



Disability Inclusion Bill – Consultation Submission

“It is time that neurodiversity is expressly included in this Bill”

On behalf of the Tasmanian autistic community, Autism Tasmania is pleased to provide our response to the consultation of this important legislation.

Our submission is set out in this document in accord with our overarching theme. *“It is time that neurodiversity is expressly included in this Bill.”*

We welcome further discussion on our proposed approach.

OVERARCHING THEMES

Express recognition of autism and neurodiversity

It is now well recognized that separate and distinct focus is needed to improve life outcomes for autistic individuals, their families, carers, and advocates. We urge reference to the Select Senate committee report and specifically this statement.

“Life outcomes for autistic Australians are unacceptably poor. This comes at an enormous personal, social and economic cost.

Meaningful systemic changes would have an enormous impact, with instances of good practice demonstrating how this can be achieved.

The drivers of poor outcomes for autistic people are complex and interrelated.

Generic disability strategies have proven ineffective at improving life outcomes for autistic people.

A National Autism Strategy should form the centrepiece of efforts to improve outcomes for autistic Australians

The National Autism Strategy should be person and family-centred, address whole-of-life needs for all autistic people, and include targeted actions to support vulnerable cohorts.

The National Autism Strategy should be co-designed by the autism community

Accountability will be critical to delivering genuine change^[1]

And further extracted from this report is the statements about accountability.

Accountability will be critical to delivering genuine change.

The committee agrees with the view that strong accountability measures will be critical to the success of the National Autism Strategy. Without such measures, the National Autism Strategy risks becoming another aspirational yet ineffective plan for change. Therefore, the committee recommends that the National Autism Strategy adopt a range of accountability mechanisms, including:

^[1] Final report – Select senate committee on Services, [support and life outcomes for autistic Australians – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)

- *clear and measurable actions, targets, and milestones.*
- *an implementation plan with clearly defined responsibilities.*
- *ongoing monitoring and reporting requirements; and*
- *built in timelines for review and renewal of the strategy.*

Overview

3.2

Numerous stakeholders submitted that autistic people experience worse life outcomes than other disability cohorts and vulnerable population groups.¹ Key statistics highlighted for the committee included:

- *autistic people have a life expectancy 20–36 years shorter than the general population, with over two times the mortality rate.*
- *75 per cent of autistic people do not complete education beyond year 12.*
- *the unemployment rate for autistic people is almost eight times the rate of people without disability.*
- *50–70 per cent of autistic people experience co-existing mental health conditions; and*
- *51 per cent of autistic people and their families feel socially isolated and 39 per cent feel unable to leave the house due to concerns about negative behaviours.²*
- **3.3**

The reasons for these results are multifaceted and interwoven. As noted by some stakeholders, life outcomes for autistic people are influenced not only by the presence and magnitude of autism symptoms but also by co-occurring physical and psychiatric conditions, as well as socio-cultural factors and other stressors, such as poverty, unaccommodating environments, exclusion and discrimination.³

3.4

Poor outcomes for autistic people are also cumulative. For example, a number of stakeholders reflected that poor educational experiences and high rates of school disengagement reduce post-school opportunities for further education, employment, and independent living. In turn, this can increase social exclusion and lead to, or exacerbate, feelings of poor self-worth and/or mental health conditions.⁴

3.5

Overall, it appears that life outcomes are poorer for autistic people with concurrent medical conditions or disabilities, such as intellectual disability.⁵ There is also some evidence that outcomes may be worse for autistic people from disadvantaged groups such as those from low-socioeconomic backgrounds, those with low English proficiency, and those living in regional and remote Australia.⁶

For this reason, it is imperative that this bill explicitly assigns specific accountabilities for all entities to appropriately consider and actively demonstrate how their service / role / function does act to improve life outcomes. This request is no different to the current arrangements, where legislators call out specific cohorts in our community where separate and distinct focus is required to ensure natural justice is possible. It is time that neurodiversity is expressly included in this Bill – along with equal status to inclusion of race, gender, sexuality, first nations etc. Each cohort requires express accountabilities to demonstrate meaningful inclusion, as is the intend of this bill.

