



Inquiry into the Disability Services and Inclusion Bill 2023

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Submitted to:

The Senate Standing Committee on Community Affairs, Legislative Committee

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Introduction

Lived Experience Australia Ltd (LEA) is a national representative organisation for Australian mental health consumers and carers, families and kin, formed in 2002 with a focus on the private sector. All members of our Board and staff have mental health lived experience as either a consumer, family carer or both. This is core to our advocacy, recognising that the impacts of policy and practice are felt not only by individuals, but also by families and whole communities.

Our core business is to advocate for effective policies and systemic change to improve mental health care (including support for people with psychosocial disability) across the whole Australian health system, including within State and Territory jurisdictions. This includes advocating for empowerment of people with mental health lived experience (people with mental health conditions and their family, carers and kin) in the broad range of issues that impact their mental and physical health, and their lives more broadly. It includes empowering them in their own care and contact with health and social services, promoting their engagement and inclusion within policy and system design, planning and evaluation and most importantly, advocating for policies and systems that promote choice, inclusion, justice and fairness, and address abuse, violence, exploitation, neglect, stigma, discrimination and prejudice.

We welcome the opportunity to provide our feedback to this Senate Standing Committee on Community Affairs Inquiry into the Disability Services and Inclusion Bill 2023 [Provisions] and Disability Services and Inclusion (Consequential Amendments and Transition Provisions) Bill 2023. We wish the Legislation Committee well in its deliberations. We welcome the opportunity to work with the Committee, the federal government, and the sector to ensure equity for all people with disability, and particularly people with psychosocial disability.

Purpose of this Inquiry

The Disability Services and Inclusion Bill 2023 and the Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Bill 2023 have been introduced parliament by The Hon Rishworth (Kingston – Minister for Social Services). The aim of the Bill as stated by Minister Rishworth is to “help deliver on the Albanese Labor government's commitment to enable people with disability to fully participate in our community and exercise agency over their lives.” Importantly, it reminds the parliament that supports and services for people with disability go beyond the NDIS—extending to the 4.4 million Australians with disability in Australia.

The Disability Services Act is no longer fit for purpose, as it does not reflect the current landscape of disability policy, community expectations or demands for creating a more inclusive society, or the current the nature of services and supports required to complement the NDIS. Importantly, it predates Australia's adoption of the Convention of the Rights of Persons with Disabilities (CRPD) in 2008, followed by Optional Protocol to the CRPD in 2009. It also does not adequately reflect the underlying goals and ethos of Australia's current Disability Strategy 2021-2031.

The Bill, as Minister Rishworth has stated, will enable a piece of legislation that:

- Provides a single-source statutory framework and a clear basis for the Commonwealth to fund certain disability supports and services outside of the NDIS that are not covered by state and territory obligations under Australia's Disability Strategy 2021-2031. It contributes to reducing the significant administrative delays in implementing important programs that have resulted from disaggregated legislative frameworks for disability services and supports.

- Establishes clear authority to continue funding existing programs, and at the same time, provides a flexible basis from which to fund non-NDIS supports and services to respond to emerging needs and changing circumstances both now and into the future.
- Improves quality and safeguarding arrangements by introducing a mandatory code, which will mirror the NDIS Code of Conduct. This code will set a minimum standard for all service providers and workers, and will show people with disability, their families and carers what they should expect from providers funded under this legislation. This will support the provision of consistent, high-quality supports and services and ensure people with disability are safe when accessing them.
- Will enable the government's timely response to findings and recommendations arising from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and non-NDIS initiatives arising from the NDIS review.
- Gives effect to the CRPD, in conjunction with other key Commonwealth legislation such as the Disability Discrimination Act 1992, and the NDIS Act 2013, and the Social Security Act 1991, as well as the state and territory disability legislation by focusing on capacity, experience, empowerment, potential and goals for people with disability.
- Promotes consistency, coordination and accessibility of supports and services for people with disability and a clear basis for the Commonwealth to continue funding disability supports and services alongside the NDIS and alongside state and territory services.
- Embeds its objects and guiding principles in primary legislation, whereas under the Disability Services Act the objects and guiding principles are prescribed via legislative instrument. This change fosters greater transparency, more certainty, clear articulation of aims and objectives, and provides clearer guidance for actions taken under this legislation.
- Expands the types of supports and services that may be able to receive such funding and expands service categories to cover accessibility, accommodation, advocacy, capacity building, carers, community inclusion, counselling, education, employment, independent living, information, recreation, research and evaluation, and respite care.

