



## Full Day Hansard Transcript (Legislative Council, 28 May 2014, Corrected Copy)

Extract from NSW Legislative Council Hansard and Papers Wednesday, 28 May 2014.

### DISABILITY INCLUSION BILL 2014

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. John Ajaka.**

#### Second Reading

**The Hon. JOHN AJAKA** (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [11.47 a.m.]: I move:

That this bill be now read a second time.

The Government is proud to introduce the Disability Inclusion Bill 2014. This bill will have a meaningful impact on the lives of people with disability, their families and their carers. This is a time of great change. People with disability are now shaping disability services, rather than being the passive recipients of services from governments and other providers. The bill replaces the Disability Services Act 1993 which, for the past 21 years, has provided the main legal foundation in New South Wales for regulating supports, services and funding to people with disability. I note that a former Minister for Community Services who introduced that bill, the Hon. Jim Longley, is in the President's Gallery. He is now the Chief Executive Officer of the Department of Ageing, Disability and Home Care.

Although progressive when introduced, the Disability Services Act no longer sits comfortably with the present-day approach to disability. Recent times have seen a shift towards person-centred disability services, client-directed supports and individualised budgets. In those arrangements the person with disability is firmly at the centre of decision making and is able to exercise choice and control over the nature of their supports and how they are delivered.

This shift in approach is signified by the National Disability Insurance Scheme [NDIS], which represents an historic milestone for people with disability, their families and their carers, not only in New South Wales but also throughout Australia. The NDIS is a significant development for disability support. It will deliver a national system that is focused on the individual needs and choices of people with disability. It is without a doubt an historic step forward. I was proud when New South Wales became the first State to sign up to the scheme through a heads of agreement with the Commonwealth Government in December 2012.

I commend my Government for showing no hesitation in committing to a revolutionary approach to how people with disability are supported to achieve their goals. New South Wales welcomed this long overdue approach that will provide people with disability with something that most Australians take for granted—that is, choice and control in everyday life. When the NDIS is rolled out across New South Wales by 1 July 2018 the responsibility for managing the provision of disability supports will transfer to the National Disability Insurance Agency [NDIA]. The bill recognises the need for far-reaching reform that enhances the everyday lives of people with disability. It does this within the context of the NDIS.

The bill proposes a rights-based inclusion framework that moves us away from historically, highly regulated services. This framework will enable New South Wales to make a smooth transition to the national scheme on 1 July 2018. Some members may question why the bill is being introduced at this stage given that the National Disability Insurance Scheme is still undergoing fine-tuning, with some reviews and negotiations yet to take place. Although the Federal National Disability Insurance Scheme Act, inter-government agreements and the National Disability Insurance Scheme Rules provide a comprehensive framework and clear focus, it is important that the bill acknowledges the potential for changes or reforms that are yet to be negotiated for the national scheme.

This acknowledgement has been built into the bill, with the inclusion of transitional provisions that will end when the national scheme is fully implemented. In addition, the bill contains a requirement that it be reviewed within four years. This will provide an essential check on whether the bill's objectives are being achieved and whether any adjustments need to be made to take account of reforms introduced by the NDIS. Further, I note that the reforms contained in the bill aim to support and improve on current practice within the government and non-government service sector and so the cost of implementation will be relatively low.

Also of importance is the need for the bill to be consistent with the NDIS. I point out that the bill offers consistency with the national scheme in its intent to provide people with choice and control over their supports—for example, a focus on individualised funding that allows for greater flexibility and facilitates choice and control in support provision. The bill will support people to build their skills and capacity in this area prior to their transition to the NDIS. As members can see, this bill has been designed to provide both consistency and flexibility. It is what New South Wales needs to make a smooth transition to the NDIS.

I stress that it is crucial for the bill to be introduced at this stage and not held off until the final detail of the NDIS is known. This is because one of the bill's functions is to assist in ensuring that the scheme is implemented on schedule and that the people with disability, their families and carers, the Government and service providers are fully prepared for transition. As such, to introduce the bill at a later stage would be counterproductive.

The development of the bill has been informed by the feedback received from an extensive statewide consultation process, which has involved thousands of people across New South Wales. The consultation process began in 2011 with the Living Life My Way consultations that ran until 2012 and gave more than 4,000 individuals the opportunity to share their views on the introduction of self-directed support and individualised budgets. Subsequently, in early 2013 approximately 600 people with disability, their families and carers, service providers and peak representative organisations from across New South Wales attended face-to-face consultations to discuss the review of the Disability Services Act 1993. In addition, 64 written submissions were received. These views were taken into account in developing the new law.

