



Submission to the Exposure Draft of the *Disability Inclusion Bill 2022*

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ETHNIC COMMUNITIES' COUNCIL OF VICTORIA



Acknowledgements

ECCV would like to gratefully acknowledge our stakeholders for providing consultation feedback and sharing their insights and expertise.

About ECCV

The Ethnic Communities' Council of Victoria (ECCV) is the peak body for people from migrant and refugee backgrounds in Victoria. ECCV works closely with over 220 member organisations including ethnic associations, multicultural service providers, and eight regional ethnic communities' councils. ECCV has been advocating for human rights, freedom, respect, equality and dignity for migrant and refugee communities, and for a socially cohesive and inclusive Victorian community since 1974. ECCV has a strong history in informing industry, practice and influencing Federal, State and Local governments to promote culturally responsive approaches, anti-racism, equitable access to services and socially just policy.

A note on language

The term 'people from migrant and refugee backgrounds' is used in this document to refer to people and communities who have entered Australia through a variety of pathways, including through humanitarian, family, and skilled migration pathways. ECCV uses this term to refer to people with backgrounds and ancestry that is not part of the dominant Anglo-Celtic Australian population. This term is inclusive of people seeking asylum in Australia, people on temporary visas, undocumented migrants, and people born in Australia.

Suggested citation

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ECCV acknowledges the Traditional Owners of Country throughout Victoria and their continuing connection to land, water and community. We pay respect to their Elders past and present.

Contents

Acknowledgements	2
About ECCV	2
Executive Summary	4
Summary of recommendations	5
Responses to Exposure Draft Paper: <i>Disability Inclusion Bill 2022</i>	7
Purposes, Defined Entities and Definitions	7
Objectives of the Bill	10
Inclusion Principles	11
Duty to promote disability inclusion	12
Disability impact assessments	14
State disability plan.....	16
Disability action plans	17
Monitoring and Compliance	18
Commissioner for Disability Inclusion	18
Victorian Disability Advisory Council	19
General and miscellaneous.....	20

Executive Summary

The Ethnic Communities' Council of Victoria (ECCV) welcomes the exposure draft of the *Disability Inclusion Bill 2022* ('the Bill'), which introduces significant whole-of-government measures to promote the participation and inclusion of people with disability in Victoria. ECCV is pleased to see that recommendations from our submission to the Review of the *Disability Act 2006* (Vic) were implemented, particularly in relation to the incorporation of an intersectional lens and the creation of a positive duty to promote disability inclusion.

Our responses to the questions outlined in the 'Disability Inclusion Bill 2022: Exposure draft overview paper' are set out in this submission.

ECCV's submission highlights that a multi-faceted approach is needed to promote disability inclusion, both in the workplace and in the provision of services. Although the Bill incorporates a range of measures to shift entrenched attitudes and behaviours, ECCV believes that it can be strengthened further through a combination of complementary measures, including:

- Embedding a substantive commitment to cultural safety to ensure that people from migrant and refugee backgrounds are engaged equitably, and in a meaningful and consultative manner.
- Providing comprehensive education to support defined entities with complying with the requirements of the Bill, including training programs that are implemented by trusted multicultural organisations and community representatives.
- Extending the positive duty to promote disability inclusion to all bodies that work with people with disability, following a period of capacity- and capability-building.
- Extending the enforcement powers of the Disability Inclusion Commissioner to the positive duty and embedding effective and proportionate consequences for non-compliance.
- Strengthening the monitoring, consultation and reporting requirements for disability impact assessments, disability action plans and the State Disability Plan.
- Mandating greater diversity of representation in the Victorian Disability Advisory Council and a greater consultative role for its members.

Achieving greater disability inclusion at a systems level is an ongoing task. To achieve lasting cultural change, the aspirations and intentions of the Bill must be supported with long-term investment and a staged approach to implementation. Initiatives to change attitudes and behaviour will require multiple approaches and should be reviewed in light of current, emerging, and new evidence. ECCV emphasises that the key to the success of the Bill and its measures will be the provision of long-term and sustainable funding.

Summary of recommendations

Recommendation 1. That information about the Bill is made available in plain and easy English.

Recommendation 2. That private and community sector bodies are prescribed as defined entities following the Bill's commencement at a time determined by the Disability Inclusion Commissioner.

Recommendation 3. That the 'number of employees' criterion for what constitutes a 'defined entity' is reviewed two years following the Bill's commencement.

Recommendation 4. That additional funding is provided to support defined entities with implementing and complying with the Bill.

Recommendation 5. That a definition of 'cultural safety' that is codesigned and coproduced with the community is inserted into the Bill.

Recommendation 6. That a provision is inserted that requires communication that involves 'the use of any language' under clause 6(a) to be subject to best practice approaches such as community verification.

Recommendation 7. That the Bill includes definitions of advocacy, individual advocacy, and system advocacy set out in the National Disability Advocacy Program (NDAP) and replicates the obligations regarding the provision of disability advocacy in the NDIS Quality and Safeguards Commission Practice Standards at a State level.

Recommendation 8. That clause 7(h) of the Bill is amended to include the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the *Equal Opportunity Act 2010* (Vic) and the *Gender Equality Act 2020* (Vic).