Our Response

LEA applauds this work which we see as long overdue. The language, tone and purpose of the Disability Services Act does not reflect the needs and expectations of the current Australian community. It reflects a time when people with disability and the various employment, education and other services and supports in their lives were separate and segregated. This is no longer acceptable and it has had significant adverse consequences for people with disabilities at all levels. Significant revisions are needed to ensure the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability can be realised, and to ensure the provision of inclusive supports and services to all people with disability.

We particularly applaud the intent to address structural issues with accountability, reporting, funding and safeguarding. Diversity in financial arrangements for various programs has been problematic for program implementation and has meant some programs are not subject to any form of regulatory oversight beyond the requirements in funding agreements.

The Inquiry is timely, given the significant NDIS review work that is currently being undertaken. Important also is the growing realisation of significant unmet need in the community for people with psychosocial disability, and the work being done across each jurisdiction to understand these gaps. NDIS cannot meet this need. Commonwealth and State governments must work together to ensure the many people who need support outside of the NDIS are recognised and their support needs addressed. At present, we know that many of these individuals are bouncing between fragmented systems where responsibility for service is unclear, and where the person and their families ultimately are left to cope with substandard support or no support.

For example, the recently released South Australian Unmet Needs Report by Mr David McGrath indicated that there are approximately 19,000 people with psychosocial disability who do not receive NDIS support.¹ Further work on unmet need is being undertaken in other jurisdictions with reports due for release in 2024. From the early indications from SA's findings (with SA representing 1/14th or 7% of the Australian population), and therefore extrapolating these findings to the Australian population more broadly, it is possible that approx. 270,000+ Australians with psychosocial disability will not have their needs met within the NDIS. We therefore need disability legislation that fits for purpose and is ready to guide the sector in establishing consistent and coordinated disability services outside of the NDIS.

Also in South Australia, we have learned the hard lessons from Oakden and the tragic case of Ann-Marie Smith and the importance of ensuring greater oversight, regulation and accountability mechanisms are in place for service providers. The quality and safeguarding under this Bill are addressed through two key mechanisms—a mandatory code of conduct for all providers, and certificates of compliance for providers of certain eligible activities. This will create greater consistency and clarity for providers, and allow people with disability, their families and carers to understand exactly what they should expect from service providers. We also note the intention to establish consistent complaints management requirements for providers funded under the Bill. Greater clarity and transparency in these processes is welcome and hopefully will empower people with disability and their families and carers to voice any concerns, be heard, be taken seriously, and have their concerns addressed.

We also acknowledge the complexity of existing arrangements for service providers with regard to quality standards and regulatory requirements, and the Bill's goal of promoting consistency and reducing duplication across the sector and reducing burden for providers who work across multiple sectors and are subject to multiple quality standards. We would hope that this system improvement translates to greater capacity for services to prioritise and focus their resources on quality support, by rationalising administrative requirements that might otherwise take valuable time, money and human resources away from the people they serve.

We also applaud the Bill's provisions for greater oversight with regard to breaches of the code of conduct, standards or terms and conditions of funding arrangements. Provisions for information sharing and recognition of NDIS banning orders, for example, will ensure that awareness of wrongdoing in the NDIS can be considered in the context of other Commonwealth disability programs and services. We see this as a strength of the Bill, recognising that it has been too easy for disreputable providers to simply move shop and continue to exploit people with disability.

In summary, we believe that the Disability and Inclusion Bill will be a positive step in ensuring the rights and safety of people with disability accessing supports and services.

¹ <https://www.chiefpsychiatrist.sa.gov.au/news/release-of-the-unmet-needs-report-for-psychosocial-support-services-in-sa-2>

Contact

We thank the Standing Committee on Community Affairs for the opportunity to put our views forward. We wish you well with the next steps and would be keen to contribute our lived experience perspectives to any future discussions about this important topic.

Your sincerely

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