The consequences of this bill NOT expressly including neurodiversity are dire. The bill would fail to deliver its purpose for a large and growing proportion of the community who will continue to experience unjust exclusion in all domains of life.

Representation

One of the stated objects of this legislation is to “advance the full and effective inclusion of people with disability in the Tasmanian community.” As such it is critical that the views of people with lived experience of disability (the individuals themselves, their families, carers, and advocates) be considered at all levels of the proposed framework established under the legislation. The disability framework will not function to benefit people with disability unless there is an authentic connection formed between the Tasmanian disabled community providing information from the grassroots level and governmental authorities making decisions informed by such input.

Universality

The objects of the legislation, the enumerated Inclusion Principles and the definition of “disability” establish the concept of universality as fundamental to the proposed legislative scheme. This approach is wholeheartedly supported. However, as it stands, the legislation only seeks to apply this universal approach to the area of internal governmental planning, and not to the regulation of disability service provision or the authorization of restrictive practices. It is critical that the protections of the legislation be available to all people with disability in the Tasmanian community, in all environments, including within public education, public health, aged care and justice systems.

Equivalence

People with disability, and especially children with disability, are particularly vulnerable to actions and omissions by controlling individuals and organizations which breach their fundamental human rights. Such wrongdoing must be treated seriously and be seen as such by the wider community. As such it is considered that the penalties in the Bill should at least be equivalent to those applied in other human rights areas of the law, and that breaches involving the unlawful application of restrictive practices should attract very high monetary penalties (equivalent to those in the child protection domain) as well as personal liability for the directors of disability service providers.

Transparency and accountability

People with disability will be unable to exercise their rights under the proposed legislation unless the decision-making process under the Act is transparent and decision-makers are legally accountable under administrative law.

COMMENTS ON SPECIFIC PARTS OF THE BILL

Part 1 Preliminary

- Definitions of “disability service” and “disability service provider.” The current definitions tie the status of a disability service provider to receipt of NDIS funding. This effectively excludes the provision of many services, by many providers, from regulation which is sorely needed. It is inconsistent with the stated objects of the Bill that providers of services such as education, medical care, and aged care to people with disability should not be required to meet disability support standards. The relevant definitions should be widened to include any provider of a disability service to a person with disability, regardless of whether the provider is disability specific, mainstream, State Government funded, or community based. **Disability standards should have universal application, and the Tasmanian Government should show strong leadership by including its agencies and funded institutions as disability service providers under the Bill.**
- Definition of “defined entity.”
 - The Bill includes the term “disability sector” but neither defines nor explains the intended limits. It is not clear what this term includes, and what falls beyond its scope.

- The definition of “defined entity,” on its face, appears to cover individual State-funded institutions which provide services to people with disability, e.g., public schools at which students with disability are enrolled to learn. Does this mean that each and every such school will be required to meet the planning obligations placed on Government departments and agencies?
- Inclusion Principles
 - Cl. 1(b). The reference of “social and economic life” is narrower than the language of the UN Convention. Should it not include all domains of participation, such as political, cultural, educational, work etc.? Or more simply, participation in all aspects of society?
 - Principles in relation to consultation should include requirements for co-design and co-development undertaken with people with disability.
 - **Cl. 2(d) Neurodiversity should be added to the list of intersecting attributes.**
 - The goal of eliminating the use of restrictive practices entirely should be included in the list of Principles.
 - Cl.3(c). The stated principle of “listening to” the wishes of a child with disability lacks clarity and respect and may be insufficient to support the protections of the rules of administrative law. It is submitted that the expressed wishes of the child must be taken into account by the decision-maker.

Part 2 Disability Inclusion Planning

- Cl. 9(2)(b). It is unclear what the term “mainstream supports and services” means. Are “State authorities and other entities” different to defined entities?
- Cl. 12(2)(b) & (e). What are “universal support services”?
- Cl. 17. The requirement for a defined entity to consult with “people with disability” is unclear. Elsewhere in the Bill required consultees are listed, including advocacy groups, families, carers, and support persons, the DIAC. This provision should be drafted in similar terms.

