



Disability Voices Tasmania

Community Consultation on Disability Inclusion Bill – TAS

For any queries or clarification on any matter contained in this submission, please contact:

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Introduction

Disability Voices Tasmania acknowledges and appreciates the opportunity to comment on, and provide input to, the consultation process for the Disability Inclusion Bill 2023 (Tas) (the “draft Bill”).

About Disability Voices Tasmania

Disability Voices Tasmania is Tasmania’s only cross-sector Disability Representative Organisation seeking to gain equality through driving change and promoting the human rights of disabled people in Tasmania. All of the staff, board and organisational members are disabled people who live in Tasmania. While Disability Voices Tasmania is funded to undertake projects that build capacity for Tasmanians with disability, all of our systemic advocacy work is conducted by volunteers.

Our Vision is a Tasmania in which people with disability understand our rights and where those rights and the dignity and opportunity of people with disability are respected and advanced.

Our purposes are:

- To **I**nform, **C**onnect, **E**mpower and **G**ive voice to Tasmanians with Disability:
- To strengthen and promote the individual and collective voices of people with disability.
- To strengthen and promote the economic, social, cultural, civil and political contexts that enable our contribution to community as equal and active citizens.

Preliminary Matters

Disability Voices Tasmania joins with other groups in the community in continuing to express extreme disappointment about the short timeframe offered for responding to the draft Bill by

the Tasmanian Government, particularly given that, especially in this instance, matters under consultation have such wide-reaching implications for the community. People with disability, through their representative organisations, have the right, clearly expressed in article 4(3) of the *Convention on the Rights of Persons with Disabilities* (“CRPD”), to be closely consulted and actively involved in the ‘development and implementation of legislation and policies to implement’ the Convention and respond to other issues facing people with disability.¹ The development of the draft Bill has not met this requirement with disabled people and our representative organisations, including Disability Voices Tasmania, being asked to comment on a fully-developed draft; rather than being invited to be actively involved in its development. This failure is compounded by the provision of such short timeframes for community consultation. This is extremely disrespectful to the needs of people with disability and seriously undermines the community and its representative organisations’ capacity to provide considered and constructive feedback and invites input at far too late a stage. The draft Bill outlines strategies and legal frameworks that have impacts on many aspects of the lives of disabled Tasmanians. Having been excluded from the development process and having less than a month for consultation means that many peoples’ experiences, ideas and feelings will be unavoidably left out of the mix when providing responses which means that any resulting Act will not be a fair representation of the community’s needs and views. Disability Voices Tasmania is certainly not alone in repeatedly raising concerns about how the Tasmanian Government engages with the disability community, and we are extremely disappointed to see that no improvements have been made here.

Disability Voices Tasmania’s feedback on the draft Bill takes two forms: high-level comment on the timing and structure of the draft Bill; and more concise feedback on the clauses of the draft Bill.

Overarching Views

1. Given the nature of the draft Bill and its likely significant influence on government policies, procedures and services and its impact on disabled Tasmanians in particular, Disability Voices Tasmania’s overarching position is that the Bill has been drafted and issued for consultation prematurely and without due attention to community views and sector awareness. As noted above, it has clearly been developed without close consultation or active involvement by Disability Representative Organisations at a time when Australia is awaiting the imminent publication of the final report from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (“DRC”). This report is due to be released on 29 September 2023, only 11 days after the close of this consultation period. It is expected that the final report will include recommendations across a diverse range of issues directly relevant to the draft Bill, including the involvement of disabled people in decision-making which affects them, and have far-reaching implications on the lives and involvement of disabled people in Tasmania. Further, the report of the review into the National Disability Insurance Scheme (“NDIS”) is due for release at the end of October 2023. Many of the principles, aims and clauses of this Bill will directly relate to outcomes and recommendations of both reports.

