



**Equal Opportunity  
Tasmania**

**Equal Opportunity Tasmania**

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To Whom It May Concern

### **Consultation – draft Disability Inclusion Bill**

Thank you for the extension of time to provide comment on the Disability Inclusion Bill 2023 (the Bill).

At the outset I express my concern that the Bill is being progressed without the benefit of the information released in the Final Report from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission).

Notwithstanding the extension provided to Equal Opportunity Tasmania, consultation for the Bill ended on 18 September 2023. The Royal Commission handed down the Final Report on 28 September 2023.

It is unfortunate that stakeholders were not able to provide their expert advice with reference to the Royal Commission findings, particularly given the relevant subject matter to the Bill.

I am supportive of other community organisations who have also raised this issue.

Stakeholders should have the opportunity to make submissions informed by the findings of the Royal Commission and it cannot be said that genuine consultation has occurred until this has been done.

### **Preliminary comments**

It is noted that these comments are provided on the basis that this submission will be read alongside a new version of the Bill. Equal Opportunity Tasmania has been

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advised that a new version is expected to be provided to Department of Premier and Cabinet on the same date this submission is provided.

On this basis, the comments made in this submission have been limited, owing to the fact that some may now be irrelevant as many are consistent with other stakeholder submissions which may have impacted any redrafting of the Bill.

### **Tasmanian Human Rights Act**

Firstly, Equal Opportunity Tasmania has consistently advocated for a Tasmanian Human Rights Act.

It is considered that such an Act would contribute to overall human rights protections in Tasmania, including for people with disability.

It is noted that many of the examples<sup>1</sup> of human rights protections being advanced in jurisdictions with such Acts/Charters, relate to people with disability.

A Tasmanian Human Rights Act should be progressed simultaneously with a Disability Inclusion Bill, in order to demonstrate a comprehensive commitment to the human rights of Tasmanians.

### **Complaints under the *Anti-Discrimination Act 1998 (Tas)***

Clauses 19(10) and 23(4) of the Bill sets out circumstances where a complaint may not be made under the *Anti-Discrimination Act 1998 (Tas)* (Anti-Discrimination Act).

I am not supportive of these draft provisions.

The Anti-Discrimination Act contains exceptions. If an exception is applicable, discrimination is not unlawful.

Exceptions to the Anti-Discrimination Act should be contained in the Anti-Discrimination Act.

Sections 25 and 26 set out:

#### **25. Disadvantaged groups and special needs**

A person may discriminate against another person in any area if it is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute.

#### **26. Equal opportunities**

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<sup>1</sup> Human Rights Law Centre, *Human Rights Make Our Lives Better*, report p 39: <https://www.hrlc.org.au/reports-news-commentary/2022/6/2/charters-of-human-rights-make-our-lives-better>

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.

The clauses as drafted fail to account for circumstances, for example, where a person experiences a derogatory comment about the nature of their disability during the process of selection for a role on the Disability Inclusion Advisory Council or as the Tasmanian Disability Inclusion Commissioner (Commissioner). In such circumstances the person should have the right to make a complaint under section 17(1) of the Anti-Discrimination Act about offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of disability. This example demonstrates that a blanket provision is inappropriate.

If the above referenced sections are not viewed as sufficiently covering the circumstances to which clauses 19(1) and 23(4) of the Bill relate, I recommend inclusion of a new provision in the Anti-Discrimination Act setting out:

#### **Employment based on disability**

A person may discriminate against another person on the ground of disability in relation to employment if the discrimination is based on a genuine occupational qualification or requirement in relation to a particular position.

This proposed provision would be similar to sections 27(1)(d), 36, 41, 49 and 51 of the Anti-Discrimination Act which allow for discrimination in the area of employment on the basis of various attributes, if it is based on a genuine occupational qualification.

#### **Lack of positive duty, Disability Impact Assessments**

The Bill does not include a positive duty, nor a provision relating to a 'defined entity' conducting a Disability Impact Assessment. These two elements were included in the Victorian Disability Inclusion Bill Exposure Draft 2022.<sup>2</sup>

The Victorian Disability Inclusion Bill 2022: Exposure draft overview paper<sup>3</sup> sets out:

'The Bill creates a new duty for defined entities to take whole of government action and actively promote disability inclusion.

The new duty means that defined entities must promote disability inclusion when they:

- develop policies and programs
- provide services to the public
- provide services with a direct and significant impact on the public.

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<sup>2</sup> See Part 2 and Part 2 of the Victorian Disability Inclusion Bill exposure draft 2022. Found at Engage Victoria, *Disability Inclusion Bill Exposure Draft*, October 2022: <https://engage.vic.gov.au/disability-act>

<sup>3</sup> See the Disability Inclusion Bill 2022 – Exposure draft overview paper. Found at Engage Victoria: <https://engage.vic.gov.au/disability-act>

Defined entities must:

- consider and promote disability inclusion
- consult with people with disability
- foster good relationships between people with disability and other Victorians
- take necessary and proportionate action to advance disability inclusion.

When consulting or engaging with people with disability, defined entities must ensure their communications are delivered in at least one accessible format (such as Auslan or Easy English).