In December 2013 the exposure draft of the Disability Inclusion Bill was released for public comment. More than 90 written submissions on the draft bill were received from people with disability, their families and carers, service providers and other organisations. The feedback received from this broad consultation process indicated a strong need for change and has received careful consideration in the drafting of the bill. On behalf of the Government, I say thank you to those who took the time to share their opinions, thoughts, hopes, suggestions, stories and concerns. We are grateful for this feedback, which has been invaluable in getting the bill right. The feedback showed that people want the new disability law to promote human rights, to support people with disability to exercise choice and control, to clarify the role of the New South Wales Government now and following introduction of the NDIS, to provide safeguards to protect the rights of people with disability and to help make our communities more inclusive.

It gives me great pleasure to advise members that the bill reflects this feedback and the Government has listened to the legitimate concerns and expectations of individuals and organisations across New South Wales. We have delivered a bill that is responsive and that will support individuals and service providers to move from the New South Wales disability system to the national scheme. As I mentioned previously, the bill clarifies the responsibilities of the New South Wales Government during transition to the NDIS and beyond. The bill achieves this through, firstly, legacy provisions and, secondly, transitional provisions.

The legacy provisions will continue to operate after the scheme is operating fully in New South Wales. In short, these provisions include the bill's objects and human rights principles and commit the New South Wales Government to making communities more inclusive for people with disability. The legacy provisions offer direction and clarity about where we are headed in this time of great change and will guide New South Wales in the transition to the NDIS and beyond. Let me make it clear: The NDIS does not, nor should it, alleviate the New South Wales Government from all responsibility towards people with disability. There are some things that will remain an ongoing responsibility of the New South Wales Government and these are contained in the legacy provisions.

The legacy provisions make the bill an instrument of social change. They affirm that people with disability have the same human rights as other people and promote the inclusion of people with disability in the community. I believe that this part of the bill represents the vision for the future for people with disability in New South Wales. The legacy provisions articulate the fact that the New South Wales Government must continue to strive to ensure the wellbeing of people with disability, their families and carers living in the State. As I just mentioned, human rights flow through the legacy provisions, including in the bill's updated definition of "disability" that is based on the social model of disability. This definition aligns with the United Nations Convention on the Rights of Persons with Disabilities ratified by Australia in 2008.

The social model of disability is based on the premise that disability is not inherent in the person but arises from the interaction of a person's impairments with barriers put up by society to full and equal participation. Barriers may include attitudes towards people with disability or may exist in the built environment. I believe that it is not for people with disability to change to accommodate society but it is up to society to change to accommodate people with disability.

People with disability have a right to be included on an equal basis with other citizens. Therefore, I embrace the updated definition of "disability" in the bill that recognises this right. The objectives and principles of the bill

strengthen and update the purpose of the legislation. The ultimate purpose of the legislation is to give effect to the human rights and fundamental freedoms of people with disability. The objects set out and emphasise the key themes of the new legislation: social and economic inclusion, choice and control over funding and supports, protection of the rights through safeguards and recognition of human rights. An important goal of the bill is to assist with the transition to the National Disability Insurance Scheme.

The bill has two sets of principles. The first involves general principles that acknowledge the human rights of all people with disability and have been developed with regard to the United Nations convention. The second set of principles recognises the needs of particular groups such as Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, women with disability and children with disability. The bill recognises that these groups of people often suffer multiple forms of disadvantage and sets out considerations for delivery of supports and services to those groups. The incorporation of the United Nations convention in the definition of "disability" in the objects and principles reflects the New South Wales Government's commitment to the human rights of people with disability in accordance with the highest international standards.

Another theme that flows strongly through the legacy provision is inclusion. All too often people with disability are excluded from meaningful participation in community life due to societal barriers, which includes inaccessibility of the built environment or inaccessibility of information. Such exclusion is a detriment not only to people with disability but also to society as a whole. When people with disability are able to contribute to and be involved in community life we have more inclusive and diverse communities, and that enriches community life for everyone. The legacy provisions promote inclusion by establishing a strong, outcomes-focused approach to whole-of-government strategies.