Therefore, Disability Voices Tasmania asserts that consultation on any Bill on issues affecting disabled people is premature. We anticipate the draft Bill will need to be

¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 31 March 2008, Doc.A/6/611 (entered into force 3 May 2008, ratified by Australia 17 July 2008, entered into force for Australia 16 August 2008 (“CRPD”) art 4(3).
<https://social.desa.un.org/issues/disability/crpd/article-4-general-obligations>

extensively amended once these reports are published. This is because both reports will contain recommendations which must be sufficiently understood before development of draft legislation that fully and effectively meets the needs of Tasmanians with disability, as well as the State Government, can be undertaken. The draft Bill should not be presented to the Tasmanian Parliament without due consideration of the recommendations from the DRC and the NDIS Review. To do otherwise will result in the need for significant amendment within a short time and cause significant disquiet in the Tasmanian disability community.

Experience informs us that Parliaments are extremely unwilling to reconsider bills which have been recently passed, preferring to take a “wait and see” approach to determine whether the legislation proves effective. In its current form, without taking due account of all information available, it is extremely unlikely that this Bill will prove effective in its objectives. It is very likely the provisions will be outdated even before they are enacted. Presenting this draft Bill to the Parliament prematurely will also make it extremely difficult to ensure that Tasmania’s legislative frameworks remain in keeping with the spirit of Australia’s Disability Strategy and community expectations taking into consideration those recommendations, causing the Tasmanian government to answer questions about its lagging behind the rest of the country in performance against this strategy.

2. The language used, which speaks to the positioning of the draft Bill, is problematic and strongly reflects the current legislative approach of the *Disability Services Act 2011* (Tas), which we all acknowledge is now out of date and not fit for purpose. Given Australia’s obligations under the CRPD, other human rights treaties and the stated objectives and principles of the Bill, it should be centrally framed in the context of human rights rather than “inclusion”.

Inclusion is one of the General Principles listed in article 3 of the CRPD. All these principles guide the interpretation of the rights set out in the Convention, they do not supersede those rights and should not be treated as stand-alone substitutes for the rights framework of the Convention. The demand for ‘inclusion’ started out as a call by people with disability for policies and strategies aimed at providing access to and participation in our community, consistent with equal rights. As is often the case, the softer and principle-focused language of inclusion has been embraced by governments, service providers, employers and community organisations as being central to their policies and strategies. Inclusion, however, is only one aspect of what the disability community has the right to expect in the fulfilment of human rights. Inclusion without promotion and protection of human rights, and without opportunities to exercise power and engage in decision-making as partners, falls short of what is required. Inclusion practices can become paternalistic where power remains in the hands of those doing the including rather than focusing on the relevant rights bearers – people with disability. The Bill and its principles should clearly focus on the fact that Tasmanians with disability have rights, not only under the CRPD but under all international human rights treaties. These treaties do not focus on inclusion as the overarching right or even principle; they promote an expectation of equality and equity. We should lead with the assumption that Tasmania is a place where disabled people experience fully and equally, internationally recognised human rights and where the terms of the UNCRPD take precedence over political expediency. Perhaps, in view of this, a better title would be the Disability Rights Bill or Disability Rights and Equity Bill.

3. The draft Bill states that it is about promoting inclusion and the rights of disabled Tasmanians. There is, however, significant discussion about restrictive practices and the role of the Senior Practitioner in relation to restrictive practices contained within the Bill. This, again, reflects the close relationship between the drafting in this Bill and the *Disability Services Act 2011*, in which the role of the Senior Practitioner and restrictive practices and their regulation are found in Parts 5 and 6. To the extent that discussion of these practices can ever be justified in the context of human rights, it does not belong in legislation which promotes inclusion, let alone promoting the human rights of people with disability. Indeed, the Disability Royal Commission has already commissioned and received a report which recommends an eight-point plan for the abolition of restrictive practices and discusses potential measures which might be undertaken to mitigate their need.² The report discusses restrictive practices in depth and goes to some considerable length to outline how and why restrictive practices are inconsistent with human rights treaties such as the CRPD. As well, in 2020, the DRC commissioned a report entitled “Research Report - The United Nations Convention on the Rights of Persons with Disabilities - An Assessment of Australia’s Level of Compliance”, wherein restrictive practices and their direct contravention of human rights and specific articles of the UNCRPD, is discussed at length.³ In the “Concluding Observations” in its 2019 Report on Australia’s Review of the Convention on the Rights of Persons with Disability (CRPD), the United Nations Committee observed:

“The Committee urges that the State party Establish a nationally consistent legislative and administrative framework for the protection of all persons with disabilities, including children, from psychotropic medication, physical restraint and seclusion under the guise of “behaviour modification” and the elimination of restrictive practices, including domestic discipline/corporal punishment, in all settings”⁴

Given these reports it is likely that the final report from the DRC will contain a recommendation for the abolition of restrictive practices altogether.

