

DRAFT SECOND READING SPEECH

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Disability Inclusion and Safeguarding Bill 2024

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Mr President, I move that the Disability Inclusion and Safeguarding Bill 2024 be read a second time.

It is with great pride that I stand before this house and present this Bill.

It is my hope that this Bill will become a driver of change through which Tasmania can become a more inclusive place. A place where the human rights of all people with disability are upheld and people with disability can envision a future for themselves in which they are equal participants in the economic, social and political life of Tasmania. The Bill will drive delivery on the commitment we made to the Tasmanian People in 2021 that people with disability should have the same right of access to services as all Tasmanians.

We have heard many stories from people with disability and their supporters about the positive influence of the NDIS, however we also know we need to further enhance the system of supports which will improve the lives of people with disability. In response to the NDIS Review the Tasmanian Government has committed to working with all Australian Governments, the disability sector, and people with disability to build a system that supports people with disability and builds a more inclusive and accessible society.

We have heard and listened to the stories shared with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. I thank and acknowledge the resilience of all who shared their stories and their commitment to a safer future. We are continuing to work at a National and local level to respond to recommendations from the Royal Commission.

I acknowledge that there are some who feel that we should pause the progress of this Bill whilst we consider these broad disability reforms and recommendations. I strongly feel that we must proceed with establishing disability inclusion and safeguarding legislation and that now is the right time.

It will take time to consider the recommendations and actions, time to work with people with disability about how to respond and time to respond in a measured and considered way. I am confident that this Bill provides the right platform upon which Tasmania can build its response.

The old *Disability Services Act 2011* is no longer fit for this purpose and it will not give us the framework we need to respond. If it becomes apparent, once the reforms from the Royal

Commission or the NDIS Review are further evolved, that our legislative framework needs further work, this is work we will commit to driving.

Above all else we want Tasmania to be a place where people with disability can live free from violence, abuse, neglect and exploitation.

The Bill is grounded in a social model of disability. In this model it is not an impairment or anything else about an individual which creates disability. It is factors like the attitudes of others, poor communication, inaccessible environments, and lack of accommodations in providing services which build barriers and create disability.

The Bill has been developed over a two-year timeframe with two significant rounds of consultation involving people with disability, carers, advocacy organisations, disability service providers and a range of other stakeholders. In 2022 the Tasmanian Government consulted with stakeholders about how the *Disability Services Act 2011* needed to change and what else was needed to advance the human rights of people with disability. This consultation provided a large quantity of information for the Government to consider. After considering all the feedback it was decided that an entirely new Disability Inclusion Act was needed. Over the past year we have researched, drafted, consulted, and refined the Disability Inclusion and Safeguarding Bill 2024.

The passing of the Bill will only be the beginning. It is important to acknowledge that a significant amount of work will be required to put in place the resources, guidelines, policies, procedures and structures needed to implement and support the Act.

The Objects of the Bill have been framed to advance and safeguard the rights of all people with disability and to advance the full and effective inclusion of all people with disability, including by:

- recognising the responsibility of the State and the community to support people with disabilities in exercising their human rights; and
- supporting and achieving –
 - the purpose and principles of the United Nations Convention on the Rights of Persons with Disabilities; and
 - Australia's Disability Strategy; and
- establishing a framework for a whole-of-government approach to accountability and transparency in relation to disability inclusion; and
- regulating the use of restrictive practices by disability services providers; and
- establishing the positions of Disability Commissioner and Senior Practitioner; and
- establishing the Disability Inclusion Advisory Council;
- providing for a community visitor scheme; and

- enabling the provision of funding to support the above objects.

The Principles of the Act provide an important framework for anyone who makes a decision or takes an action in relation to the Act. The Bill states that these principles are to be observed in the operation, administration, and enforcement of the Act. The principles are intentionally closely aligned with the articles of the United Nations Convention on the Rights of Persons with Disabilities.

The requirements in the Bill relating to Disability Inclusion Planning are designed to transform the commitment in the Bill to human rights into a practical and enforceable framework for action. It is these planning requirements which will position us strongly in responding to the disability reforms.

The Bill establishes a requirement for development of a Tasmanian Disability Inclusion Plan. This plan will set out Government measures for achieving the objectives of the Bill and advancing the inclusion principles. The Plan will also provide for collaboration and coordination among State authorities and other entities in the provision of mainstream supports and services to people with disability. The Bill also establishes a requirement for Disability Inclusion Action Plans to be developed by Defined Entities. These Plans will be required by all State Government Agencies, GBEs and instruments of the Crown. The Bill includes a requirement for consultation to be undertaken by Defined Entities in relation to policies, programs or services provided by that entity that have a direct or significant impact on people with disability. These provisions will replace the planning and reporting framework previously undertaken under the umbrella of Accessible Island.

