Disability Inclusion and Safeguarding Bill 2024:

A Guide to the Bill

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**Department of Premier and Cabinet**



# Contents

[Contents 2](#_Toc169538965)

[Introduction 3](#_Toc169538966)

[Some explanation of Terminology and Process 4](#_Toc169538967)

[How can I read the full Bill? 5](#_Toc169538968)

[Part 1 Preliminary 6](#_Toc169538969)

[Part 2: Disability Inclusion Planning 8](#_Toc169538970)

[Part 3: Disability Inclusion Advisory Council 9](#_Toc169538971)

[Part 4: Tasmanian Disability Commissioner 9](#_Toc169538972)

[Part 5: Disability Services Regulations 11](#_Toc169538973)

[Part 6: Senior Practitioner 11](#_Toc169538974)

[Part 7: Regulation of Restrictive Practices 12](#_Toc169538975)

[Part 8: Appointed Program Officers 14](#_Toc169538976)

[Part 9: Independent Persons 15](#_Toc169538977)

[Part 10: Community Visitor Scheme 16](#_Toc169538978)

[Part 11: Funding 16](#_Toc169538979)

[Part 12: Authorised Officers 16](#_Toc169538980)

[Part 13: Review of Decisions 17](#_Toc169538981)

[Part 14: Offences 17](#_Toc169538982)

[Part 15: Miscellaneous 17](#_Toc169538983)

[Schedules 17](#_Toc169538984)

[Back Cover 18](#_Toc169538985)

# Introduction

The Tasmanian Government has made a commitment to create a new Disability Inclusion and Safeguarding Act. Once passed, the Act will provide a way for Tasmania to advance the human rights of people with disability and to create a safe and inclusive place for people with disability.

In 2022 the Tasmanian Government consulted with stakeholders about the *Disability Services Act 2011* (Tasmania). After considering all the feedback it was decided that an entirely new Disability Inclusion Act was needed. In response we drafted a Disability Inclusion Bill 2023 and sought feedback from the Tasmanian community in August and September 2023.

After considering all the feedback on the Bill we made many changes and have now prepared the Disability Inclusion and Safeguarding Bill 2024.

This guide describes and explains the major parts of the Bill. It is intended to assist anyone who is reading the Bill. It provides a summary for anyone who doesn’t wish to read the whole Bill.

# Some explanation of Terminology and Process

A Bill is a proposed law. It is a draft document used to create a new law or to make changes to an existing law.

A Bill will move through various steps before it becomes an Act, or a law passed by each house of Parliament.

Before a Bill is presented to Parliament the writers will usually consult with stakeholders.

Consultation ensures that the Bill is broadly supported, and any potential problems or disagreements are considered and sorted out.

This consultation was undertaken last year. We received a great deal of very helpful feedback and made many changes to the Bill as a result.

The Bill has begun its journey through the Tasmanian Parliament. Along the way the content of the Bill will be debated, and changes may be made. The Bill must pass a three-stage reading process in the House of Assembly, and the Legislative Council before it passes and can receive Royal Assent from the Governor of Tasmania.

After the Bill is passed it becomes an Act. There will be a few months before the Act takes effect. During this time, the Tasmanian Government will put into place the resources and structures necessary to make the Act work in a practical way. Ongoing consultation will be an important part of implementation.

# How can I read the full Bill?

The Bill is long and there are many parts. This Guide provides a summary.

The full version of the Disability Inclusion and Safeguarding Bill 2024 as tabled in the Tasmanian Parliament is available from the Tasmanian Parliament [website](https://www.parliament.tas.gov.au/bills/bills-introduced-into-parliament-2024/bills-2024) at https://www.parliament.tas.gov.au/bills/bills-introduced-into-parliament-2024/bills-2024

An accessible version of the Bill is available from the Department of Premier and Cabinet website (insert link). If you experience any difficulties with the accessible version please get in touch by email at [disabilityinclusionbill@dpac.tas.gov.au](mailto:disabilityinclusionbill@dpac.tas.gov.au).

Once the Bill is passed and becomes an Act we will create accessible versions of the Act.

# Part 1 Preliminary

This part of the Bill provides introductory information.

It sets out:

* the title
* when the Act will commence
* the objects (or purpose) of the Act
* establishes that the Crown (the Tasmanian Government) is bound to comply with provisions of the Act
* provides information and definitions to assist with interpretation of the Act.
* Sets out the principles which guide anyone who takes action in relation to the Act.

## Title of the Act

The title of the Act will be the Disability Inclusion and Safeguarding Act.