Part 2 of the bill is dedicated to disability planning. It introduces a requirement for the New South Wales Government to have a four-year State disability inclusion plan that guides whole-of-government approaches to inclusion and provides strategic direction for disability action plans. The National Disability Strategy requires all States to have an implementation plan that captures the State's priorities and actions across government to promote inclusion for people with disability. It is anticipated that this plan will become the State disability inclusion plan while it is in place. Upon expiration of the National Disability Strategy implementation plan it is critical that New South Wales promote community inclusion and improvements in the lives of people with disability living in New South Wales. The bill will ensure this.

Furthermore, the bill strengthens the disability action planning process by extending the requirement for not only New South Wales government departments but also local councils to have disability inclusion action plans. This extension is supported by Local Government NSW and the majority of council submissions received on the draft Disability Inclusion Bill. Sensibly, the bill requires that the State disability inclusion plan and all disability inclusion action plans are developed in consultation with people with disability to ensure that plans are meaningful, relevant, practical and effective. Part 3 of the bill confirms a continuation of the Disability Council NSW. The bill extends the council's role to providing advice on the State disability inclusion plan and disability inclusion action plans. This is a significant reform as it mandates consultation with Disability Council members who can provide invaluable feedback through their lived experience and expertise in disability issues.

The Government is keen to ensure that the extension of the disability inclusion action plan regime to local government does not have an unnecessary impost on local councils. Accordingly, it is developing guidelines and supporting tools to assist local councils to prepare disability inclusion action plans. Notably, most local councils already have disability action plans or have community strategies that incorporate ways to address the needs of people with disability. As such, the majority of local councils are well placed to accommodate this requirement.

I support the 2013 report entitled "Disability planning across local government in New South Wales", commissioned by Local Government NSW together with the Department of Ageing, Disability and Home Care. Encouragingly, the report found that approximately three quarters of local councils in New South Wales consult with people with disability and have community strategic plans that include strategies to address the needs of people with disability. The report also found that approximately one third of local councils have a disability action plan. Lastly, I point out the bill allows for the disability action planning process to be aligned with the strategic planning process of local councils to minimise any administrative burden.

I will discuss the detailed transitional provisions of the bill that will prepare people with disability, their carers and families, service providers and the Government for the full transition to the NDIS. The transitional provisions explain how the New South Wales disability service system will work until the responsibility for funding and the provision of disability services has transferred fully to the Commonwealth National Disability Insurance Agency. The first transitional provisions I will speak about are those contained in part 5 of the bill. Part 5 deals with the provision of supports and services, including those provided directly by the New South Wales Government, and financial assistance for individuals and eligible entities. Part 5 of the bill will operate until the NDIS funds all disability supports and services in New South Wales. This confirms that delivering and funding services and supports will remain a priority of this Government for the next four years. Individuals who can receive funding

supports and services under part 5 fall within the bill's target group.

There are three main changes to the target group definition in the current Act. First, in addition to the people covered previously by the target group, it now includes cognitive and neurological impairments; and, secondly, children aged six years and under with developmental delay. The bill states that it is important to consider a reduction in a person's social and self-management skills when making a decision about whether a person needs support in managing their life activities. The changes bring the target group definition further into line with NDIS eligibility requirements. As members are aware, individualised funding is a key feature of NDIS and the bill focuses on individualised funding arrangements, thereby supporting people with disability to exercise greater choice and control over their support arrangements.

The bill allows for individualised funding to be administered in a number of different ways in order to suit individual circumstances. Depending on what option best suits the desires and circumstances of the individual, funding can be provided directly to the person, to a person nominated by the individual, to a plan manager to manage funding in consultation with the individual, or to an organisation to provide services to the individual. The bill maximises the flexibility of these arrangements by permitting funding to be provided in one of these ways or in a combination of these ways.

The bill also allows for the continuation of block funding to eligible service providers until the move to the NDIS is complete. For those members unfamiliar with the term "block funding", it is where the service provider is allocated a set amount of money that is not in the name of the individual service user. Importantly, the funding provisions are drafted to minimise risk and provide protection. The bill allows for conditions to be placed on individual funding arrangements if necessary to minimise risk, for example, from exploitation or abuse where people lack capacity or are vulnerable. The bill also places conditions on funding to eligible organisations that act as quality control mechanisms, safeguarding against poor service and abuse.

