

**REPUBLIC OF NAURU**

**INCLUSION OF PERSONS WITH DISABILITIES BILL 2023**

**EXPLANATORY MEMORANDUM**

The *Inclusion of Persons Living with Disabilities Bill 2023* is a Bill for the *Inclusion of Persons Living with Disabilities Act 2023*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Inclusion of Persons with Disabilities Act 2023*.

**Clause 2** sets out that the commencement of the Bill once passed will be on the date it is certified by the Speaker.

**Clause 3** provides for the interpretation of terms used throughout the Bill.

**Clause 4** provides for the objective of the Bill. The objective of the Bill is to give effect to the Convention on the Rights of Persons with Disabilities by ensuring that the rights of persons with disabilities are equally protected as rights of other persons. It promotes the progressive removal of any barrier or hindrance that results in the discrimination against a person based on a disability. It also aims to achieve the full participation and inclusion of persons with disabilities on an equal basis in society. The Bill also promotes to the extent reasonably practicable, that the purposes and principles of the Convention are implemented in the Republic.

**PART 2 – ADMINISTRATION**

**Division 1 – Powers and functions of the Minister and Secretary**

**Clause 5** provides that the Minister has the functions and powers to do anything that is necessary to achieve the objectives of the Bill.

**Clause 6** provides for the functions and powers of the Secretary. Subclause (1) provides for the functions and powers of the Secretary.

Subclause (1)(a) provides that the Secretary shall provide the necessary information and support to persons with disabilities.

Subclause (1)(b) provides that the Secretary is also required to prepare a report on the implementation of the Republic's obligations under the Convention.

Subclause (1)(c) provides that the Secretary must collate or collect information or data for persons with disabilities, in coordination with a relevant person.

Subclause (1)(d) provides that the Secretary is also required to advise the Minister of Nauru's obligations under the Convention.

Subclause (1)(e) provides that the Secretary must also perform other functions that are designated by the Minister from time to time.

Subclause (2) provides that the Secretary has the powers to do all things necessary or convenient for the implementation of the Bill.

## **Division 2 – Nauru Disability Coordinating Council**

**Clause 7** provides for the establishment of the Nauru Disability Coordinating Council ('Council').

**Clause 8** provides for the membership of the Council. Subclause (1) provides for the membership of the Council. The Council will have representation from a range of Departments including the Secretary from the Department for People with Disabilities who is also the Chairperson. There is also representation from the Departments of, Justice and Border Control, Education, Finance and Sustainable Development, Health and Medical Services, the Public Service, the Nauruan Bureau of Statistics, and non-government organisations.

In relation to non-government organisations, provision is made for representation from 2 non-government organisations. These representatives are appointed under subclause (1)(h) and (i). Subclause (1)(h) provides for a non-government organisation whose primary focus is persons with disabilities. Subclause (1)(i) provides for a non-government organisation whose primary focus is interests that are relevant to person with disabilities. For example, it may be a group whose primary focus are the interests of women or children. The interests of women and children are relevant to the interests of persons with disabilities ('PWD') as these groups also consist of PWD.

The purpose of having a Council which comprises of the members listed is to meet the requirements of Article 33 of the Convention. The Council is required to coordinate within government and in all levels of society regarding the Bill. As such it requires a membership that is able to facilitate that coordination. This is the purpose for ensuring the relevant government departments and civil society representatives are members of the Council. The membership further promotes the holistic approach that Nauru intends to use for the implementation of the Bill.

Subclause (2) provides that members of the Council appointed under Subclause (1)(b) to (i) are to be appointed by the Cabinet on the advice of the Minister.

Subclause (3) provides that the tenure of members appointed by the Cabinet under subclause (2) is a term of 3 years. A person appointed is also eligible for reappointment.

**Clause 9** provides for the functions of the Council. Subclause (1) provides that the Council's functions are to assist the Secretary in the development of the National Disability Strategy and advise on the implementation of government policy and plans in relation to persons with disabilities. It is also required to coordinate and consult with any person to promote and achieve the objectives of the Bill.

Subclause (2) provides that the Council has the power to do all that is necessary or convenient to be done for the performance of its functions under the Bill.

**Clause 10** provides for the meetings of the Council. Subclause (1) provides that the Chairperson decides when and where the Council meets.

Subclause (2) provides that the quorum is met by any 5 members of the Council. This must include the Chairperson.

Subclause (3) provides that the Council determines its procedure for meetings.

Subclause (4) provides that the Council must appoint one of its members to record and maintain the minutes of the Council's meetings.