Disability Voices Tasmania joins with other members of the disability community in expressing extreme dissatisfaction with singling out people with disability for specific discussion of restrictive practices. If the government specifically wishes to act in direct contradiction to or contravention of human rights conventions by enabling the maintenance of restrictive practices, regulation of these would be far better dealt with in new and separate legislation that deals with the application of restraints in any form and in respect of any person, and in a context that does not single out people with disability. Perhaps the regulation of the use of any form of restraint could be dealt with in an Act of its own, outlining the rights of people who experience restrictive or behaviour management practices in any form or for any reason whatsoever and the obligations to be imposed on those seeking to implement such practices. This would then apply equally and fairly to all Tasmanians and avoid the confusion that arises in the draft Bill with the Senior Practitioner whose role, as outlined in the Bill is to monitor and regulate restrictive practices, sits outside the purview of the responsible Minister and of the proposed Commissioner. This makes oversight relationships and the interaction of different parts of

² <https://disability.royalcommission.gov.au/publications/restrictive-practices-pathway-elimination>

³ [The United Nations Convention on the Rights of Persons with Disabilities - An Assessment of Australia’s Level of Compliance | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#)

⁴ [UN-Outcomes-Report-on-Australia.pdf \(afdo.org.au\)](#)

the draft Bill extremely unclear and likely to give rise to unintended consequences owing to differences of interpretation.

Also, the use of restrictive practice is antithetical to many of the principles set out in the Bill and we caution that the retention of provisions relating to such practices will tend to weaken the key principles and undermine the usefulness and right-upholding interpretation of the resulting Act.

4. Whilst the draft Bill has clearly taken some considerable time in its development, there is no evidence to suggest that people with disability have been centrally involved in the drafting. As noted above, this failure is in direct contravention of the General obligations in article 4(3) of the CRPD. In order that the intentions and principles of this legislation be most effectively achieved and are effective in implementing, through legislation and policy, the state's obligations under the CRPD, it is important that the people drafting it understand the sector and the experiences of disabled Tasmanians and work closely with disabled Tasmanians as key stakeholders. It is evident that the bill has not been drafted through a co-design approach consistent with the CRPD otherwise this would have resulted in a more robust rights-focused Bill that fully and effectively protects the rights and upholds the dignity and choice of people with disability. Such a Bill would inevitably have more effectively garnered widespread community support.

Disability Voices Tasmania notes the consultation in 2022 on the review of the *Disability Services Act 2011* (Tas). That consultation was conceptually limited by the existing legislation and the questions were framed around changes to that Act. It did not provide a clear invitation for disabled people in Tasmania and our representative organisations to frame the future for disabled people in Tasmania and what we consider necessary to frame that future, particularly in terms of the role and functions of government. This anchoring of the future in the past is strongly reflected in the draft Bill and has created a significant missed opportunity to work directly with disabled people and our representative organisations to shape a new future. Since the completion of that review, there has been no formal participation of Disability Representative Organisations in the planning and development of the government approach to what is an enormous and central reform for people with disability in this state. There should be a further process to ask people with disability and our representative organisations what we want from a specialist oversight role, what functions we might want that role to perform in relation to both government and the disability services sector, what powers it should have, how it should work with disabled people and our representative organisations. We urge the Government to delay further work on the draft Bill until the project team has established effective mechanisms to work directly with disability representative organisations to review the outcomes of the DRC and NDIS review to develop a comprehensive framework for the future direction. This could well mean going back to a consultation process on the key questions identified above but it would go a long way to assisting Tasmania to achieve its obligations under the UNCRPD – the above-mentioned UN Outcomes Report states in part 8:

“The Committee recommends that the State party, in line with the Committee’s general comment No. 7 (2018), establish formal and permanent mechanisms to ensure the full and effective participation of persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation and

policies to implement the Convention, ensuring adequate resources and provision of necessary supports.”

