

Disability Inclusion Bill 2024
Supplementary Explanatory Statement

Presented by Suzanne Orr MLA

Member for Yerrabi

Introduction

This revised explanatory statement relates to the *Disability Inclusion Bill 2024* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

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 address 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 This approach is outdated; people with disability do not need to be fixed or treated, but rather, supported.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 declared

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 public service to have these in place means the Government will 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

A consultation draft of the Bill was released for public consultation in August 2023.

The Bill was introduced to the Legislative Assembly on 8th February 2024.

An inquiry by the Standing Committee on Education and Community Inclusion provided further opportunity for public consultation and parliamentary scrutiny. The Standing Committee on Justice and Community Safety Committee (Legislative Scrutiny Role) provided comment on the Bill.

Further amendments to the Bill, a supplementary explanatory statement for the proposed amendments and this revised explanatory statement have been proposed following feedback from these processes.

Human Rights Compatibility

The Bill engages human rights compatibility considerations.

Rights Promoted

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.

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

Asking a person to identify if they have a disability could be considered a breach of privacy as it is requiring the person to identify their personal circumstances. The Bill could therefore be considered to limit the privacy of people with a disability therefore engaging section 12 of the *Human Rights Act 2004*.

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.

Through this systemic approach the need for people with disability to identify themselves is minimised as the system should pre-empt their needs and be responsive to these through the various measures put in place via the strategies and plans.

The Bill requires consultation with people with disability to ensure that the key stakeholders are not left out of the conversation. It is crucial that people with disability are included in the decisions that affect them - as the saying goes, 'nothing about us without us'. However, in creating the requirement to consult with people with disability there is an argument that to demonstrate compliance with the law the consulting entity will need to be able to identify individuals as having a disability so that they can confirm they have spoken with them, which means that the right to privacy of the individual is impinged upon.

In maintaining an individual's right to privacy, the Bill could have required consultation without specifying that this includes people with disability, therefore removing the need to identify people with disability. However, in doing this it could not be guaranteed that people with disability had in fact been consulted. Given the history of decisions being made on behalf of people with disability without their input, this is not a satisfactory approach.

It also needs to be acknowledged that while some people with disability will want to maintain their privacy, some people with disability will self-identify without any or much concern.

To balance the right of individuals to maintain their privacy as well as ensuring that people with disability are not consciously nor unconsciously left out of the development of strategies and plans, under the Bill the consultation is written in acknowledgement that people with disability will choose to either self-identify or not. Those who do self-identify will allow for the requirements of the Bill to be met.

In addition, as the consultation requirements set out in the Bill are minimum and not exhaustive, it is possible for consultation to incorporate feedback from a range of stakeholders through a several channels, including people with a disability who do not wish to identify.

The Bill does require certain members on the Ministerial Council to be people with a disability and in this circumstance, individuals will need to disclose their disability. Like the considerations regarding consultation, the requirements to disclose a disability could be seen as impinging on the privacy of the individual.

In maintaining the individual's right to privacy, the Bill could have not specified the requirement for certain appointees on the Ministerial Council to have a disability. However, given the history of decisions being made on behalf of people with disability without their input, this is not a satisfactory approach. This is especially true for a Ministerial Council tasked with providing advice on issues affecting people with disability and fostering cooperative relationships between people with disability and a range of individuals and groups. Individuals who are not comfortable identifying as having a disability will still be able to interact with the Ministerial Council through any consultation or outreach that the Ministerial Council undertakes.

Ultimately, the Bill promotes and upholds several human rights by enabling the full participation of people with a disability in society. While considerations of privacy are required, these can be mitigated so that any limitation of people's right to privacy is minimised to an extent that the impact of the bill does not outweigh the benefits.

Outline of the Provisions of the Bill

AMENDMENT 1

Proposed new clause 7A

Page 5, line 1 –

This is a new clause that articulates the meaning of disability inclusion strategy as intended under the bill. The inclusion of the term and its meaning in Part 2 (Objects, important concepts and principles) of the bill provides a clearer and more readily accessed understanding of what strategies are and how they should be approached.

This amendment has been made following feedback during the committee inquiry process which indicated that even though the explanatory statement provides context on what is meant by both a disability inclusion strategy and a disability inclusion plan, it would be helpful to have this information presented within the bill itself.

AMENDMENT 2

Clause 9 heading

Page 6, line 7

This is a minor amendment to provide consistency with the terminology used in the proposed new clause 7A.

AMENDMENT 3

Clause 9 (1)

Page 6, line 9

This is a minor amendment to provide consistency with the terminology used in the proposed new clause 7A.

AMENDMENT 4

Clause 10 heading

Page 7, line 9

This is a minor amendment to better reflect the intent of the section.

