



REPUBLIC OF NAURU

INCLUSION OF PERSONS WITH DISABILITIES ACT 2023

No. 5 of 2023

An Act to give effect to the *United Nations Convention on the Rights of Persons with Disabilities* and for other related purposes.

Certified: 7 June 2023

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short title

This Act may be cited as the *Inclusion of Persons with Disabilities Act 2023*.

2 Commencement

This Act commences on the date it is certified by the Speaker.

3 Interpretation

In this Act:

'caregiver' means a parent, a legal guardian or any other prescribed person responsible for:

- (a) caring for the health, financial and physical security and general well-being of a person with a disability; and
- (b) prescribed care of a person with a disability;

'Convention' means the *United Nations Convention on the Rights of Persons with Disabilities*;

'Council' means the Nauru Disability Coordinating Council established under Section 7;

'Department' means the Department of People Living with Disabilities;

'disability' includes a physical, mental, intellectual or sensory impairment which, in interaction with various attitudinal and environmental barriers, may hinder full and effective participation of a person in society on an equal basis with others;

'habilitation support' includes programmes and initiatives that enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life;

'Minister' means the Minister responsible for the Department of People Living with Disabilities;

'reasonable accommodation' means the necessary and appropriate modification and adjustment that:

- (a) is needed in a particular case to ensure the full participation of a person with a disability in the enjoyment or exercise of his or her fundamental rights and freedoms on an equal basis with a person without disabilities; and
- (b) does not impose a disproportionate or undue burden on the person required to provide such accommodation;

'Register' means the Register of persons with disabilities established under Section 12;

'rehabilitation support' includes programmes and initiatives that enable persons with disabilities to regain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life;

'right' means any right provided in this Act that a person with a disability is entitled to, on an equal basis with other persons; and

'Secretary' means the Secretary for the Department for People Living with Disabilities.

4 Objective

The objective of this Act is to give effect to the Convention by ensuring:

- (a) that the rights of persons with disabilities continue to be recognised and protected;
- (b) the progressive removal of any barrier or hindrance that results in the discrimination against a person based on a disability;
- (c) the inclusion of and full participation of persons with disabilities in the society; and
- (d) 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

5 Functions and Powers of the Minister

The Minister shall have all such functions and powers to do all things that are necessary to achieve the objectives of this Act.

6 Functions and powers of the Secretary

- (1) The Secretary shall:
 - (a) provide the necessary information and support to persons with disabilities;
 - (b) report to the Minister on the implementation of the Republic's obligations under the Convention;
 - (c) collect and collate information or data relating to persons with disabilities in coordination with a relevant person;

- (d) advise the Minister of the Republic's obligations under the Convention;
and
 - (e) perform any other functions designated by the Minister.
- (2) The Secretary shall have the powers to do all things that are necessary or convenient to be done for the performance of his or her functions under this Act.

Division 2 – Nauru Disability Coordinating Council

7 Establishment of the Council

The Nauru Disability Coordinating Council is established.

8 Membership

- (1) The Council shall consist of:
- (a) the Secretary, who shall be the Chairperson;
 - (b) a representative from the Department of Justice and Border Control;
 - (c) a representative from the Department of Education;
 - (d) a representative from the Department of Health and Medical Services;
 - (e) a representative from the Department of Finance and Sustainable Development;
 - (f) a representative from the Nauruan Bureau of Statistics;
 - (g) a representative from the Public Service;
 - (h) a person who is a member of or employed by a non-government organisation with specific interests in persons with disabilities; and
 - (i) a person who is a member of or employed by a non-government organisation with interests that are relevant to the interests of persons with disabilities.
- (2) The members of the Council under subsection (1)(b) to (i) shall be appointed by the Cabinet on the advice of the Minister.
- (3) The term of appointment of a member appointed under subsection (2), shall be 3 years and the appointed member is eligible for reappointment.

9 Functions and powers of the Council

- (1) The Council shall:
 - (a) assist the Secretary in the development of the National Disability Strategy;
 - (b) provide advice on the implementation of government policy and plans in relation to persons with disabilities; and
 - (c) coordinate and consult with any other person to promote and achieve the objectives of this Act.
- (2) The Council shall have the powers to do all things that are necessary or convenient to be done for the performance of its functions under this Act.

10 Meetings

- (1) The Chairperson shall determine the times and places for the meetings of the Council.
- (2) The quorum shall be 5 members including the Chairperson.
- (3) The Council shall determine its procedure.
- (4) The Council shall appoint a member to record and maintain the minutes of its meetings.

11 Allowance

A member of the Council appointed under Section 8(1)(h) and (i) is eligible for an allowance as the Cabinet may approve.

