

# Disability Inclusion Act Review

Victorian Aboriginal Child Care Agency

November 2022



**VACCA**

Connected by culture

VICTORIAN ABORIGINAL  
CHILD CARE AGENCY

**VACCA**

PO Box 494, Northcote Plaza  
Northcote VIC 3070

e. [vacca@vacca.org](mailto:vacca@vacca.org)

## **About VACCA**

The Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child welfare organisation and the largest provider of Aboriginal child welfare, family violence, and youth justice services in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive.

We provide services to over 3,000 children and young people, and over 500 families, with strong connections not only to clients, but across community.

VACCA is guided by Cultural Therapeutic Ways, our whole of agency approach to our practice of healing for Aboriginal children, young people, families, Community members and Carers who use our services, and to ensure that VACCA is a safe and supportive workplace for staff. It is the intersection of cultural practice with trauma and self-determination theories. The aim of Cultural Therapeutic Ways is to integrate Aboriginal culture and healing practices with trauma theories to guide an approach that is healing, protective and connective.

## **Note on Language**

We use the term 'Aboriginal' to describe the many Aboriginal and Torres Strait Islander Peoples, Clans and Traditional Owner Groups whose traditional lands comprise what is now called Australia.

We acknowledge that there is not consensus about whether to use person first or identity first language when it comes to those living with disability. VACCA has decided to adopt an approach of including both, so that we respect both disabled mob calls for identity first language, and acknowledging the person first language that has been adopted at a government level, as indicated in the Inclusive Victoria State Disability Plan. We believe interchanging language, is an inclusive approach.

## Key Points and Recommendations

It is VACCA's contention that if there was a whole of government commitment to the following four principles then the lives of disabled mob would be significantly improved; self-determination, equity in access, freedom from discrimination and data sovereignty. We need a responsive and culturally safe sector that recognises that disability and the experience of disabled mob must be heard, acknowledged and respected. For disabled children and young people, and their parents, or carers, if they are living in out-of-home-care, it is clear that a multi-disciplinary response is essential to being able to meet their needs. The Disability Inclusion Bill has the opportunity to provide leadership and embed stronger accountability across government and service sector.

### Recommendations:

VACCA makes the following recommendations for consideration:

1. for the Commissioner to adopt a Statement of Recognition and binding principles of self-determination
2. for an Aboriginal Commissioner for Disability to be appointed
3. that voice of children and young people be better reflected in the Bill and the proposed measures to improve disability inclusion, with the understanding that the experiences of children and young people living with disability are different to that of adults, and the supports they require must be developmentally appropriate.
4. for the Commission to have a complaints process established
5. for defined entities to be resourced effectively to be able to adhere to their positive duties as outlined in the Bill, and that culturally safe and trauma informed training are produced using participatory design methods with community living with disability.
6. that community service organisations are included as defined entities
7. that the Disability Commission develops a data dashboard that is accessible and is premised on the commitment to the principles of Indigenous data sovereignty.
8. that dedicated positions on the Victorian Disability Advisory Council are allocated to Aboriginal, LGBTIQ+ and CALD community members.

## Introduction

VACCA welcomes the opportunity to provide feedback on the Disability Inclusion Bill.

VACCA's feedback is based on our unique position as a Victorian ACCO providing a suite of services across the state supporting children, young people, families and community



members. We have protected and promoted the rights of Aboriginal children and families for over 40 years. VACCA believes that all children have a right to feel and be safe and live in an environment that is free from abuse, neglect and violence. We are committed to promoting and upholding the rights of Aboriginal children to maintain and celebrate their identity and culture, recognising that connection to culture is critical for children's emotional, physical and spiritual wellbeing.

Whilst to date VACCA receives very limited funding specifically to support the needs of Aboriginal children, young people and adults living with a disability, we have committed to firstly better understanding the prevalence of disability within the community we support, alongside building our capacity to support and advocate for their needs. In 2021 VACCA was funded for five dedicated Disability Specialist Workers based at VACCA's eastern, western and southern regions, as well as Ovens Murray. The Disability Specialist roles provides support to engage families with NDIS and has some brokerage for assessments; funds to support travel; respite and attendant care support; emergency relief; general resources like toys and books; and cultural connection.

