



PWdWA RESPONSE TO THE REVIEW REFORMING WESTERN AUSTRALIA DISABILITY LEGISLATION

People with Disabilities (WA) Inc would like to thank the Department of Communities for the opportunity to provide comments on the current consultation review towards reforming the Disability Service Act 1993.

Chair: Yhana Lucas

Acting Chief Executive Officer: Andrea Surman

Author: Dr. Siyat Abdi

Reviewer: Nick Wilson-Australian Federation of Disability Organisations

People with Disabilities (WA) Inc.

City West Lotteries House, 23/2 Delhi Street West Perth WA 6005

Email: admin@pwdwa.org

Tel: (08) 9420 7279

Website: <http://www.pwdwa.org>

People with Disabilities WA (PWdWA)

Since 1981 PWdWA has been the lead member-based disability advocacy organisation representing the rights, needs, and equity of all Western Australians with a physical, intellectual, neurological, psychosocial, or sensory disability. PWdWA do this via individual and systemic advocacy. They provide access to information, and independent individual and systemic advocacy with a focus on those who are most vulnerable.

PWdWA is run by and for people with disabilities and, as such, strives to be the voice for all people with disabilities in Western Australia.

Introduction

Systemic advocacy is an important part of PWdWA's work. PWdWA is committed to ensuring the voice of our members and people with disabilities in WA are heard and represented. PWdWA appreciate that the Department of Communities is reviewing the Disability Service Act 1993. PWdWA acknowledge that this Act is now outdated and overtaken by events in time and space such as the introduction of the National Disability Insurance Scheme (NDIS).

The Disability Services Act 1993 has not changed much since it was implemented 30 years ago. However, the way the State Government supports people with disability has significantly changed with the creation of the National Disability Insurance Scheme (NDIS). Additionally, the needs of peoples with disability are being recognised through the United Nations Convention on the Rights of Persons with Disability (UNCRPD), the Australian Disability Strategy, the State Disability Strategy, and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The review of the Act provides the opportunity for people with disabilities in Western Australia to modernise the progressive and conceptual understandings in the new legislative framework. This should make sure that there is a strong drive towards people with disability living their lives as equal citizens, engaging in education, employment, social, economic, political, spiritual and cultural pursuits alongside their peers.

PWdWA and other individuals and organisations supporting this submission welcome the opportunity to provide input into the Department of Communities reform agenda and consultation on a New Act to Replace the Disability Services Act 1993.

Survey Results

In preparing this submission, PWdWA undertook a brief review of documented information on the consultation topic and conducted a survey of members with disabilities on their views and ideas for the review.

Characteristics of the respondents

Identity of the respondents:

The total number of people who participated in the survey was 57 respondents. Their responses are significant because they are directly affected by disability legislation and can reliably contribute useful insights on how it can be improved. The respondents were distributed as per the table below:

Category of respondents	Number	Percentage
Persons living with a disability	37	61.4
Carers/Family members	14	24.6
Disability sector workers	12	14.0
Total	63	100

Notes:

Most respondents were people living with disabilities and their carers or family members.

The primary disability

The primary disability of the respondents recorded in the survey is indicated in the table below:

Primary disability	Number	Percentage
Acquired Brain Injury	1	2.3
Blind or Vision Impaired	6	14.0
Deaf or hard of hearing	3	7.0
Developmental and/or Learning Disability	1	2.3
Intellectual Disability	3	7.0
Neurological Disability	6	14.0
Autism	5	11.7
Psychosocial Disability	7	16.2
Physical Disability	11	25.5
Total	43	100

Notes:

Physical disability had the highest number of respondents, followed by psychosocial disability, neurological disability and blind or vision impaired being the leading primary disabilities among the respondents. However, the survey had diverse primary disabilities represented.

The age of the person with disability

The age of persons with disability was as indicated on the table below:

Age Bracket	No. of respondents	Proportion in%
-------------	--------------------	----------------

0-14, no responses	0	0
15-25	5	11.62
26-35	8	18.60
36-45	6	13.95
46-55	12	27.90
56-65	8	18.60
Over 65	4	9.30
Total	43	100.0

Notes:

The majority of respondents belong to the 46-55 age bracket.

Gender-cultural diversity of our respondents

Among 13 respondents who responded to the question on diversity, the responses are indicated in the table below:

Diversity group	Number	Percentage
Aboriginal	2	15.3
Torres Strait Islander	0	0
Aboriginal and Torres Strait Islander	0	0
Culturally and Linguistically Diverse	4	30.8
LGBTIQA+	7	53.9
Total	13	100

Notes:

Among those who responded to the question on gender diversity, only 20.6 percent or 13 out of 63 responded and of those more than half of the 13 respondents identified as LGBTIQ+.

