



# Submission to the Review of the Disability Services Act 1993

Never Stand Still

Medicine

Department of Developmental Disability Neuropsychiatry

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 Services Act 1993<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 experiencing poor health outcomes, unless there is a strong human rights framework in the legislation supporting 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).

### **Recommendations**

It is recommended that the new iteration of the legislation:

- 1) Uphold the rights of people with a disability;
- 2) Clarify agency roles and responsibilities, including for collaboration;
- 3) Contain a regulatory framework for restrictive practices;
- 4) Stipulate mandatory data collection;
- 5) Improve access to information about the Act;
- 6) Stipulate and adhere to review of the legislation; and
- 7) Invigorate and/or expand the role of the NSW Disability Council.

### **Recommendation 1 – Uphold the rights of people with a disability**

Review of the NSW Act is long overdue. It requires substantial redevelopment to be aligned with Australia's commitment to the Convention on the Rights of Persons with Disabilities, reflects contemporary thinking, and clarifies the roles and responsibilities of agencies. Enhanced focus in these areas will ensure that the revised NSW Act will fulfil the capacity of

---

<sup>1</sup> Referred to in this document as the 'NSW Act'.

the legislation to improve the quality of life. This opportunity is missed in the current iteration of the NSW Act.

Currently, the NSW Act allows for broad interpretation, giving far too much scope for the rights and needs of people with a disability to be ignored. This has been well demonstrated by the treatment of people with a psychiatric disability, as outlined in the NSW Ombudsman's 2012 report, *Denial of rights: the need to improve accommodation and support for people with psychiatric disability* (Ombudsman 2012 November).

The Ombudsman's report found that people with a primary diagnosis of mental illness were being excluded from accommodation supported funded under the NSW Act (p2). It highlighted the unacceptable approach of 'trading-off' on the rights of persons with a psychiatric disability against other people's rights because there are limited resources (p96).

A practical way to reflect a contemporary, rights-based paradigm for disability service provision, including a strong person-centred approach, would be to align the NSW Act with aspects of the Victorian Disability Services Act 2006.

Further, the current NSW Act does not embed the rights of people with a disability to have access to services or to be involved in service planning. Nor does it reflect the responsibilities of agencies in providing person-centred services.

***Therefore, we recommend that:***

- The NSW Act stipulate that service planning is carried out on an individual basis with the person who is to be a recipient of services (a requirement that is found in the Victorian Act);
- A section of the Act be included that specifically focuses on people with an intellectual disability, providing recognition of the specific rights and needs of people with an intellectual disability, in line with Section 6 of the Victorian Act; and
- The NSW Act contain significantly more detailed descriptions of the rights, responsibilities and services that arise from the legislation.

**Recommendation 2 – Clarify agency roles and responsibilities, including for collaboration**

The service needs of people with a disability cross the jurisdictions of different government agencies, with clear implications for policy and service delivery. Acknowledging this in the

legislation will provide strong leverage for interagency policy and service development. This will be especially relevant as individualised funding is implemented as proposed by the National Disability Insurance Scheme (NDIS), accentuating the need for clear service access pathways. Clear stipulations for agencies in the new legislation would clarify the requirements, reduce ambiguity and increase the accountability of these agencies.

The National Disability Insurance Scheme (NDIS) Bill 2012, the Human Rights & Anti-Discrimination Bill 2012 and the UN Convention on the Rights of Persons with a Disability offer a positive framework against which to review the responsibilities of agencies and indeed also to review this NSW Act.

Currently, articulation of agency responsibilities for people with a disability are dispersed across different legislative frameworks, including the NSW Mental Health Act 2007, the NSW Community Services (Complaints, Reviews and Monitoring) Act 1993 and the NSW Guardianship Act 1987.

The NSW Act should outline how Official Community Visitors are recruited, the duration of their term and auspicing arrangements, similarly to the legislative requirements for Principal and Official Visitors under the Mental Health Act 2007. The NSW Act should also outline the formal reporting arrangements to the Minister of Disability Services.

The relationship between the NSW Act and the Guardianship Act should be clearly identified within the NSW Act. For example, the legislative framework should be articulated for persons with disability who lack capacity for decision-making and require a substitute decision-maker. Presently this is unclear, and this is problematic in service delivery.

