



# Budget Submission

*2022-23 ACT Budget Consultation*

# About Advocacy for Inclusion

Advocacy for Inclusion incorporating People with Disabilities ACT<sup>1</sup> is a leading independent organisation delivering reputable national systemic advocacy informed by our extensive experience in individual advocacy and community and government consultation. We provide dedicated individual and self-advocacy services, training, information and resources in the ACT.

As a Disabled People's Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. Advocacy for Inclusion speaks with the authority of lived experience. It is strongly committed to advancing opportunities for the insights, experiences and opinions of people with disabilities to be heard and acknowledged.

Advocacy for Inclusion operates under a human rights framework. We uphold the principles of the United Nations Convention on the Rights of Persons with Disabilities and strive to promote and advance the human rights and inclusion of people with disabilities in the community. Advocacy for Inclusion is a declared public authority under the Human Rights Act 2004.

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Advocacy for Inclusion acknowledges the Aboriginal and Torres Strait Islander peoples as Traditional Custodians of the lands where we live, learn and work. We respect and celebrate the diversity of individuals, including those amongst the lesbian, gay, bisexual, trans, and intersex communities and we value and promote inclusion and diversity in our communities.

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<sup>1</sup> On March 24, 2021, Advocacy for Inclusion (AFI) officially merged with People with Disabilities ACT (PWDACT), a systemic advocacy organisation based in the ACT. Herein, reference to 'AFI' also acknowledges the values and philosophies of PWDACT.

# Introduction

Advocacy for Inclusion (AFI) welcomes the opportunity to provide feedback to the 2022-23 ACT Budget. Our recommendations focus on upholding the human rights of people with disabilities in all areas of the community. We are hoping to see improvement of outcomes in the wellbeing domains of human rights, equity in education, access and equity and health.

**Priority One:** Funding of National Preventative Mechanisms to carry out OPCAT functions.  
Investment supports improvements in the Wellbeing Domain for Human Rights

**Priority Two:** Begin transition to inclusive education model by increasing disability loading funding and implement universal design for learning in all schools.  
Investment supports improvements in the Wellbeing Domain for Educations

**Priority Three:** Implementing recommendations made to the Healthy Prisons Review of the Alexander Maconochie Centre and to meet aspirations in Pillar 4 of R25 by 25 on recidivism.  
Investment supports improvements in the Wellbeing Domains for Health and Human Rights

**Priority Four:** Funding key priorities for the meaningful realisation of the ACT Disability Strategy.  
Investment supports improvements in the Wellbeing Domains for all the domains including Access and Equity

## ASKS AT A GLANCE:

- Adequate **funding of National Preventative Measure bodies** so they can carry out a preventative function against human rights abuses and meet our OPCAT obligations
- Funding to **increase the disability loading for students** and work to **ensure universal design access** to school premises and curricula
- **Funding to implement the Disability Justice Strategy** and related priorities including:
  - **Funding to implement AMC Healthy Prisons Review recommendations** including implementing **universal design in ACT correctional facilities** and more timely **access to functional assessments**
  - Funding to implement recommendations from pillar 4 of the R25 by 25 Recidivism Strategy including transitional services to **support correctional detainees with disability re-enter the community, the transitional centre** and to **implement the promised ACT Corrections Disability Framework**.
- Funding to **implement the ACT Disability Strategy** including adequate funding for DPO's and the ACT Office for Disability to deliver and monitor the Strategy with:
  - **multi year funding for the ACT Disability Health Strategy;**
  - funding for **affordable accessible and visitable social and public housing;**
  - funding to ensure the **new ACT Planning System supports adequate planning for people with disability** in new built infrastructure;
  - continued funding to address **gaps in supports under NDIS;**
  - funding for community **transport**, removal of caps on the ACT Taxi Subsidy Scheme and funding for ongoing access improvements to mass transit
  - Funding for a **rolling program of stocktake, audits and accessibility improvements** to spaces, places, community facilities and urban infrastructure in the ACT guided by lived experience
- Ongoing funding, including **disaster contingency**, to support service continuity, public health measure implementation, social inclusion and information to **people with disabilities impacted by COVID19**

## Priority Areas:

### Fund National Preventive Mechanisms to meet OPCAT obligations

AFI welcomes the nomination of National Preventive Mechanism (NPM) bodies in the ACT to meet obligations under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT). All persons deprived of liberty should have their human rights upheld to the highest possible standards. People with disability who are in detention or deprived of their liberty are especially vulnerable to abuse or mistreatment. It is essential that NPM bodies in the ACT are well funded and resourced to carry out OPCAT functions and regularly engage with civil society groups to prevent human rights abuses from occurring in the ACT.

