



Submission of Family Planning Australia

A New Act to Replace the Disability Services Act 1986

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Australian Government – Department of Social Services

Online written submission

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Introduction

Family Planning Australia welcomes the opportunity to respond to this consultation on a new Act to replace the Disability Services Act 1986.

We have a strong history of consulting with the Australian Government on policy and legislation impacting on people with disability. We make the recommendations below in response to the consultation questions in order to better provide people with disability with sexuality supports, which encompasses positive health and wellbeing outcomes in the areas of relationships, sexuality and sexual and reproductive health.

Sexuality support is a vital component of disability support services which contributes to improving social, education, health and wellbeing outcomes for people with disability, fulfilling the promise of Australia's Disability Strategy 2021-31 and Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).

About Family Planning Australia

Family Planning Australia is the leading provider of reproductive and sexual health services in NSW and Australia. Our mission is to enhance the reproductive and sexual health and rights of our communities by supporting all people to have control over and decide freely on all matters related to their reproductive and sexual health throughout their lives.

Each year we provide more than 30,000 clinical occasions of service to clients, information and health promotion activities to communities, and best practice education and training in reproductive and sexual health for health for doctors, nurses, teachers, disability support workers and other health, education, and welfare professionals.

Our work is evidence-based, and shaped by our research, published clinical practice handbooks on reproductive and sexual health, nationally recognised data and evaluation unit and validated through extensive clinical practice.

Family Planning Australia has been delivering targeted services to people with disability and those who support them for over 35 years, including clinical services, health promotion and professional education. As a registered provider under the NDIS, we have provided sexuality and relationship support and education via psychology services to people with disability, face to face through our Newcastle clinic, and via telehealth across New South Wales.

We firmly believe in the right of all people to make decisions about their own body and relationships, and the right of all people to live without violence, abuse, neglect and exploitation. However, the evidence is clear that people with disability are much more likely to experience poor health outcomes and violence, particularly sexual violence, compared to people without disability.(1)

Objects of the Act

QUESTION 1: Do you agree with the proposed objects for the new Act? What other objects should be included in the new Act?

We commend the proposed objects of the new Act for including reference to supporting independence and social participation of people with disability, and to their inherent human rights and freedoms.

However, the proposed objects of the new Act should more specifically reference relationships and the full scope of obligations under the UNCRPD, including equality and non-discrimination, freedom from exploitation, violence and abuse, and respect for home and the family.

The rights of people with disability to have relationships are being denied due to stigma and misconceptions, lack of resources, lack of clear policy and lack of training of disability sector staff. This means that people may not be able to access the supports they need. People with disability have higher rates of sexual abuse and exploitation, as evidenced by the recent Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and poorer reproductive and sexual health outcomes. (2, 3, 4) The new Act therefore needs to strongly emphasise this area in order to improve practices in disability services, framed by a rights-based approach.

Development of relationships is a key aspect of human health and wellbeing. People with disability, particularly those with intellectual disability and autism, may require specific and explicit support to develop their understandings and skills to successfully develop and maintain relationships, including friendships as well as more intimate relationships as they mature. These skills and experiences of positive relationships also contribute to their ability to achieve a range of life goals, and fully participate in family and community life, education and employment.

Recommendations

Family Planning Australia recommends the following **amendments** (in bold text) to the proposed objects of the new Act:

- Object b) support the independence and social and economic participation of people with disability, **and the full attainment of rights as specified under the UNCRPD**
- Object c) provide supports and services which empower people with disability to **develop relationships**, maintain and increase their social and economic participation
- Object c) i. participating on an equal basis in their communities of choice **and in relationships of their choosing** OR: ii: increasing independence and seeking meaningful opportunities for employment, education, and development, **including development of relationships**
- Object e) increase public awareness, understanding and acceptance of people with disability, **and eliminate discrimination, exploitation, violence, abuse and neglect**

Who will the new Act support?

QUESTION 3: Do you agree with our suggested principles for avoiding duplication and requiring coordination? What other principles do you think should apply?

Family Planning Australia is supportive of measures which promote coordination between service providers to ensure the best quality of care and support is given to people with disability. For example, people with intellectual and psychosocial disabilities may receive services from behaviour support practitioners to address sexualised behaviours of concern as well as accessing psychology and counselling services for the same goals of building social skills and improving health and wellbeing. People with disability are vulnerable as both victims and perpetrators of sexual harm, and sexuality education and/or therapy to address behaviours of concern is a particular skill set that is crucial for addressing behaviours that put a person and others at high risk of abuse. These services should therefore be coordinated to ensure they are provided by those best qualified to do so, namely experienced clinicians, rather than as general behaviour support services.