Recommendation 9. That consequential amendments that refer to the Bill, once passed, are made to the *Multicultural Act 2011* (Vic), the *Guardianship and Administration Act 2019* (Vic), and the new *Mental Health and Wellbeing Act 2022* (Vic).

Recommendation 10. That clause 7(e) is amended to 'recognise and address barriers to disability inclusion that are compounded by intersectionality'.

Recommendation 11. That an additional inclusion principle that sets out a clear standard for cultural safety is co-designed and inserted into the Bill.

Recommendation 12. That the proposed duty in the Bill is broadened so that it applies to both the external and internal practices of defined entities.

Recommendation 13. That the words 'necessary and proportionate' in clause 9(1)(d) are changed to 'reasonable and proportionate' to align the Bill with existing state law, and that plain English guidance is provided as to what constitutes 'reasonable and proportionate'.

Recommendation 14. That the enforcement functions and powers of the Disability Inclusion Commissioner are extended to the proposed duty to promote disability inclusion under clause 9 of the Bill.

Recommendation 15. That comprehensive guidance and training materials are provided for defined entities so that they can comply with the requirements of the Bill prior to its commencement.

Recommendation 16. That the State Government provide additional resourcing to support the disability and multicultural sectors to share their expertise with defined entities.

Recommendation 17. That the requirement to conduct a disability impact assessment is broadened so that they are prepared in relation to *all* the policies, programs and services of the defined entity, including internal workplace practices.

Recommendation 18. That clause 11(2)(c) is amended to ‘recognise and address barriers to disability inclusion that are compounded by intersectionality’.

Recommendation 19. That a provision is inserted that clarifies the potential overlap between the Bill and the *Gender Equality Act 2020* (Vic) in relation to the preparation and implementation of disability impact assessments.

Recommendation 20. That defined entities are required to report against specific targets for disability impact assessments, in relation to the provisions and principles of the Bill.

Recommendation 21. That a provision is inserted that requires defined entities that are part of the public sector to consult with people with disability as part of the disability impact assessment process.

Recommendation 22. That a provision is inserted that requires the State Government to ensure that people with disability from different population groups participate in the development of the state disability plan, and to report on how people with disability were engaged in the co-design process.

Recommendation 23. That the Bill requires the State Government to develop a strategic advocacy framework that is attached to the State Disability Plan, and that must be reviewed every four years to ensure that funding is long-term and sustainable.

Recommendation 24. That a provision is inserted that requires the Disability Action Plans of public sector defined entities to be made accessible on a public register.

Recommendation 25. That the obligations for preparing Disability Action Plans are limited to public sector entities in the immediate term until a time other determined by the Commissioner.

Recommendation 26. That the wording in clause 33(3)(a) is amended to require the Minister to consult the Victorian Disability Advisory Council when making a recommendation to appoint the Disability Inclusion Commissioner.

Recommendation 27. That the Disability Inclusion Commissioner is granted discretionary powers to investigate the cultural safety of policies, practices and programs on a discretionary basis.

Recommendation 28. That the Bill includes the express requirement that at least one or more members of the Victorian Disability Council is a person with disability from a migrant or refugee background.

Recommendation 29. That a provision is inserted that requires the Minister to consult with people with disability in relation to the issuing of guidelines under the Bill.

Responses to Exposure Draft Paper: *Disability Inclusion Bill 2022*

Purposes, Defined Entities and Definitions

Q1. Do you agree with creating a new principal Act for Victoria relating to disability inclusion – why or why not?

ECCV supports the creation of a new principal Act for disability inclusion in Victoria. This brings Victoria in line with other Australian jurisdictions, including New South Wales and South Australia.

Disability inclusion was identified as a key priority in consultations that ECCV conducted with people from migrant and refugee backgrounds, their families, and carers.¹ Law has a significant normative impact on what we value and consider important in our society. The creation of a standalone framework that is supported by measures for accountability and long-term change will help elevate and reinforce the importance of embedding disability inclusion across Victoria.

Practically, a dedicated Act is potentially less complex for people with disability to navigate and use to self-advocate, or advocate on behalf of others. To help facilitate this, information about the Bill should be made available in plain and easy English. ECCV stakeholders have indicated that plain English and easy English documentation can at times be more useful than direct translations into community languages.

Recommendation 1. That information about the Bill is made available in plain and easy English.

Q2. What are your thoughts on the purposes of the Bill and its focus on government and defined entities?

ECCV supports the purposes outlined in the Bill and is pleased to see that the definition of ‘defined entities’ broadly extends to the public sector. The focus on government will go towards ensuring that disability inclusion is at the forefront of all public planning and programmatic decisions, including vital services and amenities such as public transport, emergency services, justice, housing, education, and health.

A particular concern raised in consultations with stakeholders was the accessibility of built environments. Participants emphasised the responsibility of local councils to improve disability inclusion in everyday public works and amenities. This suggests that disability inclusion is currently not a primary concern of public bodies, and/or people with disability are not being consulted appropriately in planning decisions. These responsibilities should be subject to a measure of legislative oversight

Q3. Should any entities be included or excluded from the current scope? What should be added, changed or removed?

