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Submission by the Synod of Victoria and Tasmania, Uniting Church in Australia submission to *Disability Inclusion Bill 2023*

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The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission to the *Disability Inclusion Bill 2023*.

The Synod has sought to be inclusive of people with a disability, seeking to improve its response over time. Our position in response to the *Disability Inclusion Bill 2023* is informed by the resolutions adopted by the meetings of representatives of the Synod and our National Assembly. The 1998 meeting of hundreds of representatives of the Synod from across Victoria passed the following resolution:

98.5.4.5 The Synod resolved:

In keeping with the spirit of resolutions made in the International Year of Disability Persons, and in the light of the Disability Discrimination Act (DDA) (Cwth: 1992):

(a) To affirm its commitment to creating a Church that is for all people with disabilities (as defined in the DDA) and in all aspects of its life, free from discrimination.

(b) To appoint a Task Group to develop and implement an Action Plan under the DDA in compliance with Section 61 of that Act. The initial phase would be to undertake an audit of current practices within the life of the Church that may discriminate (including unintentionally) against people with a disability, including, but not limited to, physical or sensory barriers, informational or attitudinal barriers, and any other elements of proclamation, teaching, fellowship or service.

(c) That the Standing Committee be asked to appoint members of the Task Group.

(d) That the Task Group report to the 1999 Synod with its recommendations, including financial and staffing implications and a schedule of action.

The 2010 meeting of the Synod representatives passed the following resolution:

10.7.10.2.6 The Synod resolved:

While acknowledging that a balance needs to be struck between freedom to practise religious beliefs and the right not to be discriminated against in relation to certain characteristics in the areas of employment, education, provision of goods and services, and accommodation; and notwithstanding the Uniting Church's support for religious liberty, its support for UN human rights treaties through the National Assembly Resolution Dignity in Humanity: Recognising Christ in Every Person 2006, and Synod resolution 93.5.1.1-3(c),



(a) (i) *To support the UN Convention on the Elimination of all Forms of Racial Discrimination in its assertion that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous” and therefore to oppose all forms of harmful racial discrimination and all laws that legalise harmful racial discrimination, even when such discrimination is religiously motivated;*

(ii) *To recognise that all people are created in the image of God and therefore to oppose all forms of harmful discrimination against people with disabilities, even when religiously motivated, except where not discriminating would place unreasonable costs on a body to accommodate such persons and, in the area of employment, where a person with a disability is unable to fulfil the genuine inherent requirements of the role;*

(iii) *While noting that the current polity of the Uniting Church would not allow discrimination in ordination in any of the areas below, to oppose harmful discrimination and laws that accommodate harmful discrimination in education, clubs and club membership, sport, provision of goods and services, local government, accommodation, employment and employment-related areas, excluding ordination, on the grounds of:*

- *age*
- *breastfeeding*
- *industrial activity*
- *status as a carer*
- *physical features*
- *political belief or activity*
- *parental status*
- *pregnancy*
- *gender identity*
- *marital status*
- *sex*
- *sexual orientation*

even where such discrimination is religiously motivated. The only exception to this opposition to discrimination on the above grounds is in the area of employment where, as a result of one of the above characteristics, the person is unable to fulfil the inherent requirements of the role.

(b) To write to the Victorian and Tasmanian Attorneys General and Shadow Attorneys General to inform them of this resolution.

(c) To ask the Justice and International Mission Unit to keep these matters under review and report to future Synods.

The 2022 Synod meeting adopted the following resolution:

The Synod resolved:

- 1) *To support the full implementation of the UN Convention on the Rights of Persons with Disabilities in Australia.*
- 2) *To call on the Victorian Government to:*
 - a) *Amend the Victorian Disability Act to*
 - i) *recognise the right of people with disabilities to spiritual expression, and this be referenced in all Victorian State Disability Action Plans;*
 - ii) *ensure that the Victorian Government will provide essential supports to people with disabilities where the National Disability Insurance Scheme fails to deliver such supports;*
 - iii) *establish a Victorian Commissioner for Disability Inclusion who:*
 - (1) *oversees compliance with the state disability plan and disability action plans;*



In seeking to be a community of reconciliation, the Uniting Church acknowledges that for many people with disability its life and faith has not always borne witness to this vision. The Uniting Church seeks:

- (a) to embody a community life that in its theology and practice is accessible to all people;*
- (b) to ensure that within its own life, people with disability are treated justly and have their hopes and rights realised; and*
- (c) to advocate for justice and equality for people with disability in the wider community.*

18.18.02 to request the Standing Committee to develop disability access guidelines for use at all events and activities overseen by the Assembly and to encourage each Synod to develop similar disability access guidelines for use at Synod events and meetings;

18.18.03 to encourage each Synod to develop Disability Action Plans in accordance with the federal Disability Discrimination Act 1992, with the aim of eliminating access barriers pertaining to:

- (i) Attitude/Theology and access and welcome;*
- (ii) Communication; and*
- (iii) Physical Environment.*

18.18.04 to request the appropriate Standing Committee to arrange for the development of an appropriate liturgical response that acknowledges the historical exclusion experienced by many people with disability

The Synod supports creating a new Act for Tasmania relating to disability inclusion. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability highlights the need for such an Act through its overview of responses to their paper on the rights of people with a disability and attitudes towards people with a disability:¹

Responses to the issues paper told us that people with disability and the broader community lack awareness of the rights of people with disability. The lack of awareness can enable violence, abuse, neglect and exploitation of people with disability.

