South Australia

Disability Inclusion (Review Recommendations) Amendment Bill 2022

A BILL FOR

An Act to amend the *Disability Inclusion Act 2018*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Disability Inclusion (Review Recommendations) Amendment Act 2022*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Disability Inclusion Act 2018*

3—Amendment of section 3—Interpretation

Section 3(1)—before the definition of ***central assessment unit*** insert:

barrier includes something that is—

(a) physical, architectural, technological or attitudinal; or

(b) based on information or communications; or

(c) the result of a policy or practice;

4—Amendment of section 8—Objects

(1) Section 8—after "people with disability" wherever occurring insert:

, regardless of age,

(2) Section 8—after paragraph (e) insert:

; and

(f) making significant gains towards achieving an inclusive community where the principles outlined in the *United Nations Convention on the Rights of Persons with Disabilities* underpin the development and delivery of services, especially by removing barriers so that people with disability, regardless of age, are able to access services and to participate in the community in the same way as other members of the community.

5—Amendment of section 9—Principles

(1) Section 9(1)—after paragraph (j) insert:

(ja) people with disability have the right to be safe, and to feel safe, through the provision of appropriate safeguards, information, services and support, and through appropriate and accessible reporting mechanisms in cases of neglect, abuse or exploitation;

(2) Section 9(1)—after paragraph (o) insert:

(p) people with disability, and their families and representatives as appropriate, have a right to participate in the design and delivery of inclusive policies and programs;

(q) insofar as people with disability may not be able to find out about their rights, or may not be able to understand their rights, because of their disability, State and local government should take reasonable steps to assist them to learn about their rights and to develop ways in which they can, or their families or representatives can, report violations of those rights.

(3) Section 9—after subsection 5 insert:

(5a) In addition to the principles set out in any other provision of this section, the following principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to people with significant intellectual disability or who have high levels of vulnerability due to disability:

(a) people with significant intellectual disability or who have high levels of vulnerability due to disability have a right to feel safe, to enjoy dignity in their lives, and to participate in the community in meaningful way;

(b) people with significant intellectual disability or who have high levels of vulnerability due to disability may face major barriers which they may not be able to understand and so need support from others to advocate on their behalf when seeking to remove, or deal with, those barriers.

6—Amendment of section 10—Functions of Chief Executive

Section 10(1)—after paragraph (g) insert:

(ga) advising the Minister on systemic or emerging accessibility and inclusion issues; and

7—Insertion of Part 3A—Disability Ministerial Advisory Council

After section 12—insert:

Part 3A—Disability Ministerial Advisory Council

12A—Establishment of Disability Ministerial Advisory Council

(1) The *Disability Ministerial Advisory Council* is established.

(2) The Disability Ministerial Advisory Council consists of—

(a) the Minister; and

(b) up to 12 members appointed by the Minister, being persons who—

(i) live with disability or are the carer for a person with disability; and

(ii) collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the Disability Ministerial Advisory Council to carry out its functions effectively.

(3) In appointing the members under subsection (2)(b) the Minister should, as far as is reasonably practicable, endeavour to ensure that the following groups are represented:

(a) the Aboriginal and Torres Straight Islander community;

(b) the LGBTIQA+ community;

(c) the cultural and linguistically diverse community;

(d) people living in regional or remote areas.

12B—Terms and conditions of membership

(1) Subject to this section, a member of the Disability Ministerial Advisory Council appointed under section 12A(2)(b) will hold office on conditions, and for a term (not exceeding 1 year), determined by the Minister and specified in the instrument of appointment, and is, at the expiration of a term of office, eligible for reappointment.

(2) A member of the Disability Ministerial Advisory Council appointed under section 12A(2)(b) cannot hold office for terms that exceed 2 years total.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of—

(i) an indictable offence against the laws of this State; or

(ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or

(iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or

(e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction; or

(f) is removed from office by the Minister under subsection (4).

