

# **NCOSS Submission to the NSW Disability Inclusion Bill**



**February 2014**

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## **ABOUT NCOSS**

The Council of Social Service of NSW (NCOSS) is the peak body for the non-government human services sector in NSW. Through its organisational membership, NCOSS represents a vast network of service delivery and consumer groups.

NCOSS has a vision of a society where there is social and economic equity, based on cooperation, participation, sustainability and respect.

We work with our members, the NSW Government and other relevant agencies, towards achieving this vision in New South Wales.

## **INTRODUCTION**

NCOSS appreciates the opportunity to provide this submission on the NSW Disability Inclusion Bill 2014.

This submission is structured in three sections. The Overview and Recommendations summarise the key issues and recommendations contained in the submission.

The General Comments section provides feedback on general aspects of the Bill and related issues and which in some instances pertain to more than one area of the draft legislation.

The Specific Comments section provides detailed feedback and discussion on particular clauses of the Bill or parts thereof.

## **OVERVIEW AND RECOMMENDATIONS**

NCOSS supports the NSW Disability Inclusion Bill and its provisions in relation to the development of the State Disability Inclusion Plan and mandated Disability Action Plans for development by government departments and local councils. We strongly suggest that the legislative framework would be strengthened through the appointment of an ongoing Minister for Disability Inclusion would also send a strong message about the importance of the legislation and the NSW Government's commitment to support people with disability.

Rights based Objects and Principles involving the presumption of capacity and informed choice of people with disability, and an emphasis on participation and legislated safeguards are critical to the achievement of genuine inclusion of people with disability in the NSW community. So too will be the availability of well funded, effective independent advocacy and information services for people with disability and their families.

In developing this submission, NCOSS has consulted with the NSW Disability Network Forum<sup>iii</sup>, the Assistive Technology Community Alliance of NSW<sup>iii</sup>, the NSW Community Care Issues Forum<sup>iv</sup>, the NSW Disability Advocacy Network<sup>v</sup> and others in the disability and related sectors.

## **GENERAL:**

NCOSS recommends that:

1. There must be an ongoing NSW Minister for Disability Inclusion to administer the legislation, provide leadership and to build on progress to date in improving access, inclusion and participation for and with people with disability in NSW.
2. The Disability Inclusion Bill should emphasise the word participation as part of its Objects and throughout the wording of the Bill.
3. The legislation should indicate more clearly which provisions are ongoing, which cease at a particular time, and when that will be.
4. The Bill should make direct reference to and includes the role of independent advocacy and information to support people with disability (and their families and carers).

## **SPECIFIC:**

NCOSS recommends:

5. The addition of the words *and participation* in Clause 3 Point (b) so that it reads:  
*to promote the independence and social and economic inclusion and participation of people with disability*
6. The addition of the words “equal treatment, inclusion and non-discrimination” alongside respect in general principle Clause 4 point 5:  
*People with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs.*
7. That more appropriate wording in Clause 4 Point (11) would be:  
*The special needs of children with disability as they mature, and their right to respect as equal members of the community, must be supported and upheld.*
8. The addition of a General principle on the recognition and presumption of capacity of people with disability.
9. That the right to, exercise of and provision of independent advocacy and information to support people with disability must be included in the General Principles.
10. That the language and intent of Clause 5 be reframed to begin with the person with disability to align with Clause 4 General principles.
11. That children with disability and families become an additional “particular group” whose needs are recognised in the principles under Clause 5.