Adequacy of the current definition of disability

The respondents were equally divided in their opinion on the adequacy of the current definition of disability. Of the 34 respondents who answered this question, 17 claimed the current definition of disability is adequate while 17 claimed it is not adequate.

Suggestions to improve the definition included:

- Include disabilities that involve fluctuations in a person's abilities.
- Section C limits a person by stating that someone is incapable because of a disability and needs to be reviewed.
- Consider the influence of environments and relationships that can lessen or increase the effects of disability in some people.
- It needs to be included that not everyone with a disability has a diagnosis e.g. Lyme disease still needs to be acknowledged within Australia.
- Rare syndromes do not have correct boxes to tick and therefore are ignored and declined access to much needed services.
- Consider the inclusion of those people of over 65 years of age with mild disabilities for support.
- Mental health or Psycho-social Disability should be given more attention and inclusion.
- Separate vision impairment and blind categories of disability since they may have different needs.
- Acknowledge the deaf-blind category of disability.
- Remove 'substantially reduced' and replace it with 'altered'.
- Use the UNCRPD definition: long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may

hinder their full and effective participation in society on an equal basis with others.

- The definition needs to be less focused exclusively on restricting access to appropriate services.
- Add to i) reduced capacity for executive functioning.
- Section (c) (i) needs to be expanded. It isn't just about reduced capacity for communication, social interaction, learning or mobility. It should be more human rights focused like the intent of the NDIS and deals with all domains of life. This definition can be limiting as arguably there isn't a need for continuing support services in some cases, especially when it is episodic. Respondents are seeking more careful wording be considered.
- Those with permanent disability will need the most help. Recommend a scale of the level of disability to get a better idea of what type of help will be required.

Concerns about principles of the Act

- The Act does not specifically cover Persons with Disabilities (PWDs) who have Guide or Assistance Dogs. This should be included in the Act and there needs to be penalties associated with discrimination against PWD who have Guide or Assistance Dogs as none of the current legislation includes this.
- None of the principles are enforceable.
- Implementation bottlenecks as indicated by this response: "Even though there is a Disability Act, society has a long way in making society follow and implement the changes needed in making equality for disabilities. There is still an ongoing lack of opportunities and accountability in implementing disability hiring systems, inaccessibility into buildings, and dealing with uneducated and often biased doctors who don't understand the definition of disability. Often there are times of gaslighting type behavior, so there needs a lot more accountability in how the Act is followed by MPs and people mandating on behalf of WA people to have to follow. There are often gaps for people with disabilities every day and that needs to change."

- “The Act doesn’t recognize intersectional discrimination for people with disabilities who have multiple disadvantages, particularly those who are Aboriginal and have a disability. The Act doesn’t offer legislative protection by making discrimination, abuse, and neglect on the basis of disability unlawful. The Act does not protect the rights of people with disabilities to choose and receive reasonable adjustments for disability in education, training, employment, justice, being in the public sector employment, housing, leisure etc. The Act does not legislate representation of people with disabilities working or volunteering in organizations and committees/working groups that develops disability policy and legislation”.
- “I would include a section that includes a point about people with disability having the right to access help/support to pursue any grievance concerning support, discrimination, and employment services”.

Need to change the Principles in the Act

Fifteen (53.57%) of the twenty-eight respondents who answered this question thought that there is a need to change the current principles.

Suggestions about how to improve the current Principles.

- Include people who have not received a diagnosis. One respondent noted: “There are people out there who have not received a diagnosis which leads to a lack of funding as you need a diagnosis to access supports.”
- Put into practice the principles in the way disability services are provided and managed.
- Exclude independence because interdependence is what we should already have.
- Include extra funding that would give people with disabilities the ability to fully access different services.
- More needs to be included on bullying, discrimination and intersectional issues such as gender, sexuality, mental health, etc.

Concerns about safeguarding people with disabilities.