The National Disability Insurance Scheme (NDIS) was formalised in full in Victoria in July 2019, and the transition in service provision and funding was expected to be completed by the end of 2020. However, Victoria retains some residual functions in the provision of disability support for people

¹ Ethnic Communities’ Council of Victoria (ECCV) (2021). [Submission to the review of the Disability Act 2006 \(Vic\)](#). Melbourne, Australia, ECCV (2021). State Disability Plan and the Victorian Disability Act: Report on consultations with people from culturally and linguistically diverse backgrounds. Melbourne, Australia.

who are not eligible for the NDIS. This includes people with disability on bridging and temporary visas, who may have specific needs stemming from their migration and resettlement experiences. This represents a substantial accessibility and inclusion gap that Bill must not lose sight of.

ECCV believes that private and community sector bodies should also be subject to the obligations of the Bill as they play a vital role in providing services for people with disability, including people who are not eligible for the NDIS. As the UN Convention on the Rights of Persons with Disabilities (CRPD) emphasises, disability inclusion is the responsibility of everyone in society. Legislative requirements for disability inclusion should extend to all services that people with disability use and interact with.

Currently, ‘defined entity’ is defined in the Bill to be an entity with 50 or more employees. Although this will exclude a significant number of organisations that people with disability interact with, it is appropriate in the immediate term because defined entities must first build their capacity to comply with the requirements of the Bill. ECCV recommends that this criterion be reviewed two years following the Bill’s commencement. We also recommend that the Government consider a tiered system that imposes a greater standard of responsibility for community consultation on public sector bodies (see **Recommendation 21**).

ECCV recommends that private and community sector organisations are prescribed as ‘defined entities’ under clause 5(2) in the years that follow the Bill’s commencement, at a time determined to be appropriate by the Disability Inclusion Commissioner (‘the Commissioner’). This will give the Commissioner time to develop resources to support the implementation of the Bill, build the capacity of organisations to comply with its requirements, and resolve any issues that may arise with respect to implementation for public sector organisations. Additional funding should also be provided to assist defined entities with improving disability inclusion practices.

Recommendation 2. That private and community sector bodies are prescribed as defined entities following the Bill’s commencement at a time determined by the Disability Inclusion Commissioner.

Recommendation 3. That the ‘number of employees’ criterion for what constitutes a ‘defined entity’ is reviewed two years following the Bill’s commencement.

Recommendation 4. That additional funding is provided to support defined entities with implementing and complying with the Bill.

Q4. What do you think about the definitions proposed in the Bill? Do any definitions need to be added, changed or removed?

The definitions proposed in the Bill are consistent with the language and concepts found in the UN Convention on the Rights of Persons with Disabilities (CRPD) and other human rights instruments. The recognition and incorporation of these instruments will help strengthen the Bill so that it can better address intersectional barriers to inclusion. In particular, the definition of ‘disability’ is appropriate as it moves away from diagnostic understandings of disability, and better incorporates different forms of disability in a broader definition. This is important because people have different experiences and cultural understandings of disability that are not necessarily reflected in diagnostic criteria.

‘Cultural safety’

ECCV commends the insertion of a definition of ‘intersectionality’ as it compels defined entities and the Commissioner to consider how, in practice, the various factors that drive inequalities can create barriers to disability inclusion. However, ECCV believes that a definition of ‘cultural safety’ is needed to set out clear expectations about engaging with people from migrant and refugee backgrounds. The importance of cultural safety discussed in greater detail under **Question 6**, in relation to the Inclusion Principles.

ECCV’s consultations highlighted the intersecting barriers that people from migrant and refugee backgrounds face in many areas of their daily lives. People with disability from migrant and refugee backgrounds are a highly diverse population, but common barriers are related to the lack of culturally responsive and language appropriate supports and information, low levels of health literacy distrust of institutions, difficulty accessing Australia’s complex system of services, and stigmatising attitudes and misconceptions both within cultures and in the broader community. These engagement barriers reflect a lack of cultural responsiveness in mainstream services more generally. It is not enough to define ‘intersectionality’ for the purposes of the Bill, as it does not go far enough in setting a standard of engagement for people from migrant and refugee backgrounds.

‘Communication’

Clause 6 provides that a range of different forms of ‘communication’, including accessible means, such as braille, plain language, and tactile communication, can be made in relation to the provisions of the Bill. It also provides that communication can be made by means of the ‘the use of any language’.

ECCV recommends that a provision is inserted that requires the ‘use of any language’ to be verified by the community and/or accredited interpreters. Language services policy and implementation are an important part of disability inclusion. ECCV has been concerned about the reported use of unchecked/reviewed machine translations, such as Google Translate to disseminate information, particularly during the COVID-19 pandemic. While machine translations can be timely, it is essential that important legal, public health and other official information is translated using best practice approaches, which includes community verification. This also highlights the importance of embedding a culturally responsive approach in disability inclusion, elaborated further in our response to **Question 6** below.

‘Advocacy’, ‘self-advocacy’ and ‘systemic advocacy’

The terms ‘advocacy’, ‘self-advocacy’ and ‘systemic advocacy’ are mentioned in clause 8(n) but they are not defined in the Bill. Differences in how disability is viewed and experienced in diverse cultures and religious groups influences not only their lived experience of disability, but also help-seeking behaviours and preferred support options. Due to a range of barriers, people from migrant and refugee backgrounds may not always have the skills, knowledge, confidence or trust needed to articulate their will and preferences. A participant from ECCV’s consultations noted that people with limited English language proficiency often do not know how to represent and advocate for themselves, so they often have to fit the needs of the service provider, rather than the other way around.