5. Throughout the draft Bill mention is made of the publication of documents and reports. In general, under such clauses, the requirement is clearly stated that they must be published on a website and in “at least one accessible format”. Disability Voices Tasmania asserts that this is clear demonstration of the lack of understanding shown by the drafters of this Bill; the Government and its entities must already comply with publication standards which relate closely to current WCAG guidelines. Disability Voices Tasmania notes here that the Tasmanian government is already falling short of its obligations in this area and weakening these would only cause further criticism and complaints from the community. The reference to at least one accessible format also fails to recognise that there are many ways people with different types of disability access and understand information. Inserting clauses into the Bill that allow for only one accessible format is completely inappropriate and is a clear breach of the requirement for accessible publications which meet the needs of all disabled people. The community has a right to expect considerably better. The WCAG guidelines clearly outline how documents should be produced and the federal and all state and territory governments are expected to publish in accordance. Information should be accessible to all and freely available through public-facing websites; this is clearly established as a part of the CRPD.⁵

Specific clauses and Sections

The following section sets out Disability Voices Tasmania’s comments on specific clauses and ideas in the drafting. Any issues which relate to the above high-level comments will be referenced for convenience. The comment will be listed in the same way as the clauses in the draft Bill.

Preliminary:

1. As a general principle, the legislation should be conceptually accessible to people with disability, including through ensuring that understanding provisions of the Bill does not rely on accessing expert legal advice.
2. As previously stated, Disability Voices Tasmania asserts that the language of inclusion in proposed legislation that is about rights does not reflect modern ideas and up-to-date thinking. Rather, it is simply one aspect of the rights people with disability hold and must have fulfilled. We do not discuss, for example, gender inclusion; we reference in legislation gender equality or equity or non-discrimination. Disabled people have the same rights as all Tasmanians therefore language of tolerance and “inclusion” is disrespectful and inappropriate.
3. The objectives need refining and clarifying. The draft Bill clearly references “defined entities” which are, in the main, government departments and agencies; yet the objectives reference the community. Disability Voices Tasmania broadly supports the objectives in the draft Bill but seeks refinement of these to ensure they meet the needs of the disability community and reflect the centrality of rights. As well, the objectives state: “The objects of this Act are to advance and protect the rights of people with disability and to advance the full and effective inclusion of people with disability, ...” but does not state inclusion in what (for example “in all aspects of life and culture”). This must be refined according to relevant examples such as the CRPD and other human rights treaties, the *National Disability Insurance Scheme Act*

⁵ See, for example, CRPD articles 9(2)(h), and 21(a). It is of note that the CRPD refers to ‘accessible formats’ not ‘one accessible format’.

2013 (Cth) (“NDIS Act”), *Disability Discrimination Act 1993* (Cth) (“DDA”) and the *Anti-Discrimination Act 1998* (Tas). Also, as commented above it is necessary to remove any discussion of restrictive practices as being antithetical to the human rights of people with disability.

4. The draft Bill references “Australia’s Disability Strategy” and binds that reference to the current strategy. We recommend that all references to Australia’s Disability Strategy be amended so that should the strategy be renamed, updated or abolished, the objectives in the resulting Act may be maintained.
5. Section 6 describes a “Defined Entity”. Paragraph 1B refers to “an agent or instrumentality of the Crown, if that agent or instrumentality administers funding or services to the disability sector”. This should be broadened such that any agent or instrumentality is covered and should include any organisation which receives funding from the government or any government agency or instrumentality. This would strengthen the purpose and effectiveness of this Act whilst ensuring better products and services and greater accessibility for disabled Tasmanians. The provision should also make clear that local government entities are defined entities for the purpose of the Act. The current coverage of the term is unclear to anyone other than a person with expertise in legislative interpretation and administrative law.
6. The definition of “Disability Services Provider” must be broadened to encompass organisations that provide support to people with disability in aged care and other settings, which frequently are not specifically registered as Disability Support Providers. Not all disabled people receive services under the NDIS and the improvements sought through this legislation need to clearly extend to any place of government or government-outsourced service provision to people with disability.
7. Section 8 refers to “Inclusion Principles”. Disability Voices Tasmania argues that these principles are relevant to the meaning and purpose of the proposed Act without using the term “inclusion”. We are aware of no other state or commonwealth Act which applies to Tasmania which defines its principles thus and for simplicity and consistency, this should be dropped. Further, there are other language inconsistencies, such as the use of imperatives, (ie, “are to”) compared with softer suggestions, (such as “should be”). This is a potential Act of parliament—: all of these principles should be expressed in unequivocal terms. [FB: See, for example, the General principles set out in article 3 of the CRPD.]
8. Many of the principles in the draft Bill discuss the right to be supported to exercise rights, without any reference to the fundamental right. We assert that these rights are absolute, and any language which serves to water down the promotion, protection and fulfilment of these rights must be dropped. For example: “(b) people with disability have the right to be supported to participate in, and contribute to, social and economic life to the full extent of their ability” should read, “(b) people with disability have the right to participate in, and contribute to, social and economic life on an equal basis with others, and have the right to be supported to enjoy this right”.

