



Government of **Western Australia**  
Department of **Communities**



# **Public Forum: WA disability legislation**

**28 July 2023**

## **Transcribed Notes**

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## **Welcome (slide 2)**

### **(Marion Hailes-MacDonald, Executive Director, Office of Disability)**

Thank you all for coming today. We've had a really overwhelming response to our request to consult on new disability legislation.

We've got about 100 people online and unfortunately typically we've got IT issues. So, for those of you online, the breakout rooms that we had got working this morning now don't work.

So, we have had such an overwhelming response that we're going to be actually holding another forum later in August. We'll give priority to people who are online at the moment and can't join, so I'll just like to apologise to the people who are online just at the moment because of the lack of break out groups. But please, do you use your chat function.

I'm Marion Hailes-MacDonald. I'm Executive Director of the Office of Disability and really welcome all of you, but also welcome and like to acknowledge the traditional custodians of the land on which we're

meeting. We pay our respects to their elders, past, present and those emerging recognising their long connection to culture, to sea, to land and to spirit and we welcome their wisdom in the room and we pay our respects to our colleagues who may be with us today.

I'd also like to pay respect and acknowledge the people with lived experience of disability who are here with us today. You're vital in actually shaping legislation and it's your experience that makes legislation, policy and services absolutely vital and fit for purpose. So really appreciate and pay our respect and value you being here.

I just like to say that we're actually recording this session. We're recording it from the perspective of ensuring that we capture everybody's input. Also, so the people online can hear us and see us and the other is that we can actually report accurately. No one will be identified, so any reporting will be deidentified and we will only use the recording for the purposes of the legislative development.

## **Purpose of Today's Forum (slide 3)**

Today's session is about developing new legislation and so there's a couple of things that we want to alert you to before we actually move into actually getting your thoughts. And, you hearing about what we've heard to date because we've been consulting for about the last three months.

Within the legislation is the Ministerial Advisory Council and the Chair of the Ministerial Advisory Council, Kane Blackman, is here to give you an overview of that.

We also have the Board, which is established under the legislation, and I'll talk a little bit to that and we have the Chair here, Scott Hollier, pop up your hand, Scott. And around the tables are a number of members who are with the Ministerial Advisory Council and with the Board to hear what you have to say because they will be vital in actually developing legislation as we move forward.

So with no further ado, I'm going to introduce Kane Blackman and Kane's been, as I say, Chair of the Ministerial Advisory Council and

in that role also is a member of the Board.

## **Ministerial Advisory Council on Disability (slide 4)**

**(Kane Blackman, Chair of Ministerial Advisory Council on Disability)**

Thank you, Marion. Good day everyone.

As Marion mentioned, the primary purpose of today is for the department to run through the consultation for legislation. We also want to use this opportunity to raise awareness of the Ministerial Advisory Council on Disability, so obviously part of the Act as Marion has mentioned and just give a brief overview of the sorts of things that MACD has been doing and the working relationship that MACD has with the Disability Service Commission. All part of the legislation.

So, Scott is the Chair of the Board. Those two groups DSC Board (Disability Service Commission Board), and the Ministerial Advisory Council. So, we're just really called MACD, both have been working together in a group called WADAC. So, the WA Disability Advisory

Committee.

And that's really at the Minister's request for those two groups to work together to focus on improving the outcomes for people disability.

So, those Members who are here today on the DSC Board and MACD, would you just pop your hands up, please, just to make yourself known to others. So, if you can see those people here. There's probably those people who have been on the DSC board and MACD historically, you wanna throw your hands up as well. Probably a couple more. They're great people just to talk one on one to find out a little bit more about what the group does.

So, just quickly, MACD is a legislative requirement and it's a really critical function that provides advice to the Minister for Disability on issues that impact people with disability, their families, their carers and their communities in Western Australia.

So, the MACD provides advice directly to the Minister and we work very collaboratively with the DSC board, with the Office of Disability. The group is made up of predominantly people with disability and those with lived experience.

I just want to run through about 10 very quick things that the Council has been working on. Any topic that impacts a person with disability and their family, carers and communities can be worked on by MACD. So, if there's something that's bubbling up that you're aware of that someone in your community has told you about that you would like advocacy on that you would like some advice to the Minister, reach out to MACD, reach out to the individuals in this room to say, have you done some work on the this, could you do some work on this?

And we are more than happy to take it on board and to see what we can do, to use MACD as a conduit to help raise awareness on those issues.

Couple things that we've worked on.