Advocacy is vital for people with disability as it ensures the continued promotion, protection, and security of their rights. To give greater effect to the inclusion principles and promote a consistent approach to disability advocacy for people from migrant and refugee backgrounds, these terms should be defined.

Recommendation 5. That a definition of ‘cultural safety’ that is codesigned and coproduced with the community is inserted into the Bill.

Recommendation 6. That a provision is inserted that requires communication that involves ‘the use of any language’ under clause 6(a) to be subject to best practice approaches such as community verification.

Recommendation 7. That the Bill includes definitions of advocacy, individual advocacy, and system advocacy set out in the National Disability Advocacy Program (NDAP) and replicates the obligations regarding the provision of disability advocacy in the NDIS Quality and Safeguards Commission Practice Standards at a State level.

Objectives of the Bill

Q5. What do you think of the proposed objectives? Do any need to be changed or removed? Would you add any other objectives?

ECCV supports the proposed objectives as they affirm a whole-of-government approach to disability inclusion that is consultative, transparent, and outcomes-focused. The proposed objectives also make express reference to human rights instruments that Australia is a party to, and that Victoria has incorporated into state law.

Victoria’s state-based human rights framework is strong and should be referenced in the objectives to strengthen the Bill’s commitment to human rights, intersectionality, and equality. ECCV recommends that clause 7(h) is amended to include the Charter of Human Rights and Responsibilities Act 2006 (Vic) (‘Charter’), the *Gender Equality Act 2020* (‘Gender Equality Act’), and the *Equal Opportunity Act 2010* (Vic) (‘Equal Opportunity Act’). These instruments strengthen the form and substance of the rights that people with disability are entitled to and promote an interpretation of the Bill that is consistent with the internationally recognised way of viewing disability.

ECCV also recommends that consequential amendments that refer to the Bill, once passed, are made to the *Multicultural Act 2011* (Vic), the *Guardianship and Administration Act 2019* (Vic) (for example, the capacity to engage in political citizenship, such as voting), and the new *Mental Health and Wellbeing Act 2022* (Vic). These instruments form part of Victoria’s whole-of-government framework, and the intersections between them – particularly the role of the newly created role of Commissioner – should be clarified.

Moreover, ECCV notes that the wording of clause 7(e) only goes as far as *recognising* the ‘barriers to disability inclusion [that] may be compounded by intersectionality’. It does not provide that those barriers also be *addressed* within the objectives of the Bill. We recommend that clause 7(e) is amended to: ‘... recognise and address barriers to disability inclusion that are compounded by intersectionality’.

Recommendation 8. That clause 7(h) of the Bill is amended to include the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the *Equal Opportunity Act 2010* (Vic) and the *Gender Equality Act 2020* (Vic).

Recommendation 9. That consequential amendments that refer to the Bill, once passed, are made to the *Multicultural Act 2011* (Vic), the *Guardianship and Administration Act 2019* (Vic), and the new *Mental Health and Wellbeing Act 2022* (Vic).

Recommendation 10. That clause 7(e) is amended to ‘recognise and address barriers to disability inclusion that are compounded by intersectionality’.

Inclusion Principles

Q6. Are these the right principles to promote and advance disability inclusion in Victoria? Do any need to be changed or removed? Would you add any other objectives?

The inclusion principles reflect a social model of disability and a commitment to advancing disability inclusion for all Victorians. While aspirational, the inclusion principles currently do not set out clear and substantive expectations for cultural safety and responsiveness, which refer to:

... [the] attitudes, knowledge, practices and policies for agencies and professionals working with people who face marginalisation, exclusion, and inequality. The concept of cultural safety is based on acknowledgement of the difference in power between professionals and the marginalised person using a service – the professional has significant opportunities to have major impacts on the person they are working with. Cultural safety is therefore a way of managing the difference in power, knowledge, and opportunities to ensure that the person using a service has a voice, is treated with respect, and feels included.

In keeping with the purpose of the concept, to ensure that cultural safety mitigates the power relationship between a client and service provider, a culturally safe outcome is determined by the marginalised person, not by an institution, service provider or professional. Beyond cultural competency or cultural responsiveness, which focus on identifying and addressing what is culturally important to the client, cultural safety acknowledges that mainstream systems are not designed to include everyone, and that it is the responsibility of service providers to ensure inclusion.²

ECCV would welcome the addition of a substantive provision that recognise the importance of cultural safety. ECCV considers cultural safety to be an essential approach to promoting equity, access, and inclusion for people from migrant and refugee backgrounds. Embedding cultural safety in disability inclusion involves taking a flexible and adaptive approach to achieving better outcomes for people facing inequity.

The Royal Commission in Violence, Abuse, Neglect and Exploitation of People with Disability has reinforced the importance of a culturally appropriate, responsive, and safe approach to engaging people from migrant and refugee backgrounds and to ensuring that they “are provided with supports that reduce barriers and enable their participation”.³

ECCV is concerned that by aggregating all categories of diversity into a single approach, the Bill stands the risk of overlooking and hence failing to respond to the needs of people from specific populations. There is a risk that defined entities will engage in a ‘tick box exercise’ to satisfy their obligations under the Bill and overlook the need to consider the diverse circumstances, backgrounds, and values of people from migrant and refugee backgrounds (see **Recommendations 5 and 6**).