VACCA's Aboriginal Children's Healing Team, is a multidisciplinary and centred on holistic culturally grounded and trauma informed responses to supporting children and families. VACCA resources our Aboriginal Children's Healing Team to provide specialised support to Aboriginal children and young people with disability and their families. Although it is not a disability specific service, it is a promising practice model that incorporates biopsychosocial, clinically oriented assessments and therapeutic interventions. The Healing Team provides guidance and assessment to help with NDIS eligibility, speech and occupational therapy, alongside access to a psychiatrist on their team who can develop NDIS neuropsychological assessments for Autism Spectrum Disorder, Acquired Brain Injuries, mental health and neurobehavioural concerns. It is the interface between our Disability Specialist Workers and VACCA's Healing Team that we are making a real difference for the Aboriginal children, young people and carers that we support, and we wish to continue to strengthen it. The Aboriginal Children's Healing Team is funded to support children in out-of-home-care, but does not currently have the capacity to meet all children VACCA supports (currently we

support 640 Aboriginal children in out-of-home-care and 100 young people who have left care). The team isn't funded beyond out-of-home-care so there's no capacity to provide services to children and adults in other programs such as family services, family violence, justice and early years.

In 2021 VACCA undertook a cross-sectional disability data collection project across 35 of our programs to understand the prevalence of diagnosed disability within the community we serve. What we found is that our numbers are significantly higher than national data reports. For example, Australian Bureau of Statistics (ABS) NATSIHS data from 2018/19 shows that 22% of Aboriginal children surveyed were living with a disability (compared with 8% non-Aboriginal children).<sup>1</sup> The baseline data that we collated indicated that 35 percent of Aboriginal children aged 17 and under across all 35 programs were living with a diagnosed disability. The prevalence of diagnosed disability was even higher with adults in our programs. 46 percent of all clients aged 18 and over in the programs surveyed were living with a disability. This data echoes that of the NATSIHS data<sup>2</sup>.

The prevalence of a diagnosed disability for Aboriginal children aged 7 and under across all child cohort programs (not just out-of-home-care) was particularly high, with children under 7 with a disability making up 42% of all children with a diagnosed disability in the programs surveyed, compared with 35% of children aged 17 and under overall. Our data shows that over 51 percent of children with a diagnosed disability were living with more than one disability, and 42 percent of adults were living with more than one disability. If we had expanded the definition of disability to better reflect the social model of disability then we believe the numbers would have been much higher, particularly with our understanding of the impact of trauma on the SEWB of Aboriginal children, young people and adults. This data highlights the particular complexity and high level of disability support needs of the Aboriginal children we work with at VACCA and gives a strong indication as to why this

---

<sup>1</sup> ABS NATSIHS data 2019, from AIHW 2020. Indigenous hearing health snapshot, July 23 2020. <https://www.aihw.gov.au/reports/australias-health/indigenous-hearing-health>

<sup>2</sup> The prevalence of disability in adults at VACCA lines up with NATSIHS data from 2019, which found that 48% of Aboriginal adults were living with a disability (compared with 20% non-Aboriginal adults) ABS NATSIHS data 2019, from AIHW 2020. Indigenous hearing health snapshot, July 23 2020. <https://www.aihw.gov.au/reports/australias-health/indigenous-hearing-health>

Disability Inclusion Bill provides such significant opportunity to better support the rights and needs of Aboriginal children, young people and adults living with disability.

We know that many of the children and families we work with are also living with complex developmental concerns, trauma histories, and mental health needs that require specialised supports, including NDIS, disability support services and primary and specialist health services. We also understand the ongoing impact of forced removal policies and the intergenerational trauma that so many families still carry.

VACCA has been actively engaged with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and has met with Commissioner Mason OAM on multiple occasions and provided written submissions alongside supporting a community member make their own submission. One of our recommendations was for a Disability Commissioner to be appointed, and the Commission should be empowered to change and reform current practices, and include the provision of a complaints mechanism so community voices can be heard. So, we welcome this opportunity to provide further feedback into the proposed Bill and the role of the proposed Commissioner for Disability Inclusion.

## **Feedback**

We acknowledge the considerable work undertaken to date to review the *Disability Act, 2006* following the roll out of the NDIS to ensure that it is fit for purpose and that this work sits within the broader reform as identified in the *Inclusive Victoria: State disability plan 2022-2026*. We provide the following feedback on the questions outlined in the Disability Inclusion Bill Exposure Draft Overview Paper.

