

Disability Inclusion Bill 2024

Explanatory Statement

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Introduction

This explanatory statement relates to the *Disability Inclusion Bill 2024*.

The explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The *Disability Inclusion Bill 2024* is a Bill to promote disability inclusion in the ACT by recognising that people with disability are an important and valuable part of the ACT community. To create a truly inclusive ACT we need to challenge and address ableism and identify and remove barriers to accessibility as a community.

Despite improvements in disability rights, people with disability continue to face discrimination in many facets of their lives. The Australian Bureau of Statistics Disability, Aging and Carers Survey 2018 found among people with disability aged 15 years and over that one in ten had experienced discrimination, up from 8.6 per cent in 2015. In addition, the same survey found that of the 3.3 million people with disability aged 15 years and over, one in three avoided situations because of their disability in the previous 12 months. The *Disability Inclusion Bill 2024* seeks to drive change in key priority areas that addresses ongoing discrimination still experienced by people with disability, creating a more equal and inclusive Canberra.

The Bill enshrines in the law an understanding of disability that is social and not medical. This is a significant and important change. To date, the law in the ACT has defined disability through a clinical lens as a health ailment, something that is not normal and something that needs to be fixed or treated. This approach is outdated; people with disability do not need to be fixed or treated, but rather, supported.

At the core of a social model of disability is the realisation that society needs to change. A social model of disability does not deny the reality of impairment nor its impact on an individual but rather than expect the individual to change a social model 'sees' disability is the result of the interaction of people with impairments and an environment filled with physical, attitudinal, communication and social barriers. It is these physical, attitudinal, communication and social barriers that must change to enable people with impairments to participate in society on an equal basis with others.

To address ableism and remove the barriers people with disability face, the Bill establishes a framework from which physical, attitudinal, communication and social barriers can begin to be addressed.

The Bill establishes a requirement for the Government to develop and review a suite of disability strategies to address and remove barriers across a range of priority areas. These strategies are in priority areas identified through Australia's Disability Strategy 2021-2031 or deemed by the Minister and reflect areas where significant social barriers need to be addressed. The strategies are high level documents intended to drive change across a sector. These strategies are intended to include many individuals, organisations, and entities from both the private and public sectors as necessary.

The Bill establishes a requirement for Government entities to develop disability inclusion plans for their administrative units. Disability inclusion plans differ to strategies in that they apply to a singular entity and are focused on the specific actions that entity will take to make their organisation inclusive of people with disability. The requirement for Government to have these in place is to lead by example.

The Bill establishes a Disability Advisory Council (the Council) to advise the Government on matters relating to the content of this Bill. The role of the Council is critical to driving the systemic change sought by this Bill and brings the voices of people with disability directly to Government to inform the decisions being made about them with them.

Consultation Undertaken

The Bill was released for public consultation between August and December 2023.

Human Rights Compatibility

Rights Engaged

The Bill engages the following human rights under the Human Rights Act 2004:

- Section 8: Recognition and equality before the law (promoted)
- Section 12: Right to privacy (limited)
- Section 17: Taking part in public life (promoted and limited)
- Part 3A: Economic, Social and Cultural Rights (promoted)

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By establishing the social model of disability in the law the Bill establishes a best practice human rights driven lens through which we can consider disability in the ACT. The importance of this change is that we step away from outdated models of disability which require the individual to adapt in ways that very often are unreasonable and bring into the discussion how we as a community can adapt to be inclusive. Through making this change the Bill promotes the right to recognition and equality before the law, as we are no longer setting unrealistic expectations under our laws, therefore engaging section 8 of the *Human Rights Act 2004*.

The discrimination faced by people with disability is higher than those who do not have a disability and is often a direct result of their disability. Discrimination is often humiliating and degrading, leading to feelings of shame within those who experience it. By recognising the rights of people with disability to be free from discrimination and requiring broad systemic change across our community to address and remove that discrimination, the Bill engages section 10 of the *Human Rights Act 2004* by promoting protection from torture and cruel, inhuman, or degrading treatment etc.

The establishment of the Council enables the participation in public life of its members, including participating in dialogue with elected representatives, advocacy, and representative groups. The establishment of the Council also enables participation in consultation and review processes.

