

Submission on the Proposed OHS Amendment (Psychological Health) Regulations

30 March 2022

About National Disability Services

National Disability Services (NDS) is the peak body in Victoria and Australia for non-government disability service providers, with over 270 members in Victoria and more than 1100 members nationally. We provide information and networking opportunities to our members and policy advice to State, Territory and Commonwealth governments. NDS has a diverse and vibrant membership, comprised of small, medium, and larger service providers that deliver direct and indirect support to people with disability. Our members collectively offer the full range of disability services; from supported independent living and specialist disability accommodation services to respite, therapy, community access and employment.

Introduction:

NDS welcomes the opportunity to provide feedback on the Proposed OHS Amendment (Psychological Health) Regulations. We understand that this proposed amendment is designed to respond to a significant growth in the incidence of work-related psychological injuries, with mental injury expected to account for a third of all workers' compensation claims by the end of the decade. We acknowledge that this proposed reform follows a commitment by the Victorian Government to implement all recommendations of the Royal Commission into Victoria's mental health system, including Recommendation 16 which targets the creation of mentally healthy workplaces. NDS recognises that psychological hazards can be just as harmful to workers' safety and wellbeing as physical hazards and welcomes the Victorian Government's commitment to promoting psychologically safe workplaces.

Key Issues:

While NDS is a strong supporter of initiatives to promote physically and psychologically safe workplaces within the disability sector, we hold a number of concerns about the proposed regulations and their potential impact on disability service providers and the people with disabilities they support. We note that many of the psychosocial hazards that exist within the disability sector cannot be eliminated or reduced through legislation alone, and would require significant investment in tools, resources, training and systems which can effectively minimise psychosocial risks to workers in the sector. We have outlined some of our concerns with the proposed amendments below:

Lack of knowledge or capacity to control psychosocial hazards:

Disability support providers are acutely aware of the mental health impacts of work in the disability sector and are supportive of initiatives to promote psychologically safe workplaces for their staff. Indeed, poor mental health of staff has been consistently identified as a top concern by organisational leaders during our surveying of members on key issues over the last 6 months. However, NDS understands that there is a general lack of skills and knowledge amongst organisational leaders around how to minimise or mitigate the impacts of psychosocial hazards, particularly where there are conflicts between the need to balance worker safety with the obligation to provide continuity of supports for people with disabilities.

The nature of the work in the disability sector means that many workers are exposed to many of the psychosocial hazards outlined within the Proposed Amendment, including aggression, occupational violence (OV), traumatic events, and isolation in the workplace. Recent research¹ by the Health and Community Services Union (HACSU) indicated that more than half of the 1,279 disability workers surveyed had experienced occupational violence in the last 12 months, 67% of which had experienced psychological harm. Concerningly, those who had experienced occupational violence tended to experience it multiple times. Indeed, of those who reported experiencing OV, 52% reported between 2-10 incidents in the year, while 5% reported experiencing occupational violence multiple times per day.

NDS understands that this violence or aggression is often perpetrated by the people with disabilities who are receiving support from the organisation, or their family and friends. As a result, NDS is very concerned that organisations are likely to be limited in their capacity to 'eliminate any risk associated with a psychosocial hazard', as dictated under Section 448B(1) of the Proposed Amendment, where the threat is posed by clients receiving supports or somebody close to them.

Lack of funded initiatives to address root issues:

Section 448B(2) of the Proposed Amendment acknowledges that it may not be reasonably practicable to eliminate a risk associated with a psychosocial hazard, but in such instances the employer 'must reduce the risk so far as is reasonably practicable'. The proposed amendment indicates that this could be done through the provision of information, instruction, or training.

NDS would strongly support the provision of information, resources and training for workers and organisational leaders to develop skills to minimise the impacts of occupational violence and other psychological hazards which impact disability workers. It is worth noting, however, that under current NDIS price settings, resources to cover the cost of training are significantly constrained. As a result, NDS understands that many organisations are limited to offering basic OH&S training and do not have the resources to provide specialised training for staff to develop skills in managing participants displaying behaviours of concern or antisocial behaviours which may pose a psychosocial hazard. NDS has been advocating for funding to deliver targeted supports and resources for disability organisations to manage psychological harms, including through a recent grant application to WorkSafe to deliver a project on 'Tackling Occupational Violence in Disability Services.' We strongly believe that subsidised disability-

¹ Health and Community Services Union, August 2021, Report on Safety in Disability – Statistics.

specific training and resources are urgently needed in order to equip disability workers and organisations to reduce and mitigate the physical and mental health impacts of occupational violence and aggression in the sector.