The Bill will establish a Disability Inclusion Advisory Council. This council will provide independent advice, framed by lived experience of disability, to the Minister for Disability Services and the Tasmanian Disability Commissioner on matters relating to disability inclusion and assist in planning and monitoring of progress against the implementation of the Tasmanian Disability Inclusion Plan. The Advisory Council will also provide independent advice on barriers to access and inclusion, and on matters related to violence, abuse, neglect, and exploitation of people with disability. It is intended that the majority of members of the council will be people with disability with skills, knowledge and experience in matters relevant to people with disability.

This Bill establishes the Office of the Tasmanian Disability Commissioner. The creation of this role delivers on the Election Commitment we made in 2021 to establish Tasmania's first Disability Commissioner.

The Disability Commissioner will be an independent officer appointed by the Governor on the advice of the Minister responsible for Disability Services. The Bill establishes that the Commissioner must be a person with disability.

The Commissioner will have a broad range of functions including to:

- provide leadership, foster inclusion, and promote accessibility across government and universal services, including monitoring and reporting in relation to the Tasmanian Disability Inclusion Plan and the Disability Inclusion Action Plans of Defined Entities;
- establish and monitor safeguarding mechanisms that address violence against, and the abuse, neglect and exploitation of, people with disability;
- take action, where appropriate, in relation to allegations of violence against, or the abuse, neglect and exploitation of, people with disability, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations.

The Disability Commissioner will have powers necessary to ensure fulfillment of these functions.

It is intended that the Disability Commissioner will work cooperatively with other Tasmanian and Australian Government complaints and safeguarding mechanisms.

The Bill makes provision for the creation of Disability Services Regulations. The intent of this section of the Bill is to maintain a link to the National Standards for Disability Services. These standards apply to all Disability Service Providers and provide standards and practice guidance, particularly for providers who are not registered with the National Disability Insurance Scheme Quality and Safeguards Commission. Providing for Disability Services Regulations enables an additional safeguard mechanism in the Act to ensure disability services are provided at a high-quality standard regardless of the registration status of a provider.

The Bill establishes the role of Senior Practitioner and sets provisions in which the Senior Practitioner has increased monitoring and oversight of the use of restrictive practices. A Senior Practitioner role has existed in Tasmania since 2011 however this Bill elevates the position, to strengthen safeguarding for people with disability and to support changes in the process for authorisation of restrictive practices set out in the Bill.

The Bill provides a model in which the Senior Practitioner is the single pathway for authorisation of restrictive practices in disability services settings. This change streamlines the process and sets up practice changes which will reduce the administrative burden on disability service providers allowing resources to focus on high quality and safe service delivery for people with disability.

The Senior Practitioner will oversee the use of restrictive practices to ensure that the rights of people who may be subject to a restrictive practice are protected. They also act to ensure that disability service providers comply with guidelines and standards relating to the use of restrictive practices and practices are the least restrictive possible.

The Bill provides a framework for the authorisation of the use of restrictive practices on people with disability. The model set out in the Bill is in recognition that there are some circumstances where a restrictive practice is necessary as a last resort to protect a person with disability and or

others from harm. The decision to use a restrictive practice needs careful clinical and ethical consideration, considering a person's human rights and the right to self-determination. The overall goal is that the use of a restrictive practice is reduced over time and eliminated where possible.

The Bill explicitly links approval of the use of a restrictive practice to a Behaviour Support Plan containing strategies to reduce or eliminate the practice over time.

The Bill includes a process whereby some practices are prohibited and reinforces that some practices should never be used.

The Bill outlines an updated definition of a restrictive practice which aligns with the NDIS Act 2013 and the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018. Close attention has been paid in preparation of the Bill to ensure interoperability between National and State Legislation and Rules relating to the use of restrictive practices.

The Disability Royal Commission recommends legal frameworks for the authorisation, review and oversight of restrictive practices. This Bill supports the recommendation of the DRC that restrictive practices:

- should only be used as a last resort,
- should be the least restrictive response possible and
- subject to independent oversight.