12. That the Bill requires that the State Disability Inclusion Plan give effect to the General Principles of the Act (Clause 4) and the Principles recognising the needs of particular groups (Clause 5).
13. That the review of the State Disability Inclusion Plan be tabled as soon as practicable but no later than 6 months after the end of the 4 year period after the day the Department is required to have the Plan.
14. That the Bill requires that all Disability action plans give effect to the General Principles of the Act (Clause 4) and the Principles recognising the needs of particular groups (Clause 5).
15. The addition of disability representative organisations in the consultation process for the development of Disability Action Plans. [Clause 10, points 2,3]
16. The addition to Clause 10 (3) (b) (ii) of the words *in appropriate and accessible formats* to read  
*(ii) providing access to information in appropriate and accessible formats,*
17. Clause 10 Point 5: That a timeframe for the completed disability action plans to be publicly available be identified in the Bill for reasons of fairness, transparency and accountability. The plans should be provided as soon as practicable but no later than 4 weeks following the day it is required to have disability action plans.
18. That the timeframe is identified in the Bill for the lodging of annual reports to Parliament on the implementation of Disability Action Plans. The Minister should table the report on the implementation of the plans no later than June 30th each year. (Clause 11)
19. The addition of disability representative organisations in the consultation process for the review of disability action plans. (Clause 12)
20. That in developing, updating and/or amending the Guidelines for preparing Disability Action Plans, the Director-General must consult with people with disability and disability representative organisations. (Clause 13)
21. An additional function for the Disability Council to advise on emerging issues relevant to people with disability. (Clause 16)
22. That a mid-term review of the Act be conducted by the Minister with reports being made public and tabled in both Houses of Parliament. (Clause 61)
23. That the definition of *funded provider* in clause 25K of Part 3B Protection of People with Disability of the Amendment of the Ombudsman Act 1974 No 68 be changed to include all organisations that receive departmental funding by deleting the words “living in supported accommodation” to:

*funded provider means an organisation receiving financial assistance under the Disability Inclusion Act 2014 to provide supports and services for people with disability.*

24. That the Bill stipulate that assisted boarding houses remain under the jurisdiction of the NSW Ombudsman.(Part 3B Amendment of the Ombudsman Act)

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## GENERAL COMMENTS

### Minister for Disability Inclusion

While the NSW Disability Inclusion Bill stipulates there will be a Minister responsible, it does not stipulate that there will be a Minister for Disability Inclusion. NCOSS strongly recommends there be a NSW Minister for Disability Inclusion - not just any Minister - with an ongoing role, in administering the Bill. There is real danger that the hereto good leadership in working towards long overdue improvements in access, inclusion and participation for and with people with disability in NSW will be lost without an identified Minister principally responsible for overseeing and advising on disability issues, receiving reports and advice from the Disability Council and ensuring that goals and strategies under the State Disability Inclusion Plan are implemented and advanced.

Further, the NSW Government will be continuing to make substantial financial contributions to the provision of specialist disability services through the NDIS. According to the Australian Bureau of Statistics *2012 Survey of Disability Ageing and Carers*, 18.5% of people in Australia live with a disability<sup>1</sup>. In NSW, this means that over 1.4 million people with disability live, work, use facilities, services and are among the community. The NDIS is expected to provide direct support to approximately 140,000 people with disability in NSW towards community inclusion and participation.

The appointment of a NSW Minister for Disability Inclusion on an ongoing basis will send a strong message about the NSW Government's commitment to people with disability in NSW.

### Location of Restrictive Interventions

NCOSS supports the need for a legislative instrument covering restrictive interventions. The NSW Disability Inclusion Bill states in its Overview that:

*people with disability have the same human rights as other members of the community, promoting the independence and social and economic inclusion of people with disability, enabling people with disability to exercise choice and control in the pursuit of their goals..<sup>2</sup>*

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<sup>1</sup> 2012 Survey of Disability Ageing and Carers; Disability Characteristics  
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3A5561E876CDAC73CA257C210011AB9B?opendocument>

<sup>2</sup> Disability Inclusion Bill 2014, page 1, Explanatory Note, Overview of Bill:  
[http://www.adhc.nsw.gov.au/data/assets/file/0005/281336/public\\_consultation\\_draft.pdf](http://www.adhc.nsw.gov.au/data/assets/file/0005/281336/public_consultation_draft.pdf)

This is a worthy demonstration of Inclusion to the people of NSW. It is vitally important that there is a legal framework that governs the practice of restrictive interventions in NSW.

In consultations held by NCOSS regarding the Bill, there were very strong views put that the legal framework on restrictive interventions should not be located within the NSW Disability Inclusion Bill, as such interventions contradict the principles on which the Bill is based.

