

13 December 2020

National Disability Strategy Governance and Engagement Section
Department of Social Services
GPO Box 9820
Canberra, ACT 2601

Dear Sir/Madam

Re: Submission regarding the NDS and NDIS Outcomes Frameworks

Thank you for the opportunity to make a submission regarding the new National Disability Strategy (**NDS**) and the National Disability Insurance Scheme (**NDIS**).

By way of background, I am a Barrister and have provided pro bono assistance to a number of complainants before the Australian Human Rights Commission (**AHRC**). In addition, I am an experienced dog-trainer and have worked with various organisations such as the NSW Police Dog Squad, national intelligence authorities in the EU and police in the UK. I have also consulted with the Russian military to develop standard procedures involving service dogs which were adopted nationally, including the invention of a system involving customs and detector dogs (RU 2677265 C9).

It is clear to me, in my role as a Barrister, that there is a fundamental lack of understanding as to the rights of those people with a disability who require a service dog. I fully support a uniform regulatory scheme for the identification and regulation of service dogs in the hope that this will foster an unrestricted public acceptance of service dogs. In particular, I believe that a “one card only” solution to accreditation is an important step to ensuring that the law effectively and consistently supports those people with a disability who use service dogs.

I am concerned, however, that the draft framework fails to adequately consider the impact that the new laws will have on the most vulnerable members of the community. I note that page 21 of the document titled ‘*Service Dogs - A National Approach to Consistency of Policy and Law Reform - Part 1*’ provides a list of the parties that have been contacted and invited to contribute information. Notably, this list appears to lack any consultation with individual members of the community, in particular, members of the community living in low socioeconomic circumstances.

It is now widely accepted that an integral role of any law or policy making body is to consult broadly with the community in its relevant jurisdiction. As former Director of the Tasmanian Law Reform Institute Professor Kate Warner has explained:

The fact that law reform bodies are independent of government is what sets the consultation process apart from community consultations conducted by governments. It provides a level of confidence, which is essential to achieving wide community input. While the nature and extent of community engagement depends upon the subject matter of the reference, it is no longer considered enough for a law reform

*body to publish a discussion or issues paper, schedule a public hearing or two and wait for the submissions to flow in. Greater creativity is expected.*¹

The new draft framework and the manner in which the new laws are enforced will have a disproportionate impact on people with low socioeconomic status. Generally, people from lower socioeconomic groups are at greater risk of poor health and have higher rates of illness, disability and death. A recent study conducted by Susquehanna Service Dogs in the United States revealed that 70% of people who require a service dog cannot afford one.

Under the current legislation, individuals who are unable to afford to have their service dog accredited by an accredited training body can train their dog themselves. This is a key factor to ensuring equity of access to service dogs.

This is supported by the Explanatory Memorandum to the Bill which gave rise to the 2009 amendments, which stated in respect of s 9(2)(c) (emphasis added):

*The purpose of this amendment is to provide greater certainty to both services providers and people with assistance animals. The third limb of the definition (paragraph 2(2)(c)) is designed to ensure that people with a disability who may not live in a State or Territory that has a relevant accreditation scheme, **or who may not have access to a recognised assistance animal trainer continue to be protected under the Disability Discrimination Act** (if they are able to demonstrate the requirements of the relevant sections).*

Further, recent case law has acknowledged the importance of recognising owner-trained service dogs. In *Mulligan v Virgin Australian Airlines Pty Ltd*[2015] FCAFC 130, the Full Court of the Federal Court of Australia held that the word “trained ” in section 9(2)(c) should be given its ordinary meaning and does not require training by an accredited or recognised dog training body.

The aim of the draft framework is to establish a simple regulatory scheme for the training, registration, accreditation, identification and public transport access of service dogs. However, any proposed law reform should not introduce additional barriers for people with disabilities to access service dogs. Service dogs empower people with disabilities by reducing the negative aspects of their handlers disability(s). Empirical research indicates the potentially life-saving impact of service dogs. It is vital that the legislation continues to recognise the importance of service dogs and ensures that they remain accessible to those who need them. As a result, the provision for self-trained service dogs needs to be reviewed and expanded under the draft framework.

Currently, neither Medicare nor private health insurance programs cover the cost of a service dog. Until this changes, any law reform which introduces a compulsory accreditation

¹ Kate Warner, ‘Lessons From a Small University-Based Law Reform Body in Australia’ in Michael Tilbury, Simon NM Young and Ludwig Ng (eds) *Reforming Law Reform: Perspectives from Hong Kong and Beyond*, (Hong Kong University Press, 2014), 127.

scheme needs to be accompanied by price -cap regulations or be subsidised by the government.

I urge the Department of Social Services to establish a community consultative committee to engage with members of the community and ensure people in marginalised groups are provided with an opportunity to voice their concerns and be taken seriously. This is a crucial step to achieving social justice and equity of access to service dogs.

Yours sincerely
Daniel Kadison