

# Disability Inclusion Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are stated in proposed section 3 of the proposed Act, and include acknowledging 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, providing safeguards in relation to the delivery of supports and services for people with disability, supporting (to the extent practicable) the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities* and providing for State responsibilities during and following the transition to the National Disability Insurance Scheme.

The objects are to be achieved under the proposed Act primarily by:

- (a) stating the disability principles to which people exercising functions under the proposed Act, or providing supports or services to people with disability, are to have regard, and
- (b) providing for a State Disability Inclusion Plan to be prepared by the Department of Family and Community Services setting out whole of government goals that support the inclusion in the community of people with disability, and for each **public authority** to have a disability inclusion action plan setting out measures to ensure people with disability can access general supports and services available in the community, and
- (c) providing for the continuation of the Disability Council of New South Wales, and
- (d) providing for the making of service standards relating to the provision of supports and services for people with disability, and
- (e) providing for the provision of supports and services, including financial assistance for individuals and certain entities to facilitate obtaining, or the provision of, supports and services, and
- (f) amending the *Ombudsman Act 1974* to provide for a monitoring and investigative role for the Ombudsman in relation to certain reportable incidents occurring in supported group accommodation facilities of the Department or a funded provider.

## Outline of provisions

### Part 1 Preliminary

#### Division 1 Introduction

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

#### Division 2 Objects and principles

**Clause 3** specifies the objects of the proposed Act, which include acknowledging 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, providing safeguards in relation to the delivery of supports and services for people with disability, supporting (to the extent practicable) the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities* and providing for State responsibilities during and following the transition to the National Disability Insurance Scheme.

**Clause 4** specifies for the purposes of the proposed Act the general principles relating to people with disability.

**Clause 5** specifies for the purposes of the proposed Act additional principles relating to certain people with disability who may have particular needs.

**Clause 6** provides that persons exercising functions, or providing supports or services to people with disability, under the proposed Act should have regard to the disability principles in the exercise of the function or the provision of supports and services.

### **Division 3 Interpretation**

**Clause 7** defines certain words and expressions used in the proposed Act.

## **Part 2 Disability planning**

### **Division 1 Preliminary**

**Clause 8** specifies the purpose of the proposed Part.

**Clause 9** provides that the Secretary may issue guidelines to assist public authorities in preparing disability inclusion action plans. This clause further provides that the Secretary must publish the guidelines on the website of the Department of Family and Community Services.

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

**Clause 10** provides for a State plan (the *State Disability Inclusion Plan*) that is prepared by the Department of Family and Community Services and sets out whole of government goals that support the inclusion in the community of people with disability and improve access to mainstream services and community facilities and provides for collaboration and co-ordination among various entities in the provision of supports and services. This clause further provides that the Minister is to table a copy of the plan in each House of Parliament.

**Clause 11** provides that the Minister is to review the State Disability Inclusion Plan at 4-year intervals and table a report on the outcome of the review in each House of Parliament.

### **Division 3 Disability inclusion action plans**

**Clause 12** provides that each public authority must have a plan (a *disability inclusion action plan*) that sets out the measures the authority intends to put in place (in connection with the exercise of its functions) so that people with disability can access general supports and services available in the community and can participate fully in the community. This clause further provides that each public authority must consult with people with disability and may consult with other persons or entities in preparing its disability inclusion action plan. This clause also provides for particular matters to be included in a disability inclusion action plan and for each public authority to give a copy of its plan to the Disability Council NSW and to make its plan publicly available.

**Clause 13** provides that each public authority that is a government department or a local council is to give the Minister a copy of the part of its annual report relating to the implementation of its disability inclusion action plan. This clause further provides that other public authorities are to give a report to the Minister about the authority's implementation of its disability inclusion action plan in each financial year. This clause further provides that the Minister is to table, annually in each House of Parliament, a report about the implementation of disability inclusion action plans.

**Clause 14** provides that each public authority is to review its disability inclusion action plan at 4-year intervals. This clause further provides that, in reviewing its disability inclusion action plan, each public authority must consult with people with disability and have regard to any guidelines issued by the Secretary under clause 9.

## **Part 3 Disability Council NSW**

**Clause 15** continues in existence the Disability Council of New South Wales as the Disability Council NSW (the *Disability Council*) under the proposed Act.