(4) The Minister may remove a member from office—

(a) for misconduct or conduct that may bring the Disability Ministerial Advisory Council into disrepute; or

(b) for breach of, or non-compliance with, a condition of appointment; or

(c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

(f) for incompetence or neglecting the duties of the position; or

(g) any other reason the Minister thinks fit.

(5) An act or proceeding of the Disability Ministerial Advisory Council is not invalid by reason only of a vacancy in the office of a member or a defect in the appointment of a member.

12C—Remuneration, allowances and expenses

A member of the Disability Ministerial Advisory Council is entitled to such remuneration, allowances and expenses as may be determined by the Minister.

12D—Presiding member and deputy presiding member

(1) The Minister is the presiding member of the Disability Ministerial Advisory Council.

(2) The Minister may appoint 1 member of the Disability Ministerial Advisory Council 1 to be the deputy presiding member.

12E—Disability Ministerial Advisory Council's procedures

(1) Subject to this Act, a quorum of the Disability Ministerial Advisory Council consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.

(2) A decision carried by a majority of the votes cast by members at a meeting of the Disability Ministerial Advisory Council is a decision of the Disability Ministerial Advisory Council.

(3) Each member present at a meeting of the Disability Ministerial Advisory Council has 1 vote on any question arising for decision and, if the votes are equal, the person presiding at the meeting will have a casting vote.

(4) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Disability Ministerial Advisory Council at which the participating members are present.

(5) A proposed resolution of the Disability Ministerial Advisory Council becomes a valid decision of the Disability Ministerial Advisory Council if—

(a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Disability Ministerial Advisory Council; and

(b) a majority of the members express their concurrence in the proposed resolution by letter, fax or other written communication setting out the terms of the resolution.

(6) The Disability Ministerial Advisory Council must have accurate minutes kept of its meetings.

(7) Subject to this Act and any direction of the Minister, the Disability Ministerial Advisory Council may determine its own procedures.

12F—Functions of Disability Ministerial Advisory Council

The functions of the Disability Ministerial Advisory Council are—

(a) to advise to the Minister in relation to the development of policies and initiatives under this Act; and

(b) to advise to the Minister, taking into account the principles of co-design, in relation to the preparation and review of the State Disability Inclusion Plan; and

(c) such other functions as may be assigned to the Disability Ministerial Advisory Council under this or any other Act or by the Minister.

12G—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of the Disability Ministerial Advisory Council will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with persons with disability, or for or a substantial section of such persons in this State.

8—Amendment of section 13—State Disability Inclusion Plan

(1) Section 13(3)—after paragraph (b) insert:

(ba) must contain provisions—

(a) setting out whole of Government policies and strategies for giving effect to the principles and purposes of the *United Nations Convention on the Rights of Persons with Disabilities*, as well as any other relevant international human rights instruments affecting people with disability, as in force from time to time; and

(b) setting out strategies to ensure that the needs of persons referred to in section 9(2), (3), (4), (5) and (5a) are properly addressed by the State Disability Inclusion Plan; and

(c) specifying priority areas for improvement in relation to inclusion; and

(d) specifying measurable outcomes for each priority area identified in the State Disability Inclusion Plan; and

(2) Section 13(4)—after paragraph (b) insert:

(ba) must ensure that any documents prepared for the purposes of paragraph (a) are in a form that is accessible to people with disability; and

9—Amendment of section 14—Annual report on operation of State Disability Inclusion Plan

(1) Section 14(1)—delete "31 December" and substitute:

30 June

(2) Section 14(1)—delete "financial" and substitute:

calendar

10—Amendment of section 15—Review of State Disability Inclusion Plan

Section 15—after subsection (2) insert:

(3) A report submitted to the Minister for the purposes of subsection (1) must include, or be accompanied by, information about any changes recommended to be made to the State Disability Inclusion Plan as a result of the review.