Part 2: “Disability Inclusion Planning”

1. Disability Voices Tasmania broadly supports the intent behind mandating the development of Disability Inclusion (Rights) Plans for the whole of government but the requirement for these plans must encompass all of levels of government, state and local, as well as all government entities, agencies and instrumentalities and any organisation which contracts with, or receives funding from those bodies. We are cognizant of the impost this might cause to some smaller Entities, and we suggest that the requirement be limited, for example, to organisations with more than 10 employees, or with a turnover of more than \$300,000. Such limitation would only apply to organisations which can demonstrate that they provide support or services, on an equal and accessible basis, to disabled and non-disabled Tasmanians. This could be enshrined in regulation and

funding applications and agreements rather than the draft Bill itself, to allow for necessary massaging of the limits and other necessary criteria.

Disability Inclusion (Rights) Plans should contain KPIs and there must be robust and appropriate measures put in place to ensure Government and entities are accountable for actions under the plan. Otherwise, the State runs the very real and serious risk of the same outcomes as we have seen with previous plans and strategies such as these, i.e., very little progress. Perhaps a solution might be to provide the Disability Commissioner with the power to issue 'compliance notices' where a disability inclusion plan has not been prepared in a timely fashion, has not been provided to the Commissioner or where no reasonable and material progress has been made in implementing the KPIs contained in the plan. As well, in circumstances where the compliance notice is not complied with, the Commissioner could recommend that the Minister take appropriate action to ensure the entity's compliance with the Act, publish on the Commissioner's website the name of the entity and the requirement which the entity has failed to comply and apply to the Tribunal for an order directing the entity to comply with the notice.

2. Many of the clauses in the Bill dealing with plans compel the Minister, defined entities or other bodies to consult with, (for example, people with disability). This should be amended to ensure full involvement of people with disability, (in line with recommendations passed down from the United Nations in it's 2019 review of Australia's implementation of the UNCRPD), in development of these plans, particularly the whole of government plan. For these plans to be meaningful it is essential that the experience of disabled people is baked in and that the entities developing these plans do so with authenticity and with full knowledge. Further, it would enable Tasmanians with disability to have the opportunity to gain meaningful employment or upskill to become more job-ready by enabling them to participate in a meaningful way. This increases social and economic participation of people with Disability and specifically targets one of the key pillars in Australia's Disability Strategy.
3. As previously mentioned, all references to "publishing" of plans must be amended to allow that publication must be in accordance with publication guidelines (including currently applicable WCAG guidelines) which encompass accessible formats and ensures publication is accessible to all Tasmanians.
4. The development of all plans should have regard to the policies and procedures governing these which have already been developed by the Australian Human Rights Commission. All plans should be registered with the Australian Human Rights Commission as required under the Disability Discrimination Act.
5. All plans must, at a minimum, contain details of:
 - a. specific disability employment targets at all levels within the organisation.
 - b. whether those targets are met and what the organisation has been doing to ensure compliance;
 - c. how many people with disability are employed across the organisation, its governing and advisory bodies;
 - d. how many disabled people have been involved with the delivery of products and services of that entity;
 - e. steps the entity intends to take to increase the involvement of people with disability in its product and service development, staff, senior management and governance; and
 - f. clear outline of accessible practices for employees including recruitment, induction and workplace policies and procedures - – including plans for

implementing the Accessible ICT Procurement Standard across all aspects of its operations⁶.

