

# Submission to the Review of the Disability Inclusion Bill 2014

Never Stand Still

Medicine

Department of Developmental Disability Neuropsychiatry

## **Ms Sophie Howlett**

Project Officer

Department of Developmental Disability Neuropsychiatry

School of Psychiatry, Faculty of Medicine

University of New South Wales, Sydney

[s.howlett@unsw.edu.au](mailto:s.howlett@unsw.edu.au)

## **Associate Professor Julian Trollor**

Chair, Intellectual Disability Mental Health

Head, Department of Developmental Disability Neuropsychiatry

School of Psychiatry, Faculty of Medicine

University of New South Wales, Sydney

[j.trollor@unsw.edu.au](mailto:j.trollor@unsw.edu.au)

# SUBMISSION TO THE REVIEW OF THE DISABILITY INCLUSION BILL 2014<sup>1</sup>

## **Context**

- In 2008, Australia ratified the UN Convention on the Rights of Persons with a Disability (CRPD), thereby committing Australia and its jurisdictions to upholding the Convention in legislation, policy and service delivery.
- People with an intellectual disability (ID) account for approximately 2% of the Australian population (AIHW 2003). Mental disorders are at least 2.5 times more common in people with ID than in the general population.
- Many people with ID, especially those with complex developmental disabilities, experience an atypical profile and presentation of mental disorders, thus requiring a high level of psychiatric expertise, and coordinated approaches between services.
- People with ID and mental disorders are at risk of remaining marginalised and likely to experience poor health outcomes, emphasising the need for a strong human rights framework in the legislation that supports equal access to services.
- The strong link between disability, physical and mental health in people with ID highlights the importance of disability legislation which clearly addresses the complex issues for this population and articulates a joint framework for cross-agency service provision (Evans 2012).

## **General Feedback on the Bill**

- When compared with the Disability Services Act 1993, the Bill is a substantially improved document in terms of its focus on inclusion and human rights. Both the '**Objects of Act**' (**s3**) and '**General principles**' (**s4**) appropriately support a human rights framework for people with a disability.
- The provisions under **Part 2. Disability Planning** legislating for the development of a State Disability Inclusion (**Division 1**) and Disability Action Plans (**Division 2**) are important inclusions which were in-keeping with our recommendations. That these Divisions stipulate for regular reporting and monitoring to occur against the development and implementation of these Plans is very important (**s8(2)** and **s11** respectively).
- The inclusion of specific functions and reporting arrangements for the Disability Council NSW is significant (**Part 3**) and will hopefully transform the Council into an action-based body for the benefit of the sector.
- We appreciate that this Bill has included a regulatory framework for restrictive practices (**Part 6**) as per our recommendation.
- The amendments to be made to the Ombudsman Act 1974 for the specific 'Protection of people with disability' (**Schedule 4, s4.8**) will be of benefit to the sector in both recognising the role that the Ombudsman plays in monitoring disability services, and the issues of inadequate treatment and provision of services faced by people with a disability.
- Compared with the Disability Services Act 1993, the proposed Act contains a greater degree of clarity regarding the intersection with the Guardianship Act 1987.

---

<sup>1</sup> Referred to herein as 'the Bill' or 'proposed Act'.

- The penalty charges for breaches stipulated in this Bill (**s52 and s57**) are significant enough to be a deterrent against breaches as compared to those listed in the Disability Services Act 1993.
- We appreciate the stipulations replicated in this proposed Act (**s61**) at 5 years and for the tabling of results of this review in Parliament.

### ***Further Recommendations for Improvement***

There are a number of ways in which the Bill should be improved prior to finalisation. Our recommendations are as follows:

1. As per our previous recommendations, people with an intellectual disability should be specifically named among the vulnerable groups in **s5(3)** “Principles recognising the needs of particular groups”. This is justified by the high levels of neglect and abuse, and the high level of complex medical and psychiatric comorbidities experienced by some individuals in this group. This recommendation is aligned with the Victorian Disability Act 2006 which thoroughly incorporates the needs of people with an intellectual disability within the Act.
2. As significant points within the Bill rely heavily on the development of subsidiary legislation such as ‘Regulations’, we would recommend that consultation is undertaken on a draft or drafts of any subsidiary legislation.
3. Although we are pleased that provisions have been made to amend the Ombudsman Act 1974 to formally recognise their powers of scrutiny over the Department of Family and Community Services, it is preferable to have this included within the Bill itself. Formal reporting arrangements of either the NSW Ombudsman or a specific body should be included within the Disability Inclusion Act 2014. A provision such as the ‘Official Visitors’ within the Mental Health Act 2007 is strongly recommended. This is to ensure that: (1) there is appropriate scrutiny of services provided to persons with a disability in order to uphold the human rights framework for a vulnerable group, and (2) to enhance monitoring in a sector which is undergoing rapid decentralisation, and in which there is currently no articulated mechanism to ensure these safeguards and standards are upheld.
4. This proposed legislation should be written in a way that upholds human rights, supports the social model of disability and uses inclusive, person-centred language. For example:
  - **s3(e)** should be reworded to demonstrate the force behind the proposed Act in upholding these ‘Objects’ and ‘Principles’, to read: “to uphold the purposes and principles of the United Nations Convention on the Rights of Persons with Disabilities.”

We have concerns that the current wording is too soft and recommend that this is worded more definitively.

  - **s38 (a)** should be reworded, to read: “‘behaviour support plan’ means a plan that:

(a) is prepared with a person with disability.”

The language of the Act needs to be inclusive.

