

DISABILITY SERVICES AMENDMENT BILL 2014

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Part 4B inserted —

Dr A.D. BUTI: I have an amendment to move, but I will do that a bit later. I refer to proposed section 26G, “Trial of disability services model”, on page 3 of the bill, which states in part —

- (2) The objectives of the model include —
- (a) providing people with disability with reasonable and necessary supports;

This comes up again under proposed section 26I. Can the parliamentary secretary clarify whether “reasonable” is to be measured in an objective or a subjective way, or a combination of both?

Ms A.R. MITCHELL: We are following the definition of “reasonable and necessary” as defined in the federal National Disability Insurance Scheme Act. That act includes a description of how to determine what is reasonable and necessary. We will adopt that, so that there will be consistency in Western Australia.

Dr A.D. BUTI: Is that section 4 of the NDIS act?

Ms A.R. MITCHELL: Under the bill, proposed section 26I(2)(b) states —

the support meets the criteria set out in the NDIS Act ...

Dr A.D. BUTI: I know that we are following the NDIS act, but I would still like to know what that act says. How will we measure “reasonable”? It is all right to say that we will follow the NDIS act, but we need to know what that criteria is.

Ms A.R. MITCHELL: I do not think the member wants me to read right through that section in the federal act on reasonable and necessary supports. It outlines six areas. It talks about participants being able to pursue goals and objectives; that participants will be given support to undertake activities; that the support represents value for money; that the support is likely to be effective and beneficial for the participant; that the funding or provision of the support takes account of what it is reasonable to expect families, carers and informal networks to provide; and that the support funded through the National Disability Insurance Scheme is not more appropriately funded or provided through other general systems of service delivery. There are a couple of other paragraphs under that. That section in the federal act is quite detailed.

Dr A.D. BUTI: I thank the parliamentary secretary. Although that list provides a number of things that need to be complied with to make it reasonable and necessary, what I am trying to get at, which we discussed very briefly at the briefing, is how to determine what is reasonable. Is something determined to be reasonable because the community determines that it is reasonable and, then, is it the general community or a particular community? For instance, if services were being provided to someone up in Halls Creek, would we determine whether that is reasonable by what the community in Halls Creek determines is reasonable or by what the community of Western Australia considers is reasonable? That would be an objective measure. Is it a subjective measure? For instance, would it be in terms of whether the person to whom the services are provided considers it to be reasonable? For instance, section 18C of the Racial Discrimination Act, which the parliamentary secretary’s federal colleague Attorney General George Brandis wants to repeal, which is quite disgraceful, has objective and subjective parts to it. There is an objective part in terms of what the general community would think and a subjective part in terms of how the person upon whom the abuse has been inflicted responds to it or feels about it—whether they are offended or humiliated. If we are going to determine whether something is reasonable, we need to know what the yardstick will be. We are not talking about all the services that may need to be provided but the standard at which they will need to be provided. Is it the community standard or the recipient’s standard? If it is the community standard, is it the standard of the general population or of the community of which that person is a member?

Ms A.R. MITCHELL: The member is right; objective and subjective areas will be determined, particularly for a state like Western Australia that is generally diverse. Even though this area has a boundary around it, there are still variations within that. We will develop guidelines based on the NDIS guidelines for My Way. The important thing about the My Way site is that it will allow the local coordinator to compare local decisions and to work with them; we will have that local area coordinator factor. The flexibility will be there, but one of the things we are very proud of about the My Way trial sites is that local decisions will affect local circumstances. I think that will be very important for this trial.

Dr A.D. BUTI: The parliamentary secretary just said that “reasonable” would be subjective, but does she really mean that it will be objective based on an overall community standard and also a localised community standard? If it was subjective, we would also bring in the viewpoint of the person receiving the treatment, which would be great, but we need to be quite clear that that is the case; or does the parliamentary secretary mean there is objective 1 and objective 2—objective 1 being the general population, and objective 2 being the particular community—rather than the subjective feeling or subjective view of the person receiving the service?

Ms A.R. MITCHELL: The parameters are set by the federal guidelines, and our local area coordinators will refine them to meet the patients’ needs and supports systems.