Division 3: Disability consultation

1. This section is well compiled, but as discussed above, entities must involve, not simply consult with, people with disability. This is necessary to fulfil obligations under the CRPD. Consideration should be given to the use of the term “community engagement” rather than consultation and reference made to the Tasmanian Government Framework for Community Engagement 2013⁷. The disability community must be engaged in partnership and empowerment (consistent with the CRPD) and not simply consulted.

Division 4: Guidelines

1. This section should be shifted to section 25, “Powers of the Commissioner”;
2. The language needs to be changed to ensure that entities must follow the guidelines, not simply “have regard to”. The Commissioner must be empowered to compel entities to comply with decisions or guidelines.

Part 3, Disability Inclusion Advisory Council (“DIAC”)

Disability Voices Tasmania supports the establishment of the Disability Inclusion (Rights) Advisory Council. We query however, whether between nine and eleven members would be sufficient to capture the breadth of experience required from the community, particularly if the council is to include carers and advocates, which in order to capture the full lived experience of disabled Tasmanians, Disability Voices Tasmania supports. We also understand that the intension is that this body would supersede bodies such as the existing Premier’s Disability Advisory Council and the Minister’s Disability Consultative Group. Whilst Disability Voices Tasmania does not necessarily advocate that both groups be continued, we caution that having only one advisory body may lead to significant difficulties in the future and represent poor outcomes overall. It has been noted, for example, that significant issues have been dealt with through the line of management represented by PDAC, where traction on those actions has been difficult to gain elsewhere. Disability Voices Tasmania warns that there must be multiple ways for the disability community to have its voice heard.

Regardless, it is important that the following principles be applied:

1. The council should be considered as a government board and must be remunerated accordingly. Remuneration of council members must not be at the sole discretion of the minister.
2. An absolute majority of the council members must be people with disability, I.E, 80 percent.
3. Both the chair and deputy chair must be people with disability.
4. Any authorised spokesperson from this body must be a person with disability.
5. Members must be given appropriate support, such as coaching, training and mentoring to realise their potential as members and to develop necessary skills.
6. Vacant positions must be advertised broadly in locations and through avenues where it might be expected that people with disability will encounter the information. Newspapers are not sufficient particularly as many disabled people cannot access print media.
7. The length of a single term should be specified rather than somewhat open ended as is currently the case in Schedule 1, Part 2, clause 1(a), with transitional arrangements to

⁶ <https://intopia.digital/articles/en-301-549-australia/>

⁷ <https://nla.gov.au/nla.obj-1382403019/view>, which identifies five levels of engagement: Inform; Consult; Involve; Collaborate/Partner and Empower

allow for succession within the council to ensure the handing on of knowledge and experience.

8. Provision must be placed in the resulting Act to clarify the nature of advice from the council. Clearly, the intent is that the council reports to the Minister and the Commissioner, but it is not clear whether its recommendations are to be made public. Disability Voices Tasmania joins with the Tasmanian Council of Social Service, TASCROSS, in calling for publication of any formal advice or recommendation of this body to be published and provided to the public in the interests of transparency. This would serve to protect the members of the group and would provide a clear avenue for the community to hold the government to account for subsequent decisions made.
9. Some of these clauses need to be clarified as the language is unclear and inconsistent. Broadly however, Disability Voices Tasmania supports the functions as listed. The functions and powers invested in the council, however, will require the council to have greater standing than a simple advisory body and the skills required by members as well as the potential workload will require proper remuneration and support than has previously been the case with community advisory bodies.