The new duty is not intended to give rise to legal rights. It is intended to be aspirational and lead to improvements over time.'

It is not clear whether the same has been considered for Tasmanians. A positive duty has the potential to be a powerful mechanism able to be referenced by the community in advocating for changes relating to disability inclusion and access.

In relation to systemic discrimination experienced by people with disability, Disability Impact Assessments would be a helpful tool in the development of any Disability Inclusion Action Plan and I would recommend inclusion in the Bill.

### **Commitment to resourcing**

A provision should be included for the adequate resourcing of the Commissioner.

I note the comments made by the Commissioner for Children and Young People<sup>4</sup> and resourcing restrictions experienced by her office.

Paramount in the ability to effect policy objectives set out in the Bill is adequate resourcing for the extensive work that will need to be undertaken.

I echo the submission of the Commissioner for Children and Young People, as well as other submissions by the Community Legal Centres Tasmania<sup>5</sup> and the Tasmanian Council of Social Services (TasCOSS)<sup>6</sup> calling for a provision outlining that adequate resourcing will be provided to the Commissioner.

I also note the TasCOSS submission extending the recommendation for adequate resourcing to the Disability Advisory Council and support this call.

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<sup>4</sup> Commissioner for Children and Young People, *Submission to Disability Inclusion Bill 2023*, (September 2023), p. 6: <https://childcomm.tas.gov.au/wp-content/uploads/2023/09/2023-09-19-FINAL-Submission-Disability-Inclusion-Bill-2023.pdf>

<sup>5</sup> Community Legal Centres Tasmania, *Submission to Disability Inclusion Bill 2023*, (18 September 2023), p. 3: <http://www.clctas.org.au/wp-content/uploads/2023/09/DisabilityInclusionBill180923.pdf>

<sup>6</sup> Tasmanian Council of Social Services, *Submission to Disability Inclusion Bill 2023*, (September 2023), p.9 – 10: <https://tascoss.org.au/wp-content/uploads/2023/09/TasCOSS-submission-Disability-Inclusion-Bill-.pdf>

## **Access to legal representation**

The majority of complaints made under the Anti-Discrimination Act are in relation to disability. This has been consistent over a number of years and is reflected in various annual reports.

This office routinely refers individuals with disability discrimination matters to Launceston Community Legal Centre, where, as I understand it, there is one lawyer providing advice and representation to individuals with disability matters, across a range of jurisdictions. This individual provides legal assistance across the state, though they are based in Launceston.

Noting the objects clause in the Bill, it is my view that a provision which ensures permanent publicly-funded access to legal representation for people with disability should be included.

In its submission, TasCOSS notes that Tasmania Legal Aid has recommended funding of a 'specialist disability legal service, to provide comprehensive legal and non-legal support to Tasmanians with disability'.<sup>7</sup> I am wholly supportive of such an establishment as it is my observation that despite the good work done by current advocacy and legal bodies, there are woefully inadequate existing resources to ensure Tasmanians with disability have easily accessible legal representation.

## **Definition of defined entity**

The definition of 'defined entity' is narrow.

At present, local government is not included in the definition of 'defined entity'. Most complaints made under the Anti-Discrimination Act against local government relate to issues of access in public places. Previous complaints have been made about tactile pavers, accessible parking spaces, pathways etc.

Local government decisions and actions (or lack thereof) have the potential to significantly affect the lives of people with disability and their opportunity to fully participate in their communities.

Local government should therefore be included in the definition of 'defined entity'.

I make reference to the significantly wider definition proposed in the Victorian Disability Inclusion Bill exposure draft 2022. Consideration should be given to a broader definition in the Tasmanian Bill, taking into account the various types of organisations (in particular ones which receive government funding) that administer services to people with disability.

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<sup>7</sup> Ibid.

## Disability inclusion planning

In relation to disability inclusion planning, I support the recommendations made by TasCOSS in its submission, which also refers to recommendations made by Disability Voices Tasmania.

In particular, I emphasise the need for a wide scope in relation to organisations and entities required to develop Disability Inclusion Plans, and that people with disability should be consulted in the creation of such plans.

Further, the Commissioner should be empowered to issue compliance notices where the legislative requirement to prepare a Disability Inclusion Plan has not been complied with. Without any enforcement mechanism, there is no incentive or motivation for organisations to prioritise compliance with the requirement, or to allocate sufficient resourcing to achieve completion.

This has the potential to disenfranchise the community and impose a burden on people with disability and disability advocates. It is foreseeable that they will be placed in a position of having to spend time, energy and resources calling for organisations to comply with the statutory requirement to create a Disability Inclusion Plan, rather than working with organisations in meaningful ways to further inclusion.

Without an enforcement mechanism, any commitment to accountability, inclusion and action through Disability Inclusion Plans is hollow.

Thank you for considering the above points and for providing the opportunity to comment.

If you require further information or clarification in relation to any of the information provided, please contact me on (03) 6165 7515 or [EOT.Commissioner@equalopportunity.tas.gov.au](mailto:EOT.Commissioner@equalopportunity.tas.gov.au).

Yours sincerely



**Sarah Bolt**  
ANTI-DISCRIMINATION COMMISSIONER

6 October 2023

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