

2014

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**DISABILITY SERVICES (DISABILITY SERVICE PROVIDERS)
AMENDMENT BILL 2014**

EXPLANATORY STATEMENT

**Presented by
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Introduction

This Explanatory Statement relates to the *Disability Services (Disability Service Providers) Amendment Bill 2014* as presented in the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Policy Objectives of the Bill

The principal objective of this Bill is to enable the Territory to maintain the existing quality assurance frameworks and safeguards relevant to the disability services for which it has responsibility during the trial period of the National Disability Insurance Scheme. This Bill amends the Act to require specialist disability service providers operating in the ACT during the trial period to meet standards, such as the National Disability Service Standards, and minimum safeguards. It also confers power onto the Territory to monitor those services against a regulatory framework.

The Bill also amends the Act to remove the reliance on a funding relationship with the Territory to enable the Disability Official Visitor to visit disability accommodation.

Reasons for the Bill

The ACT National Disability Insurance Scheme (NDIS) Trial will commence on 1 July 2014. The scheme is being trialled in different ways in sites across the country. The NDIS will revolutionise the way people with a disability, their families and carers are supported in Australia and will replace all current state and territory disability systems.

Agreement was not reached on the design of a nationally consistent quality assurance and safeguarding framework prior to the commencement of the first NDIS trial sites. In developing the Intergovernmental Agreement (IGA) for the National Disability Insurance Scheme (NDIS) Launch, it was agreed that the existing Quality Assurance frameworks and safeguarding arrangements in each State and Territory would remain for the trial period. There is a degree of variation in opinion on this topic, which is reflected in the diversity of arrangements across States and Territories. The safeguarding and regulatory model in the ACT is a product of the history and values of the ACT, including its commitment to human rights.

This decision provides the Commonwealth time to develop a nationally consistent model and the opportunity to learn from the experiences of trial sites. The ACT is the only trial site where conditions will mirror the full-scheme environment of the NDIS. For this reason, the ACT trial will offer valuable lessons.

In light of the introduction of the NDIS, the ACT will progressively cease to have a direct funding relationship with disability services as the funds transition to the National Disability Insurance Agency. This Bill removes the reliance on a funding relationship and the requirement for disability service providers to enter into an agreement with the Minister in order to be within the scope of the regulatory regime in this Bill.

In the current environment, funding agreements are the primary mechanism through which services are required to comply with approved standards and which mandate minimum safeguards. This Bill provides the Territory with the mechanism and authority to maintain existing quality assurance frameworks and safeguard arrangements in the absence of a funding agreement.

Further, the safeguarding function provided through the Disability Official Visitor (OV) is unable to transition to the NDIS Trial environment without amendment. The current jurisdiction of the Disability OV is also reliant on a funding relationship between the disability accommodation provider and the Minister. This amendment will enable the operation of the Disability OV in the NDIS Trial environment.

Human rights considerations

The *Disability Services (Disability Service Providers) Amendment Bill 2014* positively engages rights protected under the *Human Rights Act 2004* (HRA). The provisions in the Bill are designed to protect the rights, safety and interests of people with a disability. The right to recognition and equality before the law is expressed under section 8 of the HRA. The right to protection from torture and cruel, inhuman or degrading treatment etc is expressed under section 10 of the HRA and the right to protection of the family and children is expressed under section 11 of the HRA.

Section 31 of the HRA provides for international law, and the judgements of foreign and international courts and tribunals, relevant to a human right, may be considered in interpreting the human right. Particularly relevant to the interpretation of the rights specific above in this context is the United Nations Convention on the Rights of Persons with Disability (UNCRPD). Further, Section 7 of the HRA recognises that the Act is not exhaustive of the rights an individual may have under domestic or international law.

The Bill is consistent with the principles in article 3 of the UNCRPD, set out as follows:

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- b. Non-discrimination;*
- c. Full and effective participation and inclusion in society;*
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- e. Equality of opportunity;*
- f. Accessibility;*
- g. Equality between men and women;*
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

The Bill amends existing provisions regarding the ability of Official Visitors to visit certain disability services. The jurisdiction of the Disability Official Visitor is contingent on a funding relationship between the disability accommodation provider and ACT Government. As the introduction of the NDIS will progressively remove the funding relationship, this Bill ensures the operation of the Official Visitor is unimpeded in the NDIS environment. The right to privacy (including right to home) is engaged by this existing scheme, as amended; however, rights are not further engaged or limited by the amendment. The Explanatory Statement for the *Official Visitor Bill 2012* describes in detail the human rights that are engaged through this function and

Amendments

Clause 1 Name of the Act

This is a technical clause and sets out the name of the new Act as the *Disability Services (Disability Service Providers) Amendment Act 2014*.