Part 4: Disability Inclusion Commissioner (“DIC”)

Division 1: General functions

1. Disability Voices Tasmania considers that the body of work expected of this role warrants an independent commission, with a commissioner as its head. This must be well-resourced and must have access to appropriate staff and staffing levels to undertake all of the expected duties and functions and provide appropriate support to the commissioner in the undertaking of their work.
2. The name should be changed to reflect the role and its powers. Perhaps Disability Rights Commissioner or simply Disability Commissioner.
3. Disability Voices Tasmania agrees that the role of Commissioner must be filled by a person with disability and asserts that the majority of commission staff must be people with disability, while recognising the part family members or carers, as well as other allies from the community, can play.
4. The recruitment and appointment of the Commissioner must be undertaken through a public recruitment process which takes into account the accessibility needs of people with disability and is authentic and respectful of the needs and views of people with disability. The selection panel must involve a majority of suitably qualified people with disability identified by Disability Representative Organisations.
5. The language of the draft Bill in relation to functions needs, in places, to be strengthened or expanded:
 - a. Clause 24(d) states that a function of the Commissioner is to “promote, monitor and review the wellbeing of people with disability”. This should be amended to refer to the rights of people with disability.
 - b. Clause 24(b), while it is not apparently intended to be narrow, could usefully be amended to read “to undertake research into any matter related to the promotion, protection and fulfilment of the rights of people with disability in Tasmania, including but not limited to the operation and objects of this Act”.
 - c. The draft Bill limits the Commissioner’s function to act on allegations – in clause 24(j) – to allegations of “allegations of violence against, or the abuse, neglect and exploitation of, people with disability”. It is not clear why such action should not be permitted in relation to any allegations of breaches of rights.
 - d. Clause 24(k) refers to “issues relating to the protection and promotion of the rights of people with disability”. Consideration should be given to including the fulfilment of rights in this clause.

- e. Clause 24(l) limits the function of consultation with the DIAC to “matters relating to violence against, and the abuse, neglect and exploitation of, people with disability”. This appears inconsistent with the intention of the Act and the establishment of the DIAC. There is no clear basis to limit the scope of the Commissioner’s consultation in this way.
6. Section 28 – Staff: As previously discussed, the majority of commission staff must be people with disability and recruitment of staff must be done in accordance with best practice and having regard to practices which are fully accessible to and involve people with disability.

Division 2: Reports and Investigations

1. In line with the comments above in relation to the functions of the Commissioner, it is not clear why the reporting to the Commissioner under clause 31 only deals expressly with “violence, abuse, neglect or exploitation”. Such reporting should expressly encompass any infringement of human rights of people with disability.
2. The time limit on action by the Commissioner in clause 32(2)(d) should be amended to reflect time limits on civil claims or criminal charges and to allow for the often-traumatic nature of events or behaviours which gave rise to such complaints.
3. Where the Commissioner is empowered under clause 34 to refer a report to another statutory body, consideration should be given to empowering the Commissioner to become the complainant to those bodies to ensure (a) people whose legal capacity is affected by disability are protected from the types of conduct that are the subject of the report; and (b) the Commissioner is kept informed of the actions taken by that other statutory body.
4. Further consideration could usefully be given to ensuring sufficient prosecutorial powers (either vested in the Commissioner or expressly held by another entity) to ensure prosecution of actions that harm individuals or groups of people with disability.

Part 5: Disability Service Standards

These standards should not be limited to prescribed disability service providers – they should apply to any person or organisation who provides support services to people with disability. As noted above, many disabled people receive supports from organisations which would sit outside this definition and those services, where they apply to people with disability, must be captured.

Part 6: Senior Practitioner

Disability Voices Tasmania does not accept that the role of the Senior Practitioner is appropriate for inclusion under this draft Bill. The functions undertaken by this role would be governed more appropriately in legislation that affects all Tasmanians. There is nothing specific here which promotes the key principles and objectives listed in this draft Bill, which asserts that it is designed to promote the rights and inclusion of people with disability. Including discussion of restrictive practices and the Senior Practitioner in this draft Bill creates confusing oversight relationships and weakens the legislative intent.

Part 7: Regulation of Restrictive Practices

Disability Voices Tasmania does not propose to enter further discussion of restrictive practices here. We have commented already on the need for regulation of restrictive practices to be removed from the draft Bill. We contend that restrictive practices are antithetical to basic human rights, fly in the face of the intentions of the United Nations treaties which endorse the human rights of all people and would seem to conflict with

recommendations from the DRC – although we note that the DRC has not yet published its final report.