People with disability are overrepresented in conventional places of detention and experience deprivation of liberty at a higher rate than the general population.<sup>2</sup> People with disabilities are more vulnerable to mistreatment or abuse within these settings.

Well-functioning NPM bodies must carry out a preventative function, working at a systemic level to prevent the occurrence of human rights abuses. Without adequate resourcing, these bodies remain reliant on a complaints-based approach, responding to issues only as they arise. This approach relies on those deprived of liberty, who are likely to be vulnerable or marginalised, to identify and articulate issues and sustain a complaint in situations of severe power imbalance. This reliance on a reactive approach is an established issue within anti-discrimination frameworks within Australia.<sup>3</sup>

Effective NPMs can work at a systemic level to prevent human rights abuses, but adequate funding and resources are needed to carry out this function. NPMs need to conduct formal monitoring regularly across both traditional places of detention and other sites where persons are deprived of liberty. Additionally, they must have enough staff with the expertise to work with vulnerable groups safely and effectively, such as people with disabilities.

It is essential to monitor any place people with disabilities are deprived of liberty is done by NPM staff with specific expertise. People with disabilities have unique needs and face issues that may not be obvious to an observer without specialist knowledge. It is essential for the prevention of human rights abuses against people with disabilities that NPMs have resourcing to employ such staff to monitor all settings people with disability may be detained. While this includes traditional detention settings, several disability specific settings must also be

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<sup>2</sup> Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (2019) < <https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true> >

<sup>3</sup> Fredrickson et al, *Implementing OPCAT in the Australian Capital Territory* (2019) Australian National University Law and Social Justice, <[https://law.anu.edu.au/sites/all/files/implementing\\_opcat\\_in\\_the\\_act\\_report\\_final.pdf](https://law.anu.edu.au/sites/all/files/implementing_opcat_in_the_act_report_final.pdf)>

included. Such as forensic mental health centres, aged care facilities, locked psychiatric wards, closed community care facilities, segregated educational spaces and segregated rehabilitation facilities. It is likely that the monitoring of welfare of people with disability will fall across the jurisdiction of multiple NPMs thus, they need to have the capacity to cooperate and share knowledge.

The ACT has a large and active network of civil societies and human rights organisations with experience working in closed settings to provide support and advocacy for vulnerable persons. Civil society groups are a source of expertise on the experiences of vulnerable persons deprived of liberty and the particular issues they face. NPMs in the ACT must have the resources to establish a formal means of engaging with civil society to make the most of the resources they represent. The importance of NPM engagement with civil society groups has been emphasised by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).<sup>4</sup>

**Recommendation:**

*That the 2022/23 ACT Budget include adequate funding of National Preventative Mechanisms to carry out OPCAT functions.*

## **Fund a proper transition to inclusive education**

All children in the ACT should have access to high quality, inclusive education, regardless of where they attend school. Parents and carers should be able to trust that any school they enrol their child in will be inclusive of and well equipped to support their child.

Inclusive education means that all students learn together and are involved meaningfully in all aspects of the curriculum. No students are excluded, and no student is 'too disabled' for inclusive education. Rather, supports for inclusion is built into the everyday operation of classrooms. Inclusive education recognises the dignity of all learners and the value that all students can bring to the school. The ACT currently has a segregated and assimilated education model, and students are either segregated entirely into specialist schools or learning support units or assimilated into mainstream education. Assimilation models require students with disabilities to try and fit themselves into the mainstream rather than making classrooms accessible for all students. Segregated or assimilated education models are often labelled as 'inclusive' but still function to separate students with disabilities from their peers. These models fail to uphold the human rights of students with disabilities or provide the best educational outcomes.

AFI is calling for the ACT to begin transitioning to a fully inclusive education model in all schools. This process begins by increasing the disability loading funding for students in mainstream schools to ensure they have access to all necessary support. Secondly, we recommend making universal design for learning a key consideration in the design of all new

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<sup>4</sup> Ibid

ACT schools. By implementing universal learning design, students with disability are fully included in education settings.

The current model is inefficient, exclusionary and does not provide the best outcomes for students with and without disability. Not all students with disability or additional learning support needs will be identified, and the identified students are not being sufficiently included or supported. The report of the expert panel on students with complex needs and challenging behaviours<sup>5</sup> (report of the expert panel) found that learning support units and classes in 'mainstream' schools are under-resourced and do not provide adequate support. Transitioning to an inclusive education model removes the need to identify individual students by making learning universally accessible.