Clause 2 Commencement

This clause enables the new Act to commence on 1 July 2014.

Clause 3 Legislation amended

This clause identifies the Act to be amended is the *Disability Services Act 1991*.

Clause 4 Objects

This clause substitutes a new subclause into the objects of the Bill, which reflects the purpose of the amendments.

Clause 5 Specialist disability services New part 1A

This clause outlines what is a specialist disability service for the purposes of the Act. It provides that services are in scope for the Act by virtue of the 'type' of service that is provided and because the service is provided specifically for people with a disability. This is an important distinction between this Bill and the Act being amended, which defines providers on the basis of their funding relationship with the Government.

Who is a specialist disability service provider

This clause provides that a specialist disability service provider is a person or an entity. It states that the Territory is not considered a specialist disability service provider for the purposes of the Act. The original Act does not currently bind the Territory as a provider. Territory delivered services are within scope of the Act, but the provisions of the Act are not enlivened absent a contract with the Minister. It is therefore consistent with obligations under the Intergovernmental Agreement (IGA) – to maintain existing quality assurance and safeguarding frameworks – to leave Territory delivered services out of the new provisions. The exact same oversight and Quality Assurance mechanisms that are in place for Territory delivered services will remain throughout the transition to the NDIS. The removal of the Territory removes any potential for conflict or bias in the director-general's role of oversight.

It further states that where a close relative is engaged directly to provide services to a person with a disability, they are not considered to be a specialist disability service for the purposes of the Act. It would present an unreasonable limitation on the right to privacy and reputation contained in section 12 of the HRA for family arrangements to be within scope of this Bill. This policy decision does not diminish Government's understanding that these arrangements can present unique risks for people with a disability, it is more reflective of a recognition that this Bill does not provide the most appropriate way to manage those risks and that there are other mechanisms and safeguards relevant to these arrangements.

Approval of standards

This clause gives the Minister the authority to approve standards, with which Specialist Disability Services must comply. These standards will be detailed in a disallowable instrument, as will the criteria for which standards are applicable to each type of Specialist Disability Service.

Clause 6 Financial assistance for providers of services Section 6(2)(b)

This clause omits the reference to standards approved under section 11, in lieu of the introduction of new section 5A.

Clause 7 Section 6(2)(c)

This clause omits Section 6(2)(c) as it references the Territory as the funder of disability accommodation. In the National Disability Insurance Scheme environment, the Territory will no longer have a funding relationship with accommodation providers.

Clause 8 Conditions of grants Section 7(4)

This clause omits reference to standards in section 11, in light of the new section 5A.

Clause 9 Meaning of official visitor Section 8A, new definition of operating entity

This clause inserts a new definition to provide that an operating entity for a visitable place by an official visitor is as defined in *the Official Visitor Act 2012*.

Clause 10 Section 8A, definition of a visitable place, paragraph (a)

This clause omits the reference to Territory as funder and removes from scope an individual's private home.

Clause 11 Complaint about disability service provided at place other than visitable place Section 8B(1)

This clause replaces the definition of services from those funded by the Territory to the new definition of specialist disability services in Part 1A.

Clause 12 Official visitors must give notice of visit Section 8C(1)

This clause provides that notice of a visit must be given to an operating entity at least 24 hours before a visit. This is in recognition that the director-general will no longer have a funding relationship with the provider.

Clause 13 Disability Service Standards Section 11

This clause omits section 11 of the Act as the new section 5A replaces the authority to approve standards.

Clause 14 Regulation-making power Section 12(2)

This clause replaces reference to section 11 for the approval of standards, with reference to the new section 5A.

Clause 15 Requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities

Schedule 2, requirement 9

This clause is a technical amendment to correct the language used in the section.

Clause 16 Dictionary, new definition of operating entity etc

This clause provides for new definitions to be added to the dictionary.

Clause 17 Dictionary, definition of *organisation*, paragraph (c)

This clause removes the paragraph that scopes not-for-profit providers out of the definition of organisation.

Clause 18 Dictionary, new definitions of *specialist disability service* and *specialist disability service provider*

This clause provides for the new definition of specialist disability service and specialist disability service provider to be included in the dictionary.