However, measures must also be included to ensure that gaps in services or supports are proactively addressed and not left in the 'too hard basket'. Family Planning Australia is concerned that focusing too heavily on minimising duplication may mean more complex areas like sexuality support remain underfunded or unfunded (refer also to our response to consultation question 6 below).

For example, Family Planning Australia is concerned about the gap between the sexuality education provided to students with disability through schools and the services available under the NDIS to provide that education and support, particularly where education provided at school has been insufficient or unsuited to the person's learning style. Through our work as a provider of training to special education teachers, we are aware of the frequency with which schools inconsistently provide sexuality education at school, particularly to students with intellectual disability. Our own needs analysis (5) identified a number of key barriers to schools providing this education: lack of resources, insufficient teacher training and a lack of teacher confidence. These findings have also been confirmed by research (6, 7).

This means that some students are finishing school without the required skills and knowledge to allow them to successfully transition into post-school programs or education. This is relevant within the NDIS context as there continues to be inconsistent advice provided to participants and their families about the availability of funds to support additional sexuality education.

Family Planning Australia is concerned about the mutual shifting of responsibilities between health and the NDIS in meeting the reproductive and sexual health needs of people with disability. Health services, including allied health, are often inexperienced or avoidant in providing reproductive and sexual health care and support, particularly where there are sexualised behaviours of concern or concerns about a person's capacity to make decisions. At the same time, it has been clearly stated that the NDIS does not fund treatment for such needs when they arise, only maintenance for known issues. This potentially leaves a large gap where a person's reproductive and sexual health needs are not addressed by the health system or the NDIS, leaving the person and their families with few options for support and limited recourse for complaint.

Recommendations

Family Planning Australia recommends that:

- Any changes to the Act and associated implementation and monitoring measures focus on addressing gaps in service delivery around relationships and sexuality support rather than focusing on reducing service delivery.
- Changes to the Act support coordination between service providers to ensure the best quality services are delivered by the most appropriately skilled and experienced providers.

Quality and safeguarding arrangements

QUESTION 5: How do you think quality and safeguarding arrangements should be managed by the new Act?

It is well established that lack of provision of sexuality and relationship support places people with disability at greater risk of violence, exploitation, abuse and neglect as well as poorer reproductive and sexual health outcomes than people without disability.

Family Planning Australia has deep concerns about the capacity and capability of the current disability workforce, and wider disability sector, to provide best practice holistic sexuality and relationship support to people with disability.

Disability support work is intense and task driven with low pay and poor conditions, indicating that it is not valued. This was reflected in the Disability Royal Commission, which called for improvements to training and conditions of employment. (8) Evidence shows that disability support workers and other members of the NDIS workforce experience high rates of workplace stress and burnout which contributes to a high turnover rate of employees.(9, 10). NDIS funding restrictions have severely limited the training that is available to disability sector workers. Some employers in the disability area focus their recruitment criteria on values that are compatible with the organisation, such as rights-based and person-centred care, rather than qualifications and prior training or experience. (11) While these values are important, the job duties and requirements of disability support workers are complex and require specialised skills and knowledge. This includes supporting people around communication, relationship-building, conflict resolution, managing challenging and sometimes violent behaviours and knowledge of relevant legislation and policy that are essential in working with any highly vulnerable people.

International research has shown that the introduction of individualised funding in the social and community services sector has led to fewer opportunities for skill development and training, particularly for workers employed directly by care recipients. (12) The NDIS current pricing structures are not always sufficient for training activities and skill development and workers must often pay for training themselves. (13) Family Planning Australia have seen this trend firsthand as registration in our own disability training courses has waned since 2017 as workers cannot afford training fees and their own organisations do not have training budgets. Sexuality and relationships have an impact on every area of life and workers have significant influence in their clients' lives. The potential for untrained disability sector workers to restrict or overlook their clients' access to sexuality, relationships and sexual health services can lead to lifelong disadvantage for people with disability.