Inclusive education provides the best outcomes for students with disability, improving equity of educational outcomes and a sense of student belonging to school communities. Transitioning to inclusive education models uphold the ACT and Australia's human rights requirements under the CRPD and the Disability discrimination ACT. The ACT would be leading Australia in responding to consistent calls from the CRPD general committee to the Australian government to transition to an inclusive education model. AFI has been made aware of many concerning situations where students with disability have been unable to access support in mainstream settings. Requests from parents and carers for their child to access support workers such as occupational therapists have been significantly reduced or outright denied. These situations leave students in an inaccessible environment without support, denying them the same quality of education as their peers. There is a pressing need to implement an inclusive education model in the ACT.

A significant body of evidence demonstrates improved educational outcomes for students with and without disability in inclusive education models. Additionally, better outcomes for social justice, wellbeing for teachers. The expert panel's report found that most students with disability are in mainstream settings, and it is essential then that 'mainstream' settings are accessible for all students. An inclusive education approach would mean that the whole school, and every classroom, is inclusive and implements universal learning design, so that all students can participate fully. This whole-school approach bypasses the need to identify individual students with disability, which is both costly and ineffective. Not all students with disability will meet the criteria to access support needs, but all students will benefit, especially students from other marginalised backgrounds that are disadvantaged in educational settings.

All children benefit immensely from inclusive education. There have been found to be substantial short- and long-term benefits of inclusive education for all students in academic, communication, and positive behavioural and social development. Conversely, no detrimental effects have been observed for students who do not experience disability. Students with disability who participate in inclusive education are more likely to live independently post-schooling and have better academic and vocational outcomes. Additionally, they are more likely to be engaged in competitive employment.

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<sup>5</sup> Shaddock, A., Packer, S., Roy, A. *Report of the Expert Panel on Students with Complex Needs and Challenging Behaviour* (2015) <[https://www.education.act.gov.au/\\_\\_data/assets/pdf\\_file/0003/856254/Attach-4-Expert-Panel-Report-Web.pdf](https://www.education.act.gov.au/__data/assets/pdf_file/0003/856254/Attach-4-Expert-Panel-Report-Web.pdf)>

Students without disabilities who are part of inclusive education programs have enhanced learning opportunities and experiences, growth in interpersonal skills and greater acceptance and understanding of human diversity. Designing programs accessible for all students improves the experiences and reduces burdens on teachers. Challenging behaviour is frequently cited as a significant area of concern for teachers. Investing in inclusive education to mitigate challenging behaviours minimises the burden on teachers to manage these behaviours independently. Investing in improving teacher and student wellbeing is essential to keeping teachers in the ACT and ensuring the ACT is a desirable jurisdiction for teachers to work in. The expert panel report found that teachers are in support of inclusive education.

People with disability have the right to access to inclusive, quality, and free education, in a manner that is equal to their peers. This is provided for by article 24 of the United Nations *Convention on the Right of Persons with Disabilities (CRPD)*<sup>6</sup>. In its general comment number four, the United Nations Committee on the Rights of Persons with Disability (CRPD committee) elaborates on this – differentiating between genuine inclusive education and integrated education models where people with disabilities are required to adapt themselves to the existing system<sup>7</sup>. Australia, as a signatory to the CRPD has a clear responsibility to all students to establish an inclusive education model. The ACT is a leading human rights jurisdiction and has the opportunity to uphold the rights of people with disabilities and ensure all students receive the best possible educational outcome.

**Recommendation:**

*That the 2022/23 ACT Budget include funding to increase the disability loading for students and work to ensure universal design access to school premises and curricula.*

## **Fund review recommendations for AMC detainees with disability**

AFI appreciates the opportunity to provide feedback on the experiences of prisoners with disability through the health prisons review. However, significant concerns remain regarding the experiences of people with disability in ACT prisons and correctional centres. Particularly relating to accessibility of information and programs and support need identification and response. Additionally, AFI has concerns about the lack of disability liaison officers at the AMC and overall staffing levels. Achievement of comprehensive health, mental wellbeing and access to health services are indicators under the health domain of the ACT wellbeing framework. Incarcerated populations must also be included in assessments of these metrics. Especially given that people with disabilities and other marginalised groups are overrepresented within prison populations.

