



NCOSS Summary & Analysis: *Disability Inclusion Bill 2014*

10 June 2014

The *Disability Inclusion Bill 2014 (NSW)* was tabled in the Upper House of the NSW Parliament on Wednesday 28th May by the Minister for Disability Services, the Hon. John Ajaka. Once it is passed, the Bill will replace the *Disability Services Act 1993 (NSW)*. This summary and analysis outlines what is in the Bill and some of NCOSS' concerns. This is NCOSS' opinion only and does not reflect the views of the NSW Government.

A draft of the Bill was released in December 2013 for feedback, along with an information paper. The draft Bill and a summary of responses are available at the NSW Ageing, Disability and Home Care (ADHC) website here:

http://www.adhc.nsw.gov.au/about_us/legislation_agreements_partnerships/nsw_disability_services_act_review

The information paper and summary of responses are also available in Easy Read format.

NCOSS' response to the draft Bill is available at NCOSS' website here:

<http://www.ncoss.org.au/resources/DNF/140214-NSW-Disability-Inclusion-Bill-NCOSS.pdf>

Next steps

The Bill will be debated in the Upper House on 17th June. Any concerns can be raised with Minister Ajaka's office before 17th June, as there may be amendments that the Government will table. It is not yet known when the Bill will be considered in the Lower House. The Shadow Minister for Disability Services, Barbara Perry, who is in the Lower House, may move amendments to the Bill.

You can write to Minister Ajaka at:

The Hon. John Ajaka, MLC
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1 Farrer Place
Sydney NSW 2000

Email: office@ajaka.minister.nsw.gov.au

Summary

The information paper released along with the draft Bill outlines the Government's intentions behind the Bill and its provisions. The Bill has two intentions:

- (1) To create a framework for disability inclusion across government including a statewide Disability Inclusion Plan, government agency Disability Action Plans, and to establish the NSW Disability Council as a consultative body on matters relating to people with disability. These are referred to by Government as the 'legacy provisions'.
- (2) To set out provisions for funding, policy and regulation of disability supports and services that are consistent with contemporary approaches to support – these are referred to by Government as the 'transitional provisions'. The transitional provisions will cease to operate over time as the National Disability Insurance Scheme (NDIS) takes over the responsibility for funding, policy and regulation of disability supports.

The Explanatory Note describes what is in each section of the Bill:

[http://parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/243b2a609e6a9291ca257ce5001c53b0/\\$FILE/Exnote%20Disability.pdf](http://parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/243b2a609e6a9291ca257ce5001c53b0/$FILE/Exnote%20Disability.pdf)

Objects and Principles

The Objects and Principles set out in the Bill are intended to be in line with the rights of people with disability as stipulated in the UN *Convention on the Rights of Persons with Disabilities* (CRPD). These rights include the right of people with disability to participate and contribute to social and economic life, the right to make decisions that affect their lives, rights to privacy, and freedom from abuse and neglect.

The Bill also specifies principles relating to particular groups of people with disability, including 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.

Disability Planning

The Bill requires that the NSW Government develops a State Disability Inclusion Plan, to be reviewed every 4 years. A report on the outcome of the plan must be tabled in parliament.

This part of the Bill also requires all government agencies and local councils to have a Disability Inclusion Action Plan that they review every 4 years. The Minister and the Disability Council will receive copies of all Disability Inclusion Action Plans.

This part of the Bill also makes provision for the Government to make guidelines for Disability Inclusion Action Plans.

Disability Council NSW

The Bill sets out who can be a member of the Disability Council, and how many members there can be. It also stipulates the role and functions of the Disability Council. The Disability Council is established under the *Community Welfare Act 1987*. After the *Disability Inclusion Bill* is passed, the Disability Council will be established under the *Disability Inclusion Act* legislation.

Service Standards

The Bill gives the NSW Government power to make service standards for disability services, and for supported group accommodation services. The supported group accommodation standards will not apply to Assisted Boarding Houses as per the meaning in the *Boarding Houses Act 2012*.