Through its objective to improve and increase the inclusion of people with disability across a range of societal areas and practices, the Bill engages Part 3A Economic, Social and Cultural Rights of the *Human Rights Act 2004*.

Rights Limited

- Section 12: Right to privacy (limited)
- Section 17: Taking part in public life (promoted and limited)

The Bill limits the right to participate in public life as the membership to the Council limited by section 19(3) to a person with disability, a person who is a carer of a person with disability, a person committed to promoting disability inclusion or a person with demonstrated expertise in relation to disability services and inclusion. Therefore, engaging section 17 of the *Human Rights Act 2004* which states everyone has a right to take part in public life.

The Bill potentially limits the right to privacy by requiring consultation undertaken to inform strategies and plans include people with disability. Further, the Bill limits the right to privacy as sensitive personal information about disability, gender identity, age, cultural and linguistic identities Aboriginal and Torres Strait Islander Identity and socioeconomic backgrounds may be collected as part of the application process for the Council. Therefore, engaging section 12 of the *Human Rights Act 2004* which states everyone has the right to not have their privacy interfered with unlawfully or arbitrarily.

Proportionality

The objective of the Bill is to promote disability inclusion in the ACT by recognising that people with disability are an important and valuable part of the ACT community. To address ableism and remove the barriers that lead to discrimination against people with disability the Bill establishes a systemic approach focused on the actions of entities and delivered through the actions in strategies and plans.

As the saying goes, ‘nothing about us without us’. It is crucial that people with disability are included in the development of the very strategies and plans that will affect them and so that the strategies and plans developed best reflect the needs of those in our community they are intended to support.

While the Bill requires consultation with people with disability, to respect the privacy of individuals the Bill does not include any requirement for a person to disclose they have a disability, nor does it include any requirement to share information about who was consulted with. Administratively the consultation provisions of the Bill can be satisfied with no disclosure or with only voluntary disclosure, and without sharing of the personal details of anyone who was consulted.

The Bill does require certain members on the Council to be people with disability and in this circumstance, individuals will need to disclose their disability as well as other personal details. The limitation is however rationally linked to legitimate purpose of the requirement as it ensures, in an effective and proportionate way, people with the required diversity of experience and expertise are appointed to the Council.

Outline of the Provisions of the Bill

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act.

Clause 2 Commencement

This clause sets out that the Act commences on a day fixed by the Minister by written notice within 6 months of notification.

Clause 3 Dictionary

This clause states that the dictionary at the end of the Bill is, once enacted, part of the Act.

Clause 4 Notes

This clause states that a note included in the Bill is explanatory and, once enacted, is not part of the Act.

PART 2 OBJECT, IMPORTANT CONCEPTS AND PRINCIPLES

Clause 5 Objects of Act

This clause sets out the object of the Act. The object of the Act is to ensure that people with disability are recognised as an important and valuable part of our diverse community and that it is the responsibility of all of us to foster a community where people with disability are included.

The Object outlines that to do this ableism must be addressed and that barriers to accessibility are not only identified but also removed. This approach is core to moving to a social model of disability in the ACT where people with impairments are required to change to fit within the community but rather the community adjusts its structures and practices in a way that enables people with impairments to participate in society on an equal basis with others.

The object is achieved by requiring the development of disability inclusion strategies to drive change across the whole community and disability inclusion plans for the public sector so that Government programs and services are inclusive.

Clause 5(3) notes that to achieve the objective of the Bill to the extent that is reasonably practicable the principles of the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD) and other relevant human rights instruments affecting people with disability as in force from time to time are to be supported. The UNCRPD is pivotal in progressing disability rights globally and supporting the implementation of the social

model of disability. Australia ratified the UNCRPD on 17 July 2007 and it came into force in 2008. In 2009 Australia ratified the Optional Protocol to the Convention on the Rights of People with Disability. The Optional Protocol came into force in Australia in 2009. Both documents therefore influence the legislative and policy approached of the Australian Government and the States and Territories. In implementing the requirements of this Bill it is crucial to consider these documents as well as other instruments that may be in place to make sure the responses arising from the actions of this Bill are consistent with our wider commitments and obligations.

Clause 6 Important Concepts

This clause defines the terms *disability inclusion* and *ableism* for the purposes of this Act.

The concepts involved in these definitions are central to this Act and its implementation. As we move to a social model of disability commonly held practices and perceptions will be challenged.