NCOSS agrees that such provisions sit very uneasily in a Bill that seeks to give effect to the rights of people with disability. However it is unquestionably necessary that provisions for restrictive interventions are legislated to provide essential safeguards for people with disability. We also acknowledge that the inclusion of such provisions in the Bill provides a clear link to the Principles and Objects which must govern decisions and processes concerning the use of such practices.

### **Participation as well as inclusion**

NCOSS recommends that the Inclusion Bill should emphasise the word *participation* as part of its Objects and throughout the wording of the Bill. Participation is critical because, for many people with disability, just being present does not mean that the person is actually participating. Inclusion for some is only the first step. With the addition of participation, the NSW legislation will more fully align with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) as well as the National Disability Insurance Scheme (NDIS).

### **Legacy and transition provisions**

The Information Booklet highlights *legacy* provisions, being those of an ongoing nature, and *transition* provisions, being those which cease at the completion of the transfer to the NDIS. This distinction is made clear in the Information Booklet and Factsheet but is not evident within the Bill itself. NCOSS recommends that the legislation should indicate more clearly which provisions are ongoing and which cease, and when this will occur.

### **Independent information and independent advocacy**

The functions of independent advocacy and information actively support and put into practice the objects and principles of the Bill. The provision of independent advocacy and information can assist people with disability with a range of options to make informed and supported choices as well as, in some cases, possibilities not previously considered.

NCOSS strongly recommends that the Bill makes direct reference to and includes the role of independent advocacy and information to support people with disability (and their families and carers).

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## SPECIFIC COMMENTS

### Part 1 Division 2 Objects and principles

#### Clause 3 Objects of Act

NCOSS recommends the addition of the words '*and participation*' in Point (b) so that it reads:

*to promote the independence and social and economic inclusion and participation of people with disability,*

#### Clause 4 General Principles

Point (5) *People with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs.*

It is not enough to simply respect difference. NCROSS has received strong feedback that "respect" in this instance can be widely interpreted and has not, over many years, resulted in greatly improved responses or equitable treatment or access for many groups. NCROSS therefore recommends the addition of the words "equal treatment, inclusion and non-discrimination" alongside respect in this general principle.

Point (11) *The special needs of children with disability as they mature, and their right to respect as equal members of the community, are to be respected.*

Some respondents to NCROSS found the term "as they mature" confusing. Children with disability should be treated as other children but with the considerations and supports they need to act as other children do. There was a suggestion that the Bill could source and adopt appropriate language from the UNCRPD.

Further, the language of this point is clumsy in that it will be difficult to interpret: their right to respect is to be respected. NCROSS recommends that more appropriate wording would be:

*The special needs of children with disability as they mature, and their right to respect as equal members of the community, must be supported and upheld.*

#### Recognition and presumption of capacity

There must be a general principle on the recognition and presumption of capacity of the person with disability and their right to exercise that capacity in decisions that affect their life. At present the Bill does not contain any reference to this. The General Principles is a good starting point and brings the Bill into line with NDIS Act Section 4:

People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.<sup>3</sup>

and Section 17A which states:

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<sup>3</sup> NDIS ACT 2013 [www.comlaw.gov.au/Details/C2013A00020](http://www.comlaw.gov.au/Details/C2013A00020)

People with disability are assumed, so far as is reasonable in the circumstances, to have capacity to determine their own best interests and make decisions that affect their own lives.<sup>4</sup>

NCOSS recommends the addition of a General Principle on the recognition and presumption of capacity.

### **Right to make informed decisions and be supported to do so**

There must be a general principle on the right for a person with disability to make informed decisions and to be supported to do so. This will align with UNCRPD and the NDIS as described above.

### **Advocacy and Information**

NCOSS recommends that the right to, exercise of and provision of independent advocacy and information to support people with disability must be included in the General Principles. NCOSS suggests the addition to Clauses 8 and 9 of “including access to independent advocates and supporters to assist them to do so”. This will read:

*(8) People with disability have the right to access information in a way that is appropriate for their disability and cultural background, and enables them to make informed choices, including access to independent advocates and supporters to assist them to do so.*

*(9) People with disability have the same right as other members of the community to pursue any grievance, including access to independent advocates and supporters to assist them to do so.*

See comments on financial assistance for the provision of advocacy and information under Part 5 in this submission.

