



Submission from Advocacy Tasmania regarding the draft *Disability Inclusion Bill 2023*

**September 2023**

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## Introduction

Advocacy Tasmania is an independent not-for-profit organisation that provides client-directed advocacy services to older people, people with a disability ('PWD'), people living with mental health issues, and people who use alcohol and other drugs. Advocacy Tasmania welcomes the opportunity to make a submission to the Tasmanian Government regarding the proposed *Disability Inclusion Bill 2023* ('the Bill'). Advocacy Tasmania provided feedback regarding the review of the *Disability Services Act 2011* ('the DSA') in late 2021 and welcomes the opportunity to reflect on the incorporation of that feedback in the Bill.

Our submission is informed by directly reported client experiences and case studies included in this submission have been anonymised. They may include the experiences of more than one individual, and details not affecting the outcome of the issue may have been changed to protect the identities of the individuals concerned.

## Feedback on DSA

Advocacy Tasmania notes the Bill incorporates some matters raised in our submission to the review of the DSA in 2021. These include: centring inclusion as a core object of the Bill (s3); including supported decision-making as a core principle of the Bill (s8(1)(j)); establishing a Disability Advisory Council with the majority of its members being PWD (s19(3)(a)); retaining the power for government to grant assistance for disability services to PWD (s61(3)(e)); retaining the power to grant funding for advocacy services (s61(3)(b)); and establishing the Disability Inclusion Commissioner ('the Commissioner') (s23) who is able to refer matters to other bodies such as the NDIS Quality and Safeguards Commission ('NDISQSC') (s34(2)).

We note that supported decision-making provisions have not been established in full as per our recommendation and are hopeful that the Tasmanian Government intends to address this urgent issue through current reforms to guardianship and administration legislation. Our submission will focus on strengthening the Bill by incorporating a Charter of Rights for PWD, an Official Visitors Scheme, strengthening the role of the Disability Inclusion Commissioner, and taking into consideration the findings of the Disability Royal Commission ('DRC').

## Considering Findings of the Disability Royal Commission

Advocacy Tasmania supported many clients to make submissions to the DRC on a broad range of issues experienced. Many clients reported difficulty in sharing their stories, however were determined to do

so in the hopes of improving outcomes for PWD in future. As the final report of the DRC is expected to be released on 29 September 2023, which is likely to lead to amendments required to the Bill, Advocacy Tasmania submits that the findings of the DRC should be taken into consideration by the Tasmanian Government in the review process of the Bill. This would respect the effort involved by PWD in making contributions to the DRC, maximise the opportunities for those contributions to be considered in government policy, and ensure their experiences are centred as much as possible. If the Bill proceeds without consideration of the findings of the DRC the government should, as a matter of urgency, give an indication of the timeframe intended to take the findings into consideration in relation to the Bill and table any amendments.

## Charter of Rights

Advocacy Tasmania submits that listing rights of PWD as ‘inclusion principles to be observed’ in section 8 of the Bill does not go far enough to protect the rights of PWD. We recommend that the Bill incorporates a Charter of Rights for PWD accessing services in Tasmania which explicitly includes the right of access to advocacy and that the Commissioner has oversight of complaints made where rights under the Charter are breached. Access to independent advocacy, which of itself is not a safeguarding mechanism, provides a critical support to PWD and facilitates access to and effectiveness of any safeguarding mechanisms that do exist. The importance of access to advocacy is highlighted in the National Standards for Disability Services, National Disability Insurance Scheme (‘NDIS’) Act, NDIS Rules, and in the inclusion principles of the proposed Bill. However, none of these frameworks create an obligation on providers to facilitate access to advocacy.

A comparison can be drawn to the Charter of Aged Care Rights across national government-funded aged care services, which sets out the core rights of any person accessing aged care services, including the right of access to advocacy.<sup>1</sup> The legislated Charter increases the number of older persons able to access individual advocacy and improves outcomes by increasing awareness amongst older persons of their rights as well as creating an obligation on providers to uphold them. Many of our aged care clients are aware of their rights as there is a requirement for their aged care service provider to assist them to understand the Charter and provide them with the opportunity to sign the Charter on entering aged care services.<sup>2</sup> See below case studies highlighting the importance of legislated rights for older persons accessing aged care services in keeping providers accountable for upholding client rights.

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<sup>1</sup> *User Rights Principles 2014* (Cth), Schedule 1, s2.