While legal, regulatory, program, and service provisions will and do respond to disability, these responses are not always from the perspective of a social model and the measures taken can and do still focus on adapting the impairment rather than the adapting an environment where physical, attitudinal, communication and social barriers lead to exclusion.

The concepts outlined in this section are intended to provide a clear basis from which disability inclusion under a social model should be approached as the objects of the Act are implemented.

Clause 7 Disability Inclusion Principles

This clause notes that the disability inclusion principles are set out in Schedule 1.

PART 3 DISABILITY INCLUSION STRATEGIES

Clause 8 Meaning of *priority inclusion area* and *responsible Minister*

This clause sets out the meanings of priority inclusion area and responsible Minister for the purposes of disability inclusion strategies. The priority inclusion areas are intended to cover the priorities outlined in Australia's Disability Strategy as well as providing for the Minister to declare additional priority inclusion areas.

Clauses 8(1)(a) outline priority inclusion areas based on Australia's Disability Strategy. Australia's Disability Strategy recognises that all levels of Government have a responsibility to support people with disability and in line with this is developed in coordination with the States and Territories. The inclusion in the Act of these priority inclusion areas is in recognition of the shared responsibility the ACT has under Australia's Disability Strategy. The priority areas are provided as examples rather than being named in the Bill, as Australia's Disability Strategy is periodically amended and any changes to the naming of the priority areas in Australia's Disability Strategy could lead to

inconsistency with this Bill. However it is expected under this Clause that a multiple strategies will be developed consistent with the policy priority areas of Australia's Disability Strategy.

Clause 8(1)(b) allows the Minister to declare additional priority inclusion areas. This function is important as not all areas requiring a systemic approach to improving disability inclusion in the ACT will necessarily be captured by the national priorities.

Clause 8(2) sets that a priority inclusion area declared by the Minister under 8(1)(b) and responsible Minister for a priority inclusion area under sub section (1) shall be a notifiable instrument. By having priority inclusion areas notified the information is clear and publicly available. Likewise, the notifying of responsible Minister will provide clarity on which Minister is responsible for delivering a strategy; this is particularly important given that multiple Ministers could have responsibility for a priority inclusion area.

Clause 8(3) defines *National disability Strategy* for clause 8.

Clause 9 Disability inclusion strategies for priority inclusion areas

This clause sets out certain parameters to guide the development of disability inclusion strategies for priority inclusion areas. Disability inclusion strategies are intended to be high level documents across a range of stakeholders in a priority area and are not limited to one organisation.

Clause 9(1) establishes a requirement that the Minister responsible for a priority inclusion area must make a strategy for that priority inclusion area. In making a strategy, the minister responsible must make the strategy in consultation with the Minister responsible for this Act (currently, the Minister for Disability). This is an important aspect to the development of the strategies. To drive the change sought by this Bill, all ministers with responsibility will need to direct change within their portfolio areas. Consultation with the Minister responsible for this Bill will allow the Minister responsible for this Bill to meet any obligations they have for the implementation of this Bill as well as meet their portfolio responsibilities.

Clause 9(2) outlines that the strategy must be consistent with the disability inclusion principles outlined in Schedule 1, as well as promote a social model of disability, interact with other strategies, and include information for non-government entities.

Clause 9(3)-(5) establishes a time frame for each strategy and the requirement to develop a new strategy once an existing strategy expires and allows the existing strategy to stay in force where a new one has not been developed by the time it expires. It is important that strategies are refreshed so that emerging challenges or responses are adopted in our approach, and in recognition that as a community creating inclusion is an ongoing and iterative task.

Clause 9(7) determines that a disability inclusion strategy is a notifiable instrument to ensure the document is publicly available.

Clause 10 Disability inclusion strategies - consultation

This clause sets out the minimum requirements for consultation when developing a strategy for a priority inclusion area. Importantly, this clause requires that consultation must be undertaken in way that is inclusive of people with disability and in ways that is accessible to all abilities.

Clause 11 Disability inclusion strategies – annual progress report

This clause requires that an annual report be provided setting out the achievements against a disability inclusion strategy each financial year.

PART 4 DISABILITY INCLUSION PLANS

Clause 12 Definitions

This clause sets out the definitions of *public sector entity* and *responsible person* for the purposes of this part.

