Laurel House is a not-for-profit, community-based, child-friendly, sexual assault support service covering the Northern half of Tasmania to provide trauma counselling and support, education and training and advocacy. Established for more than 30 years, Laurel House provides an inclusive, confidential, and holistic service that addresses sexual inequalities and abuses by:

* providing trauma-informed counselling and support for **anyone** impacted by sexual violence
* advocating for individual, community, and systemic change
* providing community, workforce, and school-based education
* providing professional training and debriefing

Laurel House trauma-informed services are funded primarily through Tasmanian Government Department of Premier and Cabinet and are free to victim-survivors throughout North and Northwest Tasmania. Services include face-to-face, online and phone counselling to adults, young people and children, their family, and supporters, 24-hour support for forensic, medical, and legal processes, community education and advocacy. Located in Launceston, Devonport and Burnie and providing outreach to rural locations covering the West Coast, Circular Head, King Island, and Flinders Island, Laurel House has active collaborative relationships with many stakeholders across sectors.

Laurel House also supports people with disability who have experienced sexual assault. With a grant from Dept of Social Services NDIS for capacity building, Laurel House is undertaking a project aimed at developing a suite of co-designed resources to support health professionals and service providers to recognize and respond to disclosures of sexual assault from persons with disability. These resources are available on the Laurel House website. The second stage of this project will focus more on resources focused on prevention and recovery.

What is clear from the Child Maltreatment Study data, ABS data, and the Aust Institute of Health and Welfare study into Violence against people with a disability, is that persons with a disability are more than twice as likely to experience sexual assault than someone without a disability, and in 80% of cases the perpetrator is someone known to them. ([People with disability in Australia, Violence against people with disability - Australian Institute of Health and Welfare (aihw.gov.au)](https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/violence-against-people-with-disability#Perpetrators%20of%20violence))

Stories from the Disability Royal Commission, and stories from the Tasmanian Commission of Inquiry confirm that violence towards people with a disability is happening far too often. This reality must be considered within the creation of the new Tasmanian Disability Inclusion Bill.

**Our first point of comment** with regards to the Disability Inclusion Bill is that it appears to be under haste to get the required sign-offs BEFORE the release of the report from Tasmanian Commission of Inquiry which is imminent, and the Disability Royal Commission report which is also now imminent. We believe that any new Disability legislation **MUST consider the recommendations from these two pivotal reports.**

Given the immense investment of time and resources in creating a new Act, and the phenomenal opportunity to make it a contemporary framework, it would seem prudent to avail all possible means to be well-informed and into ensuring that the Act is robust, and inclusive of the insights, stories, and expert recommendations from these reports. It seems tokenistic and even suspicious to rush the Bill through without referring to the findings, outcomes and recommendations of the Disability Royal Commission, and the Tasmanian Commission of Inquiry which are so close to being tabled. The Tasmanian Commission of Inquiry has heard stories from people with disability and also from families of those who lived with disability or long-term health conditions, who have experienced abhorrent acts of abuse. Likewise the Disability Royal Commission has heard harrowing reports of abuse of persons with disability within their homes. It would seem especially pertinent to ensure that the learnings from these reports be considered in the development of the Tasmanian Disability Inclusion Bill, in honour of the bravery of those who told their stories, but also as a sign of sincerity, intention, commitment, congruence, and respect from the Government.

If the Tasmanian Government is serious about the Disability Inclusion Bill a human rights-based piece of legislation, then it must be developed in consideration of Article 15 from the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) – Freedom from torture or cruel, inhuman, or degrading treatment or punishment. The above reports can, and should, inform this work.

## **3. Objects.**

(b) *supporting and furthering* – should specify ‘supporting**, implementing, enforcing and** furthering**’**

(d) regulating the use of restrictive practices by *disability services providers*

*7. (3) For the purposes of this Act, disability services provider does not include the following:*

*(a) a person with disability in receipt of a disability support grant for the purpose of obtaining care, support or assistance;*

*(b) a relative or friend of a person with disability who provides disability supports to that person;*

*(c) a person or body, or class of persons or bodies, prescribed as being excluded from the definition of disability services provider.*

What accountabilities are there for these persons defined in a, b, and c above? Research shows that persons with a disability are at higher risk of experiencing abuse, and that 80% of perpetrators are known to the person. [People with disability in Australia, Violence against people with disability - Australian Institute of Health and Welfare (aihw.gov.au)](https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/violence-against-people-with-disability#Perpetrators%20of%20violence)

For a Tasmanian Disability **Inclusion** Bill should this not also include… **and caregivers.**

Regulation of restrictive practices by informal and/or familial carers should also be included in the Disability Inclusion Bill to be truly inclusive – otherwise it leaves **ex**cluded and vulnerable those persons with a disability who may not be empowered to speak for themselves or have the liberty or capacity to do so, within circumstances outside of formal service provision. How will we as a state commit to increasing protection for ALL persons with disability? Pretending that responsibility for safety of persons with a disability only extends to those in receipt of government funded services is negligent.

