

**The Hon. Derrick Kellier, CD, MP**  
**Minister of Labour and Social Security**

**STATEMENT IN THE HOUSE OF REPRESENTATIVES**  
**IN THE DEBATE ON THE DISABILITIES ACT**  
**TUESDAY, JULY 22, 2014**

---

Mr. Speaker, it is said that “*Disability is a matter of perception*”; and I wish to begin my presentation this afternoon by declaring that I agree wholeheartedly with this sentiment.

For this reason, Mr. Speaker, I have the greatest and distinct pleasure of being able to stand here this afternoon, in this Parliament, in the land of my birth, to participate in the bi-partisan debate on one of the truly historic pieces of legislation put forward in Jamaica so far in the 21<sup>st</sup> Century – The Disability Bill 2014.

Mr. Speaker, we on this side of this Honourable House, are extremely pleased with this historic development in the life of our people, and we take great pride in having endured the long journey in finally bringing reality to the rights of persons with disabilities.

Mr. Speaker, we have had to endure along the route of this journey, much slings and arrows from a cynical minority outside of the disabled community who persist in dishonouring the intention of Government to effect genuine national development.

But because our tradition of service is deeply rooted in the character, tradition, and struggle for personhood of our people, Mr. Speaker, we never one day gave up the effort in the ten (10) years it has taken to get us here today where we are now ready as a nation to collectively move people within the community of the disabled from disability to superability.

Mr. Speaker, the work to make this happen began with the process to enact a Disabilities Bill that had its genesis in the visionary establishment of a **National Policy for Persons with a Disability** in the year 2000. This Policy was adopted in keeping with the United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities.

The goals of the National Policy included the improvement of the status and conditions of persons with disabilities so they can enjoy a better quality of life in areas such as:

- Education
- Employment
- Health
- Housing
- Transportation
- Accessibility to all areas of the society

In particular, the Policy aims to achieve the following:

- The integration of persons with disabilities in the society so they can fully participate in all aspects of society, and
- The enhancement of the self-reliance and functional independence of such persons and ensuring the availability of services and access to the various systems of society

and the environment to enable the equalization of opportunities for persons with disabilities

Mr. Speaker, in speaking of the National Policy in January 2001 in the Senate, the present President of the Senate, Senator Floyd Morrison stated, and I quote: “*Central to the national policy is the situation where the Government is trying to unlock the potential of members of the disabled community, recognizing that they have the potential to do whatsoever they want to do in terms of national development.*” End of quote.

This, Mr. Speaker, is precisely what the Government aims to achieve with the Bill now before us. It will pave the way for enhanced contribution to the society and economy of Jamaica by persons with disabilities by ensuring that impediments to their full participation in society are removed.

Mr. Speaker, I wish to record my gratitude for the signal contribution of my colleague – Ministers who over the years of participated in the process leading to the development of this Bill.

This process, Mr. Speaker, has been long, tedious and contentious. It began, however with the initiation and involvement of the Most Honourable Prime Minister Portia Simpson Miller in her capacity of Minister of Labour, Social Security and Sport in 2000.

The leadership given by her in this dynamic process continued under the ministerial leadership of the late Donald Buchanan, the Hon. Horace Dalley, the Hon. Dean Peart, myself and the Hon. Parnell Charles, who advanced the process noticeably in his capacity as Minister of Labour and Social Security before that portfolio reverted to me in 2012.

Mr. Speaker, the nation and disability community is grateful to these Ministers in spearheading the dialogue in raising the consciousness of the nation as to the role and significance of persons with disabilities to national development which today has lead to the Bill before us.

Mr. Speaker, the infrastructure involved in the heavy lifting process of the removal of impediments, involved the approval of the Bill by the legislative Committee of Cabinet in February of this year and Cabinet approval for tabling granted on April 7, 2014.

Mr. Speaker, as you will recall, the latter action paved the way for the eventual tabling of the Bill in this Honourable House on May 7 of this year.

So, Mr. Speaker, to be clear, let me emphasise from the outset that this ground-breaking piece of legislation is not only being acted upon in fulfilment of a promise made to the country by this Administration; but it must also be noted that it seeks to promote, protect, and ensure the full and equal enjoyment of persons with disabilities of privileges, interests, benefits and treatment on equal basis with other persons in the national community.