After the title there is a short statement which briefly describes the purpose of the Act – “An Act to advance and safeguard the human rights of people with disability and to advance the full and effective inclusion of people with disability in the Tasmanian community.”

## Commencement

Once the Bill becomes an Act this section will be updated to include the day the Bill will come into effect. This is a date when the Bill is proclaimed by the Governor of Tasmania.

## Objects of the Act

The objects set out the overall purpose of the Act.

The objects set out that the Act has been created to advance and safeguard the human rights of all people with disability. These rights are included within the United Nations Convention on the Rights of Persons with Disabilities and Australia's Disability Strategy.

The objects of this Act are to advance and safeguard the rights of all people with disability and to advance the full and effective inclusion of all people with disability, including by –

* + 1. recognising the responsibility of the State and the community to support people with disability in exercising their human rights; and
    2. supporting and effecting –
       1. the purpose and principles of the United Nations Convention on the Rights of Persons with Disabilities; and
       2. Australia’s Disability Strategy; and
    3. establishing a framework for a whole-of- government approach to accountability and transparency in relation to disability inclusion; and
    4. regulating the use of restrictive practices by disability services providers; and
    5. establishing the positions of Disability Commissioner and Senior Practitioner; and
    6. establishing the Disability Inclusion Advisory Council; and
    7. providing for a community visitor scheme; and
    8. enabling the provision of funding to support the above objects.

## Act Binds the Crown

This is a short statement which means that the Crown, meaning the Tasmanian Government and all its parts, is bound to comply with the Act.

## Interpretation

This section sets out the meanings of certain words used in the Bill. These 45 definitions support the functioning of the Act and make sure that the meaning of some complex terms are clear to everyone who might use the Act in the future. Some other definitions are included throughout the Bill when they only apply to that part of the Bill.

The interpretation includes a definition of disability built upon a social model of disability and which is inclusive of all Tasmanians with disability.

## Defined Entities

This section also provides the meaning of a ‘defined entity’. These are all the various parts of the Tasmanian Government who will have a role to play in implementing the Act and preparing and implementing plans to improve inclusion.

## Disability Providers

This section defines a disability services provider as meaning an NDIS provider and other providers who are providing services to support people with disability.

## Principles

The principles section is one of the most important parts of the Bill.

These principles reflect the United Nations Conventions on the Rights of People with Disabilities.

The principles provide a framework for anyone deciding or taking an action in relation to the Act.

# Part 2: Disability Inclusion Planning

The Bill contains provisions to strengthen Tasmania's commitment to disability inclusion and to strengthening of requirements relating to consultation, planning, and reporting of progress in delivering actions.

## Development of a Tasmanian Disability Inclusion Plan

* This plan will set out government measures for achieving the objectives of the Act and advancing the inclusion principles. The Plan will also provide for collaboration and coordination among State authorities and other entities in the provision of mainstream supports and services to people with disability. The Act will set out the plan's purpose, responsibilities for development and implementation, consultation, reporting and publication requirements.

## Disability Inclusion Action Plans to be developed by Defined Entities

* A Defined Entity includes a State Government Agency or other agent or instrument of the crown. The Act defines the purpose of Disability Inclusion Action Plans, consultation requirements, timelines for development and review, reporting and publication requirements.

## Disability Consultation

* This section establishes a requirement for Disability Consultation to be undertaken by Defined Entities in relation to policies, programs or services provided by that entity that have a direct or significant impact on the public. The consultation will consider the effects that the policy, program, or service may have on people with disability; and state how the policy, program or service will be developed or varied to ensure accessibility, promote universal design, reduce, remove, and prevent barriers to disability inclusion and promote disability inclusion.

## Guidelines

* This section establishes a requirement for the development of Guidelines to assist Defined Entities with consultation, inclusion, and preparation of plans and reporting.

## Compliance Notices

* This section establishes a framework for compliance by defined entities with the inclusion planning, reporting and consultation requirements. This means that if the Disability Commissioner doesn’t believe that a defined entity has done what the Act says they should, the Commissioner can give them a compliance notice asking them to do what is required.

# Part 3: Disability Inclusion Advisory Council

The Bill establishes a Disability Inclusion Advisory Council. This Council will be set up within the first 12 months after the Act begins.

The Advisory Council provides a structure for the inclusion of people with disability in a leadership role. The Council will provide advice, framed by lived experience of disability, to the Minister for Disability Services and the Disability Commissioner.

The majority of members of the council will be people with disability with skills, knowledge and experience in matters relevant to people with disability.