<sup>2</sup> *Ibid*, s11(1)(a), s20(1)(a).

## Case study – Geoff

Geoff resides in residential aged care and had complained about the standard of food to staff at the facility, however, did not feel as though the complaints were taken seriously and was told he needed to ‘complain higher’ if he wanted anything done about it. Geoff wanted to have his voice heard and engaged an advocate to make a complaint to the CEO. The advocate explained to Geoff his right under the Charter of Aged Care Rights to receive safe and high-quality services,<sup>3</sup> and his right to have an advocate support him.<sup>4</sup> At Geoff’s direction the advocate met with the CEO of the service to raise his concerns on his behalf, highlighting his rights, and requesting a written response from the service provider to Geoff. The written response was received and Geoff reported some improvements within the facility. Highlighting the provider’s obligation to uphold Geoff’s rights was central to achieving a positive outcome.

## Case study – Sylvia

Sylvia was a resident of an aged care facility and experienced several concerns including regarding access to her information, refusal of information requests by the facility, and breaches of the code of conduct by facility staff. Sylvia sought advocacy assistance to discuss her rights, assist with correspondence with the facility, and progress a complaint with the Aged Care Quality and Safety Commission. Sylvia was a strong self-advocate and had arranged a meeting with the Board Chair of the aged care facility. When Sylvia advised her advocate would be attending the meeting to support her, the Board Chair refused to proceed with the meeting. The advocate communicated with the Board Chair to point out Sylvia’s legislated right under the Charter of Aged Care Rights to have support of an aged care advocate. This highlights the importance of an explicitly legislated right to independent advocacy to articulate the obligation of the provider to facilitate access to advocacy for the client.

## Official Visitors Scheme

The Bill should incorporate an Official Visitors Scheme empowered to make frequent, unannounced visits to the premises of services offering accommodation or daytime support services to PWD. This would allow the Official Visitor to both directly witness conditions in centre-based disability supports and maximise the opportunities for PWD to speak up about their experiences. We note the Bill empowers the Commissioner to ‘establish and monitor safeguards’ (s24(h)) however it could go further and establish the Official Visitors Scheme as a safeguarding mechanism. For example, official

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<sup>3</sup> Ibid, Schedule 1, s2(1).

<sup>4</sup> Ibid, Schedule 1, s2(11).

visitors are established in Tasmania by the *Corrections Act 1997* for prison facilities,<sup>5</sup> and by the *Mental Health Act 2013* for mental health facilities.<sup>6</sup>

In the ACT, the Official Visitors scheme applies to children and young people, corrections, mental health, disability and homelessness.<sup>7</sup> In terms of disability, visitable premises are respite facilities and long term residential facilities owned, rented, or operated by specialist disability providers or where specialist providers provide services.<sup>8</sup> Official Visitors can observe conditions in service environments including interactions between staff and residents, communicate with residents regarding any specific issues, and identify any concerns. Whilst it could be argued that unannounced visits to accommodation premises infringe on a person's right to quiet enjoyment of their property, the scheme is supported and overseen by the Minister for Human Rights via a reporting framework. The Bill should establish an Official Visitors Scheme overseen by the Disability Inclusion Commissioner.

The Victorian Community Visitor model makes use of volunteer programs to ensure a high frequency of site visits and could provide a strong basis for an equivalent program in Tasmania.<sup>9</sup> This model could be strengthened further by the inclusion of centre-based daytime support services in addition to accommodation providers. It can be common for clients with communication barriers to struggle to speak up about their experiences. Many are reluctant to disclose issues relating to abuse or neglect in the service setting where it occurs due to fear of retribution. However, some PWD may be more likely to disclose in the setting where incidents occurred as the physical surroundings assist to prompt memories of events. See below case studies for examples where a client may have benefitted from this scheme to observe or disclose their concerns.

## Case study – Jacinta

Jacinta, a woman with a neurological disability, is a National Disability Insurance Scheme (NDIS) participant and lives in a group home. She reported that her housemate always shouts profanities at her and often makes physical threats toward her. Jacinta advised she must lock herself in the room so her housemate cannot harm her, and she does not feel safe at her home. However, she would like to continue to live in that group home. The group home staff and management were aware of the issue and Jacinta had reflected her concerns to the group home management on many occasions, but her efforts were to no avail. She sought advocacy support to communicate with the group home management.