Division 3 – Register of Persons with Disabilities

12 Register of Persons with Disabilities

- (1) The Secretary shall establish and maintain the Register of Persons with Disabilities both in physical and in an electronic form.
- (2) The Register shall contain all such information as may be prescribed.
- (3) Subject to subsection (4), the information contained in the Register shall be deemed to be confidential and shall not be made available to any person, except with the approval of the Secretary.
- (4) The Secretary may approve the disclosure of any information in the Register to a person for the purpose of promoting or protecting the interests of persons with disabilities including:
 - (a) policy development;

- (b) improved service delivery;
 - (c) the compilation of data of persons with disabilities;
 - (d) offering assistance; and
 - (e) monitoring the progress of the implementation of this Act.
- (5) A person with authorisation to access the information on the Register shall not unlawfully disclose such information.
- (6) A person shall not access the information on the Register without authorisation from the Secretary.
- (7) A person who contravenes subsection (5) or (6) commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months or to both.

13 Registration of persons with disability

- (1) Subject to subsection (2), a person with a disability may apply to be registered in the Register.
- (2) A caregiver may apply on behalf of a person with a disability where the person:
- (a) is a child; or
 - (b) due to the nature of his or her disability, is unable to apply for registration.
- (3) An application for registration shall be made in the prescribed form accompanied with the required information.

PART 3 – PROTECTION OF RIGHTS

Division 1 – Rights of Persons with Disabilities

14 Application

- (1) The enforcement of rights protected under this Part shall be subject to limitations under the *Constitution*, this Act or other written law.
- (2) This Section does not apply to Sections 19 and 20.

15 Equality before the law without discrimination

- (1) A person with a disability shall have the right to equal protection and benefit in the application or implementation of any written law.
- (2) A person with a disability shall not be subject to discrimination on the basis of his or her disability.

16 Right to life

A person with a disability shall have the right not to be intentionally deprived of his or her life.

17 Equal Recognition before the law

- (1) A person with a disability shall have the right to be recognised as an individual.
- (2) A person with a disability shall have the right to exercise his or her legal capacity in accordance with any written law.

18 Liberty and Security

- (1) A person with a disability shall have the right not to be deprived of his or her liberty.
- (2) A person with a disability whose liberty is deprived in accordance with a written law, he or she shall be entitled to reasonable accommodation during his or her detention.

19 Freedom from torture

A person with a disability shall have the right to be free from torture and shall not be subject to cruel or inhuman treatment or punishment.

20 Freedom from exploitation, violence and abuse

- (1) A person with a disability shall have the right to be free from exploitation, violence and abuse.
- (2) A person with a disability shall not be discriminated against in protection measures that are implemented for matters relating to exploitation, violence and abuse.

21 Protecting the integrity of the person

A person with a disability shall have the right to the respect of his or her physical and mental integrity.

22 Freedom of movement

A person with a disability shall have the right to move freely within the Republic.

23 Right to nationality

- (1) A person with a disability shall have the right to acquire or change his or her nationality.
- (2) A person with a disability shall not have his or her nationality deprived on the basis of his or her disability.

24 Right to live in the community

- (1) A person with a disability shall have the right to live in the community including the right to make decisions in any matter related to living in the community.
- (2) A person with a disability shall not have his or her right to live in the community, restricted or denied on the basis of his or her disability.

25 Freedom of expression and opinion

- (1) A person with a disability shall have the right to freedom of expression and opinion.
- (2) A person with a disability shall not have his or her right to freedom of expression and opinion, restrained or denied on the basis of his or her disability.

26 Respect for privacy

A person with a disability shall not have his or her home, residence, living arrangements, correspondence or other communication subject to unlawful interference.

27 Respect for home and the family

- (1) A person with a disability shall not be discriminated against in matters relating to marriage, family, parenthood or relationships on the basis of his or her disability.
- (2) Subject to subsection (3) a child with a disability shall not be separated from his or her family on the basis of his or her disability.
- (3) A child may be separated from his or her family on an order made by the court in the best interests of the child.

28 Right to education

- (1) A person with a disability shall have the right to access and receive an education at any level, as offered in the Republic.
- (2) A person with a disability shall not be excluded on the basis of his or her disability from the general education system established in the Republic.

29 Right to health

- (1) A person with a disability shall have the right to receive health care and medical services offered in the Republic.
- (2) A person with a disability shall not be discriminated against in the provision of health insurance or life insurance.
- (3) A person with a disability shall not be discriminated against or denied health care or medical services on the basis of his or her disability.

30 Right to work and employment

- (1) A person with a disability shall have the right to work and be employed in the Republic.
- (2) Subject to subsection (3) a person with a disability shall not be discriminated against on the basis of his or her disability, from work or employment.
- (3) Subsection (2) does not apply where:
 - (a) a person with a disability is rejected from work or employment and the basis for such rejection is that the environment for such work or employment poses a risk or harm to such person; or
 - (b) the nature of the work or employment is such that the person with a disability may only undertake such work or employment with the aid of special services or facilities and it is unreasonable to expect the employer to provide such services or facilities.

