

Office of the Public Advocate

21 July 2017

Standing Committee on Community Affairs
Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Inquiry into the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017

To whom it may concern,

Thank you for the opportunity to provide feedback on the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017* (the Bill).

I am pleased to see that the foundations required to establish a sound safeguarding framework for the National Disability Insurance Scheme (NDIS), including specific provision for a code of conduct, behaviour support, complaint management and other important functions will be put in place through this Bill. However, given the high-level nature of the Bill (much like the *National Disability Insurance Scheme Act 2013* (the Act)), the effectiveness of these provisions in protecting the rights of individuals will depend upon the proposed NDIS Rules and the implementation of the principles contained within the Bill by the NDIS Commissioner.

For example, I understand that there have been some concerns raised regarding the independence of the Registrar, Complaints Commissioner, and the Senior Practitioner as those positions will not be specifically legislated to be separate and independent from the NDIS Commissioner. These concerns may be alleviated once these positions are established and demonstrate their independence in the investigation of complaints and other issues within the NDIS system.

The effectiveness of the further quality and safeguards envisaged in the Bill and outlined in the Explanatory Memorandum will also be contingent upon the finalised Rules and policies, as well as their effective implementation. In particular, in relation to the issue of restrictive practices, I strongly support the NDIS policy commitment to reduce and eliminate the use of restrictive practices in the care of people with disabilities. However, I am concerned about how effectively these policies will be implemented in a young and evolving 'free market' populated by potentially unprecedented numbers of providers, with many of them new to the disability sector.

The success of safeguards in this context will depend heavily upon proper implementation and administration of the NDIS Rules. This will require a framework of effective monitoring and enforcement.

Regarding the proposed amendments in the Bill, there is an issue regarding clause 16, for the insertion of a new paragraph 24(1)(f) into the Act. The Explanatory Memorandum states that this is to be inserted due to confusion raised regarding the fact that a person may be considered to meet the disability requirements under section 24, but not be considered to meet the requirements of section 34, that the supports required by the person are reasonable and necessary.

I do not believe that this amendment is necessary or appropriate, and would argue that these provisions are working as they should. The current eligibility for the NDIS is determined under a two-step test. The first part of the test is whether the person has disability requirements and should remain the threshold consideration for eligibility for the NDIS. The second part of the test is whether the disability supports the person requires are reasonable and necessary to be provided through the NDIS. Whether a person has a disability requirement is essentially establishing if that person has a disability within the meaning of the NDIS. The determination of whether a person has a disability condition should not be dependent upon whether the NDIS can appropriately fund services for the person.

If confusion has arisen, then it is more appropriate that the NDIA undertake a community education campaign to clarify the two-fold eligibility test. In my view, the insertion of the proposed new paragraph is likely to make these provisions more confusing, not less. It may be more appropriate for the Act to specifically state that eligibility for the NDIS is determined under a two-step process and combine sections 24 and 34 into the one eligibility provision.

Thank you again for the opportunity to provide feedback in relation to the Bill. I look forward to seeing the further development and rollout of the NDIS and will continue to provide feedback on its development whenever possible. Should the opportunity arise, I would be pleased to be part of further discussions in relation to this Bill or any of the matters raised above.

Yours sincerely

Mary Burgess

Public Advocate (Queensland)