Further, we note that there is limited response to breaches of the current NSW Act. For example the maximum penalty is 10 Penalty Units (PU), or \$1,400. This is in contrast to the Victorian Act, which contains a maximum penalty of up to 240 PU or \$26,400. This demonstrates the degree of seriousness which the Victorian Act applies to breaches of the rights of people with a disability, a commitment currently lacking in the NSW legislative framework.

As discussed previously, in 2012 the NSW Ombudsman found that:

“Despite the legislative provisions [under Section 12A], 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)

This provides a strong impetus for the legislation to require coordinated efforts across government in the provision of services for people with a disability. It would be highly beneficial for example to amend this section (12A) of the legislation to incorporate the responsibilities of agencies under both the *NSW Service Framework to Improve the Health Care of People with Intellectual Disability* (Health 2012 (JULY)) 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* (Health 2012).

**Therefore, we recommend that:**

- A preface be included in the NSW Act that places strong emphasis on the shared responsibility across agencies and the community to care for, support and uphold the rights of people with a disability;
- The NSW Act clearly outline the roles and responsibilities of agencies with key links to the disability sector. This includes government disability, health and housing departments, non-government service providers, the Disability Council, and Official Community Visitors;
- Section 12A of the NSW Act *Funding of psychiatric disability services by Minister for Health* be reviewed and a whole-of-government response to meeting the needs of people with psychiatric disability be required.
- Some aspects of NSW Mental Health Act 2007, the NSW Community Services (Complaints, Reviews and Monitoring) Act 1993 and the NSW Guardianship Act 1987 be merged, to clarify agency responsibilities, including:
  - Legislative requirements and responsibilities of Official Community Visitors in relation to disability services be provided within the NSW Act, to enable greater recognition of their role and significance in disability support;
  - The relationship between the NSW Act and the NSW Guardianship Act be articulated and address the issue of capacity for decision making.
- The NSW Act stipulate the development of state and agency disability plans, their review, evaluation and implementation; and
- Stronger penalties be imposed for breaches of rights of people with a disability.

**Recommendation 3 – Contain a regulatory framework for restrictive practices**

A section of the NSW Act is required to outline appropriate management of restrictive practices in disability services. This section should clearly outline the rights of people with a disability and the roles and responsibilities of each service or agency and penalties, in order

to increase accountability on this issue. A section on compulsory treatment should also be included in the NSW Act, in line with Victorian Act and the NSW Mental Health Act 2007.

***Therefore, we recommend that:***

- The NSW Act address the appropriate management of restrictive practices; and
- A body be established, with a function similar to the Mental Health Review Tribunal under the Mental Health Act 2007, which could review treatment orders, advocate and make recommendations to the relevant Ministers.

**Recommendation 4 – Stipulate mandatory data collection**

Improving services requires evidence, and ongoing data collection is imperative. The NSW Act should stipulate the routine collection and use of 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.

***Therefore, we recommend that:***

- The NSW Act stipulate for ongoing data collection by all agencies with responsibilities under the Act.

**Recommendation 5 – improve access to information about the Act**

***We recommend that:***

- Section 21 of the NSW Act, *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); and
- A requirement be made for people to receive appropriate support to understand information about the NSW Act (for example, as outlined in section 7 of the Victorian Act).

**Recommendation 6 – Stipulate and adhere to review of the legislation**

Rapid change in the landscape of disability service provision will have implications for carriage of the NSW Act, making regular review imperative. We are only aware of one formal review of this NSW Act undertaken by the Law Reform Commission tabled in Parliament in 1999 (Commission 1999).

**Therefore, we recommend that:**

- The NSW Act be formally reviewed every five years with formal reports of these reviews to be tabled in State Parliament.

**Recommendation 7 – Review the NSW Disability Council**

The powers of the NSW Disability Council are currently limited and its role should be reviewed. The remit of the Council or an alternative agency should strongly reflect the rights of persons with a disability, including those with intellectual disability.

**We recommend that either:**

- The roles and responsibilities of the Council be legislated to invigorate its authority, including strengthening the relationship with the Minister for Disability Services. The legislation should outline the function, membership and review of the Council; or
- Consideration be given to possible disbandment of the Council and its replacement with an agency with expanded authority (as outlined above). This agency would have the power to review restrictive practices and compulsory treatments, as well as the authority to report and make recommendations on service delivery.

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

NSW Ministry of Health, (2012). 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.

Law Reform Commission (1999). Report 91 - Review of the Disability Services Act 1993  
(NSW) Lawlink. Sydney