



New South Wales

# Disability Inclusion Amendment Bill 2022

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Disability Inclusion Act 2014* (the *principal Act*) to give effect to the recommendations for amendments arising from the statutory review of the principal Act tabled in Parliament on 20 November 2020. This is achieved as follows—

- (a) by requiring State Disability Inclusion Plans and disability inclusion action plans to be remade every 4 years (*recommendation 1*),
- (b) by requiring plans to be made available in one or more formats accessible to people with disability (*recommendation 2*),
- (c) by repealing provisions in the principal Act no longer required due to the commencement of Commonwealth legislation relating to the National Disability Insurance Scheme (*recommendations 3 and 5*),
- (d) by inserting savings and transitional provisions (*recommendation 6*),
- (e) by making other minor and consequential amendments (*recommendation 3*).

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Disability Inclusion Act 2014 No 41**

**Schedule 1[7] and [13]** give effect to recommendation 1 of the review. The proposed amendments require State Disability Inclusion Plans and disability inclusion action plans to be reviewed every 4 years and be remade, with or without variation, within 12 months of the review. **Schedule 1[1], [3], [5], [6], [8], [9], [11], [12] and [15]** make consequential amendments.

**Schedule 1[4] and [10]** give effect to recommendation 2 of the review. The proposed amendments require State Disability Inclusion Plans and disability inclusion action plans to be made available in one or more formats accessible to people with disability.

**Schedule 1[14] and [17]** give effect to recommendation 3 of the review by repealing provisions in Parts 4 and 5 and Schedule 2 of the principal Act. **Schedule 1[14]** reinserts and renumbers certain provisions relating to disability service standards and the provision of financial assistance by the Secretary. **Schedule 1[2]** makes a consequential amendment to remove redundant definitions and updates the definition of *Department*.

**Schedule 1[16] and [17]** give effect to recommendation 5 of the review. The proposed amendments repeal provisions dealing with particular accounts and funds of residents of government residential centres. Government residential centres are no longer in operation.

**Schedule 1[18]** gives effect to recommendation 6 of the review by inserting savings and transitional provisions.

## **Schedule 2      Amendment of other legislation**

**Schedule 2** gives effect to recommendation 3 of the review.

**Schedule 2.1** amends the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to remove the Ombudsman's function to review deaths of persons with disability.

**Schedule 2.2** amends the *Community Welfare Act 1987* to update references to provisions in the principal Act proposed to be repealed by the proposed Act.

**Schedule 2.3[1], [3] and [4]** amend the *Coroners Act 2009* to remove references to provisions of the principal Act proposed to be repealed and move definitions from the principal Act to the *Coroners Act 2009*. **Schedule 2.4** amends the *Coroners Regulation 2021* to make a consequential amendment. **Schedule 2.3[2]** enables the Coroners Court to hold inquests into the deaths of persons with disability.

**Schedule 2.5** amends the *Disability Inclusion Regulation 2014* to repeal provisions consequent on the proposed repeal of provisions in the principal Act.

**Schedule 2.6** amends the *Land Tax Management Act 1956* to update a reference to a defined term proposed to be moved from the principal Act to the *Coroners Act 2009*.

**Schedule 2.7** amends the *Ombudsman Act 1974* to repeal provisions relating to reportable incidents in supported group accommodation. Providers of supported group accommodation are now funded by the National Disability Insurance Scheme and the jurisdiction to oversee reportable incidents lies with the NDIS Quality and Safeguards Commission.



New South Wales

# Disability Inclusion Amendment Bill 2022

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Disability Inclusion Act 2014 No 41</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of other legislation</b>	<b>7</b>