Mr. Speaker, with your permission, I wish to also declare that dozens of voices from across Jamaica as expressed through stakeholder groups and Government Departments and Ministries contributed to the consultative approach underpinning the development of this piece of legislation.

The Legislative Committee - which was a sub-committee of the Disabilities Advisory Board that was established to assist with the issuing of drafting instructions to the Chief Parliamentary Counsel and to review the various drafts of the Bill - worked commendably and assiduously with the Ministry of Labour and Social Security to make this Bill a reality.

I take this opportunity to express my sincere gratitude to the various persons who served on this Committee throughout the years and the stakeholder groups and Government Ministries and Departments which were instrumental in the development and promulgation of this piece of legislation.

I also wish to place on record the thanks and gratitude of a grateful nation to all those persons who attended and participated in island-wide consultations held in St. Ann, St. Thomas, St. Catherine, Clarendon, Portland, St. James, Kingston and St. Andrew, Trelawny and Manchester.

Let me also say, Mr. Speaker, that all persons and groups representing the voices contributing to the consultative process were all united by one consideration – the experience of living in a society that recognises the power and contribution of persons with disabilities to national development and the growth agenda.

Therefore, Mr. Speaker, the task that falls to all of us in this Honourable House today - and indeed, the wider society more generally - is to make the political, social and economic changes necessary to enable the greater inclusion of persons with disabilities into the mainstream of the society become a reality.

### **OBJECTIVES OF THE BILL**

Mr. Speaker the main objectives of the Bill are as follows:

- Reinforce and promote the recognition and acceptance within Jamaica of the principle that a person with a disability has the same fundamental rights as any other person.
- Promote individual dignity and individual autonomy, including the freedom of choice and independence of a person with a disability.
- Ensure full and effective participation and inclusion in the society of persons with a disability on an equal basis with others.
- Prevent or prohibit discrimination against a person with a disability.
- Promote respect for differences and acceptance of persons with disabilities as part of human diversity and humanity.

Mr. Speaker it must be pointed out that the Bill provides a definition of the term ‘persons with disabilities’ or ‘person with a disability.’ This, Mr. Speaker, is an individual who has a long-term physical, mental, intellectual or sensory impairment which hinder his/her full and effective participation in society, on an equal basis with other persons.

Additionally, the legislation will provide a clear and comprehensive national mandate for the elimination of discrimination against persons with disabilities. Part IV [4] of the Bill addresses the issue of protection from discrimination. It unequivocally prohibits any form of discrimination against a person with a disability.

The term ‘discrimination’ is defined as: *“any distinction, exclusion or restriction, on the basis of disability which has the purpose or effect of impairing or nullifying the recognition,*

*enjoyment or exercise on an equal basis with others, of privileges, legal interests, rights, benefits and treatment, in the political, economic, social, cultural, civil, religious, educational or any other field, and includes all forms of discrimination including denial of reasonable arrangements...”*

Mr. Speaker, it must be recognized that persons with disabilities can only be effectively integrated into society if there is an obligation to make reasonable arrangements. Reasonable arrangements include making the necessary and appropriate modifications to ensure that a person with a disability can participate in all areas of life in the society. This includes the provision of assistive aides such as:

- Hearing devices
- Wheelchairs
- Prosthetic appliances
- Computer software and
- The use of interpreters and taped audio visual recorded texts

Mr. Speaker Part II of the Bill legally establishes the Jamaica Council for Persons with Disabilities (JCPD). This body now exists as a Department of the Ministry of Labour and Social Security; and after the passage of this Bill, will be a body corporate, the constitution of which is set out in the First Schedule to the Bill.

The function of the JCPD includes advising the Minister on matters pertaining to persons with disabilities and on current trends, policies and programmes concerning persons with disabilities, monitoring the operation of such trends and conducting public education programmes in relation to the Act.

Clause 7 establishes a Board of Management of the JCPD which is responsible for the general affairs of the Council. The Second Schedule to the Bill sets out the constitution of this Board.