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<sup>5</sup> *Corrections Act 1997* (Tas), s10.

<sup>6</sup> *Mental Health Act 2013* (Tas), s155.

<sup>7</sup> *Official Visitor Act 2012* (ACT), s7.

<sup>8</sup> *Disability Act 1991* (ACT), s8B(1).

<sup>9</sup> *Disability Act 2006* (Vic), s28.

Contrasting with what Jacinta said, the group home management told the advocate that Jacinta and the housemate in question were working with a behavioural specialist to address concerns, and there were no incidents recorded between them. The management also said that the client would like to move to another group home. Jacinta advised she was disappointed with the group home management. If an Official Visitor had been empowered to visit the group home, they may have witnessed these incidents, which would have assisted Jacinta in corroborating her experience to the management, or alternatively(, provided Jacinta an earlier opportunity to raise her concerns directly with the Visitor.

## Case study – Jamie

Jamie, a young person with a neurological disability, is a NDIS participant and a resident of a private care facility. The facility management are husband and wife, and Jamie advised his advocate that the management abused him; he was forced to attend activities he did not wish to so the management could gain a financial benefit; they stopped him from attending group-based activities outside of the facility; they imposed a curfew on him and locked him out in the cold if he did not return by 9pm; they turned the Wi-Fi off at 10pm although he paid for the Wi-Fi; they used his card to purchase groceries which were not for him; and limited his cigarette usage although he uses his own money to purchase cigarettes and is not under a guardianship or administration order.

While Jamie knew his rights, he did not wish to pursue any action against the management until he moved out from that care facility due to fear of retribution. He was working with his coordinator of support to explore alternative accommodation options when his advocate last spoke with him. If an Official Visitor was empowered to make frequent, unannounced visits to services such as Jamie's accommodation provider, their visits may have reduced the likelihood of the management abusing Jamie, or they may have witnessed one of the above incidents, allowing the matter to be observed without Jamie raising it himself.

## Disability Inclusion Commissioner

The provisions of the Bill relating to the Commissioner can be strengthened, as currently the Commissioner does not have power to enforce compliance by defined entities with their disability inclusion plans. Enforcement mechanisms should be implemented to empower the Commissioner to order compliance and/or fines by defined entities if their plans are not complied with. This would ensure commitment to Further, the Bill provides that the Tasmanian disability inclusion plan and the plans of defined entities must be published in 'at least one accessible format' (ss (4)b)), (6)(a)) which is insufficient considering the range of accessibility needs of PWD. This must be expanded to include

formats accessible to all PWD the government consults with. It is important to recognise that providing accessible resources in the first instance may address barriers faced by PWD in asking for accessibility adjustments.

Provisions should be included in the Bill for the Commissioner to be appropriately resourced. It appears from s28(1)(a) of the Bill that the Commissioner is only able to retain staff from other government departments. The Commissioner should be empowered to employ their own staff to ensure they are able to fulfil their functions under the Bill. For example, in Victoria there is provision for the Commissioner to have necessary staff and employees.<sup>10</sup> Our clients report difficulty experienced with the lengthy timeframes of existing complaint mechanisms, and it is important to minimise delays in the establishment of the Commissioner's office as much as possible.

Currently, the Commissioner can investigate any matter in relation to objects of the Bill of its own motion or via report (s30(1)) and a report does not need to be in writing (s30(2)). It should be clear that any person can make a report to the Commissioner on any matter relating to rights (see above Charter), or in relation to the provision of services. The following section 31(1)(a) regarding making a report where PWD is at risk is clearer, setting out that 'a person can make a report to the Commissioner' regarding those matters. Our clients report confusion in relation to existing complaint pathways, and it needs to be clear to PWD as to when a report can be made to the Commissioner.

## Conclusion

We aim to have demonstrated in this submission ways in which the Bill can be strengthened to ensure the rights of Tasmanian PWD are upheld and monitored by effective safeguards. As a client-directed advocacy organisation, our recommendations are informed by the reported experiences of our clients. These include considering the findings of the Disability Royal Commission, establishing a Charter of Rights for PWD, an Official Visitors Scheme, and strengthening the provisions relating to the Disability Inclusion Commissioner as set out above. We welcome any further opportunities for consultation regarding this review.

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<sup>10</sup> *Disability Act 2006* (Vic), s18(1).