**Clause 16** provides for the membership of the Disability Council and for its chairperson and deputy chairperson.

**Clause 17** provides for the functions of the Disability Council.

**Clause 18** provides that the Minister may give assistance, including financial assistance, to the

Disability Council.

**Clause 19** provides that the Disability Council is to give reports to the Minister about the exercise of its functions.

## **Part 4 Service standards**

**Clause 20** provides that the regulations may make provision for or with respect to standards relating to the provision of supports and services for people with disability. This clause further provides that the Secretary must make the standards publicly available.

**Clause 21** provides that the regulations may make provision for or with respect to standards relating to the provision of supports, services and accommodation for people with disability in supported group accommodation. This clause further provides that the Secretary must make the standards publicly available.

**Clause 22** defines *supported group accommodation* for the purposes of the proposed Act.

## **Part 5 Provision of supports and services**

### **Division 1 Preliminary**

**Clause 23** provides that the purpose of proposed Part 5 is to facilitate the provision of supports and services to persons in the target group and the transition of funding for those persons to funding under the National Disability Insurance Scheme (*NDIS*). This clause further provides that the purpose is to be achieved by providing supports and services directly to persons in the target group and by providing financial assistance directly to individuals, or to eligible entities, for the purpose of providing supports and services during the transition period.

**Clause 24** defines *person in the target group* for the purposes of the proposed Act.

### **Division 2 Supports and services provided by Secretary**

**Clause 25** provides that the Secretary may provide supports and services directly or indirectly to persons in the target group. This clause further provides that the supports and services are to be provided in compliance with the disability service standards and may be provided in addition to any financial assistance provided under the proposed Part.

### **Division 3 Financial assistance for individuals**

**Clause 26** provides that the Secretary may give financial assistance to, or on behalf of, an individual who is a person in the target group. This clause further provides that the financial assistance may be given directly to the individual, to a person nominated by the individual or another person determined by the Secretary to be an appropriate person to receive the assistance on behalf of the individual, or to another entity for the purposes of administering the assistance (as directed by the individual) or for the purpose of providing supports and services specifically to the individual. The clause also provides that the financial assistance may be given to an individual or a non-government organisation only if the individual or organisation enters into an agreement with the Secretary in relation to the assistance. The clause further provides for matters to which the Secretary is to have regard in deciding whether to provide financial assistance and the conditions on which it is provided.

**Clause 27** requires notice to be given to an individual about a decision not to provide financial assistance to, or on behalf of, the individual under proposed Division 3 or to provide the assistance on behalf of the individual instead of directly to the individual. This clause also requires notice of a decision to provide financial assistance to an individual (or another person nominated by the individual or determined by the Secretary to be an appropriate person to receive the assistance on behalf of the individual) on conditions to be given to the person receiving the assistance, and for the notice to specify the reason for the decision and that the person may apply for a review of the decision.

**Clause 28** provides that the Secretary may enter into agreements in relation to the provision of financial assistance to an individual, or a person nominated by the individual, under proposed Division 3. This clause further states particular matters to be specified in the agreement.

## **Division 4 Financial assistance for eligible entities**

**Clause 29** provides that the Secretary may give financial assistance to an eligible entity to enable it to provide supports and services to persons in the target group. This clause further provides that financial assistance may be given to a non-government organisation only if the organisation has entered into an agreement with the Secretary in relation to the assistance. This clause also provides that the Secretary may require an eligible entity that is not a non-government organisation to enter into an agreement with the Secretary in relation to financial assistance given to it under proposed Division 4.

**Clause 30** provides that the Secretary may enter into agreements with eligible entities in relation to the provision of financial assistance under proposed Division 3 or 4. This clause further provides that an agreement entered into with a non-government organisation is subject to conditions prescribed under the proposed Act, and states particular matters to be specified in the agreement. This clause also provides that a non-government organisation that is providing supports and services in supported group accommodation may be required to comply with the accommodation and service standards in providing the supports and services.

**Clause 31** provides that it is a condition of the provision of financial assistance to a non-government organisation that the organisation gives the Secretary evidence to show it can provide supports and services in compliance with the disability service standards. This clause further provides that it is a condition of the provision of financial assistance to any eligible entity that it must comply with the disability service standards in providing supports and services to persons in the target group.