**Clause 11** provides for the allowance of particular members of the Council. This clause is intended to provide that only members who represent non-government organisations are eligible to receive an allowance as the Cabinet may approve. These are the members appointed under clause 8(1)(h) and (i).

### **Division 3 – Register of Persons with Disabilities**

**Clause 12** provides for the Register of persons with disabilities. Subclause (1) provides that the Secretary must establish and maintain a register of persons with disabilities. The Register must be maintained in physical and in an electronic form.

Subclause (2) provides that the Register must contain information that is prescribed by Regulations.

Subclause (3) provides that the information contained in the Register must be kept confidential. This is subject to subclause (4). The information must not be disclosed to anyone except with the approval of the Secretary.

Subclause (4) provides that there are circumstances in which information may be disclosed. The Secretary may disclose the approval of such information. The disclosure may be made for the purpose of promoting or protecting the interests of persons with disabilities. Such purpose may include policy development, improved service delivery, compilation of data of persons with disabilities, offering assistance and monitoring the progress of the implementation of the Bill.

Subclause (5) provides that a person with authorisation to access the information on the Register must not unlawfully disclose that information.

Subclause (6) provides that a person is not permitted to access the information on the Register without authorisation from the Secretary.

Subclause (7) provides that a person who contravenes subclause (5) or (6) commits an offence. The penalty for committing an offence is liability upon conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months or to both.

**Clause 13** provides for registration of persons with disabilities. Subclause (1) provides that subject to subclause (2), a person with a disability may apply to be registered in the Register of persons with disabilities.

Subclause (2) provides that an application for registration may be made by a caregiver on behalf of a child or a person who due to the nature of his or her disability is unable to make an application.

Subclause (3) provides that the application is to be made in a form that is prescribed by Regulations.

## **PART 3 – PROTECTION OF RIGHTS**

### **Division 1 – Rights of Persons with Disabilities**

**Clause 14** provides for the general application of the Part which provides for fundamental rights of persons with disabilities. Subclause (1) provides for the general application of the Part which provides for fundamental rights of persons with disabilities. It provides that the enforcement of rights under this Part, are subject to limitations under the *Constitution*, the Bill or other written law.

Subclause (2) provides that this clause does not apply to the right to be free from torture, exploitation and violence. It effectively means, that no limitations can be placed on the right to be free from torture, as provided for under clause 19, or the right to be free from exploitation, violence and abuse as provided for under clause 20. These rights are absolute and cannot be limited whether by law or otherwise.

**Clause 15** provides for the right to equality before the law without discrimination. Subclause (1) provides that a person with a disability has the right to equal protection and benefit in the application or implementation of any written law.

Subclause (2) provides that a person with a disability must not be subject to discrimination on the basis of his or her disability. This clause is intended to implement Article 5 of the Convention.

**Clause 16** provides for the right to life. This clause provides that a person with a disability has the right not to be deprived intentionally of his or her own life. This right is intended to implement Article 10 of the Convention. This clause affirms the right provided under Article 4 of the Constitution.

**Clause 17** provides for equal protection before the law. Subclause (1) provides that a person with a disability has the right to be recognised as an individual under any written law. The term ‘individual’ is defined as meaning a ‘natural person’ under Section 65 of the *Interpretation Act 2011*. This provision therefore ensures that any written law referring to an individual, is guaranteed to include a person with a disability. All the protections that are provided to an individual applies also to a person with a disability.

Subclause (2) provides that a person with a disability has the right to exercise his or her legal capacity in accordance with any written law. This clause is intended to implement Article 12 of the Convention.

**Clause 18** provides for the right to liberty and security. Subclause (1) protects the liberty and security of a person. It provides that a person with a disability must not have his or her right to liberty deprived.

Subclause (2) provides that where a person’s liberty is deprived in accordance with written law, the person is entitled to reasonable accommodation.

There are laws that limit the right to liberty for all persons whether they have a disability or not. These laws include the *Criminal Procedure Act 1972* (CPA), the *Bail Act 2018* (Bail Act) and the *Mental Health Act 1963* (MHA). This clause is applied in parallel with clause 14, as a person’s liberty may be deprived for reasons of public safety. What this clause requires however, is that where a person with a disability is detained for lawful purposes under the CPA, Bail Act or the MHA, reasonable accommodation is to be provided. That is, if there are modifications required to be made to ensure the safety and protection of the person with a disability whilst being detained, then such modifications should be made.