Dr A.D. BUTI: I move —

Page 4, after line 28 — To insert —

- (1A) The regulations referred to in subsection (1)(d) must not impose requirements that are more difficult to satisfy than :
- (a) the disability requirements under the NDIS act; or
 - (b) the early intervention requirements under the NDIS act.

There is, of course, a requirement to be under 65 years of age to be part of the trial, which is also the National Disability Insurance Scheme standard. People can be over 65 and be a recipient, but they have to be under 65 years when they commence. I understand that. Certain residential requirements must be met, which I also understand. In regard to the residential requirements, the Disability Services Amendment Bill 2014 refers to having to be a resident of a certain area, which is fine, but is there any qualification on how long somebody has to be resident in their local area? What happens if someone was a resident of an area, moved away and came back after a short time? In other words, how long does someone have to live in an area to fulfil the residence requirement?

Ms A.R. MITCHELL: There are a couple of things to cover there. I will start with the latter part. If someone is a resident at the start of the trial, they are in. If they move briefly, they take their support with them; if they come back, they will still have the same support. As to the member’s amendment, under the agreement with the commonwealth, the state agreed to align with the National Disability Insurance Scheme eligibility criteria, and this proposed section reflects that commitment. The trial would probably aim to expand the criteria, not be limited to them, particularly in the approach to the early intervention and psychosocial components.

Dr A.D. BUTI: Proposed section 26H(1)(d) currently reads —

the person meets any other requirement prescribed by the regulations.

We obviously do not know what those regulations are. The parliamentary secretary said that the agreement seeks to comply with those regulations, and that is interesting because proposed paragraph (c) reads —

- (i) the person meets the disability requirements in the NDIS Act section 24; or
- (ii) the person meets the early intervention requirements in the NDIS Act section 25;

But proposed paragraph (d) states —

the person meets any other requirement prescribed by the regulations.

Proposed paragraph (d) does not refer to NDIS regulations. As it reads now, although the parliamentary secretary said that is the agreement, nothing under clause 4 of the Disability Services Amendment Bill 2014 would restrict the government, through regulations, imposing disability and early intervention requirements more onerous than those in place under the National Disability Insurance Scheme. The residential requirements also refer to the NDIS. The regulations imposed under proposed paragraph (d) could go beyond anything in the National Disability Insurance Scheme.

Ms A.R. MITCHELL: If we tried to make something more onerous, we would be acting contrary to our agreement with the commonwealth, and we would not be doing that.

Dr A.D. BUTI: An agreement, though, does not legally prohibit the government from doing that, does it? Maybe it does. Can the parliamentary secretary explain what the sanction to the state would be if more onerous regulations are introduced?

Ms A.R. MITCHELL: The biggest and most powerful, obviously, is the commonwealth funding, which is dependent on us complying with the agreement.

Amendment thus negatived.

Clause put and passed.

Clause 5: Section 56 amended —

Dr A.D. BUTI: I have a question about proposed section 56(2), which reads —

Without limiting subsection (1), regulations may provide for any matter for which rules can be made under the NDIS Act.

Presumably that is subsidiary legislation, but what sort of rules are we looking at?

Ms A.R. MITCHELL: I will give the member some examples; I am not sure they are specific yet. The commonwealth has already adopted 11 applicable rules, and they are things like becoming a participant, time frames for decision-making, supports for participants, children, nominees, registered providers of supports, plan management, protection and disclosure of information, scheme actuary, risk management and accounting for compensation.

Clause put and passed.

Clause 6: Section 57A inserted —

Dr A.D. BUTI: I move —

Page 6, lines 22 and 23 — To delete the lines and substitute —

is freely available online or the public can obtain hard copies on request at no charge.

Clause 6 deals with regulations made for the purposes of the act referring to published documents; it is quite important. In the second reading debate the member for Mirrabooka mentioned the issue about these documents being made freely available. I believe that my amendment seeks to present a reasonable demand on the state, given it reads, “is freely available online or the public can obtain hard copies”. It does not have to be both. People have only to provide hard copies if the document is not online. If it is freely available online, there is no need for the government to provide hard copies free.