South Australia for example, has an Adult Safeguarding Unit [Adult Safeguarding Unit | SA Health](https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/About+Us/Department+for+Health+and+Wellbeing/Office+for+Ageing+Well/Adult+Safeguarding+Unit/Adult+Safeguarding+Unit#:~:text=If%20you%20suspect%20you%20or%20someone%20you%20know,make%20a%20report%20to%20the%20Unit%20Email%20adultsafeguardingunit%40sa.gov.au) dedicated to supporting vulnerable adults regardless of what services they receive or not. This Disability Inclusion Bill provides a rare opportunity to consider inclusivity of broader protections beyond just those in receipt of services funded by the State or NDIS. One of the proposed functions of the Disability Inclusion Commissioner is to establish and monitor safeguarding mechanisms that address violence against, and the abuse, neglect, and exploitation of, people with disability.

592 059 people with disability are currently registered NDIS participants, where it is estimated that around 4.4 million Australian’s have a disability.

2.3% of the population has access to NDIS while 18% of the population have a disability.

This information is from the NDIS safety and quality report (attached) and ABS report on the number of Australians with disability. ([Disability, Ageing and Carers, Australia: Summary of Findings, 2018 | Australian Bureau of Statistics (abs.gov.au)](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.abs.gov.au%2Fstatistics%2Fhealth%2Fdisability%2Fdisability-ageing-and-carers-australia-summary-findings%2F2018&data=05%7C01%7Cnita.joy%40laurelhouse.org.au%7Cd0105953522942e47e1808dbb7e66917%7C9418e7f73d5644959a7a2482bfdbd938%7C0%7C0%7C638305972458519259%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=SmQL4o3ZTHHccr5kjCOS0N74P0O4gVB2hpbuctPvmGI%3D&reserved=0)

These statistics indicate that approximately 16% of people with a disability are not accessing formal services, and therefore would not be afforded the protections outlined within this draft Disability Inclusion Bill. Informal caregivers need to be held to account also if we are serious about inclusion and serious about both empowering and safeguarding people with disability.

Object (a) says “recognising *the responsibility* of the State *and the community* to support people with disabilities in exercising their human rights”.

Should the Disability Inclusion Bill then only apply to disability service providers? Is that the extent of the responsibility? If we are serious about the inclusivity of the Act, do we not need a Bill that serves to enforce and further the human rights of **all** Tasmanians living with a disability regardless of who they receive supports from? To not do so, serves in itself to be **ex**clusive. Persons with disability live in a broad range of settings including family homes where they may be supported by family members and community members, not all of whom are supporting the best interests of the person with disability, and who also have propensity to engage with restrictive practices equal to, or worse than, those practices that exist in the service sector – eg: locked in a room for days on end at the family home for ‘safety’ reasons; mobility aids locked away from the person to control free movement; or stringent financial restrictions that prohibit opportunities to access community, being just a few examples. Prevalence data shows that persons with a disability are at significantly higher risk of experiencing abuse, and that **the perpetrator is most often someone known/close to them**. Our community should have a clearly articulated reporting procedure for **any** suspected or alleged abuse of persons with disability regardless of who provides support to them or where.

This draft Disability Inclusion Bill provides for the Commissioner to establish safe-guarding options and safe-guarding must apply to all persons with a disability regardless of what supports are in place. It must be clearly stipulated within this Disability Inclusion Act that the expectations of any safeguarding systems and measures must also include those persons who do not receive formal disability services. Where a person with a disability is in receipt of Disability Support payments, they are in effect in receipt of government funds, even if they are not receiving supports through NDIS or other registered service providers. Carers are often in receipt of the carer payment. This fact shows that we have a responsibility to all those living with a disability. As a community we have a responsibility to include all persons with a disability in a Bill that is about them, and their basic human rights to safety and justice. The development of this new legislation provides the opportunity to do that. Just as all parents are subject to child safety authorities, there must be some interventionist authority enabled to support all persons with a disability to be safe and supported and protected by legislation regardless of their care arrangements – otherwise we are opting to ignore the prevalence data on abuse of persons with a disability, and opting to ignore the stories of those persons who have bravely spoken out.

The Commission of Inquiry in Tasmania has heard stories from individuals and families about abuse that occurred within health settings – those victims who lived with disability and required hospitalisation would not therefore be protected by this Disability Inclusion Act in these circumstances as health systems are not classed as disability services. This Act **must** protect all persons with a disability no matter the setting the abuse takes place in, and all settings must be held to account through a clearly articulated process. While there may currently be processes in place for reporting abuse to those not in receipt of NDIS services, there is currently no regulatory authority to investigate those reports outside of registered NDIS services.