The role of the Advisory Council will include:

* to effectively communicate and consult with people with disability in the development of the Tasmanian Disability Inclusion Plan and provide advice about monitoring and implementation of the plan
* to provide advice to defined entities regarding the development of disability inclusion plans and progress reports
* to raise awareness about the rights and contributions of people with disability
* to provide advice to the Commissioner and the Minister about the rights of people with disability and the inclusion of people with disability in the Tasmanian community
* to provide advice about barriers to inclusion and strategies for the reduction and removal of those barriers
* to set out provisions relating to membership and meetings of the Disability Inclusion Advisory Council.

# Part 4: Tasmanian Disability Commissioner

The Disability Inclusion and Safeguarding Act will establish the position of Tasmanian Disability Commissioner.

The Commissioner will be independent of Government and will be appointed by the Governor on the advice of the Minister responsible for Disability Services.

The Minister must recommend appointment of a person who has disability.

Functions of the Disability Commissioner:

* to provide advice and assistance to, and advocate about the disability and universal system for, people with disability
* to undertake research into any matter related to the operation and objects of this Act
* to advise, and make recommendations to, the Minister, on the Commissioner’s own initiative or at the request of the Minister, on any matters arising from the performance of the Commissioner’s functions
* to promote, monitor and review the wellbeing of people with disability
* to provide leadership, foster inclusion, and promote accessibility across government and universal services, including monitoring and reporting in relation to the Tasmanian Disability Inclusion Plan
* to support defined entities to comply with this Act
* to promote the rights of people with disability, including rights relating to disability inclusion, accessibility, individual autonomy, self-determination and choice and control
* to support the capacity-building of people with disability to participate in activities for the purposes of this Act
* to establish and monitor safeguarding mechanisms that address violence against, and the abuse, neglect and exploitation of, people with disability
* to raise awareness in relation to, and education about the rights of, people with disability
* to take action, where appropriate, in relation to allegations of violence against, or the abuse, neglect and exploitation of, people with disability, whether on the basis of a report made to the Commissioner or on the Commissioner’s own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations
* to inquire into and report on systemic issues relating to the protection and promotion of the rights of people with disability
* to consult with the Disability Inclusion Advisory Council, people with disability and disability representative organisations on matters relating to the objects of this Act
* any other functions that are conferred or imposed on the Commissioner by or under this or any other Act
* any other prescribed functions.

The Act also sets out the powers and protections the Commissioner, or their staff, will need to perform these functions.

The Act also includes provisions in relation to reporting.

The Bill includes provisions for how the Commissioner may undertake investigations. This section includes provision for the Commissioner to start their own investigations or receive reports from others. It sets out what type of reports the Commissioner can receive and investigate.

The Bill sets out that the Commissioner can refer some reports to others who are better placed to investigate them. For example they might refer a report to the Anti-discrimination Commissioner, Commissioner for Children and Young People or the NDIS Quality and Safeguards Commission.

Schedule 2 of the Bill sets out the Terms of Appointment of the Commissioner.

# Part 5: Disability Services Regulations

The Act makes provision for the creation of Disability Services Regulations.

The Act refers to any national disability standards that may apply. The intent of this section is to maintain a link to the National Standards for Disability Services. These standards apply to all Disability Service Providers and provide standards and practice guidance, particularly for providers who are not registered with the National Disability Insurance Scheme Quality and Safeguards Commission.

# Part 6: Senior Practitioner

The Bill makes changes to the existing position of Senior Practitioner which has operated in Tasmania since 2011. In the 2024 Bill, the role is strengthened to provide greater safeguarding for people with disability and to support changes in the process for authorisation of restrictive practices set out in Part 7 of the Bill.

The Bill provides a model in which the Senior Practitioner is the single pathway for authorisation of restrictive practices relating to disability services. The Senior Practitioner will have increased monitoring and oversight of the use of restrictive practices.

The Senior Practitioner will oversee the use of restrictive practices to ensure that the rights of people who may be subject to a restrictive practice are protected. They also act to ensure that disability service providers comply with guidelines and standards relating to the use of restrictive practices and practices are the least restrictive possible.

The role will cover authorisation of all restrictive practices consistent with the National Disability Insurance (Restrictive Practices and Behaviour Support) Rules 2018 and includes a process in which the Senior Practitioner can use powers to investigate other practices to determine if they are restrictive.

The Senior Practitioner will issue guidelines and deliver education and training for providers and others involved in the authorisation and implementation of restrictive practices. New roles of Appointed Program Officers and Independent Persons are intended to increase safeguards by ensuring practices are the least restrictive and the human rights of people with disability are protected.