11—Amendment of section 16—Disability access and inclusion plans

(1) Section 16(3)—after paragraph (d) insert:

(da) must include strategies to ensure that the needs of persons referred to in section 9(2), (3), (4), (5) and (5a) are properly addressed by the disability access and inclusion plan; and

(2) Section 16(4)—after paragraph (c) insert:

(ca) must ensure that any documents prepared for the purposes of paragraph (b) are in a form that is accessible to people with disability.

12—Amendment of section 17—Annual report on operation of disability access and inclusion plan

(1) Section 17(1)—delete "31 October" and substitute:

30 April

(2) Section 17(1)—delete "financial" and substitute:

calendar

(3) Section 17(2)—delete "31 December" and substitute:

30 June

(4) Section 17(2)—delete "financial" and substitute:

calendar

(5) Section 17—after subsection (1) insert:

(1a) A report under subsection (1) must include details of how the State authority is addressing the risks and principles relating to the persons referred to in section 9(2), (3), (4), (5) and (5a), by reference to the provisions in the State Disability Inclusion Plan and the State authority's disability access and inclusion plan relating to those persons.

13—Amendment of section 18—Review of disability access and inclusion plans

Section 18—after subsection (2) insert:

(3) If the State Disability Inclusion Plan is varied, a State authority must, within 6 months of the publication of the plan as varied in the Gazette—

(a) review the State authority's disability access and inclusion plan to ensure it is consistent with the State Disability Inclusion Plan; and

(b) if the State authority's disability access and inclusion plan is not consistent with the State Disability Inclusion Plan—

(i) vary the State authority's disability access and inclusion plan to such extent as is necessary to ensure consistency with the State Disability Inclusion Plan; and

(ii) publish the varied disability access and inclusion plan as required by section 16(7).

Schedule 1—Transitional and saving etc provisions

1—Annual report on operation of State Disability Inclusion Plan during transitional period

(1) Despite section 14(1) of the *Disability Inclusion Act 2018* as enacted by this Act, the annual report on the operation of the State Disability Inclusion Plan for the financial year ending on 30 June 2022 must be provided to the Minister in accordance with section 14(1) of the *Disability Inclusion Act 2018* as in force immediately prior to the commencement of section 9 of this Act.

(2) Despite section 14(1) of the *Disability Inclusion Act 2018*, the Chief Executive must provide the Minister with an interim report on the operation of the State Disability Inclusion Plan for the period of 1 July 2022 to 31 December 2022.

(3) A report under subclause (2)—

(a) must be provided on or before 30 June 2023; and

(b) need only contain such information as may be required by the Minister.

(4) To avoid doubt, section 14(2) of the *Disability Inclusion Act 2018* applies to a report under this clause.

2—Annual report on operation of disability access and inclusion plan during transitional period

(1) Despite section 17(1) of the *Disability Inclusion Act 2018* as enacted by this Act, the annual report of each State authority on the operation of its disability access and inclusion plan for the financial year ending on 30 June 2022 must be provided to the Chief Executive in accordance with section 17(1) of the *Disability Inclusion Act 2018* as in force immediately prior to the commencement of section 12 of this Act.

(2) Despite section 17(1) of the *Disability Inclusion Act 2018*, each State authority must provide the Chief Executive with an interim report on the operation of its disability access and inclusion plan for the period of 1 July 2022 to 31 December 2022.

(3) A report under subclause (2)—

(a) must be provided on or before 30 April 2023; and

(b) need only contain such information as may be required by the Minister.

(4) Despite section 17(2) of the *Disability Inclusion Act 2018* as enacted by this Act, the Chief Executive must, on or before 31 December 2022, provide to the Minister a report summarising the reports received under subclause (1).

(5) Despite section 17(2) of the *Disability Inclusion Act 2018* the Chief Executive must, on or before 30 June 2023, provide the Minister with a report summarising the reports received under subclause (2).

(6) To avoid doubt, section 17(4) of the *Disability Inclusion Act 2018* applies to a report under this clause.