**Clause 32** provides that it is a condition of the provision of financial assistance to an eligible entity that it must ensure that a person is not engaged as a worker or board member (if the person works directly with persons in the target group in a way that involves face to face or physical contact) unless it is satisfied the person is a suitable person to be involved in the provision of supports and services to persons in the target group. This clause further provides that the entity must ensure that a criminal record check is conducted or obtained in relation to such workers or board members before they are engaged, and further criminal record checks are obtained at least every 4 years. This clause also provides that (subject to specified exceptions) it is a condition of the provision of financial assistance to the entity that it must not engage such workers or board members if the worker or board member has been convicted of a *prescribed criminal offence* or refuses to obtain or submit to a criminal record check. This clause also provides for the regulations to prescribe matters relating to conducting or obtaining criminal record checks.

## **Division 5 Suspending and terminating financial assistance**

**Clause 33** provides that financial assistance provided under Part 5 of the proposed Act may be suspended on specified grounds (including grounds prescribed by the regulations). This clause further provides that notice of a decision to suspend the assistance must be given to the person or entity receiving the assistance, and that the person or entity may apply for a review of the decision. This clause also provides for the Secretary to further suspend the financial assistance on the specified grounds, and to arrange for alternative supports and services for a person in the target group while the assistance is suspended.

**Clause 34** provides that financial assistance provided under Part 5 of the proposed Act may be terminated on specified grounds (including grounds prescribed by the regulations). This clause further provides that, before termination of financial assistance, the Secretary must give notice of the proposed termination specifying the grounds for termination, when it is proposed to have effect and, if the proposed termination is for a reason other than the implementation of NDIS arrangements under the National Disability Insurance Scheme or another purpose prescribed by the regulations, inviting the person or entity receiving the assistance to give the Secretary a submission about the proposed termination. Before termination of the financial assistance, the Secretary must consider any submission received in accordance with this clause. This clause also provides that termination of financial assistance has effect despite any agreement relating to the assistance and that notice of a decision to terminate must be given to the person or entity receiving the assistance.

## **Division 6 Review of decisions**

**Clause 35** provides that particular decisions under Part 5 are administratively reviewable

decisions for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

## **Division 7 Miscellaneous**

**Clause 36** provides that the Secretary of the Department must ensure that a person is not engaged as a worker of the Department (if the person works directly with persons in the target group in a way that involves face to face or physical contact) unless the Secretary is satisfied the person is a suitable person to be involved in the provision of supports and services to persons in the target group. This clause further provides that the Secretary must ensure that a criminal record check is conducted or obtained in relation to such workers before they are engaged by the Department, and further criminal record checks are conducted or obtained at least every 4 years. This clause also provides that the Secretary must not engage such workers if the worker has been convicted of a prescribed criminal offence or refuses to obtain or submit to a criminal record check. This clause also provides for the regulations to prescribe matters relating to conducting or obtaining criminal record checks.

**Clause 37** provides that the Secretary may give financial assistance, on the conditions the Secretary considers appropriate, to a government department, local council or other entity for the purpose of promoting the objects of the proposed Act.

**Clause 38** provides that the Secretary may, by notice, require a person to give the Secretary information or a document relating to the provision of financial assistance, obtaining or providing supports or services or the compliance with an agreement entered into under Part 5. This clause also specifies the matters to be included in the notice.

**Clause 39** provides that a person who, acting in good faith, gives information or a document as required under clause 38 is not liable to any civil or criminal action for giving the information or document and cannot be held to have breached any code of professional etiquette or ethics or to have breached standards of professional conduct as a result of giving the information or document.

**Clause 40** provides that a prohibition on employment under the proposed Act prevails to the extent of any inconsistency with any other Act or law. This clause further provides that the Industrial Relations Commission and any other court or tribunal does not have jurisdiction to order the reinstatement or re-employment of a person contrary to such a prohibition or to order the payment of damages or compensation for any removal of a person from employment prohibited under the proposed Act.

**Clause 41** provides that the Secretary may issue guidelines to assist eligible entities in relation to compliance with the prescribed condition about conducting probity checks. This clause further provides that the Secretary must publish the guidelines on the website of the Department of Family and Community Services.

## **Part 6 Miscellaneous**

**Clause 42** states that the proposed Act binds the Crown.

**Clause 43** provides for the delegation of the Minister's and Secretary's functions under the proposed Act.

**Clause 44** provides for the taking of proceedings under the proposed Act.

**Clause 45** provides that it is an offence (with a maximum penalty of 50 penalty units) for a person to disclose information obtained in connection with the administration or execution of the proposed Act unless the disclosure is made for reasons specified in the clause.