AMENDMENT 5

Proposed new clause 10 (2) (ba)

Page 7, line 26

This is a minor amendment to provide further guidance on who the Minister must take all practicable steps to consult with when developing a disability inclusion strategy to ensure that the diversity in the community is taken into account.

The specific noting of veterans follows feedback from veterans and veteran advocates asking their unique life experience be reflected in the bill and considered in any actions taken under strategies and plans.

AMENDMENT 6

Proposed new clause 10A

Page 8, line 18

This is a new clause to allow for existing disability strategies to be adopted under the bill. The amendment allows for the ACT Government Disability Justice Strategy 2019-2029 – A Strategy to Address Unequal Access to Justice in the ACT, ACT Government Disability Health Strategy 2024-2033, ACT Government Inclusive Education: A Disability Inclusion Strategy for ACT Public Schools 2024-2033 and ACT Disability Strategy 2024-2033 to be adopted as the territory's strategies for their relevant priority area. The strategies covered under this clause are consistent with the intent and approach of the bill and have been developed in consultation with the disability community and disability representatives.

When the strategies reach their nominated expiration date a new strategy for the priority area will need to be developed in accordance with the provisions of the bill. This clause will expire on 1 December 2035 as all the strategies listed under it will have been replaced with new strategies for each of the priority areas. The new strategies will have been developed in their entirety under the provisions of the bill and arrangements for transitional processes will no longer be required.

The amendment has been made following feedback from the committee inquiry process which noted the want to recognise work done to date as well as noting the need to avoid consultation fatigue by not duplicating consultation processes already undertaken.

AMENDMENT 7

Clause 13 (1)

Page 10, line 12

This is a minor amendment to provide greater clarity on the intent and requirements of the clause.

This amendment has been made following feedback during the committee inquiry process which indicated that even though the explanatory statement provides context on what is meant by both a disability inclusion strategy and a disability inclusion plan, it would be helpful to have this information presented within the bill itself.

AMENDMENT 8

Clause 13 (5) (b)

Page 11, line 11

This is a minor amendment to change the period for when a disability inclusion plan must be reviewed.

The amendment has been made following feedback during the committee process which sought to better align the review period with the 10-year duration of a plan as well as allow time for actions to be better progressed before review and prevent consultation fatigue.

AMENDMENT 9

Clause 14 (1) (a) (iii)

Page 12, line 7

This is a minor amendment that removes the requirement for the Ministerial Advisory Council to be consulted on disability inclusion plans.

This amendment has been made following feedback from the Disability Reference Group regarding the management of their workload and where they believed the incoming Ministerial Advisory Councils advice could best be directed.

AMENDMENT 10

Proposed new clause 14 (2) (ba)

Page 12, line 19

This is a minor amendment to provide further guidance on who the responsible person must take all practicable steps to consult with when developing a disability inclusion plan to ensure that the diversity in the community is taken into account.

The specific noting of veterans follows feedback from veterans and veteran advocates asking their unique life experience be reflected in the bill and considered in any actions taken under strategies and plans.

AMENDMENT 11

Proposed new clause 14 (4)

Page 13, line 9

This is a minor amendment to correct a drafting error.

AMENDMENT 12

Proposed new clause 19 (3) (ca)

Page 16, line 13

This is a minor amendment to provide greater clarity on who the Minister can appoint to the Ministerial Advisory Council and better reflects the important role and contribution of Disabled Peoples Organisations.

AMENDMENT 13

Proposed new clause 19 (8) (ba)

Page 17, line 1

This is a minor amendment to provide further guidance on who the Minister must consider when taking all practicable steps to reflect the diversity of the community when appointing members to the Ministerial Advisory Council.

The specific noting of veterans follows feedback from veterans and veteran advocates asking their unique life experience be reflected in the bill and considered in any actions taken under strategies and plans.

AMENDMENT 14

Clause 19 (9)

Page 17, line 6

This is a minor amendment to change the maximum period of appointment to the Ministerial Advisory Council from 2 years to 3 years.

The amendment follows feedback that standard practice for ACT Ministerial Council appointments is 3 years.

AMENDMENT 15

Clause 20 (a)

Page 17, line 21

This is a minor amendment to better align the language used in the bill with language used in public administration practice so that the intent of the clause is clearer.

AMENDMENT 16

Schedule 1 proposed new section 1.2 (3A)

Page 21, line 24

This is a minor amendment to provide specific reference to universal design which is an important component of the social model of disability and the best practice method of creating environments so that they are accessed, understood, and used to the greatest extent possible by all people regardless of their age, size, ability or disability.

AMENDMENT 17

Dictionary, definition of *disability inclusion strategy*

Page 24, line 14

This is a minor amendment to provide consistency with the proposed new clause 7A.

AMENDMENT 18

Dictionary, proposed new definition of *universal design*

Page 25, line 5

This is a minor amendment to provide a clear definition of universal design as referenced in the Schedule 1 proposed new section 1.2 (3A).