Concerns from survey respondents included:

- There are still some unscrupulous providers and workers slipping through the cracks.
- Difficulty in accessing services in a process that is complex, lengthy, and unintuitive.
- The current complaints management systems do not act in a timely, systematic manner.
- Timeliness in monitoring effectiveness of legislation and addressing gaps. One respondent described it this way: “It’s taken years to look at the Discrimination Act between 2004 and now. It needs ongoing work and priority that looks to the government to have accountability and ongoing actions that demonstrate to society that equality is important. This must be exemplified from the top to the bottom, so no gaps are faced by the community”.
- The stigma and difficulty associated with having to prove that one has a disability and neglect of those in need if they do not have a typical or well-known disability.
- Too much sway in favour of large service providers.
- Persons with disabilities are often vulnerable to abuse and exploitation, especially from family members, partners, employers, service providers and others.
- Restrictive practices in education and healthcare sectors.
- Ineffective oversight. One respondent described it this way: “Despite checks and clearances things happen still. Some people still do harm, they just haven’t been caught”.
- Abusive patronage by self-appointed plan managers who care for a disabled adult who has limited capacity to understand (and object to) the control this person has over their lives.
- A sense of exclusion and oppression. One respondent described it this way: “There needs to be levels of Restrictive practices (RP). Too often a RP is used as a way of removing choice of providers and workers. RP needs to match up across ALL systems a person interacts with. Schools are doing one thing, hospitals another and then disability services are

doing something else. ONE set of guidelines for one person. We aren't different people when we go into different services. Person-center this stuff. ... Aboriginal community need to be looking out for our Aboriginal disabled people. White systems don't care about able bodied Aboriginal people, let alone disabled ones".

- "We should simplify things for people with disability, and whichever entity or jurisdiction has greater powers to enforce the rights of people with disability, prosecute matters and hold people and organisations to account should be preferred".

Safeguarding mechanisms that would protect people with disability from violence, abuse, neglect and exploitation

These include:

- Out of court legal avenues for addressing allegations of abuse, neglect, and exploitation.
- Clearly defined standards for service providers, sole traders, employees, and others to ensure there are adequate guidelines for people new to the industry who have limited experience.
- Better complaints management mechanisms and procedures.
- Effective actions taken to prosecute, remove and limit providers who have been involved in abuse and exploitation.
- Genuinely following up on people, and providing them with communication channels, which aren't easily monitored, intercepted, or disabled.
- Disability awareness training in schools.
- Make public schools a lot more inclusive and accessible to young people with disabilities.
- Disability awareness training in the criminal justice system to make officers more fair-minded when dealing with persons with disability.
- Eligibility determination process should be facilitative rather than inhibitive.
- Register a body for disability workers and have regular independent auditing of disability related processes and services.

- Enforce strict laws and protections against violence, abuse, neglect, exploitation, and discrimination.
- Provide more information about disability rights and opportunities to facilitate effective decision making by persons living with disabilities.
- More screening of medical, hospital and care staff, for instance, install adequate security /surveillance systems in government funded or privately funded care settings.
- Requirement for substitute and supported decision-making processes needs to be documented.
- Transcend minimum standards and pursue quality. One respondent had this to say: "I understand that there are already mechanisms in place. I think, like the NDIS, there needs to be the inclusion of "Quality" and not just "Safeguards". Safeguards deal with the absolute minimum requirements of checks and balances. We should strive to improve quality as much as possible and be proactive and striving for better at every turn. If we accept purely just "safeguards" then we are saying, we only expect the absolute minimum to be done".

Awareness about complaints mechanisms

Respondents were asked: "Do you think people with disability are aware of the complaints mechanism in WA?".

Twenty-four respondents replied as follows:

Twenty-one respondents (87.5%) said No.

Three respondents (12.5%) said Yes.

Effectiveness of the complaint's mechanism model

Respondents were asked: "Do you think the complaint mechanism model is working effectively in WA?".

All twenty-four respondents (42% of the 57 total respondents) said the model is not working effectively.

How the complaint mechanisms can be made easier to use for persons with disability receiving State services

- Increase accessibility and awareness.
- Enhance transparency and accountability of the mechanisms.
- An accessible App with options of complaints in specific areas would be easier and attractive to people with Disability.
- Consider that not all people with a disability can access a computer and therefore a phone call can help the process.
- Audit their effectiveness regularly and improve them continually.
- Make them fit for purpose.
- Provide legal support to persons with disabilities to follow up on complaints they lodge.
- Make the complaint mechanisms available on one government website dedicated to the process available by an easy google search.
- The processes and procedures need to be simplified and streamlined to be made more efficient and transparent and more needs to be done to include PWD and their lived experience.
- There should be public education campaigns e.g. posters/signs in wards/care settings. There should be accessible inclusive induction packs including access to complaints mechanisms and help for accessing them for families/carers when people with disabilities go into care for the first time at every different/new care setting.
- Adapt the mechanisms to diverse forms of disability. One respondent reported the following: “No complaints system is designed for people with ID or cognitive disability.”