Many respondents observed that negative attitudes underpin laws, policies and practices that discriminate against or ignore the experiences of people with disability and that this can erode the rights of people with disability.

Responses described how discriminatory attitudes, a lack or stigmatising representation in the media, assumptions about capacity and autonomy, and limited advocacy affect people with disability throughout their lives.

A common theme was that lack of awareness and understanding of the rights of people with disability, assumptions about capacity and autonomy, and limited advocacy affect people with disability throughout their lives.

Responses discussed how outdated stereotypes often portray people with disability as a burden, as childlike, or as an object of fear or pity. These stereotypes reinforce negative attitudes towards people with disability and may contribute to a person's experience of maltreatment, exclusion, segregation, bullying, violence, abuse, neglect and exploitation.

¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Overview of responses to the Rights and attitudes Issues paper', April 2021, 2.



We were told about the need to develop community awareness and understanding of disability through education from a young age, including in the family, throughout formal education and in the workforce.

The Royal Commission reported that assuming that a person with disability cannot make decisions limits their autonomy. Multiple responses to the Royal Commission explained that assumptions about lack of capacity exclude people with disability from essential choices about their health and well-being. For example, advocacy Tasmania reported on the case of 'Lois', a woman with a disability in her early fifties. When Lois' disability employment service provider asked her what types of employment she was interested in, she said:²

In her entire life to date, she had been told what she 'could' do or was 'allowed' to do, but that she had never before been asked what she might want. She then requested assistance to formulate goals for herself as she had never been supported to do so before.

The Royal Commission also stated that:³

Responses reported that discriminatory attitudes, assumptions and biases are drivers of violence against, and abuse, neglect and exploitation of, people with disability. Responses explained that people with disability are often considered to be 'inferior', 'a burden', 'a nuisance', 'of no value', as 'not fully human', 'objects of pity', 'a menace', 'lacking authentic identity', as 'eternal children' or 'better off dead'.

Further:

Numerous responses reported that people with disability are often perceived to be of lesser worth than people without disability or as being incapable of knowing what is best for themselves. Respondents explained that while these attitudes are frequently held on a personal level, they are also evident at a systemic level in laws, policies and practices.

1. Do you agree with the proposed Objects of the Act? Are there any changes you would make?

The Synod supports the Objects of the Bill.

2. What do you think about the definitions included in the Act? Do any definitions need to be added, changed or removed?

The Synod supports the definitions contained within the Bill.

3. Are these the right principles to advance the human rights of people with disability and the full and effective inclusion of people with disability in Tasmania?

The Synod supports the inclusion principles in the Bill. However, under 8(1)(a) we believe it should explicitly state that people with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional, intellectual and spiritual development.

Under (8)(2) it should state that the use of restrictive practices should also comply with the human rights principles contained within the *UN Convention on the Rights of People with Disabilities* and the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

5. Do you agree with the provisions outlined in the Bill regarding Disability Inclusion Planning? Is there anything else that should be considered?

The Synod supports the measures included in the Bill concerning Disability Inclusion Planning.

² Ibid., 6.

³ Ibid., 7.



As required in section 17, it needs to be clear that people with disability provide valuable expertise in the design of programs, services and policies that are programs, services and policies that apply to the whole community. Therefore, the inclusion of people with disability in the design of programs, services and policies must not be restricted to those that are particularly targeted at people with a disability.

Similar to the Commonwealth *Modern Slavery Act*, which requires the governing body of a reporting entity to sign off on the entity's Modern Slavery Statement, the governing body or head of a defined entity should be required to sign off on the Disability Inclusion Action Plan. Such a requirement would increase engagement with the Disability Inclusion Action Plans by the senior levels of the defined entities, hopefully encouraging more significant commitment to the plan.

The Synod requests that the Bill be amended so that Disability Inclusion Planning have a requirement that the inclusion of people with disability must be considered in all proposals and submissions made to Cabinet by defined entities.

7. Are there any changes you would make to the proposed functions or structure of the Disability Inclusion Advisory Council?

We support the proposed functions of the Disability Inclusion Advisory Council.

The membership of the Disability Inclusion Advisory Council should include people with experience and skills in systems that protect people with disability who are most vulnerable to abuse, neglect and exploitation. The Synod is concerned that the initial design of the NDIS did not have sufficient regard for the protection of people with disability who were most vulnerable, with tragic outcomes. It is our understanding that the flaw in the design was partly in response to disability advocates who argued that unregistered people could be employed under the NDIS without needing any checks on their suitability. Of course, the needs and preferences of people with disability are diverse, but the Disability Inclusion Advisory Council must have regard to protecting all people with disability from abuse, neglect and exploitation.

The members of the Disability Inclusion Advisory Council should be publicly disclosed.