5. It is unclear what the distinction between persons with a ‘disability’ and ‘person in the target group’ refers to and why there is a requirement for both within this proposed Act. This appears to be wording derived from the Disability Services Act 1993, and should be omitted from the proposed Act as it is not inclusive, person-centred language.
6. It is of concern to us that the intersections between the Mental Health Act 2007 and this proposed Act are not more clearly articulated or extensive, especially in relation to how services should be working together to meet the needs of people with a disability. The only section in this Bill that references the Mental Health Act 2007 is at **s23(2)**. In our previous submission, we called for the need for greater provisions in this Act around coordination across government in the provision of services for people with a disability. As per the findings of the 2012 NSW Ombudsman report, “despite the legislative provisions [under Section 12A – Disability Services Act 1993], people with a primary diagnosis of mental illness and associated disability do not currently have consistent access to the full range of disability services.”(Ombudsman 2012 November). We recommend revision of the proposed Act to provide for greater provision for interagency collaboration. For example, a section or clause could be included that acknowledges the intersection of various government agencies and the need of these to work together. As previously argued for example this may able be to incorporate specific responsibilities of agencies under both the *NSW Service Framework to Improve the Health Care of People with Intellectual Disability* (NSW Health 2012) and the *Memorandum of Understanding & Guidelines Between Ageing, Disability and Home Care, Department of Human Services NSW and NSW Health In the Provision of Services to People with an Intellectual Disability and a Mental Illness* (NSW Health 2011). Strong emphasis is required here in the legislation on the shared responsibility that agencies have in the support and care of people with a disability.
7. In our previous submission we called for the improvement of access to information about the Act for persons with a disability. We recommended that s21 of the Disability Services Act 1993, *Notices etc to be written in other languages*, be expanded to require that all information provided to people with a disability be provided in a format they can understand (for example, Augmentative and Alternative Communication or Easy Read). We still firmly recommend that a Statement of Rights document similar to that provided in the Mental Health Act 2007 (Schedule 3) is included as a Schedule in this proposed Act, at the very least that can be translated into augmentative communication formats with relative ease. Additionally, we recommend that a clause is included within the proposed Act that states that appropriate support is provided to persons with a disability in order to assist their understanding of the proposed Act and their rights.
8. **Part 6 ‘Restrictive Practices’**, should be strengthened in the following ways to ensure appropriate safeguards can be upheld:
  - **s42(1)** should be reworded to read: ‘The Director-General will establish panels...’  
It is our preference that the panel is established and that the language of this clause formally instructs this event.
  - **s42(2)** is reworded to read: ‘A disability service provider, other than a provider referred to in subsection (1), will establish panels...’

- Under **s42(4)** the Bill should stipulate the qualifications of members of the Restricted Practice Authorisation Panel rather than leaving this to be incorporated into the ‘Regulations’. Further, where Restrictive practices involve the use of psychotropic medications, a psychiatrist with appropriate expertise should be a mandatory participant in the restrictive practice panel. Where restrictive practices involve the use of complex behavioural strategies, a psychologist with appropriate expertise should be a mandatory participant in the restrictive practice panel.
  - We recommend that **s43(1)(a-f)** is reordered and reworded thus - whereby (d) is listed as the first in terms of priority and is reworded to read: “can demonstrate that the use of the restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances”; that (c) is listed second and (f) third, and the others to follow. This is both in order to strengthen the language around the use of restrictive practices and is in-keeping with person-centred approaches.
9. In our previous submission, we recommended that the Act stipulate for mandatory routine data collection and use of this data in the provision and evaluation of services for people with disability. This is outlined in the National Disability Agreement and also found in the Victorian Act, section 8(1)(c) and should also be outlined in this legislation. We firmly recommend that the proposed Act should stipulate for ongoing data collection. Data collection should include mandatory collection and reporting of data on disability supports, effectiveness and outcomes of interventions including restrictive practices, health and well-being, and community participation by all agencies with responsibilities under the proposed Act. As previously recommended, improving services requires evidence, and ongoing data collection is imperative in this aim.
10. Given that the Disability Services Act 1993 was only reviewed once in 20 years of operation as per the literal specifications of the Act, it may be more beneficial that **s61** stipulates for ongoing review of this piece of legislation at 5 year intervals. This is especially important given that the landscape of disability services is likely to experience a rapid change in the coming years with the introduction of the National Disability Insurance Scheme (NSW Enabling) Act 2013 No 104. This will have implications for carriage of the proposed NSW Disability Inclusion Act 2014, making regular review imperative.

## **References**

AIHW (2003). *Disability Prevalence and Trends*. Editor: Australian Institute of Health and Welfare (AIHW). Canberra, AIHW. **Cat. No. DIS 34.**

Evans, E., Howlett, S., Kremser, T., Simpson, J., Kayess, R. & Trollor, J. (2012). "Service development for intellectual disability mental health: a human rights approach " *Journal of Intellectual Disability Research* **56**(11): 1098-1109.

Ombudsman, N.S.W. (2012 November). Denial of Rights: the need to improve accommodation and support for people with psychiatric disability. *A Special Report to Parliament under s.31 of the Ombudsman Act 1974*. N.S.W. Ombudsman. Sydney.

NSW Ministry of Health, (2012). Service Framework to Improve the Health Care of People with Intellectual Disability. NSW Ministry of Health. SYDNEY.

NSW Ministry of Health, (2011). Memorandum of Understanding & Guidelines Between Ageing, Disability and Home Care, Department of Human Services NSW and NSW Health In the Provision of Services to People with an Intellectual Disability and a Mental Illness. NSW Ministry of Health, SYDNEY.