One is around access to students with disabilities to therapy supports within schools. We've heard a lot of from a lot of different families that there is difficulty in some education institutions about getting access to critical therapy. We know that's a requirement, a reasonable adjustment under the Education Standards and disability, that is subsidiary legislation from the Disability Discrimination Act. So, we worked and provide advice to the



Minister, which then got adopted in policy by the Department of Education to allow better process for schools and families.

Various advice on the visibility of people with disability in government advertising and on screens. You can't be that change you can't see, so we've been working very closely with the Minister and Department of Premier and Cabinet and their communication office to try to get better representation of people with disability in any government advertising.

We have also been working very closely with the Minister and providing some advice that's resulting in some change in the Public Service Commission. That the WA government is the largest employer in the state, with 40,000 employees. The PSC is that real principal people agency and there's a range of reforms that the Public Sector Commissioner is looking at to improve the employment of people disability in the public sector. We know it sits at one and a half percent. We know the Cook government has a commitment to five percent by 2025, an aspirational target. Also, the employment of people with disability more broadly outside of government and how do we improve that diversity.

We've also focused on access to information for people with complex communication needs, pointing out what the New Zealand

Parliament has done with introducing legislation for plain language and also the adoption of the Australian Standard under accessible communication. With Scott's leadership on the Board really looking at accessibility of information and adherence to that WCAG 2.0 accessibility guideline and making sure that's adopted throughout the WA government so people can communicate with WA government agencies in a really accessible way.

We've also focused on various State Disability Strategy reporting, so the outcome measures to provide some advice and guidance.

There's been a review of the state's Jobs Act to encourage local participation. We have fed into that review to ensure people disability are front and centre of any recruitment exercises.

Various work around the Department of Housing, advocating for increased social housing stock, prioritisation of people disability on some of those wait lists for social housing, and supporting tenants with disability. And, many members of the Board and MACD sitting on critical DAIP committees, critical national bodies informing various disability policies through Australia.

There's also been work on supported decision making reforms, various airport parking, the Service WA app and the accessibility of

public sector traineeships to people disability, inclusive education reform, the worker screening for people with disability in this state and we're still requiring having to attend in person to DOT licensing centre and various Auslan services.

So I'll stop it there in terms of the breadth of topics, I really wanted to give you a sense of the broad number of range of policy advice that MACD and the DSC Board, as the combined WADAC, is providing up to the Minister and working with the Office in the Department of Communities on, and welcome anyone to raise any other issues that we should focus on and work with us to achieve better outcomes for people disability.

So, with that, I'll pass over to Marion again and thank you very much for the opportunity to give you an update on WADAC. Thank you.

## **Board of the Disability Services Commission (slide 5)**

**(Marion Hailes-MacDonald)**

Thanks Kane.

Just a bit of word on the Disability Services Commission Board. Many people actually think that the Disability Services Commission, once we actually joined with the machinery of government, doesn't exist any longer. However, it does.

It's there in legislation and so is the Board and the Board still has a very important role working with the Ministerial Advisory Council, but particularly looking at access and inclusion. It's the governing body for the Disability Services Commission and we still get funding through the Department of Treasury and the Government.

So, the Board has a really important role in the governance of the Disability Services Commission. The members are appointed by the Minister, as are the Ministerial Advisory Council members.

## **Office of Disability (slides 6 to 8)**

Just in terms of the role of the Office of Disability, when we joined with the machinery government and joined with the Department of Communities, Government particularly wanted to keep a focus on disability.

And so the focus was to establish an Office of Disability within the Department of Communities, and that Office was established in December 2021.

It's 18 months in and we have a very big role in actually focusing on sector stewardship and that's actually working with the sector to actually ensure that we've got services and working alongside the NDIS.

We're very much about promoting the rights and interests of people with disability and by that we actually do that through the State Disability Strategy, all of our intergovernmental relations, and that includes working with other disability ministers and, through our Minister, working with other departments and other jurisdictions. We are a very strong voice in advocating for changes for the better, for people with disabilities.

We do still provide, as in the Department of Communities, still provides limited specialist disability support and we still have a small supported independent living or supported community living service within the Department of Communities. Some of you might have known it as the accommodation services. We also have what is called regional intensive support coordination, which really

specialised in supporting people with very complex needs to actually connect with various mainstream and other appropriate services.

So how do we support people with disabilities more visibly? Really, through sector stewardship and we work through partners in the sector. We work with and through with the National Disability Insurance Scheme and one of the things that we're looking to do is how do we make the National Disability Insurance scheme work better in WA?