Part 3 Disability Inclusion Advisory Council

- Representation of people with disability on the DIAC is vital. It is submitted that the proportion of representation of people with disability should be increased.
- The independence of the DIAC should be expressly addressed, with representatives of defined entities and disability service providers excluded from membership.
- The role of the Commissioner in the process of selecting and appointing DIAC members is unclear. Does the Commissioner recommend from a list provided by the Minister after public EOI? On what basis does the Commissioner make a recommendation?
- In order to deepen the connection between the DIAC and the grassroots level of the disability community, the Council should be expressly empowered to appoint and consult subcommittees.

Part 4 Tasmanian Disability Inclusion Commissioner

- Cl. 23(2). The language “is to be a person with disability” is not strong. It should be amended to “must be.”
- Cl. 23(3). It should be mandatory, rather than discretionary, for the Minister to consult with the DIAC in relation to a person recommended as Commissioner.
- Cl. 24(a) The meaning of this function is unclear. Are there any limits on the commissioner’s function to provide advice and assistance? Is the exercise of this function mandatory? What is meant by “systematically advocate”? Advocate to whom? About what?
- Cl. 24(d) What does this provision mean? How far does the power extend?
- Cl 24(e). What are the “mainstream services” referred to?

- Cl. 24(h) What safeguarding mechanisms” can the commissioner establish? In what circumstances, and in respect of what environments?
- Does cl. 33 extend protection to a whistleblower from a government or non-government organization in respect of adverse administrative action taken against them?

Part 5 Disability Service Standards

- As previously noted, it is considered that the Disability Service standards made under this legislation should apply universally, as far as jurisdictionally possible, to all disability service providers – including government agencies and instrumentalities, regardless of NDIS funding.

Part 6 Senior Practitioner

- In view of the nature of the powers exercised by the senior Practitioner it is considered desirable that such a person should have some relevant lived experience of disability, in addition to the stated requirement for knowledge and skills.
- This Part of the legislation should contain an objects clause setting out the goals of eliminating the use of restrictive practices in Tasmania and that the issue of neurodiversity be expressly taken into account in any decision-making regarding restrictive practices.
- The senior Practitioner should be empowered to regulate the use of restrictive practices, in respect of a person with disability, by any organization including a school, hospital, prison, or aged care facility, without the power being tied to receipt of NDIS funding.
- Express provision should address the use of RPs involving children and youth.
- While it is recognized that the inclusion of the RP topic under general disability legislation has been adopted previously in Tasmania and in other Australian jurisdictions, it does not sit easily with the other provisions of the Bill. Indeed, it can be seen as odds with the tenor of the foregoing provisions. It would seem to be a more honest approach to position the RP matters in a separate, self-contained Act which is easily and immediately searchable and accessible to members of the wider community.
- Cl. 45(3)(a). The consultation process provision introduces “a person nominated by the person with disability,” whereas other clauses refer to an “independent person for the person with disability,” who may in fact be appointed by the SP. Is this an intentional change?
- Cl. 48(2)(a). What is meant by “serious harm”? Whose decision is it. Is there a reasonableness or objective standard?

Part 12 Appeals

- As the approval of use of RPs is a reviewable decision, and the practices may have such far-reaching effects on the person involved, it would seem appropriate for explicit time limits to be placed on the internal review process, with penalties attached.
- Cl. 67. The provision refers to a “person aggrieved” by a reviewable decision. Are there any limits on who such a person can be, or their connection to the person with disability?

Part 14 Miscellaneous

- Cl. 74(3)(f). The concept of the person with disability’s consent is used throughout the draft legislation. Is the requirement in this provision for “agreement” in some way different?
- Cl. 74(3)(g). This provision introduces harm to another as an exception to the confidentiality protections but limits the exception to harm involving a child or other vulnerable person. This is the first example in the Bill of harm to another being narrowed in this way. If that is the intent. What is meant by the term “other vulnerable person” That concept has not previously been used. Who is the judge?
- Cl. 78. It would be desirable for the independent review team include at least one member with lived experience of disability.

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