**Clause 19** provides for freedom from torture. This clause provides that a person with a disability has the right to be free from torture, cruel or inhuman treatment. It affirms the right protected under Article 7 of the *Constitution*. This clause is intended to implement Article 15 of the Convention.

**Clause 20** provides for the freedom from exploitation, violence and abuse. Subclause (1) provides that a person with a disability has the right to be free from exploitation, violence and abuse.

Subclause (2) provides that a person with a disability must not be discriminated against in protection measures that are implemented for matters relating to exploitation, violence and abuse.

**Clause 21** provides for protecting the integrity of the person. This clause provides that a person with a disability has the right to the respect of his or her physical and mental integrity.

The purpose of this clause is to recognise that persons with disabilities are often faced by cruel and degrading treatment. Such treatment is brought on by the stigma that is associated with having a disability. This clause therefore provides protection of a person's right to the respect of his or her physical and mental integrity. This is essentially the right to be treated in a humane manner. It is also the recognition of the right to be treated in a manner that preserves a person's mental and physical wholeness. This is particularly important when a person is required to be detained or undergo medical treatment. These must be administered with the view of respecting the physical or mental integrity of a person with a disability.

This clause intends to implement Article 17 of the Convention.

**Clause 22** provides for the freedom of movement. This clause provides that a person with a disability has the right to move freely within the Republic. The purpose of this clause is to recognize that a person with a disability has the right to be free to move around, on an equal basis with other persons. This includes the right of the person to decide where he or she may reside.

This clause intends to implement Article 18 of the Convention.

**Clause 23** provides for the right to nationality. This clause provides that a person with a disability has the right to acquire and change a nationality. It also provides that the person should not be deprived of a nationality on the basis of a disability.

This clause intends to implement Article 18 of the Convention.

**Clause 24** provides for the right to live in the community. Subclause (1) provides that a person with a disability has the right to live in the community which includes the right to make decisions in any matter related to living in the community.

Subclause (2) provides that a person with a disability must not have his or her right to live in the community, restricted or denied on the basis of his or her disability. The purpose of this clause is to recognise the equal right of all persons with disabilities to live in the community with choices equal to others.

This Article intends to implement Article 19 of the Convention.

**Clause 25** provides for the freedom of expression and opinion. Subclause (1) provides that a person with a disability has the right to freedom of expression and opinion.

Subclause (2) provides that a person with a disability must not have his or her right to expression and opinion, restrained or denied on the basis of his or her disability. It affirms the right to freedom of expression protected under Article 12 of the *Constitution*. This clause intends to implement Article 21 of the Convention.

**Clause 26** provides for the respect for privacy. This clause provides that a person with a disability must not have his or her home, residence, living arrangements, correspondence or other communication subject to unlawful interference. Protecting the privacy of a person with a disability contributes to recognising their autonomy.

This clause intends to implement Article 22 of the Convention.

**Clause 27** provides for respect for home and the family. Subclause (1) provides that a person with a disability must not be discriminated against in matters relating to marriage, family, parenthood or relationships on the basis of his or her disability.

Subclause (2) provides that a child with a disability must not be separated from his or her family on the basis of his or her disability. This is subject to subclause (3).

Subclause (3) provides that if it is in the best interests of the child, that child may be separated from his or her family on an order made by the court.

This clause intends to implement Article 23 of the Convention.

**Clause 28** provides for the right to education. Subclause (1) provides that a person with a disability has the right to access and receive an education.

Subclause (2) provides that a person with a disability must not be excluded on the basis of his or her disability from the general education system established in the Republic.

This clause is intended to implement Article 24 of the Convention.

**Clause 29** provides for the right to health. Subclause (1) provides that a person with a disability has the right to receive health care and medical services offered in Nauru.

Subclause (2) provides that a person with a disability must not be discriminated against in the provision of health insurance or life insurance.

Subclause (3) provides that a person with a disability must not be discriminated against or denied health care or medical services on the basis of his or her disability.

**Clause 30** provides for the right to work and employment. Subclause (1) provides that a person with a disability has the right to work and to be employed in Nauru.

Subclause (2) provides that a person with a disability shall not be discriminated against on the basis of his or her disability from working or being employed.

Subclause (3) provides limitations to the right of a person with a disability to work or to be employed.

Subclause (3)(a) provides that the right to work or employment cannot be exercised where a person with a disability is rejected from work or employment for a particular reason. The reason being that the working environment poses a risk or harm to him or her.