Organisations and workers are also limited in their capacity to reduce or respond to psychosocial hazards posed by verbal abuse and violence perpetrated by participants as a result of severely limited access to behaviour support practitioners. Behaviour Support Practitioners are specialised therapists who are authorised by the NDIS Quality and Safeguarding Commission to develop behaviour support plans that may contain the use of restrictive practices. Behaviour support plans are developed to provide positive individualised strategies for people with disabilities that display challenging behaviours (including aggression and violence) which put themselves or those around them at physical and psychological risk. Anecdotally, NDS is aware of up to 8-month delays for access to a behaviour support practitioner in Melbourne alone. This leaves many participants without authorised Behaviour Support Plans, and staff untrained in mitigation strategies needed to support people with behaviours of concern. Many providers cite this issue as a major contributor to the incidence of occupational violence in the sector, and in turn, a key contributor to mental and physical injury of workers. NDS is concerned that without timely access to quality behaviour support practitioners, organisations in the disability sector are likely to be limited in their capacity to meet their obligations under the proposed amendment.

Potential to disincentivise provision of supports to clients displaying complex behaviours:

NDS is concerned that the proposed amendment may have perverse outcomes for the availability of supports for NDIS participants with complex needs. Without support and resources to provide adequate training to staff, and without access to behaviour support practitioners who can develop behaviour support plans to assist workers to effectively manage antisocial behaviours from participants, NDS is concerned that some providers may be unwilling to provide services to participants who have a history of displaying such behaviours. NDS is already hearing of instances where providers are refusing to take on new clients with a history of antisocial behaviours as a result of the organisational risk that these participants may pose. As new, profit-driven businesses (which differ from the traditional values-based disability provider) enter the rapidly expanding NDIS market, NDS is concerned that Boards and Senior Managers without human services backgrounds may choose to refuse services to new or existing clients with histories of antisocial behaviours as a matter of 'sound business practice' in response to the proposed amendments. We are also concerned that the increased reporting and planning requirements anticipated under the proposed amendment may discourage organisations from taking on these clients.

Exacerbating administrative burden

The disability sector is complex, with organisations needing to comply with a broad range of legislative and regulatory requirements from federal and state/territory bodies and agencies across a variety of areas. These includes strict and often cumbersome quality and safeguarding auditing, extensive incident reporting requirements, compliance with state and federal worker screening requirements, child safety reporting, and significant OH&S responsibilities. NDS has concerns that the proposed amendment to the OH&S Regulations may place undue administrative burden on providers through the sweep of additional planning and reporting requirements that have been proposed, including the requirement to have a

written prevention plan for certain psychosocial hazards, and the requirement to periodically report to the Authority certain data on complaints of bullying, sexual harassment and aggression or violence. Funding under the National Disability Insurance Scheme (NDIS) is limited, and many organisations have raised concerns about the lack of funding to cover the costs of the large administration workload that exists under current regulatory arrangements. We are concerned that the additional pressures associated with increased OH&S responsibilities may have a significant negative impact on provider's capacity to continue to deliver supports. Furthermore, we hold concerns about the utility of the data that would be collected under the proposed amendments to the regulations. It is essential that any reporting measures are designed to collect data which ultimately benefits workers and organisations by informing good practice and the implementation of solutions to combat psychosocial hazards. We are concerned that without funded initiatives including training, the provision of resources, the rollout of campaigns to combat violence perpetrated by clients and families, and targeted support to improve access to behaviour support practitioners, it is difficult to see how these reporting requirements will do little more than add to current reporting burden while failing to address the root causes of psychosocial harm to workers in the disability sector.

Conclusion:

NDS is supportive of the Victorian Government's commitment to reducing instances of psychological injury in Victorian workplaces. We note, however, that without targeted and funded initiatives to address the root causes of psychosocial harm to workers in the disability sector, which include high rates of occupational violence and aggression perpetrated by participants and their loved ones, it is difficult to see how mental injury can be reduced through regulations alone. Furthermore, we are concerned that the proposed regulations will exacerbate administrative burden without making a real difference in reducing the incidence of psychological harm in the sector.

NDS has been advocating for funding to deliver targeted supports and resources for disability organisations to manage psychological harms, including through a recent grant application to WorkSafe to deliver a project on 'Tackling Occupational Violence in Disability Services.' We are encouraged that the Victorian Government is aware of issues around psychological harm in the workplace, and encourage the government to fund targeted initiatives to address the root cause of psychosocial hazards unique to the disability sector.

For further information about this submission, please contact Clare Hambly, Policy and Projects Officer, Quality and Safeguarding at clare.hambly@nds.org.au.

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