### **Clause 5 Principles recognising the needs of particular groups**

The language in the General Principles correctly focuses on the person with disability. In stark contrast, the language in the principles about particular groups begins with disability service providers. There are serious problems and implications that arise from this language.

1. Barriers and needs, specific and additional, experienced by people with disability from particular groups do not occur solely in relation to disability service providers. This is recognised in framing the language of the General principles from the viewpoint of the person with disability. Clause 5 should be similarly phrased in order to honour and recognise the person with disability as well as acknowledging their additional and specific needs, considerations and supports.
2. The definition in the Bill of *disability service providers* refers to that part of the Department administering the Act and to organisations receiving funding under the

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<sup>4</sup> NDIS ACT 2013 [www.comlaw.gov.au/Details/C2013A00020](http://www.comlaw.gov.au/Details/C2013A00020)



Act<sup>5</sup>. Consequently, if Clause 5 remains unchanged, the principles recognising the needs of particular groups will become largely transition provisions which cease at the transfer to the NDIS, then only covering a small section of the Department and possibly no funded disability service providers. The needs of Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, women and girls with disability and children with disability and families (see below) must be an ongoing responsibility for all entities providing any form of access to all people with any disability, including and especially that described under the National Disability Strategy.

NCOSS recommends that the language and intent of Clause 5 be reframed to begin with the person with disability to align with Clause 4 General Principles.

### **Children with disability and families**

In the General principles of the Bill, Clause 4 (11) states

*The special needs of children with disability as they mature, and their right to respect as equal members of the community, are to be respected.*

This accords with NCOSS consultation feedback that children with disability are a special needs group. Consequently, NCOSS recommends that Children with disability and families become an additional “particular group” whose needs are recognised in the principles under Clause 5.

### **General principles**

NCOSS received feedback that it should be made clear that the General Principles should apply to the particular groups in Clause 5.

## **Part 2 Division 1 State Disability Inclusion Plan**

### **Clause 8 Requirement for State Disability Inclusion Plan**

NCOSS supports the requirement for a State Disability Inclusion Plan, as did the consultation feedback.

NCOSS recommends that the Bill requires that the State Disability Inclusion Plan must give effect to the General Principles of the Act (Clause 4) and the Principles recognising the needs of particular groups (Clause 5).

### **Clause 9 Review of plan**

*Point (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after it is completed.*

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<sup>5</sup> Disability Inclusion Bill 2014, page 4, Definitions,  
[http://www.adhc.nsw.gov.au/data/assets/file/0005/281336/public\\_consultation\\_draft.pdf](http://www.adhc.nsw.gov.au/data/assets/file/0005/281336/public_consultation_draft.pdf)

A timeframe for the completed review report to be tabled in Parliament must be identified in the Bill for reasons of fairness, transparency and accountability. NCOSS recommends that the review of the State Disability Inclusion Plan be tabled as soon as practicable but no later than 6 months after the end of the 4 year period after the day the Department is required to have the Plan.

#### **Clause 10 Requirement for Disability Action Plans**

NCOSS supports the requirement for Disability Action Plans.

#### **Reflect principles**

NCOSS recommends that the Bill requires that all Disability Action Plans must give effect to the General Principles of the Act (Clause 4) and the Principles recognising the needs of particular groups (Clause 5).

#### **Representative disability organisations**

*Point (2) (a) must consult with people with disability and have regard to any guidelines issued under section 13, AND*

*Point (3) (c) include details of the department's or council's consultation about the plan with people with disability,*

NCOSS supports the requirement for consultation with people with disability. However, for the plans to be effective, this consultation must be genuine, informed and inclusive. Representative disability organisations already have a history of and mechanisms for consulting with their members and constituents on a range of issues and policies. Accordingly, NCOSS recommends the addition of disability representative organisations in the consultation process for the development of Disability Action Plans.