In an effort to ensure that the interests of persons with all types of disabilities are protected, the Board will include a minimum of seven members from groups of persons with the following disabilities - the deaf, blind and visually impaired, physically disabled and the intellectually disabled.

It must be noted, Mr. Speaker, that the Council is also responsible for the maintenance of a confidential register with the particulars of persons with disabilities. Persons who are already registered with the JCPD are not required to re-register. This registration requirement will assist in the collection of adequate data on the number of persons with disabilities, the nature of their disabilities and their socio-economic condition. The aim in all of this is to enable proper planning for their needs.

Mr. Speaker, one of the central provisions of this Bill is the prohibition of discrimination and the removal of barriers in the areas of: education and training, employment, political office and public life, health care, housing and transportation. This will create an enabling environment where persons with disabilities can integrate into and participate in all aspects of society.

Mr. Speaker, it has long been recognized that education is key to the development of an individual and the society as a whole. It is therefore imperative that a person with a disability is granted access to education. The Bill, therefore, stipulates that a person with a disability shall not be prevented from being enrolled at or attending an educational or training institution, irrespective of whether it is a private or public institution.

Additionally, the educational or training institution is required to provide the support necessary to ensure that a person with a disability has the most reasonable access to the education or training provided, access to the facilities and that reasonable arrangements are made. A person who conducts training examinations in relation to licensing or certification is required to ensure that the examinations and courses offered are carried out in a manner, and with facilities accessible to, persons with disabilities.

In addition, the Minister of Education is required to make reasonable arrangements within the education system to facilitate the education of persons with disabilities.

Mr. Speaker, I wish to make it abundantly clear that this Administration will not condone in any shape or form discrimination against persons with disabilities in the field of employment. There will be no tolerance of this abhorrence under our watch since the utilization of all available human resources, in our view, is essential to this nation's growth agenda going forward.

To this end, Part IV [4] of the Bill prohibits an employer from discriminating against a person with a disability. There are numerous qualified persons with a disability who have surmounted tremendous odds to obtain their qualifications and it is unconscionable for some employers to seek to discriminate against these persons purely on the basis of their disability.

As such, Mr. Speaker, employers will be prohibited from discriminating in the terms of employment offered to the person with a disability, in relation to opportunities for promotion, transfer, training or the receipt of any other benefit, or by dismissing or subjecting him/her to other detriment.

The employer is also under a duty, Mr. Speaker, to make reasonable arrangements to remove any disadvantage which the employee with a disability may suffer as a result of any employment arrangement made by, or on behalf of, the employer or the physical feature of the premises occupied by the employer.

Mr. Speaker, in recognition of the fact that some persons may become disabled during employment, this far-reaching Bill makes provision for such an eventuality.

That is to say, Mr. Speaker, if an employee becomes disabled on the job or as a result of some other circumstance unrelated to the job, and is no longer capable of executing the task required under the employment contract, the employer should seek to re-deploy that employee to another position. But, this new position should be commensurate with the current skills and abilities of the employee and the employee should not suffer a loss of remuneration or benefits in the process.

However, it is envisioned that an employer may not always be in a position to re-deploy the employee. In this case, the employer can seek to establish that there is a disproportionate or undue burden.

Mr. Speaker, it is a fundamental right in any democratic society that every citizen is afforded the opportunity to participate in political office and public life. With this understanding in mind, Mr. Speaker, I wish to call our attention to Part VIII [8] of the Bill, which seeks to ensure that this right is to be extended to persons with disabilities.

In fact, Mr. Speaker, this section of the Bill addresses access to health care, in that health care providers are to provide health care without discrimination on the basis of a disability, and persons with disabilities should be able to access general health care services and facilities. Furthermore, the health care to be provided should extend to health services required given a person's disability which will include:

- Screening
- Early detection
- Treatment
- Rehabilitation
- Identification and intervention and
- Services designed to prevent or minimize any further disability.

Mr. Speaker, the ability to access housing has always been a vexing issue for persons with disabilities. Part IX [9] of the Bill has therefore been devoted to addressing this issue. According to Clause 36, the owner or the agent of the owner of existing private premises (a premises in existence or under construction before the day the Act comes into effect), who intends to rent or lease the premises, is required upon request by a person with a disability, to make, or cause alterations to be made to the premises, if it is reasonably practicable to do so. These alterations are to be made in order to ensure that the premises are accessible to, and usable by, a person with a disability.