Clause 13 Disability inclusion plans

This clause sets out certain parameters to guide the development of disability inclusion plans for a public sector entity. Disability inclusion plans focus on the actions that a specific entity will undertake to improve the inclusion of people with disability and address ableism across their organisation.

Clauses 13(1) establishes a requirement for person responsible for a public sector entity to make a disability inclusion plan for the entity they are responsible for.

Clause 13(2) outlines that a disability inclusion plan must be consistent with the disability inclusion principles outlined in Schedule 1 to promote a social model of disability, interact with the disability inclusion strategies that relate to the work of the public entity, and include information on the actions that will be taken by the entity as part of their disability inclusion plan.

Clause 13(3) makes provision for the head of a public sector body to adopt the plan made by an administrative unit that the public sector body is established under.

Clause (13)(4) ensures that disability inclusion plans will be made publicly available.

Clause (13)(5) requires that disability inclusion plans are reviewed upon the commencement of a new disability inclusion strategy and at least once every three years after a plan is made. This will ensure that disability inclusion plans stay up to date and reflect best practice.

Clause (13)(6) clarifies the meaning of *relates* as it applies to section 13.

Clause 14 Disability inclusion plan - consultation

This clause sets out the minimum requirements for consultation when developing a disability inclusion plan. Importantly, this clause requires that consultation must be undertaken in way that is inclusive of people with disability and in ways that are accessible to people of all abilities.

Clause 15 Relationship to other inclusion plans

This clause allows a public sector entity required under another Territory law to prepare an inclusion plan or plans to avoid duplication prepare a single plan that will be taken to meet the requirements of this Act and the other Act/s.

Clause 16 Annual report requirements

This clause sets out the reporting obligations for public entities.

PART 5 DISABILITY ADVISORY COUNCIL

Clause 17 Establishment of council

This clause establishes the Disability Advisory Council (the Council).

Clause 18 Functions of council

This clause outlines the functions of the Council.

Clause 19 Membership of council

This clause sets out the number of members, roles and make-up of the Council. Importantly, this clause requires that the Minister must take all practicable steps to ensure membership of the Council reflects the diversity in the community.

Clause 20 Ending appointments

This clause allows the Minister to end the appointment of a council member under certain circumstances.

Clause 21 Operation of council

This clause establishes that the Council has the autonomy to operate in a way that it considers appropriate.

Clause 22 Arrangements for staff and facilities

This clause establishes that the Council can have access to the services of a public servant/s or Territory facilities. This will allow the Council to function appropriately, e.g. receive secretariat support or meet in the meeting rooms of Territory office buildings. All arrangements are to be made in conjunction with the head of service.

Clause 23 Annual report by council

This clause requires the Council prepare an annual report as per the requirements of the *Annual Reports (Government Agencies) Act 2004*, section 7.

PART 6 MISCELLANEOUS

Clause 24 Legal rights not affected

This clause sets out that the Act does not create in any person any legal right or give rise to any civil cause of action.

Clause 25 Inconsistency with other territory laws

This clause sets out that where an inconsistency arises with another Territory law, the other law prevails.

Clause 26 Regulation-making power

The Executive may make regulations for this Act.

Clause 27 Review of Act

This clause notes that the Minister must review the Act after the fifth year of the Act's operation and make a report about this review to the Legislative Assembly. This section expires seven years after the day it commences.

PART 7 CONSEQUENTIAL AMENDMENT

Clause 28 Annual Report (Government Agencies) Act 2004 Section 7 (2), note, new dot point

This clause is consequential and updates the *Annual Reports (Government Agencies) Act 2004*, section 7 to reference the Disability Inclusion Act.

Schedule 1 Disability inclusion principles

Clause 1.1 General principles for disability inclusion

This clause outlines the general principles that should be applied when devising strategies and actions to achieve disability inclusion. The principles refer to the principles set out in the *Convention on the Rights of Persons with Disability* which the Australian Government is a signatory to and the ACT Government has agreed to through its intergovernmental agreements with the Federal Government.

Clause 1.2 Principles for disability inclusion in the ACT community

This clause outlines additional principles that should be applied when devising strategies and actions to achieve disability inclusion. These are intended to further inform the action undertaken because of this Act as well as provide reference to existing Acts of relevance.

Dictionary

The dictionary defines terms used in the Act.