Provision of supports and services

This part of the Bill sets out who is in the target group for disability supports and services funded by the NSW Government. The person's disability must be permanent, attributable to an intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of any of those impairments, and results in a need for support.

The Bill gives the Government power to provide disability supports, and to fund disability supports by either directly providing funding to people with disability, or to an 'eligible entity' who will deliver

the services. If the funding (the Bill calls it 'financial assistance') is provided to the person with disability, it can go **directly to the person**, to another person who the person with disability **nominates**, an eligible **plan manager**, an eligible **service provider**, or a combination of all of those. The Department of Family and Community Services (the Department) can set conditions on the provision of any funding.

For any financial assistance provided to a person, the person must make an agreement with the Department setting out the supports and services that will be purchased, the outcomes the person will achieve by using the financial assistance, the time period for the agreement, and any conditions on the agreement. Part of the agreement will include a plan setting out the goals and aspirations of the person relevant to the supports.

For financial assistance to a service provider, the provider must make an agreement with the Department about how they will uphold the principles in the Bill, the purpose of the financial assistance, outcomes that people in the target group will achieve from the financial assistance, how the provider will know that those outcomes have been achieved and any other conditions. Service providers need to comply with the disability service standards and make sure they conduct appropriate criminal record checks on workers every 4 years.

This part of the Bill also specifies that financial assistance for a person or an organisation can be terminated if 'NDIS arrangements' (meaning any agreement or arrangement that the NSW Government enters into with the Commonwealth relating to the NDIS) are in place and for other purposes (some of which will be specified in regulations).

Prescribed criminal offences

The Bill sets out a number of criminal offences. Anyone convicted of these offences is prohibited from working directly with people with disability using government-funded services (except people with disability who receive funding directly to pay for their supports – however, conditions in the person's agreement with the Department might prevent them from employing anyone who is convicted of a prescribed offence).

Residents' amenities accounts

Schedule 3 to the Bill sets out how money held by the Department on behalf of people living at certain residential institutions for people with disability operated by the NSW Government can be used. The Schedule specifies what happens with the money if the residential institution is operating, and what is to happen if the institution closes.

Reportable incidents and the NSW Ombudsman

Section 5.8 of Schedule 5 in the Bill will amend the *Ombudsman Act 1974 (NSW)* to require monitoring by the Ombudsman of certain incidents, and give the Ombudsman the power to investigate. The incidents in supported accommodation for people with disability that are to be reported to the NSW Ombudsman include sexual assault and sexual offences, physical assaults, neglect, certain crimes, and serious injuries. These are 'reportable incidents'.

The Ombudsman is required to keep the systems for handling reportable incidents of the Department and funded providers (service providers who are funded to provide supported accommodation) under scrutiny. The Bill also specifies that funded providers and the Department are required to report to the Ombudsman about investigations into reportable incidents.

Analysis

NCOSS supports the *Disability Inclusion Bill* and many of its provisions in relation to developing a State Disability Inclusion Plan. Many of the provisions in the Bill will be set out in regulations, guidelines and standards, which have yet to be developed and/or reviewed. NCOSS will be interested to see the detail of these guidelines and regulations to make sure they fully support the spirit of the Bill. NCOSS also supports the additional oversight of supported accommodation from the NSW Ombudsman under the requirement for mandatory reporting of certain incidents under this Bill.

NCOSS will be particularly interested in how the Bill is implemented. Specific resources and arrangements will need to be put into place to make sure that the broader community is inclusive, and that people with disability have a voice in decisions that affect them, as well as having access to safeguards.