The bill recognises that individuals may not always be happy with decisions made about their funding. Accordingly, it provides that there are some decisions that a person can ask the department to review. If after the review the individual is still unhappy, he or she may appeal the decision to the NSW Civil and Administrative Tribunal. Reviewable decisions include decisions about how individualised funding is managed, decisions to impose conditions on individualised funding, decisions to provide financial assistance on behalf of an individual instead of directly to an individual, and decisions to suspend funding. The bill also provides that a decision to terminate funding is reviewable as long as it is not related to the implementation of NDIS arrangements. This will prevent New South Wales from operating a duplicate funding system by allowing funding to be terminated with reasonable notice.

Other important aspects of the bill are the new safeguards that will better protect the rights of people accessing disability supports and services until the NDIS takes over. The bill includes three key safeguards to reduce risk while respecting the individual's right to choose. The need for legal safeguards is supported by the review into prevention of abuse and safeguard mechanisms in ageing, disability and home care, which was undertaken in January 2013. This review recommended the development of a comprehensive safeguard framework that includes appropriate regulatory protections, and practice- and community-based independent mechanisms. The need for legal safeguards was also highlighted in the feedback from consultations on the review of the Disability Services Act 1993.

As I have mentioned previously, all jurisdictions, both State and Commonwealth, are working together to develop a national approach to safeguards designed to protect the rights of NDIS participants. As such, the bill's new safeguards build on current practice and existing systems within the government and non-government service sectors. This approach to safeguards aims to avoid the potential for duplication of national safeguards and any unnecessary expenditure for service providers. Including safeguards in the law will send a clear message about the importance of these requirements and provide better protection for people with disability. Part 4 of the bill contains the first safeguard, which relates to standards for disability services provided or funded by the Government. It provides that disability services must comply with disability service standards determined by the Minister for Disability Services via regulation in order to receive financial assistance. This continues the power of the Minister to create standards and aims to improve the quality and effectiveness of the supports and services.

The bill also allows for the Minister to create special accommodation and service standards via regulation for supported accommodation and centre-based respite. This recognises the relative vulnerability of people living in these arrangements, and promotes the development of high-quality, contemporary models of supported accommodation until transition to the national scheme. Part 5 of the bill contains the second safeguard and provides that government-funded disability service providers must undertake a criminal record check on prospective employees and volunteers who apply to work directly with people with disability. For existing employees and volunteers who work directly with people with disability, an updated criminal record check must be undertaken every four years.

The bill also includes an automatic bar to people who have been convicted of certain offences, for example

murder or a prescribed sexual offence under the Crimes Act 1900. The bill also takes into account the fact that the offences may have been committed in a person's youth and that the person may have had a clean criminal record for many years since and may now be a suitable person for employment in the industry. The bill therefore states that, where a person has been convicted of a prescribed offence, excluding prescribed sexual offences, in the past but their criminal record shows no further convictions in the 10 years following the date of the person's release from imprisonment, employers have the discretion to consider them for employment. Legislating employment screening in this way will provide greater protection for people with disability from harm by minimising the risk that they will come into contact with a person who may threaten their safety.

The third safeguard introduces compulsory reporting to the NSW Ombudsman of incidents of serious sexual or physical abuse, neglect or ill-treatment, and fraud in government-provided or government-funded accommodation services and centre-based respite. This enables the Ombudsman to oversee serious complaints, to identify systemic issues, and to make recommendations for practice improvement where appropriate. Oversight by the Ombudsman is expected to improve the systems of residential care and respite services in managing and reporting incidents, and thereby improve the safety and welfare of people with disability. I repeat: The new safeguards build on current practice and existing systems within the government and non-government sectors. As such, the cost of implementation will be relatively low.

It is a time of tremendous change for people with disability, their families, and carers. The National Disability Insurance Scheme signifies the need for far-reaching reform to a more person-centred service system and an inclusive rights-based approach. The bill delivers this and more. It represents the Government's vision for a more inclusive society, outlines its responsibilities during transition to the NDIS and beyond, creates social change, strengthens the rights of people with disability, increases choice and control, and adopts a broader remit than simply enabling disability service provision. I am extremely proud of this bill and I thank the people of New South Wales who have contributed their views, which have been so important in developing this legislation. This bill represents the Government's commitment to people with disability, and I commend it to the House.