In section 8 Inclusion Principles (f) people with disability have the same right as other members of Australian society to be respected for their worth and dignity and to live free from violence, abuse, neglect, and exploitation. The Disability Inclusion Bill is on one hand stating the right of **ALL** people with disability to live free from violence, abuse, neglect, and exploitation yet ***excluding*** persons with a disability who find themselves in care arrangements outside of the service system of disability services, who are often the most vulnerable, especially in terms of sexual abuse.

Comment:

There is an overall lack of clarity and/or inconsistency with this Bill and the intersectionality with mental health services where psycho-social disability is involved, and those with disability who may move into prison services, or youth justice services. This intersectionality needs to be articulated and included in the Bill.

## **PART 2 – DISABILITY INCLUSION PLANNING**

Any disability inclusion planning must include extensive consultation with persons with disability, under the ideal of ‘nothing about me without me’. It is easy to get caught up in timelines and competing pressures, and then only apply tokenistic consultation with lived experiences. To ensure that there is best-practice inclusion and consultation we suggest the below changes at a minimum.

In preparing a Tasmanian Disability Inclusion Plan the Minister

9 (3) (c) must consult with (this should read *must consult* ***extensively*** *with”.)*

(iii) people with disability (this statement should be more instructive here – eg: *people with a broad range of disabilities, from a range of intersectionality, across each region of Tasmania including rural and remote regions and the Islands, and across the range of socio-economic status*)

## **Division 2 – Disability inclusion action plans for defined entities**

(2) Needs to be a specific point added: **reducing, removing and preventing barriers to people with disability accessing disability-accessible housing for long-term accommodation and crisis accommodation** eg requirements for at least 25% of all new social housing to be built to disability accessible standards.

One of the greatest barriers for persons with a disability leaving a situation of violence and abuse, is the inability to find accessible housing to move to, so instead they remain in their situation and endure continued violence in silence. According to ABS data, in 2018 26.7% of Tasmanian’s identified as having a disability, and this statistic needs to be factored into community policy and planning. [Disability, Ageing and Carers, Australia: Summary of Findings, 2018 | Australian Bureau of Statistics (abs.gov.au)](https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release)

We also suggest that non-government organisations (especially those that receive government funding support) should also have disability inclusion plans, and the Bill should specify this clearly if it is to truly be inclusive. Disability inclusion plans should also be required of government departments, TasTAFE, hospitals, schools, transport services/bus companies, health services, sporting bodies etc. To really foster inclusion across our communities, the conversations, thinking and planning around inclusion needs to be introduced broadly across the community and one way to achieve this is to introduce requirements for inclusion plans more broadly. It could perhaps be a requirement for organisations over a certain size for example.

## **Division 4 – Guidelines**

## **Part 3 – Disability Inclusion Advisory Council**

19. Establishment of the Disability Inclusion Advisory Council

**Question**: Are there any changes you would make to the proposed functions or the structure of the Disability Inclusion Advisory Council?

* Noting that the functions of the DIAC are entirely to do with advancing the inclusion and interests of people with a disability, and that Disability Service providers have their voice heard through National Disability Services and other peak bodies, and that Families and Carers can have their voice through the Ministers Carer Advisory Council; we suggest that the Act stipulates an increase in the majority membership by people with disabilities from diverse backgrounds by:
  + amending s19) 3) a) to specify minimum 70-80% of membership are persons with a disability.
  + Amending s19) 3) b) to specify the DIAC reflects the diversity of backgrounds and experiences of people with disability, representative of the range of intersectionality including those who identify as LGBTIQA+
* Amend (8) advertising of membership vacancies should be *by diverse and accessible means which may include advertising in 1 daily newspaper from each region, printed, and circulating, in Tasmania, and must include at least 1 other contemporary form of advertisement that is accessible for persons with vision-impairment, and a platform that persons with disability freely access. For example, social media platforms with auditory messaging and captions.*
* DIAC members must have access to funding and opportunities for capacity building through training and development. Members of the DIAC must be renumerated for their lived-experience expertise and the costs incurred with DIAC activities.

## **Part 4 – Disability Inclusion Commissioner**

## **Division 1 – General functions**

### **23. Appointment of Commissioner**

23 (3) amend *may* consult with the Disability Inclusion Advisory Council to read ***must*** consult. To be truly inclusive of people with disability this should not be negotiable.