#### **Appropriate and accessible information**

*Point (3) A disability action plan must:*

*(b) include strategies to support people with disability, including, for example, strategies about the following:*

*(ii) providing access to information,*

There must be a legislative requirement for Disability Action Plans to provide information in appropriate and accessible formats if the stated commitment to people with disability in the principles is to be upheld.

NCOSS recommends the addition Clause 10 (3) (b) (ii) of the words to *in appropriate and accessible formats* to read

*(ii) providing access to information in appropriate and accessible formats,*

#### **Information on Disability Action Plans**

NCOSS received feedback that the proactive dissemination of information regarding Disability Action Plans will be critical to their implementation with successful outcomes. Government agencies and Local Councils must be required to actively promote and disseminate information about the plans throughout the community.

### **Resources for Disability Action Plans**

Similarly, Disability Action Plans that simply 'rehash' existing plans or contain objectives, targets and measures which are not new and which may have already been completed are not in the spirit of the Disability Inclusion Bill. The Disability Action Plans must be proposals for measurable improvement against current arrangements with real resources identified and committed to achieve the strategies. The Minister and the NSW Disability Council must monitor and report on progress towards inclusion and participation for people with disability in the work of Government agencies and Local Government.

### **Specified timeframes**

Point (5) *A government department or local council must, as soon as practicable after the day it is required to have a disability action plan:*

- (a) give a copy of the plan to the Disability Council, and*
- (b) make it publicly available.*

A timeframe for the completed Disability Action Plan to be publicly available must be identified in the Bill for reasons of fairness, transparency and accountability. NCOSS recommends that the plans be provided as soon as practicable but no later than 4 weeks following the day it is required to have Disability Action Plans.

### **Clause 11 Report on implementation of plans**

#### **Specified timeframes**

This section requires that government departments and local councils report on the implementation of the Disability Action Plans in their annual reports and provide relevant sections of the annual reports to the Minister as soon as practicable. Then the Minister will table a report in both Houses of Parliament on the implementation of the Disability Action Plans as soon as practicable after financial year end.

NCOSS supports these requirements and, as described above, recommends that the timeframe is identified in the Bill for the lodging of annual reports to Parliament on the implementation of the disability action plans. NCOSS recommends that the Minister table the report on the implementation of the plans no later than June 30<sup>th</sup> each year.

#### **Accountability measures**

The commitment to the development, implementation and outcomes of Disability actions plans under the *NSW Disability Services Act 1993* varied widely between agencies and over time. These plans were often allocated no additional resources, sometimes had no designated government officer or position to champion, advise on, implement or monitor the plan, sometimes used tick-box systems for creating a plan and often involved no people with disability. Few of these plans were made public and the good plans often depended on

the commitment of a dedicated government officer with a previously held understanding of disability and a commitment to improvements.

For these reasons and to make the implementation of Disability Action Plans real and effective, the legislation should provide for accountability measures with built in consequences. A real commitment to demonstrating improved outcomes for and with people with disability would be to link Disability Action plans to the performance targets of CEOs of government agencies and local councils.

#### **Clause 12      Review of plans**

*Point (3) In reviewing its disability action plan, the government department or local council must consult with people with disability and have regard to any guidelines issued under section 13.*

NCOSS endorses that requirement for consultation with people with disability on the review of Disability Action Plans. NCOSS strongly recommends the addition of disability representative organisations in the consultation process for the review of disability action plans (see comments under Clause 10 above).

### **Division 3 Guidelines for Disability action plans**

#### **Clause 13      Guidelines**

*Point (1) The Director-General may issue guidelines to assist government departments and local councils to prepare a disability action plan.*

NCOSS recommends that in developing, updating and/or amending the Guidelines for preparing Disability Action Plans, the Director-General must consult with people with disability and disability representative organisations.

### **Part 3      Disability Council NSW**

#### **Clause 15      Membership**

NCOSS is concerned that the minimum membership of 8 is too low, as is the maximum of 12 for the effective representation of issues, the operation of the Council's functions, the achievement of its responsibilities and the advancement of its objectives. NCOSS endorses the new roles under the proposed Act, whereby the Council will require a breadth and depth of expertise from a range of experts with disability.