The Senior Practitioner will:

* consider all restrictive practices and applications
* issue guidelines for disability service providers, Appointed Program Officers and Independent Persons
* give disability service providers additional direction through the issuing of conditions which accompany the authorisation of restrictive practices
* issue additional directions to a provider to cease a restrictive practice, if or as required
* evaluate the quality of behaviour support plans containing restrictive practices
* have the power to prohibit the use of restrictive practices, or a specified form of restrictive practice on a person with disability.

The Bill sets out:

* the process for appointment of the Senior Practitioner by the Secretary
* functions and powers of the Senior Practitioner in relation to the authorisation of restrictive practice including powers necessary to advance the rights of people with disability and to reduce and eliminate the use of restrictive practices
* provision for the Senior Practitioner to make guidelines in relation to the use of restrictive practices
* requirements for reporting by the Senior Practitioner
* the delegation of certain functions and arrangements for staff employed in the Office of the Senior Practitioner and contractors engaged by the Senior Practitioner
* assistance which must be provided to the Senior Practitioner by persons and disability service providers, including penalties which may apply if assistance is not provided.

# Part 7: Regulation of Restrictive Practices

A restrictive practice is any action that restricts the rights or freedom of movement or behaviour of a person. The Bill will regulate the use of restrictive practices in relation to people with disability.

In this Bill the regulation by the Senior Practitioner of restrictive practices applies to any disability service provider, as defined in the Bill.

A disability service provider is defined as a person or organisation who receives funding to provide a service for the support of people with disability including:

* an NDIS provider within the meaning of the National Disability Insurance Scheme Act 2013 (<https://www.ndis.gov.au/about-us/governance/legislation>)
* a person or organisation who receives funding under this Bill
* a prescribed person or body
* but does not include – a relative or friend of a person with disability who provides disability supports to the person.

There are some circumstances when a restrictive practice is necessary as a last resort to protect a person with disability and or others from harm. The decision to use a restrictive practice needs careful clinical and ethical consideration, considering a person's human rights and the right to self-determination.

The Bill outlines an updated definition of a restrictive practice which aligns with the NDIS Act 2013 and the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018. This definition includes chemical restraint, mechanical restraint, physical restraint, environmental restraint, and seclusion. The updated definition also includes any other practice that restricts the freedom of movement of a person with disability and which is determined by the Senior Practitioner to be a restrictive practice.

The Bill establishes a single pathway for the authorisation of restrictive practices that safeguards the rights of people who may be subject to restrictive practices and aligns with national requirements.

A restrictive practice must be authorised and used within a positive behaviour support framework that includes proactive, person centred and evidence-informed interventions. The Bill makes provision for requirements that Behaviour Support Plans are developed and sets out consultation that must occur as part of development of the plans.

The rights of the person with disability are further protected through the introduction of additional roles of Appointed Program Officer and Independent Person. These roles are further explained in parts 8 and 9.

The issue of consent has been carefully considered in the process outlined in the Bill. The model included aligns with the UNCRPD and the *National Disability Insurance Scheme Act 2013* (<https://www.ndis.gov.au/about-us/governance/legislation>). It is built on the principles that people with disability are assumed to have capacity to determine their own best interests and make decisions that affect their own lives and are supported so that their capacity to exercise choice and control is maximised. The pathway includes a requirement for consultation with the person with disability or a person they nominate.

The Bill also includes an accessible and independent review/appeal mechanism.

This Bill supports the recommendations of the Disability Royal Commission that restrictive practices:

* should only be used as a last resort
* should be the least restrictive response possible and
* subject to independent oversight.

In addition, the powers and functions of the Senior Practitioner described in this Bill are consistent with those recommended to be adopted by the Disability Royal Commission in that the Senior Practitioner will:

* promote the reduction and elimination of restrictive practices
* protect and promote the human rights of people with disability
* make guidelines and develop standards
* have powers to investigate and
* have powers to prohibit certain practices.
* sets out the functions and powers in relation to Investigations and directions including powers for the Senior Practitioner required to undertake investigations and issue directions.

# Part 8: Appointed Program Officers

The Bill creates the role of an Appointed Program Officer (APO).

The APO undertakes a quality assurance role which includes, but is not limited to, asking if the restrictive practice is needed, has due process been followed, does the behaviour support plan reduce and/or eliminate the restrictive practice and can the restrictive practice be implemented.

The APO is also responsible for ensuring that any restrictive practice used by the disability service provider is in accordance with the authorisation and conditions provided by the Senior Practitioner, any guidelines issued by the Senior Practitioner and in accordance with the behaviour support plan. It is also the responsibility of the APO to ensure that the restrictive practice is the least restrictive possible in the circumstances.

The APO role is undertaken by an employee of the disability services provider who will implement the practice and is responsible for ensuring that any restrictive practice used is in accordance with the authorisation, conditions and guidelines set by the Senior Practitioner.