Mr. Speaker, the duty to make alterations also applies to public or commercial premises. The facilities to be altered in these premises include:

- Bathrooms
- Telephones
- Drinking fountains and
- Emergency exits, if any

This duty to make alterations to premises will not apply where it is demonstrated by the owner or agent that it is structurally impractical to meet the requirements of the Act. The rationale for this exception is that it may be impossible or impractical to make the necessary alterations to some existing structures. Additionally, the owner, or agent, may establish that to effect the alterations would constitute a disproportionate or undue burden.

Clause 37 of the Bill speaks to new premises. Mr. Speaker, as regards public or commercial premises, the construction of which began on or after the day this Act comes into effect, the owners or agents are required to ensure that the premises being constructed are readily accessible to, and usable by, a person with a disability; are built in accordance with the National Building Code, and are designed in such a way as to make the common areas accessible to a person with a disability.

We understand, Mr. Speaker, that it will not be possible for alterations to be made to premises overnight. Hence, in recognition of this fact, the owner, occupier or operator of premises in existence before the day appointed for the Act to come into effect, has twenty-four [24] months to make the necessary alterations.

This period will start running from the day appointed for the Act to come into effect and will end twenty-four [24] months after this date.

Mr. Speaker, the owner, occupier or operator of premises which are under construction immediately before the day appointed for the Act to come into effect, also has twenty-four [24] months to make the necessary alterations or until the date the construction of the premises is completed (whichever is earlier). No action shall lie against the owner, occupier or operator of the premises during these periods for breach of the provisions of the Act.

Mr. Speaker, it is envisioned that in some instances the person with a disability who is the Lessee of the premises may wish to make the necessary alterations to the premises to make same accessible and usable. This individual should submit a written request to the Lessor of the premises in an effort to obtain his/her permission before embarking on these alterations. The Lessor has thirty [30] days from the receipt of the request to communicate his/her consent or refusal.

However, the Lessor must be forewarned that his/her consent cannot be unreasonably withheld and that the decision is subject to review by the Tribunal established under this Bill.

Mr. Speaker, discrimination against a person with a disability in relation to housing will not be permitted by this Administration. Clause 39 of the Bill specifies that any person authorized to sell, lease or otherwise dispose of premises shall not knowingly discriminate against a person with a disability.

This prohibition against discrimination includes: offering different terms and conditions to the person with a disability, and refusing to dispose of the premises to the person. Additionally, a person who manages a premises or facility is not permitted to discriminate against a person with a disability.

Mr. Speaker, it is a truism that there continues to be a shortage of housing for persons with disabilities, and this has prompted this Administration to do its part in ensuring that housing is reserved for persons with disabilities in National Housing Trust Schemes.

But, as a country, Mr. Speaker, we can do much more in this regard, which is why I wish to use this opportunity today to appeal to developers within the private sector to partner with the Government in offering housing solutions to persons with disabilities.

There is no doubt in our collective mind, Mr. Speaker, that should private developers agree to construct a certain amount of housing solutions in each housing development island-wide which are accessible to, and usable by, persons with disabilities, the problem of housing shortage *vis-a-vis* persons with disabilities would be significantly alleviated.

Mr. Speaker, in relation to transportation under the Bill, the Minister with responsibility for public passenger vehicles is to ensure that as far as is practicable, public passenger vehicles

are accessible to, and usable by, persons with a disability. Public passenger vehicles include motor vehicles or any other conveyance for transport by road, rail, air or water that provides the general public with a general or special transportation service on a regular or continuing basis.

**“DISPROPORTIONATE AND UNDUE BURDEN”**

Mr. Speaker, it would have been noted that in many instances reference has been made to the term ‘disproportionate and undue burden.’ This term is in keeping with language used in the UN Convention on the Rights of Persons with Disabilities. It provides a mechanism by which the Tribunal can measure whether or not it was reasonable for the party against whom a complaint was made by a person with a disability to refuse to take, or not to take, the action complained of.