New South Wales

# Disability Inclusion Amendment Bill 2022

No. \_\_\_\_\_, 2022

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## **A Bill for**

An Act to amend the *Disability Inclusion Act 2014* to give effect to recommendations arising from the statutory review of the Act; and for related purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Disability Inclusion Amendment Act 2022*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Disability Inclusion Act 2014 No 41</b>	1
		2
<b>[1] Section 6 Having regard to disability principles</b>		3
	Omit the note.	4
<b>[2] Section 7 Definitions</b>		5
	Omit the definitions of <i>accommodation and service standards</i> , <i>Department</i> , <i>disability service provider</i> , <i>eligible entity</i> , <i>guardian</i> , <i>non-government organisation</i> , <i>person in the target group</i> , <i>prescribed conditions</i> , <i>Public Service agency</i> and <i>supported group accommodation</i> from section 7(1).	6 7 8 9
	Insert in alphabetical order—	10
	<i>Department</i> means the Department of Communities and Justice.	11
<b>[3] Section 10 Requirement for State Disability Inclusion Plan</b>		12
	Omit “have a State plan” from section 10(1). Insert instead “prepare and make a State plan”.	13
<b>[4] Section 10(6)</b>		14
	Insert after section 10(5)—	15
	(6) The Minister must make the State Disability Inclusion Plan available in one or more formats accessible to people with disability.	16 17
<b>[5] Section 11, heading</b>		18
	Insert “and remake” after “Review”.	19
<b>[6] Section 11(1)</b>		20
	Omit “have the plan”. Insert instead “prepare and make the State Disability Inclusion Plan”.	21
<b>[7] Section 11(4) and (5)</b>		22
	Insert after section 11(3)—	23
	(4) Within 12 months after the tabling of the report, and having taken into account the recommendations made in the report, the Department must remake the State Disability Inclusion Plan, with or without variations.	24 25 26
	(5) Section 10 applies to the remaking of the State Disability Inclusion Plan in the same way it applies to the making of the State Disability Inclusion Plan.	27 28
<b>[8] Section 12 Requirement for disability inclusion action plans</b>		29
	Omit “have a plan” from section 12(1). Insert instead “prepare and make a plan”.	30
<b>[9] Section 12(5)</b>		31
	Omit “have a”. Insert instead “prepare and make a”.	32
<b>[10] Section 12(5)</b>		33
	Insert at the end of section 12(5)(b)—	34
	, and	35
	(c) make the plan available in one or more formats accessible to people with disability.	36 37

<b>[11]</b>	<b>Section 14, heading</b>	1
	Insert “ <b>and remake</b> ” after “ <b>Review</b> ”.	2
<b>[12]</b>	<b>Section 14(1)</b>	3
	Omit “have the plan”.	4
	Insert instead “prepare and make the disability inclusion action plan”.	5
<b>[13]</b>	<b>Section 14(4) and (5)</b>	6
	Insert after section 14(3)—	7
	(4) Within 12 months after the completion of the review, and having taken into account the recommendations made in the review, the public authority must remake the disability inclusion action plan, with or without variations.	8 9 10
	(5) Section 12 applies to the remaking of the disability inclusion action plan in the same way it applies to the making of the disability inclusion action plan.	11 12
<b>[14]</b>	<b>Part 4</b>	13
	Omit Parts 4 and 5. Insert instead—	14
	<b>Part 4 Service standards and financial assistance</b>	15
	<b>20 Disability service standards</b>	16
	(1) The regulations may make provision for or about standards ( <i>disability service standards</i> ) relating to the provision of supports and services for people with disability to improve the quality and effectiveness of the supports and services.	17 18 19
	(2) The Secretary must make the disability service standards publicly available.	20
	<b>21 Financial assistance to promote objects of Act</b>	21
	(1) The Secretary may provide financial assistance to a government department, local council or another entity for the purpose of promoting the objects of this Act.	22 23 24
	(2) The financial assistance may be provided, as the Secretary considers appropriate—	25 26
	(a) subject to conditions or unconditionally, and	27
	(b) in relation to a particular matter.	28
	<b>22 Secretary may require information</b>	29
	(1) This section applies if the Secretary reasonably believes a person receiving, or seeking to receive, financial assistance under section 21 has information or a document in the person’s possession or control relating to—	30 31 32
	(a) the provision of the financial assistance, or	33
	(b) obtaining or providing supports or services with the financial assistance, or	34 35
	(c) compliance with an agreement entered into with the Secretary in relation to the financial assistance.	36 37
	(2) The Secretary may, by notice given to the person, require the person to give the information or document to the Secretary.	38 39
	(3) The notice must specify—	40