Accordingly, NCOSS recommends that the Committee structure could operate efficiently and effectively with a minimum of 12 members and a maximum of not more than 16.

## **Clause 16 Functions**

NCOSS supports the functions as stated in the Bill, especially

*(g) to promote the inclusion of people with disability in the community,*

which should be prioritised to appear first. However, given the Council will contain a breadth and depth of expertise and experience from experts with disability, NCOSS recommends an additional function to advise on emerging issues relevant to people with disability.

### **Requirement for information**

Further to Point (3)

*A public or local authority to which a request for information or advice is made is authorised to comply with the request.*

Given the expanded role of the Disability Council to receive and report on Disability action plans, the Bill must provide that any government agency or local council must be required to comply with requests for information from the Disability Council.

## **Clause 17 Assistance to the Disability Council**

*The Minister may give assistance, including financial assistance, to the Disability Council to ensure the proper exercise of its functions.*

NCOSS would note that the capacity to carry out the functions under the Bill will be compromised without adequate support and resourcing. While recognising the pressures Government budgets are under, in adequately resourcing the Disability Council will undermine the purpose and rationale of the Bill.

## **Clause 18 Reporting requirements**

This Clause states that the Minister must require the Disability Council to report on the exercise of its functions, but only if directed to do so.

In line with Disability action plans, the Disability Council must be required in legislation to report annually on its activities and functions to the Minister, and the report must be tabled in Parliament and made publicly available within a specified timeframe. This would increase the transparency of its functions and strengthen implementation of Disability action plans.

## **Part 5 Funding arrangements**

### **Clause 22 Purpose of Part and its achievement**

This Clause stipulates that financial assistance for the purpose of services and supports can be provided to eligible people with disability and organisations during the transition to the NDIS. This makes this Part of the Bill a transition provision.

It is clear that there will be ongoing need for the provision of ongoing financial assistance to organisations for the purpose of support to people with disability in NSW, beyond the implementation of the NDIS. The NSW Government will be responsible for all activities, actions, improvements, access, inclusion and participation of people with disability under the State Disability Inclusion Plan and the Disability action plans. These will be largely informed by the National Disability Strategy (NDS)<sup>6</sup> to which NSW has agreed and which arguably NSW leads in its response in the NDS NSW Implementation Plan<sup>7</sup>.

### **Role of Independent advocacy and information**

A critical contributor to the development of the NDS and the NSW Implementation Plan has been the input of the members of the NSW Disability Network Forum and other independent advocacy and information service providers. NCOSS and others have advocated for the importance of the provision of independent advocacy and information to support a person with disability in being able to access opportunities for inclusion and participation, solve problems at the earliest possible stage, identify barriers and find independent assistance whenever needed.

This will not cease with the introduction of the NDIS, and indeed NCOSS believes demand for this is likely to increase - both for people in receipt of NDIS support, in relation to the other aspects of their lives, and for the many people with disability who will not receive an NDIS funding allocation. The case for ongoing financial assistance for independent advocacy and information is laid out in the Disability Network Forum position paper written for the Ability Links Taskforce in 2012<sup>8</sup>.

### **Clause 23 Meaning of “person in the target group”**

NCOSS supports the expanded definitions of the person with disability included in the target group.

### **Clause 27 Provision of financial assistance**

Please refer to above comments on the role of independent advocacy and information beyond the transition period.

### **Clause 30 Probity checks**

*(5) The organisation must not engage or continue to engage a person as a worker of the organisation if:*

*(a) the organisation is satisfied from the person’s criminal record check that the person has been convicted of a prescribed criminal offence,*

NCOSS supports the legislative requirement of probity checks for workers. Criminal record checks are, however, an important but not sufficient mechanism to manage risk. There are

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<sup>6</sup> National Disability Strategy: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy>

<sup>7</sup> NDS NSW Implementation Plan: [http://www.adhc.nsw.gov.au/about\\_us/strategies/national\\_disability\\_strategy/nds\\_nsw\\_implementation\\_plan](http://www.adhc.nsw.gov.au/about_us/strategies/national_disability_strategy/nds_nsw_implementation_plan)