### **24 Functions of Commissioner**

24 (g) to promote the rights of people with disability, including rights relating to disability inclusion, accessibility, individual autonomy, self-determination, and choice and control - amend to add***including promotion and access to supported decision-making.***

(h) and (j) and (l) refer to matters relating to violence against, and the abuse, neglect, and exploitation of, people with disability

Comment: There doesn’t seem to be any reference to reporting mechanisms and how community members can raise issues with the Commissioner.

### **27 Delegation**

The Commissioner, in writing, may delegate any of the functions or powers of the Commissioner other than this power of delegation.

Comment: To whom can the Commissioner delegate? And what checks and balances will be in place to monitor delegations?

### **31. Reports may be made to Commissioner if person with disability is at risk**

Comment: there is no instruction on how reports can be made to the Commissioner except that they don’t need to be in writing.

### **32. Investigation of reports**

2) e) the Commissioner considers that the Commissioner does not have the jurisdiction to consider the report under this Act ………….. comment: in which case?

f) the Commissioner considers that the report raises issues which require investigation by another person, court, board, or tribunal ………. Comment: in which case?

**34 Investigations** (5)(b) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the person.

Seriousness is subjective and someone else deciding that an allegation is serious enough to not need consent for reporting is paternalistic view of support. It is very important for victim / survivors to maintain control over how their information is shared and what route they choose for proceeding. The consequences for the victim/survivor may have significant impact on the life of that person which they should have the opportunity for supported decision making from a professional, who also has the capacity to ensure that the victim/survivor has support for the forward journey. That said we can understand and advocate for the need to report any and all allegations about a perpetrator, we just need to be careful about sharing a victim / survivor’s experience without their consent.

Concerns about the disability commissioner re who they report to or how their work is governed. Further to that it was stated that they can take reports about violence and neglect but there is no reporting mechanism described. It is not clear how a person would make a report to the commissioner.

## **Part 6 – Senior Practitioner**

Comment: There doesn’t seem to be information within the Bill that makes clear how the Senior Practitioner and the Commissioner work in relation to each other. The inter-relationship between the Senior Practitioner and the Commissioner, should be included especially in view of the critical functions of the Commissioner around abuse, exploitation, neglect, and violence. To stipulate at the least when/how the Senior Practitioner needs to make a report to the Commissioner and/or vice versa.

As previously stated, it would seem pertinent to extend the jurisdiction of the Senior Practitioner to all caregivers not only disability services providers.

## **Part 7 – Regulation of Restrictive Practices**

It is a defence to use an unauthorised restrictive practice if:

* it was the least intrusive type of restrictive practice required to prevent serious harm;
* the Senior Practitioner was notified within 5 business days. s48)2).

This permits that a restrictive practice – even if it has severe impact on a person’s liberty and well-being, could be implemented for up to 5 days without authorisation, and is disparate when compared to the involuntary detainment provisions in the mental health Act, or implementation of Guardianship orders, or removal of children under child safety grounds. Emergency Guardianship orders can be approved almost immediately which ensures that an external party hears the scenario and makes an independent assessment decision based on the information provided which provides an additional layer of protection – it would seem pertinent that emergency interim restrictive practice orders could be approved which would provide the opportunity for an independent discussion outside of the parameters of care arrangements, that may in fact be sufficient to identify other less restrictive options and therefore delay such implementation of restrictive practices.

We saw during the COVID-19 isolation requirements the impact that 5 days of restrictive practice had on many people – many of whom did not have a disability. It is discriminatory to allow for up to 5 days of restrictive practice devoid of specifics to be implemented against a person with disability by care providers in a position of power who may have internal work cultures not consistent with respect for human rights.

At the very least, authorisation of implementation of such interim restrictive practice for such an extended period of time, should be obtained from an independent authority situate within the Senior Practitioner domain, and that such authority **must** be accompanied by specific criteria being met for determining the “… least intrusive type of restrictive practice…”.

For example:

* Explanations of what assessments had been made to rule out medical disorders such as urinary tract infection, pain, head injury etc.
* Explanations of what measures had already been trialled that were unsuccessful – eg: de-escalatory conversation or distraction?
* Discussion of what consultation had already taken place prior to implementation of restrictive practice?
* Explanations of why it was totally necessary to act before the Senior Practitioner’s involvement?

An extension of the Community Visitor scheme that is engaged for mental health facilities may be a plausible option for consideration here, that has the potential to protect the rights of persons with disability in a more holistic and fulsome manner, by enabling an external consultation with someone biased towards the person with disability. Community Visitors could be trained in supported decision making capabilities, and could be included in Part 9 - Independent Persons.

**Extended consultation period**

With the relatively short time period for submissions, our submission here feels somewhat incomplete. We believe categorically that there needs to be an extended consultative period that allows for consideration of the recommendations within the Disability Royal Commission report, and the Tasmanian Commission of Inquiry report.