In order to determine whether there was a ‘disproportionate or undue burden,’ the following must be evaluated:

- The nature of the benefit likely to accrue to, or the detriment likely to be suffered, by any person concerned.
- The effect of the disability on a person concerned.
- The financial circumstances of the person concerned who is claiming disproportionate or undue burden.
- The estimated amount of expenditure or other allocation of resources required by the person claiming disproportionate or undue burden, and whether it is reasonably proportionate to the benefit likely to accrue.

However, Mr. Speaker, the Bill does not leave the person with a disability ‘out in the cold’ in a case where a disproportionate or undue burden has been established. In such instances, the Government will have to facilitate the needs of the person with a disability as far as is practicable.

Mr. Speaker, this Bill would be ineffective without a mechanism for the making of complaints and for resolving these complaints. It is therefore important to note that a person with a disability, who is aggrieved by an act of discrimination, or any other breach of the Disabilities Act, can make a written complaint to the Jamaica Council for Persons with Disabilities (JCPD) pursuant to Clause 16 of the Bill.

The complaint may also be made by the caregiver of such a person, which includes a parent or a legal guardian.

Mr. Speaker, with your permission, I wish to briefly pause at this juncture to propose an amendment to the Bill. As the Bill currently stands, Mr. Speaker, there is no stipulated time-frame for a complaint to be lodged with the Jamaica Council for Persons with Disabilities (JPDC).

This omission, Mr. Speaker, is clearly untenable since an individual could lodge a complaint many years after an act of discrimination or any other breach of the Disabilities Act has occurred. In the circumstances, then, and more important, in the interest of justice, it will be recommended at the Committee stage that Clause 16 of the Bill is amended to specify that a person so aggrieved by an act of discrimination should lodge a complaint with the Council within twenty-four [24] months of the date on which the matter constituting the complaint arose.

Over and against the proposed amendment, Mr. Speaker, I wish to draw attention to the fact that the complaint may be referred for alternative dispute resolution with the consent of the parties, or it can be referred to the Disabilities Rights Tribunal for settlement.

This Tribunal, Mr. Speaker, will be established pursuant to Clause 15 (1) of the Bill to assist in the settlement of complaints; and similarly to the Industrial Disputes Tribunal, the Awards falling under it are final and conclusive, and can only be challenged in the Supreme Court on a point of law.

Mr. Speaker, let me advise this Honourable House that the Disabilities Rights Tribunal will be constituted of persons with the requisite skills, experience, qualifications and knowledge to properly hear and settle complaints, and that the Chairman and Deputy Chairman will be appointed by the Minister of Labour and Social Security after consultation with stakeholders.

These individuals, Mr. Speaker, must have at least seven years' experience as Attorneys-at-Law; and at least one member of the Tribunal will be appointed by the said Minister of Labour and Social Security from organizations which represent persons with disabilities and appear to the Minister to have sufficient knowledge of disability issues.

At least one other member of the Tribunal, Mr. Speaker, should have knowledge, or experience, in one or more of the following fields:

- Quantity surveying
- Building or construction
- Economic
- Finance or
- Accounting.

Mr. Speaker, it is an offence under the Bill to assault or obstruct an authorized person in the performance of his/her lawful functions under the Act, or to knowingly give false or misleading information. The penalty for these offences on summary conviction before a Resident Magistrate, is a fine not exceeding one million dollars [\$1,000,000] or imprisonment for a term not exceeding six [6] months, or both such fine and imprisonment, in the case of an individual.

A body corporate which commits an offence is liable to pay a fine not exceeding one million dollars [\$1,000,000] and each Director, Manager, Secretary or other officer is liable on summary conviction to pay a fine not exceeding five hundred thousand dollars [\$500,000] or face imprisonment for a term not exceeding six [6] months, or both such fine and imprisonment.

Mr. Speaker, while this Bill will go a long way in removing barriers and addressing discrimination being faced by persons with disabilities, it is patently clear that as a Government we cannot 'legislate' a change in attitude towards such persons. In light of this fact, I wish to take this opportunity to remind the nation as a whole that life is so configured that anyone irrespective of their station in life can become disabled at anytime in their life.