Because we all hear the challenges that people experience. However, it has had some really good outcomes for many people and we want to preserve those, but actually make sure that it works better for people who are actually having difficulties navigating the system, but also connecting with the system. We provide advice about this, via the Minister, but also via our counterparts in State and Commonwealth jurisdictions, and just to give you an example of that, the NDIS review that's currently taking place that will report at the end of October, we are heavily involved in working with our state counterparts, but also in terms of working with the Review Secretariat.

And the other is that the State Disability Strategy which links with the Australia Disability Strategy is all about promoting access and inclusion broadly across WA, but particularly across Australia.

And that is not just about access to buildings. It's about full participation and full citizenship for people with disabilities, and Kane mentioned some of the areas that the Ministerial Advisory Council are involved with, the Board are involved with and equally well the Office of Disability is there in actually advocating, promoting, influencing and doing a lot of the policy work behind it.

These are just some of the priorities that we have at the moment and I'm not going to go through them because I mentioned them now.

I'm also aware of the interest of time, but one of the ones we're waiting for is the Disability Royal Commission to hand down its findings at the end of September, which will obviously have significant findings for both or recommendations for all States, but also Federal government.

And then the other area that I haven't spoken to, we're looking at two pieces of legislation really at the moment. One of them is what you're here to actually give us input in. The other has been in

consultation for the last couple of years and is just about to go to government for their direction at the moment in terms of what model we adopt and that is for the authorisation of restrictive practices because we're trying to eliminate them as far as possible and we need a legislative mandate to do that.

So I'm going to hand to Michael now who will talk to you about the aim of the new legislation we're talking about. And then hand over to James Butterworth, who will facilitate the session for us.

## **Aims of 2023 reforms to WA disability legislation (slide 9)**

**(Michael Dombrose, Manager Strategic Policy – Governance and Legislation, Office of Disability)**

Thank you, Marion.

Hi, good morning everyone and thanks for coming out today. I just quickly would also like to thank and introduce the team. So, my name's Michael. I manage the team that's undertaking the reform work at the Department of Communities.



We've got Maria who's the project lead over here. And Jo and Su-Hsien and Nicola online and they are a very dedicated team working really hard on these reforms. They all have significant experience in the sector and lived experience of disability as well. So, they're really well poised and the right people to be leading this work.

So, thank you team.

The why of what we're doing here.

So, as many of you will know, the legislation we have in WA at the moment, the Disability Services Act, is 30 years old this year and hasn't really had any significant change in a long time. So, it was identified there was a need that we had to have updated legislation. It has to reflect the modern society we live in, the environment, the community.

So, that's one of the primary things we're doing here is about modernising legislation, making it suit the community we live in today. We recognise that the legislation needs to support the experience of people disability in this community and really focus on inclusion and having that change of positive community attitudes and having legislation that supports improved outcomes for people with disability.

And as many of you will be aware, there's been a lot of changes in the disability landscape over the last few years. The Disability Royal Commission has been ongoing and is soon to finish. The NDIS came in across Australia, in WA, and then we've also had the State Disability Strategy and the Australian Disability Strategy, which are all important things happening that need to be reflected and incorporated into our legislation.

So that's why we're doing the reform work. That's the main aims of the work and that's why your feedback is really important to make sure we reflect what the community wants and have a really well operating piece of legislation going to the future.

So thank you for coming out.

I'll now hand over to James who will start the consultation.

## **Current definition of disability (slide 10)**

**(James Butterworth – facilitator)**

Thanks, Michael. Thanks, Marion.

Very good morning, everybody.

Just by way of introduction, my name is James Butterworth. I work for a company called IPS. I'm independently facilitating today, there's obviously a lot of people in the room.

We are going to have five breakout sessions. So you're gonna be working fairly hard this morning.

If I can ask the tables are looking pretty full, but if you're feeling a little alone please move to another table. We're not gonna have time to listen to everybody, because there's just simply too many tables. We will have five sessions. We'll have 10 minutes discussions and then we'll have a 5 minute period of feedback and I'll be asking certain tables to provide that feedback.

Please note we only have one of these [microphones], so if you could please only speak when you're holding the microphone, that would be much appreciated. Not only for the people on the room, but the many people who I believe who are online.

Right, the current definition of a disability is - an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment, or a combination of those impairments. Also, a permanent or likely to be permanent, and which may or may not be of a chronic or episodic nature, and a substantially reduced capacity for communication, social interaction, learning or mobility and need for continuing support services. And they are all seen together.

