation with people with disability and community-based organisations.
8. The NSW Disability Inclusion Plan should continue its focus on “developing positive community attitudes and behaviours” and on “creating liveable communities”.
9. All NSW Government agencies should be required to develop a Disability Inclusion Action Plan.
10. All NSW Government agencies must show that their Disability Inclusion Action Plans:
  - a) Have been integrated into their core planning, operations and reporting,
  - b) Set clear and measurable Key Performance Indicators, and
  - c) Are based on a logical Theory of Change.
11. The NSW Government should facilitate access to expertise and opportunities for collaboration to support the development of Disability Inclusion Action Plans.
12. The NSW Government should ensure that there is a body appropriately resourced to oversee the development, implementation and review of Disability Inclusion Action Plans.

## Disability Council NSW

The Disability Council NSW has an important role in policy monitoring and advice to government. The functions of the Disability Council are critical in promoting the human rights of people with disability and in holding government to account. However, the role of the Council needs to be further developed and appropriately resourced. For example, while the Act specifies that the Council is responsible for advising the Minister about the content and implementation of disability inclusion action plans (DIAPs), the SAX Review of the NSW Disability Inclusion Plan 2018<sup>5</sup> found that in practice, the Council was only able to review a sample of plans and provide general feedback. If monitoring of disability inclusion action planning is to remain within the remit of the Council, it needs to be appropriately resourced to enable meaningful oversight. Similarly, if the Council is to be understood as a peak body, it needs to be appropriately resourced and structured to enable broad and deep community consultation and to ensure its membership reflects the diversity of people with disability in NSW. It is telling that at the time of writing, the Council’s Facebook page (which is publicly promoted on the ‘About the Disability Council NSW’ page on the Dept. of Communities and Justice website<sup>6</sup>) was last updated in July 2017 and that the contact number for the Council is “monitored by the NSW Companion Card Team”<sup>7</sup>. We question the extent to which the Council can be rightly perceived as a peak body with such limited resources.

## Recommendations: Disability Council NSW

13. The functions of the Disability Council NSW should be further developed and provisions made for appropriate resourcing.
14. The Act should specify that the membership of the Council should be reflective of the diversity of the community.

<sup>5</sup> *ibid*, p. 29

<sup>6</sup> <https://www.facs.nsw.gov.au/inclusion/advisory-councils/disability/overview>

<sup>7</sup> <https://www.facs.nsw.gov.au/inclusion/advisory-councils/disability/contact>



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## Conclusion

ECSC strongly supports the human rights framework underpinning the Disability Inclusion Act, including the focus on the responsibility of the State and the community to ensure that people with disability have the opportunity to exercise their rights. As our submission has shown, we believe that despite the roll out of the NDIS, the NSW Government still has a core responsibility to ensure that the rights of people with disability within their communities are upheld. This includes the NSW Government being leaders in addressing barriers to inclusion; providing supports and services for people with disability whose needs are not met by the NDIS; committing to funding specialist disability advocacy; and providing for meaningful consultation with people with disability. In order to address the multiple barriers to inclusion experienced by people with disability, including those from CALD backgrounds, a comprehensive and integrated approach is required. The Disability Inclusion Act needs to be more than just principles; it must require meaningful accountability and provide for appropriate resourcing to ensure its objectives are met.