² ECCV (2022). [Submission to the Inquiry into support for older people from migrant and refugee backgrounds](#). Melbourne, Australia.

³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020). [Culturally and linguistically diverse engagement principles](#). Brisbane, Queensland.

Without appropriate substantive provisions that recognise the importance of cultural safety, people from migrant and refugee backgrounds may be precluded from engaging with defined entities for the purposes of the Bill in a meaningful and consultative manner.

Recommendation 11. That an additional inclusion principle that sets out a clear standard for cultural safety is co-designed and inserted into the Bill.

Duty to promote disability inclusion

Q7. What do you think of the proposed duty for government and defined entities to promote disability inclusion? Do you think the requirements for defined entities are appropriate or do they need any changes?

ECCV welcomes the proposed duty to promote disability inclusion. The CRPD supports the view that the onus to break down barriers to inclusion rests not with the individual but with the State and the whole community. As improvements in disability inclusion are often budget-limited, the proposed duty is a welcome step forward in prioritising actions that prevent discrimination from occurring. However, the scope of the duty should be broadened, and the requirements for defined entities be amended to provide effective and proportionate mechanisms for enforcement.

Scope of the duty

Clause 9(1) only requires defined entities to ‘consider and promote disability inclusion’ when ‘developing policies and programs and in delivering services that are provided to the *public*, or have a *direct and significant impact on the public*’. This limits the scope of the proposed duty to specific circumstances. The internal policies and practices of the defined entity, including its organisational culture, are excluded from its scope. What constitutes a ‘significant impact on the public’ is difficult to define and in practice will be left to the discretion of the defined entity, without meaningful oversight.

Positive duties that have a broader scope are already present in state law. For example, clause 15 of the Equal Opportunity Act requires organisations subject to the Act to take ‘reasonable and proportionate’ steps to address the systemic causes of discrimination, sexual harassment, and victimisation. Section 15 also has limited enforcement mechanisms. ECCV recommends that the proposed duty in the Bill is broadened so that it applies to both external and internal practices. ECCV recommends that the wording ‘necessary and proportionate’ in clause 9(1)(d) are changed to ‘reasonable and proportionate’ to align the Bill with existing state law, and that plain English guidance is provided as to what constitutes ‘reasonable and proportionate’ for defined entities of different sizes and organisational settings. This is important given that clause 10 provides that the proposed duty does not give rise to legal rights. This means that the threshold of what is reasonable and proportionate is unlikely to be tested by the Courts.

Nevertheless, clause 10 is appropriate as invoking legal rights where there is a potential breach of the proposed duty may give rise to spurious and excessive claims. This is not in the best interests of the broader community, as it imposes disproportionate burdens on defined entities, particularly where competency to promote disability inclusion has not been resourced in the first place. It also removes the burdensome expectation that individuals bear the responsibility of enforcement through a civil complaints model, a regulatory mechanism that is largely ineffective at addressing

systemic forms of discrimination.⁴ This approach would be at odds with the purposes and objectives of the Bill, which broadly seek to promote disability inclusion practices at a systems level.

Enforcement and compliance

As discussed above, section 15 of the Equal Opportunity Act provides for a broader positive duty to prevent forms of discrimination from occurring. We note that the effectiveness of section 15 is limited by the current enforcement framework, which requires aggrieved individuals to make complaints, and which confers discretionary investigative powers to the Victorian Equal Opportunity and Human Rights Commission ('VEORHC').

ECCV is concerned that the proposed duty in the Bill will have no effective compliance or enforcement mechanisms at all. A commitment to substantive equality must involve proactively considering the disadvantage that people with disability experience, and the impact of those circumstances in terms of eliminating disadvantage in outcome or result. Without appropriate consequences for non-compliance, the proposed duty will not be effective in achieving its stated purpose of promoting disability inclusion.

The Disability Inclusion Commissioner has the power to monitor compliance and seek enforcement of compliance notices and undertakings through the Victorian Civil Administrative Tribunal (VCAT), but these powers do not extend to the proposed duty. As discussed above, reasonableness and proportionality are questions of fact and the test of what is 'reasonable and proportionate' will differ across different organisational settings. Extending enforcement to the proposed duty will not impose an unreasonable burden on defined entities as it will not require a blanket standard of compliance.

Recommendation 12. That the proposed duty in the Bill is broadened so that it applies to both the external and internal practices of defined entities.

Recommendation 13. That the words 'necessary and proportionate' in clause 9(1)(d) are changed to 'reasonable and proportionate' to align the Bill with existing state law, and that plain English guidance is provided as to what constitutes 'reasonable and proportionate'.

Recommendation 14. That the enforcement functions and powers of the Disability Inclusion Commissioner are extended to the proposed duty to promote disability inclusion under clause 9 of the Bill.

Q8. Are there any implementation issues that need to be considered to help defined entities promote disability inclusion?