<sup>8</sup> NSW Disability Network Forum Position Paper on Independent Advocacy and Information; <http://www.ncoss.org.au/resources/DNF/forum/120903-NSW-DNF-Submission-to-the-Ability-Links-NSW-Taskforce.pdf>

also concerns that some groups could be unfairly disadvantaged under a blanket application of this provision. This is exemplified by instances such as:

- A worker who has a prescribed criminal offence in their teens or early adulthood with no offences since that time and perhaps who has been working in a disability organisation as a mature adult (in their late 40s or early 50s) to good effect
- A person who will not be working with people with disability in that organisation in any significant or sustained capacity e.g. cleaner, ancillary staff, etc.
- A person with disability (and their family) chooses a self-managed package with their organisation and decides to employ a familiar and trusted person with a known criminal history to work with them, especially within a specific cultural background or in a rural or regional area.

NCOSS reinforces the importance of probity checks for workers. The above cases demonstrate that the legislation must provide for other forms of risk management in addition to criminal records checks. Safeguards are not about the elimination of risk but are designed to ensure a dignity of risk, that people with disability can make decisions that involve risk and that risk is reasonably managed. A blanket application of this provision could serve to limit opportunities for people with disability in some cases.

## **Part 6 Restrictive interventions**

### **Clause 38 Definitions**

#### ***Behaviour support plans***

Add the words *and with* to the existing definition:

*A behaviour support plan is prepared for and with a person with disability.*

## **Division 2 Restricted Practice Authorisation Panels**

During NCOSS consultations, it was widely felt that behaviour support plans must be authorised by a panel. The panel must be independent from the organisation implementing the Plan and timeframes in Plans and in subsequent clauses/provisions must be as immediate as possible. Similarly, the Plans must be as transparent to the person with disability and their family or supporters as possible.

### **Other issues**

NCOSS is concerned that the timeframes provisions for emergency use of restraint or seclusion are too long.

NCOSS consultations showed there is widespread support for behaviour support plans to require the consent of the person, and for the Plan to be independently approved and reviewed regularly by a panel. Concern was expressed at the use seclusion at all, and there was strong support for the prohibition of seclusion for people under 18 years.

NCOSS suggests that the Victorian policy could provide a better model, in specifying that the provider has the onus to resolve the issue which leads to challenging behaviours, and to

establish meaningful communication (policy uses the term “inclusive communication”) with the person. These kinds of provisions would strengthen this part of the Bill.

NCOSS supports the recommendations in the *Rights Denied* report from People with Disability Australia, particularly the section on regulation of restrictive practices regarding the appointment of a Senior Practitioner with responsibilities for determining, monitoring, overseeing, and adjudicating practices surrounding restrictive interventions<sup>9</sup>.

The role of advocates in the issue of restrictive interventions must be clarified and made transparent in the Bill. People with disability must have the support they need to understand their situation as well as any consent they are asked to provide in their own interests.

## **Part 7      Miscellaneous**

### **Clause 61      Review of Act**

Due to the fact that the Bill contains both ongoing legacy provisions and shorter term transition provisions, NCOSS recommends that a mid-term review of the Act be conducted by the Minister with reports being made public and tabled in both Houses of Parliament.

Further Ministerial reviews of the Act should be ongoing at 5 year intervals to ensure that legislation remains current with rights and opportunities for people with disability.

In conducting the review, the Minister should be required to consult with people with disability and their representative organisations.

## **Schedule 4      Amendment of Acts**

### **4.8              Ombudsman Act 1974 No 68**

#### **Part 3B Protection of people with disability**

##### **25K      Definitions**

***funded provider** means an organisation receiving financial assistance under the Disability Inclusion Act 2014 to provide supports and services for people with disability living in supported accommodation.*

Under the *NSW Disability Services Act 1993* and amendments, the NSW Ombudsman has the power to receive and handle complaints and initiate and report on investigations into any organisation and service that receives funding from Ageing, Disability and Home Care under Department of Family and Community Services. This also includes Boarding Houses with people with disability, now known as assisted boarding houses.