In light of this reality then, Mr. Speaker, I am appealing to my fellow Jamaicans to graciously extend to persons with disabilities the respect they deserve, and to patriotically open to them

doors of opportunities previously closed to enable them to contribute meaningfully to the growth and development of the society.

Experience globally has shown, Mr. Speaker, that in the main, persons with disabilities are not hankering after hand-outs, or, for that matter, special treatment. What they seek instead is what Peter Tosh lamented in song- that is, equal rights and justice. They want the equal enjoyment of privileges, interests, benefits and treatment to that afforded the so-called able bodied individual.

Granting equal rights and justice to persons with disabilities cannot be beyond a country whose national Motto – “*Out of Many One People*” – symbolises our acceptance of the principle of unity- in- diversity as the cornerstone of our defining characteristic as a people of grit, courage and determination, in the face historically, of seemingly insurmountable odds.

### **CONCLUSION**

Mr. Speaker, the region and the global community awaits the response of this Parliament to this ground-breaking piece of legislation before us known as the Disabilities Bill 2014.

Our ancestors who have gone on before us wait with baited breath to see if we will liberate the full potential of sons and daughters of the soil whose contribution to nation building is yet to be fully realised.

Our great national heroes now look to us for that signal to confirm that their struggles on our behalf, while they lived, were not in vain, and that as their legatees we are capable of guiding this country into the 21<sup>st</sup> Century with common sense and compassion, and a genuine willingness to liberate the human potential of the mass of the population.

Mr. Speaker, colleagues of this Honourable House: Jamaica has waited a decade for this Disabilities Bill. Let us delay no more! We have the wherewithal in this country to move people from disability to superability. Let us delay no more!

It is time for us, as Government and as Opposition, to come together in this historic effort and unite to lift a critically important segment of our population from the narrowing, cramping circumstances of their lives. Let us delay no more!

Let us, Mr. Speaker, signal to the world – in the trade-mark pose of Usain Bolt – that, as a country, we are more than capable of forgetting their disabilities. We have it within us to point them upwards, so that they can claim the length and breadth of this great isle, Jamaica, as truly their own- and by extension, the world. Let us delay no more!

So, Mr. Speaker, on behalf of the Government and the community of disabled persons in Jamaica, and in the name of our great ancestors, I now respectfully invite this Honourable House to consider, with a view to passing into law, the provisions of the Disabilities Act 2014. I thank you.

---

**CLOSING STATEMENT**  
The Hon. Derrick Kellier, CD, MP  
Minister of Labour and Social Security

**DEBATE ON THE DISABILITIES ACT**  
**TUESDAY, JULY 22, 2014**

---

Mr. Speaker, from the various contributions made by my colleagues in this Honourable House today, the seriousness of this Bill is fully appreciated. Profound thanks and gratitude to them all for their full support and backing of this Bill.

We have taken note of all the points made in the various contributions made to the debate, and the recommendations that follow there from. And so, Mr. Speaker, I want to give the absolute assurance that what is contained in this Bill is not rhetoric or a set of platitudes.

The Bill contains commitments by the Government which have now to be translated into action.

There is no doubt Mr. Speaker, that the full realization of this Bill and the outcomes that we are striving to achieve will require a substantial deployment of resources.

The Jamaica Council for Persons with Disabilities (JCPD) which is to enjoy the status of a Corporate Body will have to be equipped with the resources to build adequate and appropriate facilities, utilize trained professionals, and very importantly, maintain a rigorous system of monitoring.

The tribunal will function similar to our present Industrial Dispute Tribunal (IDT) with qualified persons who can objectively and professionally process the various complaints that will be reported to it. This new organizational structure will be developed and the budget necessary to implement this Bill will of necessity have to be immediately pursued.

Mr. Speaker, let us not lose sight of the fact that the disabled community comprising over 10% of the population have very high expectations of us as leaders to put in place a Bill that addresses the hopes and aspiration.

So in closing Mr. Speaker, I seek the full cooperation of both sides of this House to put in place the necessary structures to accommodate this Bill, notwithstanding the constraints facing the Ministry of Finance and Planning.

Mr. Speaker, I thank once again members of this House for their support and cooperation in the debate surrounding the Disabilities Bill 2014.