Subclause (3)(b) provides that the right to work or employment cannot be exercised. This is due to the nature of the work or employment being such that the person can only undertake with the aid of special services or facilities and it is unreasonable to expect the employer to provide these services or facilities.

The purpose of this clause is to safeguard and promote the right to work and be employed. However, it also provides reasonable restrictions to such right. This clause is intended to implement Article 27 of the Convention.

**Clause 31** provides for the right to adequate standard of living. Subclause (1) provides that a person with a disability must not be discriminated against in any matter relating to adequate standard of living. This includes access to food, clothing, housing, water and improved living conditions.

Subclause (2) provides that a person with a disability must not be discriminated against in any matter relating to social protection. Where adequate standard of living is concerned, persons with disabilities will feel the impact more than a person without a disability. The person with a disability requires extra care due to the disability he or she has. This clause is therefore intended to safeguard the basic factors required for adequate standard of living as set out in the Convention. These are, food, water and shelter.

This clause is intended to implement Article 28 of the Convention.

**Clause 32** provides for participation in political and public office. Subclause (1) provides that a person with a disability has the right to effectively and fully participate in any matter related to political or public office.

Subclause (2) provides that a person with a disability is not to be discriminated against on the basis of his or her disability to fully participate in any matter related to political and public office. The purpose of this clause is to recognise that a person with a disability can stand for election and cast his or her vote. It is also intended to recognise a person's right to be involved in any organisation relating to political or public office.

This clause intends to implement Article 29 of the Convention.

**Clause 33** provides for participation in cultural life. Subclause (1) provides that a person with a disability has the right to fully participate in activities related to culture.

Subclause (2) provides that a person with a disability shall not on the basis of his or her disability be denied the right to take part in activities related to culture. The protection of this right ensures



the inclusivity of persons with disabilities in activities undertaken within the society, such as culture.

This clause is intended to implement Article 30 of the Convention.

**Clause 34** provides for the right to participate in sports. Subclause (1) provides that a person with a disability has the right to participate in any sport or activity related to a sport.

Subclause (2) provides that a person with a disability must not on the basis of his or her disability be denied the right to take part in sports or activities related to sports. The protection of this right ensures the inclusivity of persons with disabilities in activities undertaken within the society, such as sports.

This clause is intended to implement Article 30 of the Convention.

**Clause 35** provides for participation in recreation and leisure. Subclause (1) provides that a person with a disability has the right to participate in activities related to recreation and leisure that are available in Nauru.

Subclause (2) provides that a person must not on the basis of his or her disability be denied the right to take part in activities related to recreation and leisure. This is in particular, with regard to activities that are available to the public. The protection of this right ensures the inclusivity of persons with disabilities in activities undertaken within the society, such as recreation and leisure.

This clause is intended to implement Article 30 of the Convention.

## **Division 2 – National Disability Strategy**

**Clause 36** provides for the National Disability Strategy. Subclause (1) provides that there shall be a National Disability Strategy ('Strategy').

Subclause (2) provides that the Strategy shall be developed by the Secretary in consultation with the Council.

Subclause (3) provides that the Strategy must contain matters that are listed therein. The purpose of the Strategy is to provide an overall plan to implement the requirements of the Bill. This is by providing that the Strategy must contain certain matters.

Subclause (3)(a) provides that the Strategy must provide measures to promote the protection of rights provided under this Part.

Subclause (3)(b) provides the Strategy must also provide measures to promote awareness of the Bill at all levels of Society. This requirement is intended to implement Article 8 of the Convention.

Subclause (3)(c) provides that the Strategy must identify barriers and obstacles faced by persons with disabilities and provide for measures to eliminate such barriers and obstacles.

Subclause (3)(d) provides the Strategy must also recognise that women and girls with disabilities are subject to multiple discrimination and must provide measures to ensure the rights of women and girls with disabilities are protected. This is intended to implement Article 6 of the Convention.

Subclause (3)(e) provides that the Strategy must also provide for measures that focus on the protection of rights of children with disabilities. This is intended to implement Article 7 of the Convention.

Subclause (3)(f) provides that the Strategy must also contain measures to promote and implement the access by persons with disabilities to justice including any matter related to justice. This is intended to implement Article 9 of the Convention.

Subclause (3)(g) provides the Strategy must also contain measures to promote and implement the access by persons with disabilities to the facilities, buildings and services that are available to the public as well as information, communication and technology available in the Republic. The purpose of incorporating these requirements to be implemented through the Strategy is to implement Article 13 of the Convention. The implementation of accessibility requirements for persons with disabilities will require modifications and adjustments to be made. These require planning with a view of progressively meeting such accessibility requirements.