All I am requesting is that the documents be freely available online, which I am sure most would and could be. There should not be any major budgetary consideration for the state. If that is not possible—I am sure it would be a rare occasion when it would not be possible to put it online—then it is to be made available free as a hard copy, but only upon request. It is a reasonable amendment. It is important that people are not prohibited from accessing documents that are referred to in regulations because of financial hardship. People who have disabilities are often in financial hardship, so they should not be placed into a situation of not accessing documentation; that is why we are moving this amendment. I am not demanding on all occasions that hard copies be made available at no charge. It is only when these documents are not online. Therefore, it is a reasonable amendment that I hope the government will agree to.

Ms A.R. MITCHELL: It is my understanding that this is a standard legislative provision. It also appears in the Childcare Services Act 2007, the Gas Services Information Act 2012, the Road Traffic Act 1974 and the Water Services Act 2012. The provision is simply intended to ensure that the relevant text is available in some way, and it does not go into the details of how this is to occur. Expressly providing for free access is not considered necessary in this instance as regulations are being made based on the National Disability Insurance Scheme rules. Being commonwealth legislation, these rules are always freely available.

Dr A.D. BUTI: These are regulations that will be enacted by this government through Parliament. It just seems to be pig-headed for the parliamentary secretary to say she would not agree with this amendment. She recited a long list of acts, but they do not deal with people who have disabilities. I do not really care about those other acts if I am a person who has a disability, necessarily. What is the problem here? We are just saying, “Make sure those documents are available online.” Governments put massive documents—some 300, 400, 500 pages—online. All we are asking is that these documents, which are referred to under regulation, be available online. If they are not online, then they should be made available on request. I am sure there would not be too many requests, but that should not be a problem if the regulations are put online. The parliamentary secretary referring to all these other acts, which may have no relevance to people who have disabilities, is really not a valid comparison. This is a reasonable amendment to assist people who are trying to obtain information about how the NDIS or the My Way trials will work, because if these documents are referred to in regulations, they must be important. Why should they not be freely available? It seems absurd that a government would instigate regulations that referred to documents and that some people, who do not have economic means, are unable to access them.

Ms A.R. MITCHELL: I can assure the member for Armadale that, whenever possible, these documents will be available free of charge. But there may be some aspects of the regulations that refer to another document that does not belong to this state. Therefore, we cannot guarantee that these would always be made available by the state.

Dr A.D. BUTI: I find it quite strange that a document that is not a state document but is a commonwealth document is freely available. Unless there is some special copyright provision or whether it is a government document anyway, it should not be a problem. The parliamentary secretary said she will assure, whenever possible, they are made available. This amendment is trying to ensure that the parliamentary secretary's assurance is actually given legislative force. Once again, it is the old competition aspect of "We cannot give the opposition anything here". My amendment was incredibly reasonable. I could have said "It is freely available online and the public can obtain it." I have not done that; I have tried to be incredibly reasonable by considering the people who the parliamentary secretary has said in her second reading speech she is seeking to assist. We should be trying to ensure that the people who may not, due to economic means, have the ability to obtain these documents have the ability to obtain these documents. Because it might be a commonwealth text is really quite irrelevant. I am sure the commonwealth will not prevent the state from putting a commonwealth document online, especially if it has something to do with the NDIS. As she said, it might be a commonwealth document—well, presumably, it is online. All she needs to do is provide the link.

Ms A.R. MITCHELL: We always like to take on board the member for Armadale's amendments. They are very thought-provoking and we spend a lot of time on them. As I have stated already with this provision, we would do everything we possibly can, but there are some things that may be beyond our control. For example, licensing issues associated with another publication that we cannot commit to at this stage.

Amendment put and negatived.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [7.30 pm]: I move —

That the bill be now read a third time.

