



# DISABILITY SERVICES AND INCLUSION BILL SUBMISSION

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## About CMHA

Community Mental Health Australia (CMHA) is the coalition of states and territory peak community mental health organisations and provides a voice for several hundred community-based non-government organisations working to improve the mental health and wellbeing of people living with mental health conditions, their families, and carers and for all Australians.

### CMHA Coalition

- Mental Health Coalition of South Australia
- Mental Health Community Coalition of the ACT
- Mental Health Coordinating Council NSW
- Mental Health Council of Tasmania
- Northern Territory Mental Health Coalition
- Queensland Alliance for Mental Health
- Western Australian Association for Mental Health

## Background

CMHA and its members welcome the opportunity to provide a submission to the Department of Social Services (the Department) on the Disability Services and Inclusion Bill (the Bill), which is replacing the Disability Services Act 1986. Reviewing the current legislation is critical. In the 37 years since the Act was introduced, the disability support landscape has changed radically, most importantly with the introduction of the NDIS in 2013. As outlined by the Department, the current Act is outdated:

“Disability supports and services have changed since the current Act began more than three decades ago. In 2008, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was adopted, followed by the Optional Protocol to the CRPD in 2009. Further, Australia is moving toward a unified and national approach to building inclusion for people with disability. This started with the National Disability Strategy 2010-2020 and the establishment of the National Disability Insurance Scheme (NDIS) in 2013. This work is continuing with Australia’s Disability Strategy 2021-2031<sup>1</sup>”.

<sup>1</sup> Department of Social Services. (2023). Disability Services and Inclusion Bill – Consultation Material. [Disability Services and Inclusion Bill 2023 | engage.dss.gov.au](https://engage.dss.gov.au)

In undertaking this review, it is essential that the Department considers certain aspects of the Bill which will have far-reaching consequences for psychosocial support provision in Australia. The Minister for the NDIS Hon Bill Shorten MP has indicated that 27,000 people with psychosocial disability may be diverted from the NDIS in the future<sup>2</sup>. In this context, decisions made in this Bill, particularly around definitions and scope, will significantly affect how Australians with psychosocial disability receive Commonwealth funded supports in the future.

We are encouraged by many of the provisions of the Bill including that it:

- seeks to reflect the current service and legislative environment
- gives effect to the United Nations Convention on the Rights of Persons with Disabilities (CRPD)
- ensures funding for disability supports outside the National Disability Insurance Scheme (NDIS)
- intends to facilitate a current and efficient framework to support all people living with a disability, regardless whether they are receiving an NDIS package
- strives for consistently safe and quality services for all
- includes the concept of choice and control for people with disability within the Objects of the Act
- seeks to create consistency with relevant NDIS legislation and practice standards which ensures consistent, quality and safe supports across the diverse disability sector.

However, we have a number of concerns about the proposed Bill, in particular that the nuances of psychosocial disability have not been carefully considered. Psychosocial disability, as a consequence and characteristic of living with a mental health condition can fluctuate as circumstances may change. The episodic nature of a person's condition also impacts ongoing attempts to achieve personal recovery which makes a person's needs difficult to fit into the disability framework proposed by the Bill. Most concerningly, the absence of an explicit definition which acknowledges this complexity risks a situation where people living with episodic symptoms are prevented from accessing the supports they need and want.

Our response to this submission will explore these issues in detail including:

- The importance of defining disability in relation to people experiencing mental health challenges;
- Reducing regulatory burden for providers; and
- Broadening eligible services funded (and protected) under the Act.

It is informed by our extensive knowledge of the Community Mental Health and Wellbeing Sector.

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<sup>2</sup> <https://www.abc.net.au/news/2023-06-28/psychosocial-disability-ndis-future-inclusion/102534200>

## Definitions

The proposed Disability Services and Inclusion Bill, like the original Disability Services Act 1986 (DSA), does not provide a specific definition of disability. Instead, it provides the following general principle guiding actions under the Bill:

4(3) People with disability, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society.

By avoiding the creation of a single, fixed definition of disability, we understand that the Bill attempts to acknowledge that community understanding and perspectives of disability can be diverse and may evolve over time, while disability can also encompass a wide range of impairments, whether physical, sensory, intellectual, or psychiatric in nature. Indeed, the Department states that the decision to not define disability is a deliberate attempt to reduce the potential for exclusion:

“The Department of Social Services (the department) held an initial public consultation from 7 November 2022 to 12 February 2023. During this consultation it was asked whether ‘disability’ should be defined in the Bill. The department received mixed responses and the Bill does not include a definition of disability to reduce the potential for exclusion. Individual supports and services funded under the Bill may still be designed for specific target groups to ensure everyone’s needs are met. Not restricting the definition of disability allows for greater flexibility in who services are designed for. The Bill does not exclude any disability type<sup>3</sup>”.