What we've heard so far from consultation is the definition should be broad and inclusive and include people with disability, whether or not the impairment is permanent, temporary, episodic in nature or invisible.

It is not to have reference to reduced capacity. It's not to have reference to reduced capacity or the need for continuing support services and it must move away from a diagnostic, deficit based model to one that's more affirmative and socially based.

So that's what we've heard so far.

The first group activity is Having heard the feedback, is this enough to make the definition of disability contemporary? And, if not, what else is needed?

## **Current Principles (slides 11 and 12)**

Alright, thanks everyone for contributing. Let's move on to session 2 which is about current principles.

Now these are in a Schedule in the legislation. If you can, you can keep writing on the butchers paper. I should have asked earlier, would you mind just putting a definition on the top of that page, just so the team will know which sessions these relate to, and if you could head this page principles, I think that will help.

OK, current principles. Just reading through them, noting these are in the current legislation, respect for human worth and dignity without discrimination, with equal opportunity; same rights as everyone else and enabled to exercise human rights; same opportunities for development of all those types; number 4, services

support, choice and maximize independence and participation;  
number 5, right to participate in, direct and implement own decisions;  
number 6, services protect rights and use least restrictive approach;  
number 7, there is a right to pursue complaints about services;  
number 8, access to services most appropriate to needs; similar services in regions as might be expected; and the last one is to be free from neglect, abuse, violence, intimidation and exploitation.

Now these are a summary of the principles in the Disability Services Act. There is apparently a full version of the principles on your tables. I see some of you referring to those.

What we've been told so far through consultation, is the principles should mirror the United Nations Convention on the Rights of People with Disability. And, we've already heard that emphasised today.

Also, what we've been told is that the principles need to recognise that disability is complex and diverse. It also needs to recognise intersectionality, for example, for Aboriginal people and people from culturally and linguistically diverse backgrounds.

It should specifically include the right to place, goods and services that are designed and developed to be universally accessible. As

well as the right to equitable access to mainstream services such as education, justice, health, housing and employment.

OK, session number 2. In thinking and looking at the principles let's have 10 minutes of discussion.

Do you think the United Nations Convention on the Rights of People with Disability should be incorporated into the principles? How? Would you like to add or subtract anything? And is there anything else that should be considered? Anything at all.

## **Safeguarding (slides 13 and 14)**

Let's move on to the next activity, which is all about safeguarding. Just to quickly talk through this slide, which is at the front of the room.

Safeguarding is about protections, rights. Some of the key things identified include worker screening, having registration standards for providers, to authorised restrictive practices and have the HaDSCO, which is the Health and Disability Services Complaints Office, which

is already existing in the legislation but that's one key aspect of safeguarding.

What we've been told so far is that people with a disability, wish to have more accessible, clear and transparent state based processes for making complaints about disability services; that they need to feel safe and heard during the complaints process. They want to be certain that their complaints will not affect their receipt of services.

That they wish to generally know more about the Health and Disability Services Complaints Office and they want the offence of ill-treatment to continue to be legislated, but to be made more contemporary.

Within that, the current offence of ill treatment and quoting here is “a person who ill treats or wilfully neglects a person with disability while that person is under his or her care, supervision or authority” commits an offence. The current penalty is \$4000 or imprisonment for 12 months. So, I guess the question is, is that a contemporary measure in 2023?

The questions for the tables and for those online is: when a person with a disability wants to make a complaint about state based



disability services they receive - what is needed to support them? to make them feel safe? and to empower them in the process?

And the offence for ill-treatment, the \$4000 or 12 months imprisonment, is that contemporary or not?

## **Current Objectives for Programmes and Services (slides 15, 16 and 17)**

We're gonna move to current program objectives for the programmes and services. So, the current objectives for the programs and services, there's quite a lot of them, in fact there's 17, I won't go through each verbatim but just trying to cover them quickly.

The objectives include positive outcomes, number 1; conditions of everyday life the same, number 2; number 3, integrated approach with other services; responsive to needs and choices, 4; consider all aspects of a person, number 5; promote awareness and foster respect for rights, number 6; number 7, promote local community participation and inclusion.

Number 8, no single organisation has control; number 9, service providers are accountable for the information they provide and record; number 10, support people to reach goals and enjoy lifestyles valued by the community; number 11, is access to advocacy to enable choice. and make decisions; number 12, provide an avenue to raise and resolve grievances; number 13, designed and implemented in an accessible way; number 14, is respect rights to privacy and confidentiality; early services to minimise impact of disability is number 15; number 16 is to recognise, respect and involve family and support networks; and, finally to be consulted on any major changes as a prerequisite.