DR A.D. BUTI (Armadale) [7.30 pm]: As was discussed through the quite lengthy second reading debate, particularly by members of this side, the whole issue of NDIS is an incredibly important issue. In her response to the second reading contributions of members on this side of the house, the parliamentary secretary mentioned that much of the content of our contributions had little to do with the Disability Services Amendment Bill. We cannot look at legislation in isolation; we have to look at it in context, which is why members on this side of the house spent considerable time going through the issues faced by people with disabilities and the rights of those with disabilities and service provision in the disability sector. We cannot look at it in a clinical or cold fashion. We must look at the particular clauses of the bill to determine what it seeks to do. The bill will at long last allow for a trial of the NDIS in Western Australia, which is why it was important that we outline the context of disability services in WA.

The parliamentary secretary also said it was good that we are supportive of the trials and of the NDIS being trialled in Western Australia. That is a little bit rich given that the opposition has long advocated that Western Australians with a disability should benefit from the NDIS. It is important to understand what this bill, which has just gone through the consideration in detail phase, will do. First, it will allow for a trial of the NDIS in Western Australia, but in a slightly different manner from that rolled out in other states, because it will be compared to the My Way approach of the state Disability Services Commission. Time and again we hear that we have the best disability services sector in Australia and that My Way is a great approach. There is no doubt that the My Way approach has laudable and commendable aspects. However, we must be careful not to engage in a false sense of a "Rolls-Royce quality" of the provision of disability services in Western Australia. As I relayed in my second reading contribution, many people who seek assistance through the Disability Services Commission would not say that Western Australia has a fantastic system. When the Community Development and Justice Standing Committee asked that question of some players in the system, they said that services in Western Australia are basically middle of the road—better than some in other jurisdictions, but not as good as others. That will always be a hard thing to measure. However, we always know that we can improve the delivery of services in the disability sector because the amount of money invested in the disability services sector not only in Western Australia, but also throughout Australia generally by both sides of politics has never been enough. Neither side of politics has ever provided sufficient resources for the adequate delivery of services in the disability sector, which is why the NDIS has such special appeal. It may be that the NDIS will not live up to expectations; indeed, things that are built up to such a high standard generally do not live up to expectations, but one thing is for sure: if the NDIS is rolled out in the manner that has been proposed, it will provide much greater quality in the delivery of services to people with disabilities.

Having heard many stories during our committee hearings, it is clear that many people are at breaking point. I am sure all members have heard stories about the provision of disability services. One of the reasons that there has always been an issue with the delivery of disability services is that it does not have great political weight. When people fill out their ballot paper, very few of them think about the provision of disability services. I imagine that very few people went to the polls on Saturday thinking about disability services.

Madam Acting Speaker, I am having trouble thinking.

The ACTING SPEAKER (Ms L.L. Baker): Members, keep your conversations down! This is not the place for them.

Dr A.D. BUTI: Thank you, Madam Acting Speaker.

Disability services is not a priority during an election campaign, nor is it given great political focus during the election cycle, which is why it is always a problem trying to obtain more services in the sector. Moreover, people with disabilities are in a minority. If they were in the majority, I am sure there would be a greater provision of services. At one level, it may be difficult to understand why we want to ensure that people with disabilities have as fulfilling a life as possible. Apart from the resources element, there is also an attitude issue. Many people are fearful and do not understand how to communicate or interact with people with disabilities, and, as a result, they shy away from them. It is difficult to improve the lives of those with disabilities unless people advocate in this area.