8. What do you think about the proposed functions and powers of the Disability Inclusion Commissioner? Is there anything you would change or add?

The Synod supports the proposed functions and powers of the Commissioner as outlined in the Bill. In addition, the Synod requests an explicit function is added that the Commissioner can issue guidance materials on matters that will assist entities and individuals with meeting their obligations under the Act. The guidance material should also encourage best practices and excellence in disability inclusion and the respectful treatment of people with disability.

The ability of the Commissioner to undertake research into any matter related to the operations and objectives of the Act should include the ability to commission research from third parties. In the case of commissioning research from a third party, the Commissioner should be able to share information the Commissioner has that would enhance or facilitate the conduct of the research.

The Bill should state that preference will be given to people with a disability to be employed as the staff for the Commissioner.

Under section 33(1), the Synod does not believe the Commissioner should need to assess if a report was made in good faith in order to protect the identity of a person making a report, given the exemptions to keeping the person's identity private that follow in that section. The 'good faith' test could deter people from making reports out of fear that the Commissioner will



make an assessment the report was not made in good faith, disclose their identity and open them to retaliatory action.

10. Is it important for this Act to continue to include a requirement for all providers to follow the National Standards for Disability Services?

It is helpful for the Act to reinforce that all providers of disability services in Tasmania are subject to the National Standards for Disability Services.

13. Is there anything else the Act needs to include in relation to the Senior Practitioner role?

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability received submissions indicating the use of restrictive practices has caused trauma, re-traumatisation and, in some cases, led to suicidal ideation.⁴ They also were told that when the use of restrictive practices is normalised, it trivialises interfering with the rights and freedoms of people with disability.⁵

It is of concern that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability heard reports that restrictive practices were sometimes used for “operational convenience”.⁶

Evidence provided to the Royal Commission identified that a lack of resources and a lack of workforce training contributed to the level of use of restrictive practices.⁷ Melbourne East Disability Advocacy identified understaffing, low pay and casualization as contributing factors to the prevalence of restrictive practices.⁸ Thus, the Synod recommends that the Bill be amended to require the annual report of the Senior Practitioner to assess and report on systemic factors driving the use of restrictive practices and make recommendations for addressing these causes of the use of restrictive practices.

14. Will the authorisation of restrictive practices process provided for in the Bill contribute to improved safeguarding for people with disability? If not, please expand on your answer?

The Synod strongly supports that the person with disability or a person nominated by that person need to be consulted before restrictive practices are authorised.

We also strongly support that behavioural support plans prepared by the disability service provider must consult with the person with disability, the guardian of the person and an independent person for the person with disability.

15. Does aligning the definitions of restrictive practices with the NDIS Quality and Safeguards Commission Behaviour Support and Restrictive Practice Rules 2018 provide better protections and safeguards for people with disability?

The Synod share the concern of the Victorian Office of Public Advocate that there is insufficient guidance in the NDIS Code of Conduct to explain to unregistered workers and providers as to what constitutes a restrictive practice and when to report its use. The Bill needs to ensure there is proper oversight of the use of any restrictive practices by unregistered workers and

⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Overview of responses to the Restrictive practices Issues paper’, April 2021, 8.

⁵ Ibid., 8.

⁶ Ibid., 5, 10.

⁷ Ibid., 9.

⁸ Ibid., 9.



providers. Ideally, a worker or provider should be required to register if they are to use restrictive practices.⁹

As recommended by the Victorian Office of Public Advocate, the use of certain restrictive practices should be proscribed.¹⁰ While section 50 allows the Senior Practitioner to direct specific providers not to use certain restrictive practices, the Bill itself should establish a regulated list of restrictive practices that are proscribed. These would include aversion therapy or ‘consequence-driven practices’.¹¹

The Royal Commission heard evidence that behaviours deemed to require restrictive practices in response were often a form of communication that reflects unmet needs. The behaviours can result from the person not being provided with the health, emotional and cultural support they need.¹² The Bill should create mechanisms by which multiple sources, including the Senior Practitioner, the Appointed Program Officer and an independent person for the person with disability, can identify such unmet needs. The Bill should also contain a mechanism by which a provider must take reasonable actions to address the unmet needs to reduce or remove the need for restrictive practices.

16. Do you agree that the creation of the Appointed Program Officer will provide greater quality and safeguarding in the implementation of restrictive practices by providers?

The Synod supports the creation of the Appointed Program Officer as an additional quality and safeguard mechanism, particularly regarding the use of restrictive practices. However, as the APO will be an employee of the disability service provider, there should not be an overreliance on APOs as a safeguard. As employees, they may be subject to subtle internal pressure to sign off on restrictive practices their employer wishes to use.

18. Will the establishment of this role improve safeguarding for people with disability?

The Synod strongly supports establishing the role of an Independent person and believes it will improve the safeguarding of people with disability.

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⁹ Colleen Pearce and John Chesterman, ‘Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’, Office of the Public Advocate, September 2020, 19.

¹⁰ Ibid., 19.

¹¹ Ibid., 19.

¹² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Overview of responses to the Restrictive practices Issues paper’, April 2021, 9.