The offence of ill-treatment of people with disability

Respondents were asked whether the offence of ill-treatment of people with disability is important to them.

95.83% (23 respondents) said it is important. Only one respondent (4.17%) said it is not.

Reasons given by respondents include:

- To provide harsher penalties for offenders.
- To remove offenders from disability care and provide a safer care environment.
- It enhances accountability and responsibility.
- It demonstrates that lodging complaints makes a difference, that complaints mechanisms are working.
- Make it easier to convict offenders.
- It deters ill-treatment. One respondent described it this way “We've seen changes to Work Health and Safety legislation to include industrial manslaughter in the criminal code. Similarly, we should hold carers and service providers to account if their conduct is particularly egregious. It serves as both a deterrent to offenders, it places value in the lives of people with disabilities, and it signals to service providers that they need to take ALL reasonable steps to safeguard and strive for quality - or else potentially be on the hook.”

Disability Access and Inclusion Plans (DIAPs)

Respondents were asked whether they had issues of concern related to the Disability Access and Inclusion Plans (DIAPs)

68.18% (15 respondents) said they had concerns. Seven respondents (31.82%) said they had no concerns related to DIAPs.

- Disability access and inclusion plans should apply in both public and the private sector to allow for more inclusive workplaces. One respondent reported: “I have a son in a disability apprenticeship and where he works, they do not cater for his disability. The learning style is also different, and he is often separated from peers thus experiencing bullying regularly at workplace due to his disability. By making penalties apply also in the private sector, businesses will take disability discrimination more seriously”.

What should be included in WA disability legislation to promote the inclusion and social participation of people with disability.

- Include Guide and Assistance Dogs in the legislation as it is not currently specifically mentioned in WA legislation other than the Dog Act. Assistance dogs under the DDA are the most discriminated against. Those not from known organisations or “normal” breeds are further discriminated against even by government organisations.

- Increase the number of people who have disabilities in positions of power and audit capability within state government disability-related services.
- Widen eligibility to accessible parking.
- Provide penalties for employers who fail to provide reasonable adjustments for disability, and time limits under which they must be provided.
- Involve persons with disabilities in legal reform.
- The DIAPs should be made to cover private settings.
- Airlines need to come to design their planes to allow wheelchair customers better access and help. The current legislation doesn't seem to consider the airlines.

The effectiveness of the Ministerial Advisory Council on Disability

Respondents were asked: “Do you consider the Ministerial Advisory Council on Disability an effective tool for letting the Minister for Disability Services hear the voices of people with disability?”

18 respondents answered this question, and their responses were as follows:

66.67% (12 respondents) said the Ministerial Advisory Council is not effective.

33.33% (6 respondents) said it is effective.

How the effectiveness of the Ministerial Advisory Council on Disability can be enhanced.

- Communicate its functions and achievements widely. One respondent asserted: “I didn’t even know we had one! It needs to be advertised better.”
- Having regular consultations with stakeholders in various locations. A respondent had this to say: “I have not previously seen advertising or consultation opportunities for giving advice/feedback to the Ministerial Advisory Council on Disabilities.”
- The membership of the council should be more representative and proactive in their work. As one respondent wrote: “...how are these people picked, how are they networking and connecting with the community? The Minister needs to look beyond this singular committee. Where are the Aboriginal, the ethnocultural linguistically diverse, the poor, the ID, the uneducated, the

homeless? How are you hearing from them? I see a lot of the same names on these boards, but I don't see them where my daughter goes".

How WA disability legislation can ensure the views of the community, particularly those with lived experience, are shared with WA Government

- Regular consultations in diverse locations.
- Having multiple community feedback channels and working actively towards reducing confusion and complexity.
- Give those with less experience knowledge of what is happening in the government regarding the disability legislation in W.A.
- Allow the persons that have lived experiences to advocate for persons living with disability. Empower such people to influence disability-related problem-solving and decision making.
- Conduct surveys and collect relevant data regularly for use in evidence-based decision making by Government.
- Incorporate survey results or viewpoints from disability service organizations like PWdWA.
- Hold extensive consultation sessions by advertising through providers and government services for people with lived experience of disability. Much the same was done with the issue of The Voice at a federal level - ground up i.e., grass roots up.
- Properly fund DPOs on an ongoing basis and continue to build their capacity and ensure their longevity.

The roles the WA Government and Department of Communities should continue to have in the disability sector.