It is worth reiterating here the necessity of holding off finalising any draft legislation until we have seen and assimilated the recommendations outlined in the DRC report and the NDIS review report. Failure to do this could cause significant embarrassment for the Tasmanian Government and disenfranchisement of Tasmania's disability community. Putting a Bill to parliament which includes responses to these recommendations affords the opportunity for the Tasmanian Government to demonstrate its capacity to lead, be forward thinking and pro-active and responsive to community views.

Part 8 and 9: Appointed Program Officers and Independent Persons

Noting firstly that these Parts relate to the regulation of restrictive practices and should, in the view of Disability Voices Tasmania, not be covered in this legislation.

The current provisions in Part 9 seem to empower the disability service providers to have a primary role in determining when an independent person is required and who would be suitable. This is entirely inconsistent with recognition of the need for truly independent support for people in relation to service provision.

Part 10: Funding

Disability Voices Tasmania welcomes the intent under this Part but warns that the criteria here are quite broad. Work may be needed here to establish more closely, what might be funded and why it is relevant for funding under this draft Bill. The focus of the Bill is on systemic change to achieve the promotion, protection and fulfilment of human rights. As such, funding criteria should be consistent with systemic approaches to furthering the objects of the Act.

Part 11: Authorised Officers

To the extent that this Part deals with officers authorised to enter premises to take actions under the Commissioner's authority, this Part is supported. It does however extend to consideration of authority to enter in relation to funding grants. The provisions in Part 11 have the potential to result in the Commissioner being expected to be an independent grants auditor. Without careful management and sufficient resourcing, this role could easily swamp the important systemic work of the Commissioner.

Part 12: Review of Decisions

Again, this Part relates to the regulation of restrictive practices and decisions of the Senior Practitioner. As such, it should be removed from the current draft Bill.

Part 13: Offence provisions

These are important provisions, and it is vital that such provisions be sufficiently clear as to be effective. Similar offence provisions appear in other protective legislation without any clear guidance on who is empowered to prosecute the offence and what role the relevant statutory officer should play in such prosecutions. It is insufficient to have such provisions without such clarity.

Part 14: Miscellaneous

The information sharing provisions in this Part should not proceed without full consideration by an independent privacy expert with relevant expertise in disability rights.

Review Of Act:

Given the nature of the provision in this act, Disability Voices Tasmania recommends that a review of the outcomes from this act, in particular, the establishment of the Commission, the

development and roll-out of Disability Equity Plans and any actions resulting from provisions in this act relating to Restrictive Practices against disabled people, be conducted not more than 12 months from the proclamation date of this act. This review must be conducted with full involvement from the community and recommendations for change submitted to parliament for amendment to the act.

Concluding Remarks

Whilst Disability Voices Tasmania broadly supports the need for legislative reform to protect the needs, views and rights of Tasmanians with disability we contend that this Bill is not fit for purpose and should be redrafted with the full involvement of disabled people and their representative organisations. Tasmania needs disability rights legislation which is empowering and supportive; not simply a modernisation or redraft of previously existing legislation.

If the Tasmanian government is to support, in any form, restrictive practices, this must be removed from this bill and regulated elsewhere, to protect the rights of the most vulnerable people in our community. This regulation must be developed in consultation with people with disability who are subject to such practices, their families and carers and people, information and decisions relating to restrictive practice must be accountable and transparent.

Disability Voices Tasmania welcomes robust and useful discussion on legislation and regulation which works to promote and support the rights of disabled Tasmanians but this must be conducted respectfully, constructively and openly. We argue strongly that this has not been the case with this Bill, and should it be presented to parliament in its current form the government ought to anticipate severe criticism from the community.

Disability Voices Tasmania welcomes full, open and transparent discussion relating to this feedback, the future of disability legislation in Tasmania and the establishment of the Commission and its governing board. Disability Voices Tasmania urges the Tasmanian government to take the opportunity to take a leadership role among its peers by developing and implementing affective robust and respectful legislation that meets the needs of all Tasmanians with disability, their families and allies in the way that it did with the Guide and Hearing Dog Act, (1967). This is widely understood to be the most comprehensive act of its nature in the country and provides clear demonstration of Tasmania's leadership in this area. We urge the government to continue to lead by example.

For any clarification or discussion, please contact:

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