31 Right to adequate standard of living

- (1) A person with a disability shall not be discriminated against in any matter relating to adequate standard of living including access to food, clothing, housing, water and improved living conditions.
- (2) A person with a disability shall not be discriminated against in any matter relating to social protection.

32 Participation in political and public office

- (1) A person with a disability shall have the right to effectively and fully participate in any matter related to political or public office.
- (2) A person with a disability shall not be discriminated against on the basis of his or her disability to effectively and fully participate in any matter related to political and public office.

33 Participation in cultural life

- (1) A person with a disability shall have the right to fully participate in activities related to culture.
- (2) 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.

34 Right to participate in sports

- (1) A person with a disability shall have the right to participate in any sport or activity related to a sport.
- (2) A person with a disability shall not on the basis of his or her disability be denied the right to take part in sports or activities related to sports.

35 Participation in recreation and leisure

- (1) A person with a disability shall have the right to participate in activities related to recreation and leisure that are available to the public.
- (2) 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 recreation and leisure.

Division 2 – National Disability Strategy

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National Disability Strategy

- (1) There shall be a National Disability Strategy.
- (2) The National Disability Strategy shall be developed by the Secretary in consultation with the Council.
- (3) The National Disability Strategy shall:
 - (a) provide for measures to promote the protection of rights under this Part;
 - (b) provide for measures to promote awareness of the objectives of this Act at all levels of society;
 - (c) identify barriers and obstacles faced by persons with disabilities and measures to eliminate such barriers and obstacles;
 - (d) recognise that women and girls with disabilities are subject to multiple discrimination and provide for measures to ensure the rights of women and girls with disabilities are protected;
 - (e) provide measures to ensure that the rights of children with disabilities are protected;
 - (f) provide for measures to promote and implement the access by persons with disabilities to justice including any matter relating to justice;
 - (g) provide for measures to promote and implement the access by persons with disabilities to:
 - (i) the facilities, buildings and services that are available to the public; and
 - (ii) information, communication and technology available to the public;
 - (h) provide for measures to ensure personal mobility of persons with disabilities;
 - (i) provide for measures to promote the protection and safety of persons with disabilities in situations of declared national disasters or emergencies;
 - (j) provide measures to promote and implement habilitation and rehabilitation support to persons with disabilities;
 - (k) provide for measures to implement the periodic collection of appropriate information including statistical and research data in accordance with the relevant written law;

- (l) provide for measures where appropriate, to promote partnership with relevant international, regional and domestic non-government organisations to support the Republic's efforts to achieve the objectives of this Act; and
 - (m) include reasonable accommodation measures to be applied to each matter provided for in paragraphs (a) to (l).
- (4) The National Disability Strategy shall be approved by the Cabinet before it is implemented.
 - (5) The National Disability Strategy may be implemented in stages based on planning and reasonable availability of financial and other relevant resources.

Division 3 – Enforcement of Rights of Persons with Disabilities

37 Enforcement of rights

- (1) A right or freedom conferred by this Part is enforceable by the Supreme Court at the suit of a person having an interest in the enforcement of that right or freedom.
- (2) The Supreme Court may make all such orders and declarations as are necessary and appropriate for the purposes of subsection (1).
- (3) In making orders or declarations under subsection (2), the Supreme Court may take into consideration the Republic's financial, economic and provision of the relevant resources capability.

PART 4 – MISCELLANEOUS

38 Giving false information to obtain a benefit

- (1) A person shall not provide false information to the Secretary including a delegate, Council or Minister for the purposes of obtaining any assistance or other benefit:
 - (a) under this Act; or
 - (b) from the Department.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding \$1,000 or an imprisonment term not exceeding 6 months or to both.

39 Aggravating factor in sentencing for criminal offences

- (1) This Section applies in a criminal cause or matter where:
 - (a) a sentence is being considered for a person convicted for an offence; and

- (b) the victim is a person with a disability.
- (2) The court shall conclude that it is an aggravating factor, that the victim of an offending, is a person with a disability.

40 Protection from liability

The Minister, member of the Council, Secretary or staff member of the Department, shall not for the exercise of a power or performance of a function or duty done in good faith under this Act or any other written law:

- (a) be liable for any loss or damage arising from such; or
- (b) be subject to any criminal prosecution and civil claims.

41 Regulations

- (1) The Cabinet may make regulations prescribing all matters that are necessary and expedient to achieve the objectives of this Act.
- (2) Without limiting the generality of subsection (1), the Cabinet may make regulations for the purpose of:
 - (a) implementing the National Disability Strategy; or
 - (b) prescribing a procedure for accessing assistance offered by the Government.