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12 June 2020

The Hon Nat Cook MP  
Shadow Minister for Human Services  
PO Box 158  
WOODCROFT SA 5162

Via email: [hurtlevale@parliament.sa.gov.au](mailto:hurtlevale@parliament.sa.gov.au)

Dear Ms Cook

**Disability Inclusion (Community Visitor Scheme) Amendment Bill 2020**

1. I refer to the Disability Inclusion (Community Visitor Scheme) Amendment Bill 2020 (“the Bill”).
2. The Bill seeks to amend the *Disability Inclusion Act 2018* (SA) (“the Act”) to establish a Community Visitor Scheme (CVS). The scheme provides for the entry of a community visitor into disability accommodation premises, supported independent living premises or day options program premises.
3. The Society understands the Bill has been introduced following the recent tragic death of Ms Ann Marie Smith. The Bill seeks to allow for the entry of a community visitor into private homes, including where someone is receiving National Disability Insurance Scheme (NDIS) services.
4. Under the Commonwealth model, the *National Disability Insurance Scheme Act 2013* (Cth) establishes the NDIS Quality and Safeguards Commission. The Commission is an independent agency with statutory powers to investigate complaints made about NDIS-registered providers. The Commission relies on people with disabilities making the complaint and if the provider is not a NDIS registered provider, they will not have jurisdiction to investigate.
5. However, currently in South Australia, beyond first responders such as child protection and SA Police (SAPOL), there is no specific overarching legislative framework to protect people with disabilities living in the community who experience violence, abuse, neglect or exploitation.
6. Prior to the NDIS, the Community Visitor Scheme established under the *Mental Health Act 2009* (SA) had powers to visit and inspect disability accommodation premises under the Disability Services (Community Visitor Scheme) Regulations 2013 (SA). A disability accommodation premises included any premises where a disability service provider was providing accommodation services to a person with a disability. These Regulations are still in force (albeit amended since the original version in 2013) but by virtue of being Regulations to the *Disability Services Act 1993*, the CVS is limited to State-funded disability accommodation premises of which now, there are very few.

7. The Society welcomes the establishment of the proposed CVS in South Australia. However, the scheme as proposed requires some further amendments and safeguards to ensure it will be an effective mechanism in protecting the rights of persons with disabilities in South Australia.
8. The comments below are informed by Members of the Society who practice in disability rights and advocacy.

### ***Amendments to the Disability Inclusion Act***

9. The Society notes that currently, section 24(1) of the Act allows for the Governor to establish a scheme for a community visitor or visitor by regulation. However, the Bill amends Act so that the Community Visitor Scheme (CVS) is established within the primary legislation/Act.
10. The Society supports this approach, being that the CVS will be contained in the primary legislation (as opposed to the regulations). This will provide certainty and parliamentary oversight around the scheme.

### ***Functions of community visitors***

11. Section 24B of Bill provides that the functions of the community visitor are to visit; refer matters of concern to the Minister; and act as an advocate. To perform those functions, the Community Visitor has the power to enter and inspect premises, make enquiries relating to the provision of supports and services to the residents, request the production of documents and examine documents or records and request to take extracts, or copies of them.
12. The Society supports these general functions and notes that they are consistent with other Community Visitor Schemes around Australia. However, it is important to note that community visitor schemes were originally established under the *Mental Health Act*, and were designed around visits occurring in institutional settings like hospitals and mental health facilities. As such, the Society suggests that continuing to use Community Visitors as the predominant way to safeguard people with disabilities living in the community in their own homes, requires a more detailed consideration of how the statutory powers to visit and inspect are balanced with people's right to privacy and to be out in the community.

### ***Appointment of community visitors***

13. The Society notes that section 24A(3) of the Bill provides that a person will be appointed to the position of Principal Community Visitor, or a position of Community Visitor, on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
14. Section 24A(7) of the Bill provides that the Minister may appoint a person to act in the position of Principal Community Visitor: during a vacancy in the position; or when the Principal Community Visitor is absent or unable to perform the functions of the position; or if the Principal Community Visitor is suspended from the position.
15. The Society has no issue in principle in allowing the Minister to appoint a Community Visitor to fill a vacancy, on what is assumed will be a temporary basis. However, it is suggested that section 24A(7) could be amended to reflect that the appointment is reviewable by the Governor after an appropriate period of time.