## **Purposes, Defined entities and Definitions**

VACCA supports the affirmative action that this Bill proposes, and that it includes positive duties and support to help address the ongoing discrimination experienced by people living with disability and make for a more inclusive society.

In relation to the purpose of the legislation, VACCA is concerned that the remit does not extend to Community Service Organisations, as that is where so many disabled mob do not feel safe to access support services. It is our belief that this exclusion will in effect determine the limited success of this legislative reform. VACCA encourages a reconsideration to which entities should be accountable, to fulfill the intent of the legislation.

In relation to the proposed definitions, VACCA contends that the specific right of Aboriginal self-determination should be included in the definition for disability inclusion.

### **Objectives**

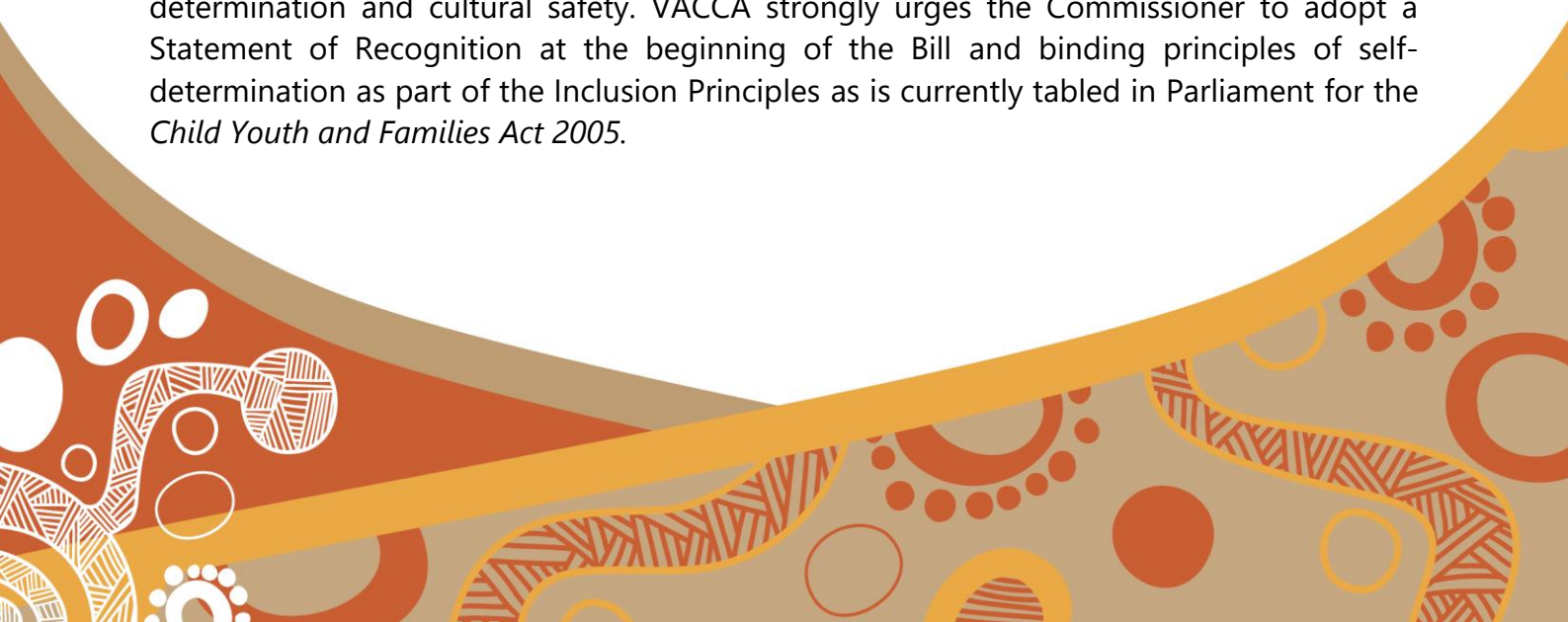
VACCA is concerned that the outlines objectives only seek to *recognise* that barriers to disability inclusion may be further compounded by intersectionality, but not seek to address these. Given this proposed Bill is to advance disability inclusion by creating positive duties and processes, there should be action-based objectives to make measurable improvements in the lives of people living with disability, including those who also are Aboriginal and identify as part of LGBTIQ+ community.