It will be critical to build the capacity and competency of defined entities to enable them to implement the requirements of the Bill and comply with their obligations. This will require:

- Early development and access to comprehensive training, guidance materials and practical resources for senior leadership, management, and human resources on how the Bill ought to be implemented in different operational and organisational settings, prior to the Bill's commencement.
- Provision of additional funding for defined entities so that their essential functions and/or services are not affected by the compliance requirements of the Bill, or vice versa.

⁴ B. Smith and D. Allen, 'Whose Fault Is It?: Asking the Right Question to Address Discrimination' (2012) 37(1) *Alternative law journal* 31.

- Creation, promotion and sharing of best practice models in disability inclusion that draw upon the lessons learned from the implementation of the Gender Equality Act, and in undertaking effective organisational evaluation and reporting.

Through ECCV's advocacy work, we have found that cultural diversity can present unique barriers and challenges to achieving disability inclusion. Beliefs about disability and well-being vary between individuals and cultures and may influence peoples' understandings of their rights. People from migrant and refugee backgrounds with disability, and their families and carers may also face a range of systemic barriers in navigating and accessing mainstream systems.

These intersecting and often complex experiences need to be acknowledged and addressed in the development of disability inclusion training and education. Much of this expertise is available within the disability and multicultural sectors and can be drawn upon through additional resourcing. It is important that trusted organisations and community representatives are involved as they have pre-existing links to the community and have extensive knowledge of the unique barriers and challenges that they face. To facilitate this process, extra funding should be provided for 'train the trainer' models (see **Recommendations 4 and 11**).

Recommendation 15. That comprehensive guidance and training materials are provided for defined entities so that they can comply with the requirements of the Bill prior to its commencement.

Recommendation 16. That the State Government provide additional resourcing to support the disability and multicultural sectors to share their expertise with defined entities.

Disability impact assessments

Q.9 What do you think about what defined entities need to do when conducting disability impact assessments? Is there anything else defined entities should do?

The requirement to conduct a disability impact assessment should be broadened so that they are prepared in relation to all policies, programs and services not just those that have a 'direct and significant impact on the public'. As discussed under **Question 7**, the internal practices of defined entities, including organisational culture, should be subject to the requirements of the Bill. ECCV recommends that the requirements are broadened to include all organisational practices, policies, programs and services. What constitutes a 'direct and significant impact on the public' is difficult to define and will ultimately be left to the discretion of the defined entity, without any meaningful oversight.

Similar to clause 7(e), the wording of clause 11(2)(c) only goes as far as *recognising* the 'barriers to disability inclusion [that] may be compounded by intersectionality'. It does not provide that those barriers also be *addressed* within the objectives of the Bill. We recommend that clause 11(2)(c) be amended to: '... recognise and address barriers to disability inclusion that are compounded by intersectionality'. For example, a defined entity may recognise that accessible forms of communication are needed to reach people with disability from migrant and refugee backgrounds but choose not to address that barrier.

Recommendation 17. That the requirement to conduct a disability impact assessment is broadened so that they are prepared in relation to *all* the policies, programs and services of the defined entity, including internal workplace practices.

Recommendation 18. That clause 11(2)(c) is amended to ‘recognise and address barriers to disability inclusion that are compounded by intersectionality’.

Q.10 Are there any implementation issues that should be considered around defined entities conducting disability impact assessments?

As outlined above in our response to **Question 8**, defined entities must first be supported to build their capacity to comply with the requirements of the Bill. Producing a disability impact assessment can be a resource intensive process, and some concession should be provided where regulatory requirements might overlap under different pieces of legislation. For example, clause 16(1) of the Bill provides that:

A defined entity may submit to the Commissioner a document prepared by the entity for another purpose and request that the Commissioner determine the document to be a Disability Action Plan.

This clause explicitly clarifies the potential overlap between the Bill, the Gender Equality Act and the Equal Opportunity Act in relation to Action Plans. There is the potential for Disability Action Plan mechanisms to meet similar objectives as Equal Opportunity or Gender Equality Action Plans, and where this occurs, the Bill provides for defined entities to submit a document prepared for those purposes and request that the Commissioner determine that document to be a Disability Action Plan.

A similar clause should be inserted to clarify the relationship between Disability Impact Assessments and Gender Impact Assessments, which defined entities must produce under the Gender Equality Act. This will help reduce the regulatory burden on defined entities that are required to prepare multiple but similar forms of assessment. Clarification will also compel defined bodies to consider the intersections between gender and disability as part of the impact assessment process.

Recommendation 19. That a provision is inserted that clarifies the potential overlap between the Bill and the *Gender Equality Act 2020* (Vic) in relation to the preparation and implementation of disability impact assessments.

Q. 11 Do you think the requirements on defined entities are appropriate or need any change?

The Bill does not include any provisions that require defined entities to report against any targets or indicators that measure cultural shifts on disability inclusion and intersectionality. At a minimum, defined entities should report their compliance with the requirements outlined under clause 11 and how the impact assessments support and further relevant inclusion principles specified in the Bill. This will provide greater force and substance to the inclusion principles. Clause 22(a)(i)-(ii) only provides that certain information about disability impact assessments should be included as part of Disability Action Plan Progress Report, including:

*(i) the policy, program or service that was the subject of the assessment; and
(ii) any actions taken as a result of the assessment*

To achieve long-term change, greater transparency and accountability are needed to ensure that defined entities identify substantive targets for disability inclusion. Where those targets are not met during the relevant reporting period, defined entities can report on their performance and progress in achieving those targets.