The disability service provider who appoints the APO must apply to the Senior Practitioner for approval of the person to undertake the role. The Senior Practitioner may revoke the approval or refuse to approve an APO.

The Senior Practitioner will issue guidelines to support the role of APOs, and the provider and APOs will be required to act in accordance with the guideline.

An APO must:

* ensure any restrictive practice proposed to be used by the disability service provider is approved by the Senior Practitioner
* follow any guidelines or conditions set by the Senior Practitioner
* ensure the person's behaviour support plan has strategies to reduce or eliminate the restrictive practice and
* ensure the practice is the least restrictive possible in the circumstances.

# Part 9: Independent Persons

The Bill establishes the role of an Independent Person who supports the safety, wellbeing and health of a person with disability for whom a restrictive practice is being considered or where a restrictive practice is being used.

The Independent Person is an unpaid or voluntary role undertaken ideally by a person known to the person with disability and who has a significant interest in their wellbeing.

The Independent Person is responsible for:

* explaining the proposed use of a restrictive practice to the person with disability
* considering if the proposed restrictive practice is the least restrictive approach
* notifying the Senior Practitioner if in the view of the Independent Person the requirements of the Act are not being complied with and
* promoting the will and preference of a person with disability.

A person with disability may self-select an Independent Person who may be a friend, family member, informal carer or guardian of a person with disability. The Senior Practitioner will establish a register of volunteers who can take on the role if a person with disability does not have anyone who can act as an independent person.

The Independent Person cannot be an employee of the Disability Service Provider who is implementing the restrictive practice.

The Independent Person will operate within guidelines issued by the Senior Practitioner.

The Independent Person must provide the Senior Practitioner with an application for approval. The Senior Practitioner may revoke the approval or refuse an application.

The Independent Person is:

* independent of any disability service provider to the person with disability
* to ensure that the person with disability understands the proposal to use a restrictive practice
* able to seek advice from the Senior Practitioner if any part of the Act or NDIS Rules are not complied with.

# Part 10: Community Visitor Scheme

The Bill makes provision for the creation of a Community Visitor Scheme to be established in the future. The creation of a scheme is recommended by the Disability Royal Commission and is broadly supported by stakeholders.

The details of how the scheme would operate will be established in the future by regulation and will be in line with Nationally consistent rules and practice.

# Part 11: Funding

The Bill provides a framework in which funding may be allocated for the purpose of delivering activities in line with the objects of the Act and which will contribute to achievement of the principles.

This would include activities like Individual Disability Advocacy, research, or capacity building to enable people with disability to participate in advisory structures associated with the Act.

It is not intended that this clause establishes an expectation for funding for planning or accommodations in universal services which are the responsibility of the Australian Government.

# Part 12: Authorised Officers

The function of an Authorised Officer will be established to assist in the safeguarding provisions in the Bill.

An Authorised Officer is authorised by either the Secretary of the department responsible for administration of the Bill or the Disability Inclusion Commissioner.

The authorisation allows officers to enter premises to ensure the safety of the person who resides there or is receiving support at the premises. This section also sets out the requirements which must be met when premises are entered.

This section also lists the things that an Authorised Officer may do or request after they have entered premises. For example, they may view documents or ask questions of any person or employee at the premises.

# Part 13: Review of Decisions

The Bill lists a range of decisions which are reviewable and sets out a process for Internal Review and a pathway for external review by the Tasmanian Civil and Administrative Tribunal.

# Part 14: Offences

The Bill lists a range of offences and associated penalties relating to actions which would hinder or limit the functions and powers of the Senior Practitioner, Disability Inclusion Commissioner or other Officers acting under the Act. These offences are in relation to intimidation, reprisals, obstruction, and provision of information.

# Part 15: Miscellaneous

This section of the Bill sets out a range of practical provisions to ensure the effective and efficient operation of the other parts of the Bill.

The Bill makes provision for a review of the Act to be undertaken as soon as practicable after the third anniversary of commencement of the Act.

Other provisions in the Bill are included relating to information sharing, confidentiality, protection from liability, delegation of functions and the making of Regulations.

# Schedules

There are four schedules in the Bill:

* Schedule 1 Membership and Meetings of the Disability Inclusion Advisory Council
* Schedule 2 Terms of appointment of the Commissioner
* Schedule 3 Legislation Repealed
* Schedule 4 Legislation Rescinded

# Back Cover

If you have any other questions regarding the Bill please send us an email [disabilityinclusionbill@dpac.tas.gov.au](mailto:disabilityinclusionbill@dpac.tas.gov.au) or phone 1800 431 211.

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