Australia is a signatory to the UN Convention of the Rights of the Child and Rights of Persons with a Disability, at a federal level we have the *Disability Discrimination Act (Cth)* and in Victoria we have the *Charter of Human Rights and Responsibilities*, where there are protections against torture, cruel and inhuman or degrading treatment (s10), alongside the *Equal Opportunity Act* which protects against discrimination on the basis of disability, and the *Discrimination Act*; and yet for all these legislated protections we know the disabled mob are incredibly vulnerable to discrimination, abuse and exploitation. Disabled mob are not believed, not provided access to culturally safe services, and have to continually prove the barriers to living a good life to be able to access supports.

VACCA notes that the Objectives include to *support and promote* related purposes and principles of international human rights instruments, however we strongly encourage that additional step should be to adopt these relevant principles and rights to ensure there is a rights-based approach embedded into the draft Bill.

### **Inclusion Principles**

VACCA welcomes the inclusion of the right of Aboriginal people with disability to self-determination and cultural safety. VACCA strongly urges the Commissioner to adopt a Statement of Recognition at the beginning of the Bill and binding principles of self-determination as part of the Inclusion Principles as is currently tabled in Parliament for the *Child Youth and Families Act 2005*.





Currently there is no mention of racism in the Bill, VACCA understands the ongoing and collective intergenerational trauma experienced by Aboriginal families and communities as a result of the ongoing process of colonisation. We know that the destructive forces of colonisation, genocide, dispossession and racism continue to leave deep wounds in the lives of many families, including those who live with disability. VACCA also strongly urges consideration to include a statement that speaks to the government's commitment to address racial bias and institutional forms of racism and discrimination.

VACCA contends that the voice of children and young people must be stronger in the Bill, their experiences as living with disability are different to that of adults, are the supports they require must be developmentally appropriate.

The Inclusive Victoria Disability Plan adopts stronger language of co-design, protecting human rights and embedding cultural safety, cultural responsiveness and LGBTIQ+ inclusion. This is done alongside the plan's alignment with other Victorian Government commitments and reforms including but not exclusive to the National Agreement on Closing the Gap, the Victorian Aboriginal Affairs Framework and Wungurilwil Gaggapduir. VACCA questions why there isn't consistency in language and approach between the Plan and the proposed Bill.

### **Duty to promote disability inclusion**

While VACCA welcomes the duty of government and other defined entities to promote disability inclusion, there needs to be consideration given to the need for effective training and resources provided to staff across all defined entities to better understand the needs of community members living with disability. VACCA strongly recommends that this training also includes mandatory cultural awareness training, and that we are in a strong position to be able to deliver this training.

### **Disability impact assessments**

For defined entities to be required to conduct disability impact assessments will require adequate training and resources to be allocated so these can be done in a timely, effective and consistent manner. There should also be a requirement for entities to seek to engage with clients with lived experience to help inform these assessments, within a participatory design approach.



## State Disability Plan

In relation to the proposed focus and requirements for preparing, consulting and reporting on the state disability plan, VACCA contends that the Minister's requirements to '*consider strategies to meet the varied needs and experiences of people with disability*' is not strong enough, their role should be to ensure that people with disability's rights are upheld and promoted. We also note that where the Minister must consult with VDAC, we recommend that it is also included that they consult with First Nations Disability Network as a mechanism for ensuring that Aboriginal voices are adequately heard and respected.

## Disability action plans

To effect change that will positively impact the people living with disability, they must inform and lead this reform. The proposed Act often mentions 'consulting with' rather than participatory design approach to this work. VACCA strongly recommends a review of the current proposed approach.

Accountability is a critical component of effecting change. VACCA contends that the current proposal requiring defined entities to submit disability action plans that *make reasonable and material progress to implement* the plans puts the onus on the individual entities, and is purely an objective measure that does not hold government or other entities to account.

Again, VACCA raises the issue of resourcing and training to support the implementation of these action plans, and the objective of disability inclusion more broadly.

## Monitoring and Compliance

VACCA strongly contends that there should be a complaints mechanism established as part of the Commission's remit, this will ensure that there is transparency and visibility for disabled mob to raise concerns where they have been abused, neglected, exploited or discriminated against. This is what the Tasmania Government has agreed to implement for their Disability Commissioner<sup>3</sup>. It is not a rights-based approach if there is not a complaints mechanism to raise concern about the effectiveness or application of Disability Action Plans for government and other defined entities, and more broadly the experiences of disabled mob living in Victoria.