- Monitoring of the sector to ensure accountability.
- Enforcement of fines.
- Funding disability care, as a starting point.

- Provide people in W.A. an equal opportunity to access funding as is done with the NDIS.
- Coordinate and regulate services and services providers.
- A regulatory role that includes prosecution of offences including discrimination and abuse of people with disabilities.
- A funding role for public education about the WA Disability legislation including education of health professionals, service provider staff and carers about the legislation.

What should be changed in or added to the Disability Service Act's current objectives?

- Include Guide and Assistance Dogs.
- Include people without a diagnosis and work on getting Lyme disease acknowledged as a disability.
- Acknowledge that not all disabilities have a name but have diverse lived experience.
- Accessible formats, including a version of the Act being in easy read format.
- Focus on just and equitable access to meaningful, appropriate employment for people with disabilities.
- Focus on better access to services for people with disabilities in regional, rural and remote WA.

Reasons for the proposed changes to the Disability Service Act's current objectives

- To implement the legislation more effectively as one respondent observed: "We suffer from frequent access denials and there is nothing we can do about it as none of the existing legislation includes criminal or civil penalties for the abuser".

- Enhance legal protection of persons living with disability.
- Make the objectives more inclusive.
- Enhance employability of persons living with disability. One respondent asserted: “I have chosen these issues because I continue to struggle, as someone with lived experience of psycho-social disability, to find meaningful employment appropriate to my level of education (post-graduate) and interests and experience. A lot of employment opportunities, especially in the regions, are for entry level positions...service providers assume people with disability have no prior work experience or nothing of value to offer an employer seeking candidates at higher levels of paygrade. Also, past failure in job positions due to health concerns are taken to mean that someone can no longer participate in the workforce meaningfully”.

Ongoing service provision received from the State Government

Respondents identified the following ongoing services received from the State Government:

- NDIS, waitlisted for community housing, dental services.
- Limited support from my service provider.
- Mental health services.
- Fuel card, Companion card, PATS, Community mental health. In-patient stays at an acute psychiatric unit (APU). Supervision by my GP. Healthcare plan for my mental health and general health. Department of Communities housing. Dietitian. Women's health and normal physiotherapy. Gastroenterology. Breast screen WA. Rural Link services.
- State hospital services.

Note:

5 respondents said they received no ongoing services.

1 respondent chose not to disclose the ongoing services received.

Capability gaps in the ongoing provision of disability services in Western Australia

- Low funding and staffing levels.
- Disability awareness training in education. One respondent wrote: “Education needs disability awareness training for public schools and has to be done by businesses and everywhere less problems would happen if people understood disabilities come in all shapes and sizes”.
- Legal services related to assisting persons living with disabilities.
- Support towards gaining and maintaining meaningful employment for people with disability in the regions.
- Regulation of restrictive practices especially of people with disability eligible for the NDIS who are in the aged care system.
- Provision of trained staff to be frontline workers for mental health emergencies, other than the police.
- There is a lack of adequate numbers of some health specialists in some neighborhoods. One respondent reported: “...it has been two years now for my turn to come to consult a neuropsychologist despite all my other specialists wanting me to see one”.
- Failure to consider cultural diversity.

CONCLUSION

PWdWA agrees with the foregoing discourse and the voice of the respondents in the survey. The disability reform legislation must seek to improve and promote the needs and rights of people with disabilities, demonstrate full commitments to the UN CRPD, continue to address the State Disability Strategy 2020-2030, align with contemporary disability services, and supports and adapt dynamic recommendations and reforms in the interest of people with disabilities.

PWdWA notes that the current definition of 'disability' in the Disability Service Act 1993 adequately covers all diagnostic understandings of disability. However, the definition is more inclined towards the medical model and does not depict exclusively the social aspect or the range of disabilities, mild or severe, that people can experience.

PWdWA considers the need for the right definition of disability which does not hinder the purpose of the reform legislation and the State Government's vision of residents living well yet ensures people with disability are happy and healthy with the support they need.

PWdWA recommends that the UN CRPD's definition posits as the better choice of terminology. The CRPD's definition supports the State Strategy 2020-2030 and the four pillars to guide change, which also brings a more contemporary, less restrictive view that allows for more breadth of understanding of disability, as well as structuring services and supports from a social model thus acknowledging society's role and responsibility.

The reform legislation must include supporting a diverse population that services people with disability, family members, carers, advocates, service providers, peak bodies, and disability lead organisations. It must also include the basis for establishing supports and services for people living with disability who are ineligible to access the National Disability Insurance Scheme (NDIS).