(a)	the nature of the information or document, and	1
(b)	how the person must give the information or document, and	2
(c)	the reasonable period, of at least 14 days, within which the information or document must be given.	3 4
(4)	The person must comply with the notice.	5
	<b>Note</b> — It is an offence under the <i>Crimes Act 1900</i> , section 307B to give false or misleading information to a person exercising a power, authority, duty or function under, or in connection with, a law of the State.	6 7 8
<b>23</b>	<b>Protection from liability for giving information</b>	9
	If a person, acting in good faith, gives information or a document in accordance with a requirement under section 22, the person—	10 11
(a)	is not liable to civil or criminal action for giving the information or document, and	12 13
(b)	cannot be held to have breached a code of professional etiquette or ethics or departed from accepted standards of professional conduct as a result of giving the information or document.	14 15 16
<b>[15]</b>	<b>Section 47 Sections 3–6 do not give rise to or affect a cause of action</b>	17
	Omit section 47(2).	18
<b>[16]</b>	<b>Section 48 Dealing with particular accounts and funds</b>	19
	Omit the section.	20
<b>[17]</b>	<b>Schedules 2 and 3</b>	21
	Omit the Schedules.	22
<b>[18]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	23
	Insert after Part 2—	24
<b>Part 3</b>	<b>Provisions consequent on enactment of Disability Inclusion Amendment Act 2022</b>	25 26
<b>7</b>	<b>Definitions</b>	27
	In this Part—	28
	<i>amending Act</i> means the <i>Disability Inclusion Amendment Act 2022</i> .	29
	<i>commencement date</i> means the date of assent to the amending Act.	30
	<i>repealed</i> , in relation to a provision, means the provision as in force immediately before its repeal by the amending Act.	31 32
<b>8</b>	<b>Continuation of financial assistance</b>	33
	An arrangement for a government department, local council or other entity to receive financial assistance under repealed section 37 continues—	34 35
(a)	as if the arrangement had been made under section 21, as inserted by the amending Act, and	36 37
(b)	subject to the conditions of the Secretary in place immediately before the commencement date.	38 39



<b>9</b>	<b>Notice to give information remains in force</b>	1
	A notice issued by the Secretary under repealed section 38 and in force immediately before the commencement date continues as if it had been issued under section 22 as in force on the commencement date.	2 3 4
<b>10</b>	<b>Accessible format of plans</b>	5
	Sections 10(6) and 12(5)(c), as inserted by the amending Act, apply only to a State Disability Inclusion Plan or disability inclusion action plan made or remade after the commencement date.	6 7 8
<b>11</b>	<b>Period of review for certain disability inclusion action plans</b>	9
	Despite section 14(1), a disability inclusion action plan made or remade by a local council in 2017 must be reviewed before the end of 30 November 2022.	10 11

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	2
		3
[1]	<b>Section 28 Applications to Tribunal for administrative reviews of decisions</b>	4
	Omit “, section 35 of the <i>Disability Inclusion Act 2014</i> ” from section 28(1)(a).	5
[2]	<b>Section 35 Application of Part</b>	6
	Omit section 35(1)(f) and (g).	7
[3]	<b>Section 35(2)</b>	8
	Omit the definitions of <i>assisted boarding house</i> and <i>supported group accommodation</i> (including the note).	9
		10
<b>2.2</b>	<b>Community Welfare Act 1987 No 52</b>	11
	<b>Section 7 Assistance funds for community welfare and social development programs</b>	12
		13
	Omit “Part 5” from section 7(3A). Insert instead “Part 4”.	14
<b>2.3</b>	<b>Coroners Act 2009 No 41</b>	15
[1]	<b>Section 24 Jurisdiction concerning deaths of children and disabled persons</b>	16
	Omit “supported group accommodation” from section 24(1)(e).	17
	Insert instead “specialist disability accommodation”.	18
[2]	<b>Section 24(1)(f)</b>	19
	Omit the paragraph. Insert instead—	20
	(f) a person, other than a child in care, who—	21
	(i) is a person in the relevant group, and	22
	(ii) receives assistance of a kind prescribed by the regulations from a service provider to enable the person to live independently in the community.	23
		24
		25
[3]	<b>Section 24(3)</b>	26
	Omit the definition of <i>supported group accommodation</i> . Insert in alphabetical order—	27
	<i>person in the relevant group</i> —see section 24A.	28
	<i>specialist disability accommodation</i> means premises—	29
	(a) enrolled under the <i>National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020</i> of the Commonwealth, section 26, and	30
		31
		32
	(b) that is, or is a type of premises, prescribed by the regulations to be specialist disability accommodation, and	33
		34
	(c) that is not, or is not a type of premises, prescribed by the regulations to not be specialist disability accommodation.	35
		36
[4]	<b>Section 24A</b>	37
	Insert after section 24—	38