In addition, the powers and functions of the Senior Practitioner described in this Bill are consistent with those recommended to be adopted by the Disability Royal Commission in that the Senior Practitioner will:

- promote the reduction and elimination of restrictive practices
- protect and promote the human rights of people with disability
- make guidelines and develop standards
- have powers to investigate and
- have powers to prohibit certain practices.

The Bill creates the role of an Appointed Program Officer (APO).

The APO undertakes a quality assurance role which includes, but is not limited to, asking if the restrictive practice is needed, has due process been followed, does the behaviour support plan reduce and/or eliminate the restrictive practice and can the restrictive practice be pragmatically implemented.

The APO role is undertaken by an employee of the disability services provider who will implement the practice and is responsible for ensuring that any restrictive practice used is in accordance with the authorisation, conditions and guidelines set by the Senior Practitioner.

The Bill establishes the role of an Independent Person who supports the safety, wellbeing and health of a person with disability for whom a restrictive practice is being considered or where a restrictive practice is being used.

The Independent Person is an unpaid or voluntary role undertaken ideally by a person known to the person with disability and who has a significant interest in their wellbeing. The Independent Person is responsible for:

- explaining the proposed use of a restrictive practice to the person with disability;
- considering if the proposed restrictive practice is the least restrictive approach;
- notifying the Senior Practitioner if in the view of the Independent Person the requirements of the Act are not being complied with; and
- promoting the will and preference of a person with disability.

A person with disability may self-select an Independent Person who may be a friend, family member, informal carer or guardian of a person with disability. The Senior Practitioner will establish a register of volunteers who can take on the role if a person with disability does not have anyone who can act as an independent person. The Independent Person cannot be an employee of the Disability Service Provider who is implementing the restrictive practice.

The Bill makes provision for creation of a Community Visitor Scheme in the future. The creation of scheme is recommended by the Disability Royal Commission and is broadly supported by stakeholders. The details of how the scheme would operate will be established in a future regulation and will be in line with Nationally consistent rules and practice.

The Bill provides a framework in which funding may be allocated for the purpose of delivering activities in line with the objects of the Act and which will contribute to achievement of the principles.

This would include activities like Individual Disability Advocacy, research, or capacity building to enable people with disability to participate in advisory structures associated with the Act.

It is not intended that this clause establishes an expectation for funding for planning or accommodations in universal services which are the responsibility of the Australian Government.

The Bill establishes the function of an Authorised Officer to assist in the safeguarding provisions in the Bill. An Authorised Officer is authorised by either the Secretary responsible for administration of the Bill or the Disability Commissioner.

The authorisation would allow officers to enter premises to ensure the safety of the person who resides there or is receiving support at the premises. This section also sets out the requirements which must be met when premises are entered. This section also lists the things that an Authorised Officer may do or request after they have entered premises.

The Bill lists a range of decisions which are reviewable and sets out a process for Internal Review and a pathway for external review by the Tasmanian Civil and Administrative Tribunal.

The Bill lists a range of offences and associated penalties relating to actions which would hinder or limit the functions and powers of the Senior Practitioner, Disability Commissioner or other Officers acting under the Act. These offences are in relation to intimidation, reprisals, obstruction, and provision of information.

The Bill makes provision for a review of the Act to be undertaken as soon as practicable after the third anniversary of commencement of the Act.

Other provisions in the Bill are included relating to information sharing, confidentiality, protection from liability, delegation of functions and the making of Regulations.

The Minister responsible for administration of the Bill will be the Minister for Disability Services and the Tasmanian Government Department responsible for administration will be the Department of Premier and Cabinet.

In closing, I would like to extend my sincere thanks to everyone who has contributed to development of the Bill, and I would especially like to thank Tasmanians with disability whose voices and experience have guided and informed the creation of the Bill. I would like to single out the significant contribution of the Minister's Disability Consultative Group who have been with us in development of the Bill from the start and their involvement has been invaluable.

I would like to illustrate in the words of people with disability what the advancement of inclusion will mean for Tasmanians with disability. Members of Speak Out Advocacy Tasmania, an advocacy service for people with intellectual and cognitive disability, provided a submission to the Disability Royal Commission in which they told the Commission what inclusion means to its members:

Inclusion is -

Feeling accepted

Being respected

Being heard in different situations

Having a voice

When you are included

People care about you

You belong

You are wanted

You fit in

You are a part of decisions that are about YOU

Your rights and choices are respected

You feel Empowered

You are safe and feel safe

When the community is inclusive

It is not us and them

We live in the community

We work in the community

We are the community

Mr President, I commend the Bill to this house.