

COMMUNITY LEGAL CENTRES TASMANIA

18 September 2023

Disability Inclusion Legislation Project
Community and Disability Services
Community Partnerships and Priorities Division
Department of Premier and Cabinet
attn: Project Manager

via email: disabilityinclusionbill@dpac.tas.gov.au

To Maryanne Lewis,
Re: Disability Inclusion Bill 2023

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to comment on the *Disability Inclusion Bill 2023* (Tas) ('the Bill'). We commend the Government's intention to create a new legislative framework for whole-of-government action and accountability in pursuing disability inclusion in Tasmania.¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Despite our support for the Bill, we are concerned that the Bill has been released prior to the handing down of the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('the Royal Commission'). In its interim report, the Royal Commission noted that restrictive practices was a theme of particular pertinence to the independence of persons with disability and their right to live free from violence, abuse, neglect and exploitation.² The interim report also noted that the Royal Commission needed to more thoroughly examine "the use of restrictive practices on people with disability and the rules and safeguards that should apply to prevent their

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim Report* (October 2020). As found at <https://disability.royalcommission.gov.au/system/files/2020-10/Interim%20Report.pdf> at 13.

unwarranted use”.³ With the Royal Commission likely to hand down its final report within the next month, we strongly believe that the Bill should await its recommendations.

Disability inclusion action plan

We strongly support the proposed introduction of a duty for defined entities to actively promote disability inclusion through the preparation of a disability inclusion action plan. These plans should reduce, remove and prevent barriers for people with disability in accessing supports, services and employment. However, as the Bill currently stands, the only entities required to commit to these plans are State Government Departments, State Authorities such as Homes Tasmania and the Public Trustee⁴ and organisations administering funding or services to the disability sector. We strongly believe that the Bill should be broadened to include all organisations of more than 50 employees. At a minimum we recommend the adoption of the Victorian model which includes Government Business Enterprises, Councils and educational facilities.⁵

We also note that whilst the Bill requires both the Minister and defined entities to prepare a disability inclusion action plan every four years with yearly progress reports, there does not appear to be any compliance mechanism. As it stands, the Disability Inclusion Commissioner’s only power to require compliance is the preparation of an annual report that evaluates the progress of defined entities in advancing disability inclusion as set out in their plans and progress reports.⁶ Without the power to require compliance we are concerned that disability inclusion action plans will become meaningless.

We strongly believe that the Disability Inclusion Commissioner should have the power to issue compliance notices as set out in the proposed Victorian model. In the Victorian model, the Commissioner has the power to issue a compliance notice in circumstances where the disability inclusion plan has not been prepared, has not been provided to the Commissioner or where no reasonable and material progress has been made in implementing the plan.⁷ In circumstances where the compliance notice is not complied with, the Commissioner can 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 or apply to the Victorian Civil and Administrative Tribunal for an order directing the entity to comply with the notice.⁸

³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim Report* (October 2020). As found at <https://disability.royalcommission.gov.au/system/files/2020-10/Interim%20Report.pdf> at 43.

⁴ Schedule 1 of the *State Service Act 2000* (Tas).

⁵ See clause 5 of Victoria’s Disability Inclusion Bill Exposure Draft. Government Business Enterprises are included in the definition of ‘public entity’ in section 5 of the *Public Administration Act 2004* (Vic). As found at <https://engage.vic.gov.au/disability-act> (18 September 2023).

⁶ Clause 16 of the Bill.

⁷ Clause 26 of Victoria’s Disability Inclusion Bill Exposure Draft. Defined entities are able to challenge the compliance notice with the Commissioner and thereafter in the Civil and Administrative Tribunal: Clauses 28-29 of Victoria’s Disability Inclusion Bill Exposure Draft.

⁸ Clause 30 of Victoria’s Disability Inclusion Bill Exposure Draft.

Accessible formats

Currently, the Bill requires at least one form of accessible communication.⁹ Given that the Long Title of the Bill strives to “advance the human rights of people with disability and the full and effective inclusion of people with disability in the Tasmanian community” we strongly believe that communications be delivered in a format accessible to all. This reform is particularly important given that the Department of Premier and Cabinet is both the lead Agency in relation to this Bill and “committed to making information accessible to all members of the Tasmanian community”.¹⁰ Finally, we note that the Convention on the Rights of Persons with Disabilities states that information should be provided in “accessible formats”.¹¹

Disability Inclusion Commissioner

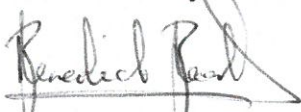
We recommend that the Disability Inclusion Commission (DIC) be re-named the Disability Commissioner. Whilst the Commissioner’s functions will include providing advice, undertaking research and supporting defined entities to comply with the Act, the Bill could be interpreted as only one State Service officer or State Service being made available to enable the Commissioner to perform their functions. We strongly recommend that the Bill ensure adequate resourcing. The Victorian model is endorsed with its assurance that staff will be provided “necessary to assist the Commissioner in performing the Commissioner’s functions”.¹²

Disability Inclusion Advisory Council

The Bill provides for the establishment of a Disability Inclusion Advisory Council comprising at least 9 but not more than 11 members. We support Disability Voices Tasmania’s recommendation that most members of the Council should be persons with disability rather than just a majority and that both the chairperson and the deputy chairperson should be persons with a disability. Finally, we do not believe that the chairperson should be appointed by the Minister but rather should be elected by the Council.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl

Policy Officer

Community Legal Centres Tasmania

⁹ Clauses 9(4)(b), 11(3)(b), 12(6)(a), 13(3)(a), 14(3)(a), 16(2), 29(3) and 40(4)(b).

¹⁰ Tasmanian Department of Premier and Cabinet, ‘Accessibility’. As found at <https://www.dpac.tas.gov.au/accessibility> (accessed 14 September 2023).

¹¹ Article 21(a) of the *Convention on the Rights of Persons with Disabilities*. See also Article 9(2)(h).

¹² See clause 45 of Victoria’s Disability Inclusion Bill Exposure Draft. As found at <https://engage.vic.gov.au/disability-act> (18 September 2023).