However, we are concerned that **not** defining disability appropriately (or creating clauses that include episodic conditions or make reference to the duration of disability) may prove in practice to be exclusionary. Without a specific definition of psychosocial disability, the legislation risks adopting by proxy one of the key features of the NDIS definition of disability, that of “permanence”, despite intending to broadly cover disabilities of many origins, nature, types and degrees.

Psychosocial disability, used to describe a disability that may arise from a mental health issue or mental distress, has long been a contentious term. Mental distress, with its fluctuating nature and ongoing attempts to achieve personal recovery is distinct from physical and intellectual disability. Mental distress may result in disability that is temporarily disabling in terms of its functional impact on a person’s life, rather than permanent or long-term. It is our view that in fact, the disability model of “permanent and significant” that underpins the NDIS is diametrically opposed to a wellness and recovery framework, which instead emphasises hope, social inclusion, community participation, personal goal setting and self-management irrespective of ongoing symptoms of mental illness. Nonetheless, we note that most of this contention regarding the term psychosocial disability could be resolved by removing the question of “permanence”

<sup>3</sup> Department of Social Services. (2023). *Consultation Feedback – Responses to QAMH Questions Regarding Disability Services Inclusion Bill*. Unpublished.

and instead focusing on functional impacts and ultimately, we still believe it is better to define it than have no definition at all.

In failing to explicitly define disability, the Bill also runs the risk of creating confusion for service providers. When are the services they provide likely to meet eligibility criteria for funding and regulation under the Bill? And, if all severities, durations and extents of disability are covered, what should services – and policy makers – realistically expect will be able to be funded under the Bill? At what point, in the vast array of services provided for people experiencing all forms of mental distress, does the reach of the Bill actually cease? We believe that these complexities need to be deeply considered and clearly enunciated in the Bill to remove confusion for key stakeholders.

Finally, in its General Principles, we are concerned that the Bill needs to further elaborate on what is meant by ‘restrictive practices’. Section 4(7) currently states that *People with disability receiving supports or services have the same right as other members of Australian society to receive those supports or services in a manner which results in the least restriction of their rights and opportunities*. While we support this principle, we would argue an explicit definition is needed. This issue has particular relevance for people living with mental distress who have historically been subjected to restrictive and coercive practices in psychiatric facilities, in contravention of human rights law. Restrictive practices include, among other things, seclusion, mechanical restraints, chemical restraints, emotional restraints, environmental restraints and involuntary treatment.

## Recommendations 1 - 3

1. Broaden Principle 4(3) *People with disability, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society* to include reference to “duration”
2. Consider including a definition of psychosocial disability, or reference to episodic conditions
3. Expand the point of Section 4(7) to ensure that there is a clear definition for the term ‘restrictive practices’

## Quality and Safeguarding Arrangements

We welcome the Department’s exploration of various ways to reduce regulatory burden for providers. There are currently multiple standards against which community mental health services are assessed, each involving a lengthy, resource-intensive process. The preparation required for a single accreditation process is substantial. Anecdotally, members tell us they may need to allocate a staff member to focus on the collation of material for at least six months before a site accreditation visit. Clearly this regulatory burden is problematic for smaller organisations with already stretched resources.

It is essential that there is a marrying of the National Standards for Disability Services with others including the National Standards for Mental Health Services, the Digital Mental Health Standards, the Aged Care Quality Standards, the Human Services Quality Framework, the NDIS Practice Standards and the new National Safety and Quality Mental Health Standards for Community Managed Organisations. Detailed mapping of a mutual recognition framework which shows overlay between various standards would be highly beneficial so services are not required to meet the Standards multiple times.

## Recommendation 4

4. Provide assurance that the proposed Bill will not create unnecessary additional compliance requirements for service providers and that every effort will be made to align mandatory reporting processes.

## Eligible activities

We believe that the list of eligible activities funded under the proposed Bill should be broadened to include recovery supports and/or capacity building supports. Currently, the Bill does not include supports for people that will assist them build capacity and maximise their independence. Instead, it includes *13(j) The provision of a capacity building program* which refers to a program to improve the capability of systems for providing supports and services to people with disability, rather than capacity building supports for *individuals* who may experience disability yet be ineligible for support under the NDIS. Including these supports is essential, as these are the very supports which may prevent short term disability progressing to a long term or permanent disability requiring support under the NDIS.

## Recommendations 5 & 6

5. Broaden eligible activities funded under the Bill to include recovery supports and/or capacity building supports for individuals.
6. Clarify what areas of service delivery the Bill will extend to.

Thank you for the opportunity to contribute to this consultation process. We look forward to continuing to work with the Australian Government to better the lives of people living with psychosocial disability. Please do not hesitate to contact CMHA should you require any further information.