There is an urgent need for **funding to be dedicated to the implementation of the recommendations from the healthy prisons review**, as access to high quality health and mental health care is essential for good outcomes in education, employment, relations, and broader social connections and thus, are essential to ensuring the success of incarcerated people re-entering the community. The ACT has invested strongly in the health and wellbeing

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<sup>6</sup> Article 24, *Convention on the Rights of Persons with Disabilities*, United Nations

<sup>7</sup> Committee on the Rights of Persons with Disabilities *General Comment No. 4 (2016) on the right to inclusive education CRPD/C/GC/4* 25 November 2016 para 11.

of Canberrans, and incarcerated people should not be excluded from this investment especially as people with disability and chronic health conditions are over-represented in the criminal justice system.

Through the healthy prisons review, we recommended **implementing universal design in ACT correctional facilities**. This means making all information materials, processes, and services accessible for all detainees. This will increase the effectiveness of services and participation of all detainees, regardless of whether access needs have been identified or not. It is also more efficient than providing accessible services and materials to specific individuals. A vital element of this is making sure all programs are physically and sensorily accessible.

Our second recommendation through the healthy prisons review is to ensure **timely access to functional assessments**, alongside policy to ensure the identification of all detainees with NDIS packages. Behaviours associated with disability are often misinterpreted as offending or challenging behaviours which are punished rather than managed and prevented with support. Functional assessments and diagnosis mean that support needs can be identified and met. It is a significant concern for AFI that all people with disability in the ACT, including those incarcerated, have access to the support, services, and health care they need.

Funding is needed to meet the aspirations for people with disability set out under pillar 4 of the Reducing Recidivism by 2025 Strategy. Specifically we note that improving wellbeing of detainees is linked to prevention of recidivism. Further, identification of needs while in detentions allows these needs to be met upon release and for better support for detainees when they re-enter the community.

As part of preventing recidivism it essential that detainees have support transitioning back into the community. Given the current cost of living detainees must be given support securing affordable and accessible housing, navigating the health system and accessing the disability supports they need to live safe fulfilling lives as community members. We are calling for funding to **develop the purpose-built rehabilitation centre, transitional services, and the ACT corrections disability framework**. These recommendations, as outlined in pillar 4 of the R25 by 25 recidivism strategy are essential to support successful transitions to community and ongoing wellbeing of detainees with disability.

**Recommendations:**

*That the 2022/23 ACT Budget include funding to implement recommendations made to the Healthy Prisons Review of the Alexander Maconochie Centre.*

*That the 2022-23 ACT Budget include funding for transitional services outlined in the R25 by 25 recidivism strategy capable of meeting the needs of detainees with disabilities.*



## Full funding to implement the ACT Disability Strategy

The ACT Government is currently consulting on the ACT Disability Strategy which is the ACT's commitment to the multilateral Australian Disability Strategy agreed by the Commonwealth and the State, Territories and local governments.

For the ACT Disability Strategy to be meaningful it *must* include investments in areas consistently identified and prioritised by people with disability and representative organisations.

AFI supports priorities variously identified by ACTCOSS, DPO's and Disability Representative Bodies for the full delivery of a meaningful ACT Disability Strategy. Our priorities include:

- **Multi year funding to support the delivery of the ACT Disability Strategy** including adequate funding to Disabled Persons Organisations and the ACT Office for Disability to deliver and monitor the Strategy and funded measures under each of the Strategy themes to support the delivery of outcomes identified through the current consultation process as follows.
- **Full multi year funding for the ACT Disability Health Strategy** focussed on policy, workforce development, training and infrastructure improvements as outlined in the ACTCOSS Imagining Better Report.
  - Some early signature investments should focus on alleviating issues with access and egress to The Canberra Hospital site during construction as well as bolstering access to critical care areas and supports for people with disabilities diagnosed with COVID19 or needing treatment for Long COVID
- **Funding to meet the ACT Housing Strategy targets** for affordable housing with an emphasis on accessible and visitable social and public housing
- **Funding to ensure the new ACT Planning System supports adequate planning for people with disability** in new built infrastructure
- Continued **funding to address gaps in supports under NDIS** including mental health and the continuation of discrete funding for ACT Community Assistance & Support Program
- **Funding for community transport** including a safe accessible fleet at sustainable levels, the **removal of caps on the ACT Taxi Subsidy Scheme** and **funding for ongoing access improvements to mass transit** including buses.
- Funding for a **rolling program of stocktake, audits and accessibility improvements** to spaces, places, urban infrastructure and community facilities in the ACT guided by lived experience
- Ongoing funding, including contingency, for public health measures, service continuity, social inclusion and information to **people with disabilities impacted by COVID19**. The Government should **maintain a contingency fund** to mitigate the effects of COVID and other disasters on people with disability and other vulnerable Canberrans