Subclause (3)(h) provides that the Strategy must provide for measures to promote the personal mobility of persons with disabilities. This is intended to implement Article 20 of the Convention.

Subclause (3)(i) provides the Strategy must also provide for measures to promote the protection and safety of persons with disabilities in situations of a declared national disaster or emergency. This is intended to implement Article 11 of the Convention.

Subclause (3)(j) provides the Strategy established must also provide for measures to promote and implement the *habilitation* and *rehabilitation* support to persons with disabilities. The intention of this requirement is to implement Article 26 of the Convention. The difference between habilitation and rehabilitation support is that habilitation support refers to programmes and initiatives that enable persons with disabilities to attain and maintain independence. Rehabilitation support refers to the same programmes and initiatives that enable persons with disabilities to regain independence that was once lost due to an illness.

Subclause (3)(k) provides that the Strategy must provide for measures for the implementation of the periodic collection of appropriate information including statistical and research data in accordance with the relevant written laws. This is intended to implement Article 31 of the Convention.

Subclause (3)(l) provides that the Strategy is required to provide for measures to promote where appropriate, partnership with relevant international, regional and domestic non-government

organisations. This is to support Nauru's efforts to achieve the objectives of the Bill. This is intended to implement Article 32 of the Convention.

Subclause (3)(m) provides that the Strategy must also include reasonable accommodation measures to be applied. This is in relation to all matters listed from subclauses (3)(a) to (l).

Subclause (4) provides that the Strategy must be approved by the Cabinet before it is implemented.

Subclause (5) provides that the Strategy can be implemented in stages. The planning has to be organised in such a way so that the Government's and other resources are not unduly restrained to implement the whole Act at once. The recognition of rights and enabling a disabled person to exercise those rights will require substantial changes including, to the buildings, infrastructure and other capital resources. A proper plan must be laid out so that the progress of implementation can be worked out in an efficient manner. This is based on the availability of financial and other relevant resources.

**Clause 37** provides the enforcement of rights. Subclause (1) provides that a right or freedom conferred by this Part is enforceable by the Supreme Court. This is at the suit of a person having an interest in the enforcement of such right or freedom.

Subclause (2) provides that the Supreme Court may make all such orders and declarations that are necessary and appropriate for the purpose of a suit brought by a person to enforce a right or freedom protected under this Part.

Subclause (3) provides that in making orders or declarations under subclause (2), the Supreme Court may take into consideration Nauru's financial, economic and provision of relevant resources capability. This is to ensure that the enforcement of rights is within the context of Nauru's ability to enforce these rights.

#### **PART 4 – MISCELLANEOUS**

**Clause 38** provides for giving false information to obtain a benefit. This clause provides for the offence of giving false information to obtain a benefit. Subclause (1) provides that a person must not provide false information to the Secretary or a delegate, Council or Minister in order to obtain any assistance or benefit under the Bill or from the Department.

Subclause (2) provides that a person who breaches the requirement of subclause (1) commits an offence. A person convicted of an offence under this clause is liable to a fine not exceeding \$1,000 or an imprisonment term not exceeding 6 months or to both.

**Clause 39** provides for a sentencing rule in criminal offences. Subclause (1) provides that this clause applies in a criminal cause or matter where a person is being sentenced for a criminal offence in which the victim is a person with a disability.

Subclause (2) provides that the court must conclude that it is an aggravating factor, that the victim of an offending is a person with a disability.

The purpose of this clause is to denote the need to protect persons with disabilities. It recognises that persons with disabilities are vulnerable due to their disabilities. A person who commits an offence against a person with a disability brings harm to a person who is already vulnerable due to his or her disability. It is for that reason, that if a victim of an offending has a disability, that must automatically be considered an aggravating factor when the court issues a sentence.

**Clause 40** provides for the protection from liability. This clause provides for the indemnity of persons acting in an official capacity under the Bill. The Minister, a member of the Council, Secretary or staff member of the Department, will not be liable for any loss or damage arising from or be subject to any criminal prosecution and civil claims for the exercise of a power or performance of a function or duty done in good faith under the Bill. This protection from liability extends to duties done under any other written law.

**Clause 41** provides for Regulations. Subclause (1) provides that Regulations may be made as are necessary or expedient to further achieve the objective of the Bill.

Subclause (2) provides that Regulations may be prescribed for the purpose of implementing the National Disability Strategy or prescribing a procedure for accessing assistance offered by the Government.