<b>24A</b>	<b>Meaning of “person in the relevant group”</b>	1
(1)	For this Act, a <b>person in the relevant group</b> is a person who has a disability, whether or not of a chronic episodic nature, that—	2 3
(a)	is attributable to an intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of those impairments, and	4 5 6
(b)	is permanent or likely to be permanent, and	7
(c)	results in a significant reduction in the person’s functional capacity in one or more areas of major life activity, including, for example, communication, social interaction, learning, mobility, decision-making, self-care and self-management, and	8 9 10 11
(d)	results in the need for support, whether or not of an ongoing nature.	12
(2)	To avoid doubt, each of the following persons, within the meaning of the <i>Mental Health Act 2007</i> , is a person in the relevant group if the person has a disability referred to in subsection (1)—	13 14 15
(a)	an involuntary patient or a forensic patient,	16
(b)	a person subject to a community treatment order,	17
(c)	a person under detention in a mental health facility.	18
(3)	A person in the relevant group includes a child under 6 years of age who has developmental delay within the meaning of the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth.	19 20 21
(4)	To avoid doubt, a person with a permanent disability is a person in the relevant group even if the severity of the person’s impairment because of the disability may diminish over time or the person’s condition may improve.	22 23 24
(5)	In this section—	25
	<b>disability</b> , in relation to a person, includes a long-term physical, psychiatric, intellectual or sensory impairment that, in interaction with various barriers, may hinder the person’s full and effective participation in the community on an equal basis with others.	26 27 28 29
	<b>support</b> means assistance provided to a person with disability to do one or more of the following—	30 31
(a)	help the person undertake the person’s day to day activities,	32
(b)	increase the person’s independence,	33
(c)	facilitate the person’s social and economic inclusion in the community.	34
<b>2.4</b>	<b>Coroners Regulation 2021</b>	35
	<b>Clause 4A</b>	36
	Insert after clause 4—	37
<b>4A</b>	<b>Meaning of “specialist disability accommodation”—the Act, s24(3)</b>	38
(1)	For the Act, section 24(3), definition of <b>specialist disability accommodation</b> , paragraph (b), premises are prescribed to be specialist disability accommodation if—	39 40 41
(a)	the premises are residential, and	42
(b)	the premises are under the control, direction or management of a registered NDIS provider, within the meaning of the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth, and	43 44 45

(c)	the registered NDIS provider provides supported independent living at the premises.	1 2
(2)	For the Act, section 24(3), definition of <i>specialist disability accommodation</i> , paragraph (c), nursing homes are prescribed not to be specialist disability accommodation.	3 4 5
(3)	In this clause— <i>nursing home</i> means a facility at which residential care within the meaning of the <i>Aged Care Act 1997</i> of the Commonwealth is provided. <i>supported independent living</i> has the same meaning as in the <i>National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018</i> of the Commonwealth.	6 7 8 9 10 11
<b>2.5</b>	<b>Disability Inclusion Regulation 2014</b>	12
[1]	<b>Clauses 4 and 9</b> Omit the clauses.	13 14
[2]	<b>Part 4 Probity checks</b> Omit the Part.	15 16
<b>2.6</b>	<b>Land Tax Management Act 1956 No 26</b>	17
	<b>Section 3B Concessional trust—meaning</b>	18
	Omit “target group within the meaning of the <i>Disability Inclusion Act 2014</i> ” from section 3B(1)(b)(iii).	19 20
	Insert instead “relevant group within the meaning of the <i>Coroners Act 2009</i> ”.	21
<b>2.7</b>	<b>Ombudsman Act 1974 No 68</b>	22
[1]	<b>Part 3C Protection of people with disability</b> Omit the Part.	23 24
[2]	<b>Schedule 1 Excluded conduct of public authorities</b> Omit “or” from the end of item 12(c) and omit item 12(e).	25 26
[3]	<b>Schedule 1</b> Omit “unless the conduct relates to a reportable incident or reportable conviction (within the meaning of Part 3C), or the inappropriate handling or response to such an incident or conviction” from item 13.	27 28 29 30