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<sup>9</sup> *Rights Denied* PWD 2010; Page 95, section 3.8 *Regulation of restrictive practices*  
<http://www.pwd.org.au/documents/pubs/RightsDenied2010.doc>



The wording of the Bill seems to suggest that only organisations funded for supported accommodation will be covered by the NSW Ombudsman. If this is the case, it is alarming to NCOSS. At present, several non-accommodation based programs supporting people with disability are funded by the state and are slowly transitioning into the NDIS but this process will not be completed until 2018 at the earliest. Such programs include Community Participation, Transition to Work, Life Choices, Active Ageing, Active Linking Initiative, Attendant Care, and some recreation and peer support programs.

It is critically important that the NSW Ombudsman's current powers relating to these programs be retained until the final transition to the NDIS. Otherwise, people with disability receiving services and support under these funded programs and the organisations providing these, will not have access to independent monitoring and complaints handling mechanisms. NCOSS understands that when any person in NSW moves into the NDIS the complaints and review system of the NDIS covers the provision of supports under that system. The roll-out of the NDIS to areas outside the Hunter will not commence until possibly 2016 at the earliest. NCOSS anticipates that this roll-out is likely to be a staged process, possibly region by region, across NSW. No person with disability in NSW in receipt of supports must be left without a mechanism for complaints and recourse in anticipation of the NDIS.

NCOSS recommends that the definition of *funded provider* in clause 25K of Part 3B Protection of People with Disability of the Amendment of the Ombudsman Act 1974 No 68 must be changed to include all organisations that receive departmental funding by deleting the words "living in supported accommodation" to:

***funded provider** means an organisation receiving financial assistance under the Disability Inclusion Act 2014 to provide supports and services for people with disability.*

This should now align the amended Ombudsman Act definition with organisations eligible for financial assistance under Part 5 of the Bill.

### **Assisted boarding houses**

The responsibility for safeguarding the people who reside in assisted boarding houses must remain part of the NSW Disability Inclusion Bill and therefore part of the responsibility of the NSW Ombudsman. The new regulations for boarding houses do not provide the same coverage for complaints to the people with disability who reside in assisted boarding houses as provided by the NSW Ombudsman to people with disability living in funded supported accommodation. Therefore, NCOSS recommends the Bill stipulates that assisted boarding houses remain under the jurisdiction of the NSW Ombudsman.

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## Conclusion

NCOSS appreciates the opportunity to provide input to the NSW Disability Inclusion Bill. During the course of discussions on the Bill, NCOSS received comments pertaining to the regulations and guidelines that will accompany the legislation. Accordingly, NCOSS looks forward to participating in the proposed consultations on the regulations at the appropriate time.

If any further information or clarification on this submission is required, please contact NCOSS Senior Policy Officer Rashmi Kumar at [rashmi@ncoss.org.au](mailto:rashmi@ncoss.org.au) or by telephone at 92112599 ext. 108.

## ENDNOTES

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<sup>i</sup> The NSW Disability Network Forum was initiated in June 2011, and comprises non-government, non-provider peak representative groups whose primary purpose is to promote the interests of people with disability. The aim of the NSW Disability Network Forum (DNF) is to provide a new avenue to build capacity within and across all organisations and groups so that the interests of people with disability are advanced through policy and systemic advocacy.

<sup>iii</sup> The Assistive Technology Community Alliance of NSW is a forum that works to improve the provision of supportive equipment and assistive technology as a basic right of people with disability and comprises organisations of people with disability and carers, service providers, therapists, suppliers and advocacy groups.

<sup>iv</sup> The NSW Community Care Issues Forum brings together a range of non-government stakeholder representatives working in community and sector development involved with in-home and community based supports for older people, people with disability and their carers in NSW.

<sup>v</sup> The NSW Disability Advocacy Network is a coalition of independent community based disability advocacy and rights-based information organisations that advocate with and for people with any disability (from the website [www.ndan.org.au](http://www.ndan.org.au)).