These factors, accompanied by limited access to professional development, reduced staff support and ambiguity regarding the scope of disability support workers' roles, make it challenging to attract and retain workers to the NDIS workforce. As a result, there is an ongoing need for better information and resources to support disability sector workers to provide sexuality and relationships support to clients.(9, 10) Research suggests that in order to reduce the impact of burnout on the workers, organisations should look to address employee workload and staffing ratios, provide increased staff support and training in a wide variety of areas, including strategies and approaches to provide relationships and sexuality supports, and provide greater clarity on the expected scope of work of NDIS staff.(10, 14)

In Australia, the disability workforce has historically had relatively low levels of formal qualifications and skills and the majority of workers in the disability sector are employed in non-professional support worker roles. While many workers have undertaken post-school qualifications, such as a Certificate III or IV in Individual Support, Community Services or Disability Services, there are no mandatory qualifications for disability sector workers. The quality of vocational education and training also varies widely, including many providers offering qualifications in short timeframes which fail to expose students adequately to real or simulated workplaces. (12) As mentioned above, if an NDIS workforce member wants to further their learning, they often have to access training at their own time and cost. Further, our needs assessment found that the majority (69.2%) of respondents had not completed any formal sexuality and disability training.(5) Due to the lack of funding and opportunities for training and professional development, we are concerned about the implication for workers' ongoing development and currency of skills, particularly in an increasingly casualised workforce.

Recommendations

Family Planning Australia recommends that:

- Changes in the Act need to be accompanied by information and resources for people with disability, their families and carers, and for the disability workforce to ensure they can fully understand changes and the current processes and services available.
- The new Act should ensure that professional development for disability sector workers is a mandatory component for disability service providers, to ensure quality service delivery, including professional development to support clients to access sexuality and relationship education and support services.
- The new Act should mandate the development of systems to ensure all disability sector workers have a level of training and qualifications which is in line with the requirements of their positions, including a specified minimum level of training or qualification for disability support workers and others who provide direct care to ensure improved quality and safeguarding.

Types of services funded under the new Act

QUESTION 6: Do you agree with the supports and services listed above? What other kinds of supports and services should be included in the new Act?

The types of services proposed to be listed in the new Act do not clearly address sexuality and relationship support provision for people with disability. The lack of clarity in the current Act has had a flow-on effect, leading to a lack of clarity for people with disability and amongst disability service providers and their policies and processes.

In terms of the provision of sexuality supports under the NDIS, more clarity and education is needed to specify what people can ask for in their NDIS plans. For example, people with disability who have NDIS funding can have sexual services in their plan, such as under Improved Relationships, Improved daily living skills, or Increased social and community participation. However, Local Area Coordinators and NDIA planners give conflicting advice, resulting in lack of access, or inconsistent access, to services clients wish to request. More training and support is needed for NDIA staff on what exactly can be funded.

Relationships and sexuality supports may include a range of activities, including:

- access to information and education utilising physical and digital accessibility principles, including Easy Read resources and resources in multiple languages
- physical and financial accessibility considerations regarding service access
- accessing sexuality and reproductive and sexual health care services
- education and training opportunities for community members and professionals to ensure they facilitate supported decision making processes with their clients or family members with disability
- access to supported decision-making resources and information for health professionals, parents, carers and disability support workers
- accessing and participating in accurate and age-appropriate, evidence-based, targeted comprehensive sexuality education. Comprehensive sexuality education programs should be developed in consultation with people with disability to ensure that their reproductive and sexual health needs are met
- Support to develop the knowledge and skills to develop and maintain healthy relationships, including friendships and intimate relationships

Family Planning Australia (formerly Family Planning NSW) conducted a *Disability Needs Assessment* in 2019 and found that a lack of organisational policy, within disability provider organisations, and from the NDIA, around sexuality contributes to uncertainty around the provision of sexuality and relationship support and results in participants being denied access to these essential services.⁽⁵⁾ For example, some NDIS workers are not aware that a participant can access therapeutic services for support on healthy relationships under the code 'Capacity Building, Daily Living, Improved Daily Living,' meaning that the participant may miss out on essential services.

As an NDIS service provider, and provider of training for disability sector workers, we continue to hear of confusion and are regularly requested to provide information around what sexuality and relationship supports can be funded for participants to access, and the correct codes to use for those supports. Disability workers, support people and NDIS participants are often unaware that sexuality and relationship support can be incorporated into NDIS plans as participant goals - and without these goals, funds are not allocated to provide support.

Recommendations

Family Planning Australia recommends that:

- The new Act provides clearer guidance for the NDIS workforce and wider disability sector about the kinds of services that can be obtained as part of sexuality and relationship support
- Changes to the Act are accompanied by professional development opportunities for workers and a range of accessible information and resources for all stakeholders to support its implementation.

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