



Submission to the Social Policy Scrutiny Committee Inquiry into the *National Disability Insurance Scheme (Worker Clearance) Bill 2019*

Darwin Community Legal Service (DCLS)

Darwin Community Legal Service (DCLS) is a multi-disciplinary service serving the communities of the Northern Territory (NT) Top End. Our specialised Seniors and Disability Rights Service provides advocacy support and empowers people in Darwin, Palmerston, Katherine and remote communities in the areas of disability and ageing.

DCLS also provides a general legal service and a tenancy service which, together, enable us to provide wrap-around support. We work to promote understanding of laws, create awareness and empower our community, to support access to services and rights, and to advocate for change that promotes fairness and justice.

In July 2018, the National Disability Insurance Scheme (NDIS) commenced full implementation in the NT. Since then, DCLS has supported 82 participants (with 95 different issues) to understand, access, and improve their outcomes under the NDIS. We have had to turn away many more potential clients because of our limited capacity. Sadly, we have barely touched the surface in remote areas where an intensive outreach approach is required. In addition, DCLS has also responded to 109 general inquiries about NDIS, and provided input in 47 education sessions about NDIS.

DCLS support the object and intent of the Bill but suggest that the Bill needs to allow greater flexibility given the Northern Territory context. We endorse the objectives of providing for the protection of vulnerable participants in the NT and preventing harm arising from poor quality or unsafe supports provided under the NDIS. However, the Bill should be proportionate and strike a balance between regulation and facilitating service delivery to ensure the needs of people with disabilities are met. We propose that Bill regulations and rules be drafted to enable sufficient flexibility to respond to the needs and the rights of people with disabilities in the NT.

1. Coverage

The Bill defines “**worker**” to mean a person employed or otherwise engaged by a registered NDIS provider. A “**registered provider**” means a person or entity approved under section 70 of the *National Disability Insurance Scheme Act 2013* (Cth).

Therefore the Bill would only apply to **workers** who are engaged by registered providers. Any person who provides or is engaged to provide NDIS services who is not registered, and there is no compulsion to be registered, is not subject to screening checks.

For NDIS participants, the main difference between registered and un-registered providers is that you can only access unregistered providers if your NDIS plan is **Plan-Managed or Self-Managed**. Whereas if you are **NDIA-Managed**, your options are restricted and you can only access registered providers. If you Self-Manage your NDIS plan, unregistered providers will send their invoices to you to pay and you will then have to manually claim the funds back from the NDIS using the NDIS portal - but if you're Plan-Managed, your Plan Manager does this for you.

The registration process takes time, money and effort and being non-registered is easier for smaller providers. Unregistered providers also do not have to adhere to the requirements of the

Quality and Safeguards Commission and they do not have to conduct audits to show they are compliant with Quality and Safeguards requirements.

2. Flexibility and Appropriateness

At the commencement of the NDIS, it was estimated that there were 4,933 potential NDIS participants in the NT. This figure is likely to be significantly understated because of a large Aboriginal population, mainly in remote locations, who either don't use the descriptor 'disabled', or don't access services where disability may be identified. Despite this, take up in the NT is at only half the estimated figure.¹ This can be explained partly by the complexities in accessing the scheme, and partly because of the lack of market services to support individual plans.

There is a significant absence of service providers in the NT and few that will travel to service remote areas. Of the 848 service providers registered in the NT, only 170 are active. Where services are available, they are usually provided by small organisations, often community organisations, councils and not-for-profits.

Recruiting and retaining skilled staff is a real challenge in the NT, and particularly in remote areas where needs are greatest. The definition of **disqualifying offences** (to be prescribed by regulation) could screen out a large proportion of the remote population.

The risk of imposing quality standards uniformly without appreciating the operational context is that service viability is threatened - so locations with limited services may end up with none. A balance needs to be struck to ensure protection and safety of people with disabilities but understanding that the Aboriginal population is significantly over-represented in the justice system and that mandatory sentencing means small infractions can result in prison time, and thus severely limit the available workforce.

Similarly, the inclusion of disciplinary and misconduct information in the assessment of an application under s22 sets a high discretionary bar with no guidance about relevance of such information to the safety and prevention objectives of the process.

3. Spent convictions

The Bill provides that spent convictions are included in criminal history information that can be exchanged between the Screening Authority, the NDIS Commission and/or a screening authority of a state or territory.

Section 11 (c) of The *Criminal Records (Spent Convictions) Act 2007* (NT) provides::

- (i) a reference to a conviction, criminal history or criminal record or record of a similar kind shall be taken to be a reference only to a record which is not a spent record; and
- (ii) a reference to a person's character or fitness shall not be taken as permitting or requiring a spent record to be taken into account.

The provision in the Bill runs contrary to the object of this Act without any indication as to why the Bill should create an exception. In the Northern Territory context this seems unduly harsh.

4. Red tape

The introduction of the bill will add cost and complexity to the sector. Acknowledging that, particularly in remote areas, there are few specialist services and more likely combined service delivery, workers may be required to get separate clearances for NDIS, ochre card and a criminal history check. This seems costly and unduly onerous.

¹ COAG Disability Reform Council, Quarterly Report, 30 June 2019 <https://www.ndis.gov.au/about-us/publications/quarterly-reports>