Further, defined entities that are part of the public sector should be required to consult with people with disability as part of the impact assessment process. Public sector bodies should be held to a higher standard of accountability as they provide public services for a wider range of people and are answerable to the whole community (see **Recommendation 2**).

Recommendation 20. That defined entities are required to report against specific targets and indicators for disability impact assessments, in relation to the provisions and principles of the Bill.

Recommendation 21. That a provision is inserted that requires defined entities that are part of the public sector to consult with people with disability as part of the disability impact assessment process.

State disability plan

Q. 12 What do you think of the proposed focus and requirements for preparing, consulting and reporting on a state disability plan?

Victoria's State Disability Plan must centre the lived experiences of people with disability to ensure that they are at the forefront of government planning and decision-making. The Bill does not expressly require the Minister to consult with people with disability when preparing or amending a state disability plan. Clause 12(4)(b) implies a top-down approach to incorporating lived experience in the preparation of the State Disability Plan:

(b) must consider the varied needs and experiences of persons with disability and the strategies that may be required in response to those needs and experiences

The Bill must include express provisions that require that people with disability, including specific population groups who are affected by intersectional disadvantage, are widely engaged and consulted in the development, review and reporting stages of the State Disability Plan, and for the Department to report on how people with disability were engaged as part of the co-design process. Comparable legislation in NSW and South Australia contain provisions that expressly require that people with disability are consulted as part of the preparation of the State Disability Plan.⁵

Strategic advocacy

The Bill must also be amended to reflect the Victorian Government's ongoing commitment to disability advocacy across Victoria. A provision should be inserted that requires the development of strategic advocacy framework to complement the State Disability Plan, and the insertion of a provision that enables the Minister to appropriate funds to resource disability advocacy.

The strategic advocacy framework must commit to the continued and expanded funding of individual and systemic advocacy in Victoria, particularly for population groups that experience access barriers to disability advocacy. There are currently many gaps and limitations in the availability of disability advocacy for people from migrant and refugee backgrounds in Victoria. In particular, there is no state-wide Disabled People's Organisation (DPO)⁶ that represents people with disability from migrant and refugee backgrounds. A representative voice is essential to ensure

⁵ *Disability Inclusion Act 2014* (NSW) s 10(2); *Disability Inclusion Act 2018* (SA) s 13(4).

⁶ For an outline of the history and roles of DPOs, see People with Disability Australia: <https://pwd.org.au/resources/disability-info/student-section/disabled-people-s-organisations-dpos/>

meaningful inclusion and responsiveness. DPOs are an essential part of the disability advocacy landscape and must be supported to represent people with disability from migrant and refugee backgrounds at a systems, community and individual level.

As part of this framework, the State Government must outline how it intends to work with multicultural communities to promote greater disability awareness, inclusion, and access. Targeted education and disability awareness will help address the marginalisation and isolation of people with disability from migrant and refugee backgrounds. This may in part be based on stigma, culturally specific beliefs about the roles of people with disability and their families, a lack of understanding within their communities.

ECCV urges the Victorian Government to take a targeted approach to disability advocacy by funding DPOs and advocacy services with multicultural expertise. DPOs by definition are made up of and led by people with disability and must be supported in that capacity. Specialist advocacy services must include multilingual staff, specific and targeted communication strategies, partnerships with multicultural and ethno-specific organisations, and cultural expertise among their governance and leadership.

Recommendation 22. That a provision is inserted that requires the State Government to ensure that people with disability from different population groups participate in the development of the state disability plan, and to report on how people with disability were engaged in the co-design process.

Recommendation 23. That the Bill requires the State Government to develop a strategic advocacy framework that is attached to the State Disability Plan, and that must be reviewed every four years to ensure that funding is long-term and sustainable.

Disability action plans

Q. 13 What do you think of the proposed focus and requirements for disability action plans? Are there any practical implementation issues that should be considered?

ECCV is pleased to see the insertion of provisions that require the Commissioner to keep a register of Disability Action Plans, and that allow the Commissioner to publish Disability Action Plans at their discretion. In the interest of greater transparency and accountability, ECCV recommends that a provision be inserted that requires all Disability Action Plans of public sector entities be made accessible on a public register. Content deemed confidential or the disclosure of which is otherwise prohibited or restricted can be redacted in line with clause 22(3) of the Bill.

As outlined above in our response to **Question 3**, private and community sector organisations should be prescribed as 'defined entities' following the Bill's commencement, at a time determined by the Commissioner (see **Recommendations 2 and 15**).

We also noted in our responses to **Questions 7 and 10** that the obligations imposed by the Bill are likely to be resource intensive, and that additional funding should be allocated for defined entities to comply with the Bill's requirements. Given the more extensive requirements for preparing Disability Action Plans, ECCV recommends that these obligations be limited to public sector entities in the immediate term (once private and community entities are prescribed) until a time otherwise determined by the Commissioner.

Recommendation 24. That a provision is inserted that requires the Disability Action Plans of public sector defined entities to be made accessible on a public register.

Recommendation 25. That the obligations for preparing Disability Action Plans are limited to public sector entities in the immediate term until a time other determined by the Commissioner.