Given the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, it is reasonable to assume that stronger protections and complaints

---

<sup>3</sup> Tasmanian Government, Disability Commissioner:

[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/commissioner-to-provide-a-strong-voice-for-tasmanians-living-with-disability](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/commissioner-to-provide-a-strong-voice-for-tasmanians-living-with-disability)

processes are going to be recommended. It would be in Victoria's interest to be proactive in their commitment to better support the disabled community in Victoria.

VACCA supported a carer share her story with the Royal Commission, she had been caring her 19-year-old grandson since he was very young. He has a diagnosed intellectual disability alongside mental health issues and drug addiction, he had experienced high levels of trauma, abuse and neglect. He had lived in her care for four years but it became unsafe for him to continue to live with them, and since then has been episodically homeless, with multiple experiences of institutionalisation (mental health ward, prison and rehab). Despite having numerous workers across drug and alcohol, housing and disability, they were unable to find him safe and affordable housing, nor provide consistent therapeutic and trauma informed supports and interventions. This grandmother reflected that the system had failed her grandson, she had written to ministers at both state and federal level and received no response. This is where a complaints mechanism in the proposed Disability Commission could be such a powerful advocate and hold government and other defined entities to account.

VACCA also notes that there is not strong enough commitment to the principles of data sovereignty and accessible and transparent data as part of the proposed monitoring and compliance mechanisms.

### **Commissioner for Disability Inclusion**

VACCA is disappointed to see that the proposed Disability Commissioner does not have the same powers and authority as their counterpart in Tasmania<sup>4</sup>. VACCA contends that this Commission should be an independent statutory authority, with powers to obtain and share data, begin inquiries and investigate complaints. The Commissions powers should be similar to the Mental Health and Wellbeing Commission in Victoria and to their counterpart in Tasmania. VACCA seeks clarity on the government's reasoning for having less powers than other Commissions.

VACCA also contends that given the prevalence of disability within the Aboriginal community there should be an Aboriginal Commissioner for Disability appointed.

---

<sup>4</sup> Tasmanian Government, Disability Commissioner:

[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/commissioner-to-provide-a-strong-voice-for-tasmanians-living-with-disability](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/commissioner-to-provide-a-strong-voice-for-tasmanians-living-with-disability)

## **Victorian Disability Advisory Council**

Given the commitment to understanding the intersectional nature of discrimination that many disabled people face, it would seem pertinent to ensure that membership of the Victorian Disability Advisory Council is proactively sought to include members from the Aboriginal, LGBTIQ+ and CALD communities, including designated positions.

The Inclusive Victoria State Disability Plan is much clearer about its commitment to Aboriginal representation on the Victorian Disability Advisory Council<sup>5</sup>, as well as engagement with self-determined representative body, yet this Bill does not reflect that commitment.

## **General and miscellaneous**

VACCA recommends that the first interim review is completed after two years, then at the four- and eight-year mark, rather than starting at four years. This will provide an opportunity to review, implement further supports and guidance if the administration and application of disability inclusion measures aren't being complied with.

## **Recommendations**

Alongside the specific feedback to questions raised in the Overview Paper, VACCA makes the following recommendations for consideration:

9. for the Commissioner to adopt a Statement of Recognition and binding principles of self-determination
10. for an Aboriginal Commissioner for Disability to be appointed
11. that voice of children and young people be better reflected in the Bill and the proposed measures to improve disability inclusion, with the understanding that the experiences of children and young people living with disability are different to that of adults, and the supports they require must be developmentally appropriate.
12. for the Commission to have a complaints process established
13. for defined entities to be resourced effectively to be able to adhere to their positive duties as outlined in the Bill, and that culturally safe and trauma informed training are produced using participatory design methods with community living with disability.
14. that community service organisations are included as defined entities

---

<sup>5</sup> Victorian State Disability Plan: <https://www.vic.gov.au/state-disability-plan/systemic-reform-commitments-actions-and-accountability/aboriginal-self>



15. that the Disability Commission develops a data dashboard that is accessible and is premised on the commitment to the principles of Indigenous data sovereignty.
16. that dedicated positions on the Victorian Disability Advisory Council are allocated to Aboriginal, LGBTIQ+ and CALD community members.

For more information, please get in touch with Sarah Gafforini, Director, Office of the CEO on [sarahg@vacca.org](mailto:sarahg@vacca.org).