I will sidetrack for a minute, because it is important to understand how we value people with disabilities. In my inaugural speech, I mentioned Australian philosopher Peter Singer, who is based at Princeton University. I think he is a professor of applied ethics or something grand like that. Before he went to Princeton, he had a history of being involved in animal rights; indeed, he wrote some interesting stuff. He long advocated that the parents of babies born with a severe disability should be able to consent to the termination of their child after he or she is born. While there was some outrage about his remarks—there was some protest about his appointment at Princeton University—it is interesting that whenever he comes back to Australia, his lectures are packed. He also appeared on *Enough Rope with Andrew Denton* a few years ago. Whilst on that show he said that if a child of his were born with Down syndrome or another intellectual disability, he would have that child adopted because he would never be able to engage in a conversation with the child. I was not aware of any outrage about that comment. If he had said that a race of people should be terminated or if he had commented on gender equality or sexual orientation, there would have been outrage. I had correspondence with a chief executive officer of a non-government organisation in Melbourne that deals with foreign aid. Peter Singer has been quite supportive of foreign aid, but, of course, many of the countries to which he wishes to send foreign aid do not treat people with disabilities very well. I corresponded with the person who worked at the NGO. I mentioned Peter Singer's views on babies born with disabilities. The comment I received back was, "Does that mean you're not supportive of foreign aid?" I said, "No, it does not mean that I am not supportive of foreign aid, but I do take issue with you saying that Peter Singer is a great champion of human rights when he has, on numerous occasions, said that it should be lawful to terminate the lives of babies with disabilities." Of course that is not the same issue as pro-choice, although some would say it is, but I do not see it as the same issue. We can have that debate another time—if members so wish. I am talking here about children who are born with a disability. Many sections of the Australian public will champion the views of Peter Singer and attend his lectures, but if it was an issue of race or sexual equality I do not think they would agree. Disability goes to something in our societal psyche. I come back to the point that because, for many people, disability is something "out there", it does not relate to them. However, it is surprising the number of people who are touched by disability and the number of people who have someone in their family or a close friend with a disability. It is probable that more and more people are now touched by the issue of disability than we would think. It is surprising that we still have this inertia in the political debate. The fact is that Bill Shorten, the federal Leader of the Opposition—whatever views those on the government side may hold of Bill Shorten—was a champion of the National Disability Insurance Scheme. When it was not fashionable, he was the one who drove the recommendations and the Productivity Commission's report about the NDIS.

There is the moral argument that if we are to be a civil society, we will do things that will assist other people. Hopefully, this would make a more civil life and one that is better for other people. If we are to be a truly civil society, we will seek to ensure that people who have disabilities are properly catered for. Madam Acting Speaker, there is still far too much noise.

The ACTING SPEAKER: Can members please stop the conversations.

Dr A.D. BUTI: If members are not interested in this topic, I, personally, would not mind if they left. They have been given enough warnings. The lack of interest in the whole area of disabilities and the provision of disability services can be shown by the display during my contribution to the third reading.

Whichever government is in power, it is incredibly important to try to depoliticise the issue. When the parliamentary secretary said that this is a bipartisan approach, or that she is happy that we on this side of the house are supportive, I am sure she is happy that we are supportive of something that we actually put to the government. Obviously we would be supportive because we have been the champions of the NDIS. Let us put it on record that it is the Labor federal government, with the support of Labor state governments and oppositions throughout Australia, that have been the champions of the NDIS. It just happens that in Western Australia at the moment it is not a Labor government, but the government has finally come to the table and maybe the decision to have this trial period will actually improve the NDIS. I hope that is the case. We are strongly supportive of the Disability Services Commission.

The ACTING SPEAKER: Members! This is the third time I have told members to stop the conversations. I do not need to start calling people at this time of the night. Please let the member for Armadale finish his contribution.

Dr A.D. BUTI: We on this side of the house very much hope that this trial period using the National Disability Insurance Scheme by way of the state My Way model will actually result in improvements to the NDIS because, hopefully, we can all champion the importance of improving the delivery of services to people with disabilities. I commend the Disability Services Amendment Bill 2014 to the house. I hope that the trial period will be successful, but in the meantime, until this commences, we have to ensure that people who are unable to access the trials because they are in geographically restricted areas are still properly catered for under the state Disability Services Commission.

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [7.45 pm] — in reply: I take this opportunity to thank members opposite, because their support of people with disabilities was very evident throughout the debate on the Disability Services Amendment Bill 2014. There is no question that I think every member of this house recognises the importance of effective support for people with disability. In particular, I would like to thank members opposite for supporting this legislation because we believe that the NDIS and the NDIS–My Way trial sites are important in the process of ensuring that we have the best system possible for people with disability. That is why it is very important that we have both trial sites operating.

I can assure members that the NDIS–My Way trial sites are underway and ready for the state to begin on 1 July this year. We will be focusing on improving the systems as much as we can. Members who have raised some issues will obviously recognise that our systems are not perfect but we are always trying to improve the support and services available to people with disability. Once again, I thank members for their support of this bill and I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.