So that's 17 objectives.

What we've heard so far is that there is too many of them. Almost can't see the wood for the trees or something going on there, so there's too many of them. All or most objectives may not be relevant anymore. That's what we've heard. Of course, those here today may disagree or agree.

Please note that if retained, any objective should ensure people who are not able to access the NDIS and or falls through the cracks are

included under the new WA disability legislation.

To ensure the programs and services genuinely engage with and respect the rights, experiences and knowledge of people with a disability, their families and their carers. To include mainstream services being accessible and inclusive of all people with a disability. That is mainstream services, not just those that are, that are disability specific services. To be able to be measured for efficiency and effectiveness of outcomes. So, the objective should be measurable.

Note, there's no legal force of these, but they are in a schedule in the legislation. They used to be connected to contract, so they've been enforceable that way.

Just discussing the objectives that you can see and the feedback I've just read out and I'm happy to clarify any of that with the tables, I've done a bit of that this morning.

The next session is - do we need the objectives? Do they add any value? If so, for what purpose do we need them? And is there anything else that the objectives need to do?

So, this is pretty open ended. Any issues, concerns, ideas about objectives?

## **Role of State Government (slide 18)**

We're gonna move ahead to the last session, which is all about the role of the state government. And I'm just mindful at this stage we will probably finish hopefully before 12:15, but people who do need to leave before that please do so.

OK, the role of the state government. Today, started with an overview of the Ministerial Advisory Council on Disability, the Board and the Office of Disability.

What we've heard from the prior consultation is that the state government need to ensure that all state and local agencies continue to work towards inclusion and meeting the needs of people with disabilities. That includes education, housing, health, justice and so on.

That the state also needs to advocate for the rights of people with disability. It needs to provide support and safeguarding outside of

the NDIS. Noting the 89% comment made earlier.

There needs to be a stronger approach from the state to Disability Inclusion and Action Plans. And, the state needs to actively engage with all parts of the disability sector to understand needs and barriers.

That's what we heard so far.

The last two questions for today before we start to wrap up with a very general question session is - what role would you like the state government to have in the future? And, should this role promote social inclusion for people with disability? If so, how?

## **Queries or Questions? (slide 19)**

I'm going to have to draw it to a close there and just acknowledging the gravity of the of the points raised today and thank you everyone for putting your points forward. Very much appreciated.

Alright, we're gonna go to next steps.

We're gonna hear from Maria, and then we're gonna hear from Marion just to wrap up and close the meeting, thank you.

## **Next Steps (slide 20)**

### **(Maria Mansour, Principal Policy Officer – Legislation, Office of Disability)**

My name is Maria. I spoke to a lot of you last time when we went out a couple months ago.

Just wanted to let you know quickly about the next steps. Everybody is encouraged to share the info today. Thank you for your time and courage to share your views. We really appreciate it. As for the butchers paper and everything that is being recorded, we are going to take all the information collate it, analyse it, and prepare a report to government.

At some stage before the draft legislation goes up, we will be back out again. So, this is an ongoing process.

Thank you for your time and your input into this process.

I'll hand over to Marion now.

**(Marion Hailes-MacDonald)**

Thanks Maria. And as a team lead, thank you for all the work done to get us to this point.

Thank you to everybody for your contributions, as Maria has said. Apologies to those of you online and for IT that went down totally unexpected, but IT can drive us nuts and also to the Auslan interpreters that we believe we had secured a few. Fortunately, through this you have to take the opportunities and then I found another Auslan interpreter service today. So that's the beauty of actually sharing connections.

There was a question that came through online is how does the Ministerial Advisory Council reach out? The Ministerial Council members are actually identified from their connections that they have with grassroots. So, they bring those connections in, but equally well, we're also looking, together with them, at the way forward and better ways that people can engage and that they are more visible so that people can actually make connections with

them. We're in the process of doing that. So, hopefully by the next time we catch up with consultations, you will know exactly who they are and can make direct connections with them.

Thank you to James for today's facilitation. Really appreciated that and your inclusion and getting around to every table was really valuable.

So, thank you everybody. Please stay around there is plenty of sandwiches, food, etcetera. Please stay around and do some networking and if there's another company that does Auslan interpretation, please let me know.

Thank you.