People with disability must be involved in decisions that affect them

At the moment people with disability and their families do not hold all the information and resources to fully take advantage of all the provisions in the Bill. Most people with disability who require support, and their families, are used to very restricted choices and possibilities for the future. It is therefore vital to ensure that people with disability and families can access appropriate support to fully realise the advantages of person centred approaches that this legislation aims to enact. This support includes:

- **A representative voice** that is well-informed through engagement with people with disability across the community, so that the State Disability Inclusion Plan and Disability Inclusion Action Plans are responsive to people with disability;
- **Independent information provision** to enable well-informed decisions by people with disability and their families;
- **Decision support** so that people with disability can enter into agreements for financial assistance with a clear understanding of how they will use supports to enhance their lives, and what is possible with their funding;
- **Advocacy to safeguard** people where there may be risks of their rights not being fully upheld, such as with investigation of reportable incidents, making complaints, and ensuring appropriate flexibility in their funded supports.

These new approaches to specialist disability supports must occur alongside greater inclusion of people with disability across the rest of the community, which is the aim of the National Disability Strategy. The National Disability Strategy is what all State governments and the Commonwealth Government have agreed to ensure people with disability will be included in all parts of the community. The National Disability Strategy requires each government to develop an

Implementation Plan to give effect to the Strategy. NCOSS understands that the NSW State Disability Inclusion Plan required by the Bill will also serve as NSW's Implementation Plan under the National Disability Strategy. The Bill thus aims to apply the principles of inclusion across the community as well as to specialist supports.

However, to fully achieve access and inclusion, people with disability need to be involved in decisions about mainstream services and systems. Disability Inclusion Action Plans will replace Disability Action Plans under the provisions of this legislation. Disability Inclusion Action Plans will need the input of people with disability to truly address the needs and circumstances of people with disability. Representative and advocacy organisations that provide input to government are a vital part of these processes, and provide support to people with disability to engage with policy and decision making. It is essential that they have adequate resources to do this.

Government must commit specific resources and accountability for outcomes to achieve inclusion

Although there has been great progress in inclusion of people with disability, many people with disability continue to miss out on basic services such as education, and cannot participate in the community because of barriers like physical access. To make a real difference, Disability Inclusion Action Plans will need to have resources committed to them so they can implement change, and need to have robust reporting and monitoring so that the plans achieve real outcomes for people with disability.

Policy and practice must support person centred approaches

The *Disability Inclusion Bill* sets out a range of provisions that contribute to a person centred approach to disability support. Implementing the Bill's provisions will be challenging. These provisions place the power over disability support in the hands of people with disability. Policy and practice must also shift, in line with the person centred direction of this legislation. A framework to measure the outcomes of this legislative change, and improve practice in government would support achieving the aims of this Bill.

Government must take a person centred approach to transitioning services

NCOSS has heard from members concerned about the interaction of this Bill with the *National Disability Insurance Scheme (NSW Enabling) Act 2013* (the *Enabling Act*), which sets out procedures for transferring NSW Government operated disability services and supports to the non-government sector. NCOSS would support the NSW Government to address the aims and principles of the *Disability Inclusion Bill* while giving effect to the *Enabling Act*, so the people using government-operated services gain the benefits of person centred approaches while the ownership of their supports is transferred.

Government must draw on best practice to safeguard vulnerable people while supporting people with disability to have choice and control over their lives

NCOSS also understands that there will be other legislative and regulatory changes after this Bill is passed. The consultation draft of the Bill included a section on restrictive interventions, which NCOSS understands will be legislated separately. NCOSS supports legislated safeguards and

limitations on the use of restrictive practices, and looks forward to the NSW Government drawing on the best practice to set out those safeguards and limitations.

NCOSS also notes that there are some elements of the *Disability Services Act 1993*, which the Inclusion Bill will replace, that are not in the Bill. This includes a specific reference to the right to advocacy that is in the *Disability Services Act 1993*, and a specific statement that a single provider is not to provide all of the supports in a person's life. These legislated principles have contributed to positive changes in disability support in the last 20 years, and NCOSS would support retaining them in some form in the legislation.

For further information

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