**Clause 46** limits liability for certain matters or things done or omitted to be done in good faith for the purpose of executing the proposed Act.

**Clause 47** provides that the objects of the proposed Act, the disability principles and the requirement for persons exercising a function, or providing supports and services, under the proposed Act to have regard to the disability principles do not give rise to, or cannot be taken into account in, any civil cause of action. The clause does not apply to a proceeding before the Civil and Administrative Tribunal on an application for an administrative review of a decision that, under the proposed Act, can be reviewed by the Tribunal.

**Clause 48** provides that Schedule 3 to the proposed Act contains provisions about dealing with particular accounts and funds relating to persons with disability.

**Clause 49** provides for the making of regulations for the purposes of the proposed Act.

**Clause 50** repeals the *Disability Services Act 1993*.

**Clause 51** provides for a review of the proposed Act within 4 years from the date of assent to the proposed Act.

## **Schedule 1 Provisions relating to Disability Council**

**Schedule 1** contains provisions relating to membership and procedure of the Disability Council.

## **Schedule 2 Prescribed criminal offences**

**Schedule 2** specifies offences in relation to which a conviction will render a person unsuitable to be engaged to work directly with persons in the target group by an organisation receiving financial assistance under Part 5 of the proposed Act.

## **Schedule 3 Residents' amenities accounts**

**Schedule 3** contains provisions dealing with accounts and funds relating to people with disability who are residents of particular government residential centres.

## **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 5 Amendment of Acts**

**Schedule 5** makes consequential amendments to various Acts.

This Schedule also amends the *Ombudsman Act 1974* to insert proposed Part 3C in that Act.

Proposed Part 3C provides for various matters relating to the occurrence of reportable incidents in supported group accommodation within the meaning of the proposed Act.

Proposed sections 25O and 25P define certain words and expressions used in proposed Part 3C.

Proposed section 25Q provides that the Ombudsman is to keep under review the systems of the Department and funded providers for preventing, handling and responding to reportable incidents. The Ombudsman may also require the Secretary or head of a funded provider to give information about the systems to the Ombudsman.

Proposed section 25R imposes reporting obligations on the Secretary and heads of funded providers in relation to reportable allegations or reportable convictions of which the Secretary or head becomes aware.

Proposed section 25S provides that the Ombudsman may exempt any class or kind of incident from being a reportable incident for the purposes of the proposed Part.

Proposed section 25T provides that particular persons may disclose information about reportable incidents to the Ombudsman.

Proposed section 25U provides that the Ombudsman may monitor the progress of investigations into reportable allegations or reportable convictions. This proposed section further provides that the Ombudsman or an officer of the Ombudsman may be present as an observer at interviews conducted in relation to an investigation and may confer about the conduct and progress of an investigation. This proposed section also provides for the Ombudsman to require the giving of information or documents to the Ombudsman.

Proposed section 25V provides for the Secretary or head of a funded provider to give the Ombudsman a report about the conduct of an investigation of a reportable allegation or reportable conviction, and also provides for the Ombudsman to seek further information in relation to an investigation.

Proposed section 25W provides that the Ombudsman may conduct an investigation into reportable allegations or reportable convictions and may also conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation or reportable conviction. This proposed section further provides that the Ombudsman may exercise relevant powers under the *Ombudsman Act 1974* in relation to such investigations. This proposed section also provides that the Ombudsman may require a deferral of an investigation being conducted by the Secretary or a funded provider. The proposed section also provides that the Ombudsman is to provide the

Department or funded provider with recommendations for action in relation to particular matters relating to investigations.

Proposed section 25X provides that other Acts or laws do not prevent the disclosure of information to the Ombudsman, and that liability is not incurred for such disclosure.

Proposed section 25Y extends the application of proposed sections 25R and 25T to other public authorities within the meaning of the *Ombudsman Act 1974*, if the relevant reportable incident arises in the course of employment with the public authority.

Proposed section 25Z applies, subject to modifications prescribed by the regulations, the provisions of the *Ombudsman Act 1974* in relation to a matter arising under proposed Part 3C even if it does not involve the conduct of a public authority.