Monitoring and Compliance

Q. 14 What do you think about the proposed monitoring and compliance mechanisms?

As discussed in our response to **Question 7**, the enforcement powers granted to the Commissioner should be extended to the proposed duty under clause 9. These powers are likely to improve defined entities' efforts to comply with the Bill. See also our response to **Question 10** in relation to the monitoring of disability impact assessments and **Question 13** in relation to compliance with Disability Action Plans.

Q. 15 Do the proposed monitoring and compliance mechanisms strike the right balance between transparency, accountability and minimising regulatory burden?

As above.

Q. 16 Is there anything you would change about the proposed monitoring and compliance mechanisms?

As above.

Commissioner for Disability Inclusion

Q. 17 What do you think of the proposal to create a Commissioner for Disability Inclusion?

ECCV supports the creation of a Commissioner for Disability Inclusion to lead and oversee the work of achieving long-term change in disability inclusion. We are pleased to see that clause 33(3) sets out requirements for the Minister when making a recommendation in appointing the Commissioner:

- (a) *may consult* the Advisory Council if the Minister considers it appropriate to do so; and
- (b) *must ensure that the person the Minister recommends is a person with disability.*

ECCV recommends that the wording in clause 33(3)(a) is amended to require the Minister to consult the Victorian Disability Advisory Council (VDAC) when making a recommendation to appoint the Commissioner, rather than leave it to Minister's discretion. As discussed in our response to **Question 20**, VDAC is intended to be a representative body and its input must be considered at all stages of the Bill's implementation.

Recommendation 26. That the wording in clause 33(3)(a) is amended to require the Minister to consult the Victorian Disability Advisory Council when making a recommendation to appoint the Disability Inclusion Commissioner.

**Q. 18 What do you think of the proposed functions and powers of the Commissioner?
What would you change?**

The proposed functions and powers of the Commissioner are appropriate. However, as noted above in our response to **Question 7**, the powers of the Commissioner should be extended to the enforcement of the positive duty for defined entities under clause 9. ECCV also recommends that the Commissioner is empowered to investigate the cultural safety of policies, practices and programs on a discretionary basis, in line with **Recommendation 11**.

Recommendation 27. That the Disability Inclusion Commissioner is granted discretionary powers to investigate the cultural safety of policies, practices and programs on a discretionary basis.

Q. 19 Do you have any other comments on the proposed Commissioner model (or an alternative model)?

No other comments.

Victorian Disability Advisory Council

Q. 20 What do you think about the proposed changes to the Victorian Disability Advisory Council (VDAC)? Is there anything else you think should be included about VDAC?

ECCV is pleased to see that the advisory functions of the Victorian Disability Advisory Council (VDAC) have been extended to include the provision of strategic advice and planning, particularly in relation to the State Disability Plan.

However, the current membership criteria do not expressly include the requirement that at least one member of VDAC is a person with disability from a migrant or refugee background. Although the blanket requirement under clause 50(2)(a) that VDAC should reflect the 'diversity of persons with disability' may cover cultural or other forms of diversity, the current wording implies diversity based on metropolitan, rural and regional communities. There is a potential that the need for broader representation may be overlooked.

The 2021 Census showed that Victoria's cultural diversity has increased substantially and will continue to increase in coming decades. Although people from migrant and refugee backgrounds are no longer a 'minority' population, they continue to experience barriers to representation, particularly in positions of leadership and governance. These barriers are magnified for people with disability. In recognition of this, more than one VDAC position should be allocated to people with disability from migrant or refugee backgrounds. To give effect to cultural safety, cultural responsiveness, and an intersectional approach, VDAC must reflect the diversity of the community (see **Recommendations 5 and 11**).

Recommendation 28. That the Bill includes the express requirement that at least one or more members of the Victorian Disability Council is a person with disability from a migrant or refugee background.

General and miscellaneous

Q. 21 Do you think the proposed guidelines the Minister can issue are the right ones to help defined entities understand their obligations? Is anything missing?

ECCV welcomes the range of proposed guidelines that the Minister can issue under the Bill. However, we believe that certain guidelines should be subject to community oversight through requirements for co-design and consultation with the community.

For example, clause 52(2)(e) provides that the Minister can issue guidelines in relation to ‘accessible communication and information’. As discussed in our response to **Question 4**, there is no requirement for community verification or the use of accredited interpreters in relation to the ‘use of any language’. Without appropriate consultation and verification, there is the risk that the translation of materials into languages other than English may not be fit for purpose.

Recommendation 29. That a provision is inserted that requires the Minister to consult with people with disability in relation to the issuing of guidelines under the Bill.

Q. 22 Do you have a view on when the Act should be reviewed? Is four years after the Act becomes law the right time?

Four years following the Bills’ commencement is a reasonable time to review the operation and effectiveness of the Act. It is consistent with other legislation and takes account of potentially changing needs, outcomes, and viewpoints over a defined period without placing a considerable burden on governments to review legislation. The concept of disability inclusion is a relatively recent development in our political history, and it is important that we stay ahead of changing norms in a staged and gradual way.

Q. 22 Do you agree with the range of things that can be made through regulations?

ECCV agrees with the range of regulations that can be made under the Bill.