### ***Powers of community visitors***

16. Section 24 of the Bill provides a community visitor may, for the purposes of carrying out the functions of a community visitor, enter a disability accommodation premises, supported independent living premises or day options program premises at any reasonable time (with or without any previous notice).
17. The Society notes that the definition provided for supported independent living premises is premises (other than disability accommodation premises) at which a disability services provider provides supported independent living assistance to a person with disability, being the person's place of residence. However, there is no definition provided for "supported independent living assistance".
18. The Society supports the provisions with respect to visits and inspections of day options programs/premises and disability accommodation, however, it seeks further information/a definition to be provided with respect to what is intended by "supported independent living assistance".
19. It is assumed that this is intended to capture assistance with daily living such as showering, toileting, dressing and cooking. This would then give the CVS a statutory power to enter a person's private home that they rent or own (noting that the person must consent as per section 24D(3) of the Bill). If this is the intended effect, the Society considers further safeguards need to be put in place to protect a person's privacy and dignity.
20. For example, if supported independent living assistance is to give the Community Visitor reach into private rentals and owner-occupier homes, it is recommended that further provision be made for the privacy and dignity of all people with disability when the community visitor is conducting those functions. For example, focusing the Community Visitor's powers on services in the home rather than lifestyle of the whole household.

### ***Requests to see community visitors***

21. The Society notes section 24E(1) of the Bill sets out who may request to see a community visitor, these persons include:
  - 20.1 A resident of a disability accommodation premises;
  - 20.2 A person attending a day options program;
  - 20.3 A guardian, medical agent, relative, carer or friend of a person who is a resident/or person attending a day options program; and
  - 20.4 Any other person who is providing support to a resident/or person attending a day options program.
22. The Minister under section 24C(2) of the Bill, may direct a community visitor to visit disability accommodation premises, supported independent living premises or day options program premises at the times that the Minister directs.
23. The Society notes that the Bill provides that a community visitor may only carry out a visit to a person in a supported independent living premises if a request has been made by a resident who is provided with supported independent living assistance at the premises; or with the consent of a

resident who is provided with supported independent living assistance at the premises, by a person authorised to make a request under section 24E(1); or on the authority of a warrant issued by a magistrate.

24. The Society is concerned that proposed ways for a Community Visitor to discharge their functions (i.e. conduct visits) are limited in scope, in particular that they do not allow for a neighbour or bystander to request a visit. Section 24E(1) is very much limited to the person with a disability or someone close to them requesting the visit. Therefore, it seems the proposed model is unlikely to capture scenarios where people are isolated in the community, like Ms Smith was.
25. As noted above, given that Community Visitor Schemes were modelled around institutions, where there would be more people in the environment to request a visit, it is not surprising that the proposed CVS would not fit perfectly into a model where people with disabilities live in a community setting, receiving in-home care.
26. A suggested amendment to address this issue is to expand section 24E(1) to enable bystanders or neighbours refer matters to the CVS.

### ***Reports by community visitors***

27. The Society notes section 24G of the Bill provides that after a visit to a disability accommodation premises, supported independent living premises or day options program premises, a community visitor must report to the Principal Community Visitor about the visit in accordance with the requirements of the Principal Community Visitor.
28. The Principal Community Visitor must, on or before 30 September in every year, forward a report under the Act during the financial year ending on the proceeding 30 June. The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.
29. The Society considers the Bill as currently drafted is inadequate in that the power of the Community Visitor is limited to providing a report to the Principal Community Visitor, which may then be provided to the Minister.
30. The Society calls for greater powers for the Community Visitor to be able to respond to incidents of abuse, neglect or exploitation. Reporting to the Minister who has no other responsibility for disability services or community care is not acceptable. At the very least, the Principal Community Visitor should have a statutory requirement to refer matters to the Ombudsman, Health and Community Complaints Commissioner and SA Police.

### ***Validity of the proposed legislation***

31. The Society has been provided with a copy of a letter containing advice from the Crown Solicitor's Office, which states that following the commencement of the NDIS Safeguards Commission Bill on 1 July 2018, there is significant risk that State legislation purporting to create Community Visitor Schemes with coercive powers to enter properties operated by registered NDIS providers would be inconsistent with the NDIS Act and invalid.
32. While the Society makes no comment with respect to the advice provided by the Crown Solicitor's Office, the Society notes the Community Visitor Schemes Review conducted by West Wood Spice in 2018 concluded at page 46 that:

State and territory framework of CVS should be retained as a contributory function to the NDIS Framework. They should play an independent role whilst contributing to the intelligence available to the NDIS Commission. It is important the CVS is formally recognised within the NDIS Framework so that the safety net for vulnerable people is not lost (especially in the context of the risks of transition in the next two to five years.) This interface could be effected through structured communications to and from, agreed reports that can be consolidated nationally, consistent definitions, possibly opportunities for the NDIS Commission to request CVS look at an issue of concern. The risks of this approach rather than a national scheme are that there could be variable commitment and inconsistencies which could impact on NDIS participants and providers. The recommendations that CVS collaborate to achieve greater consistency and alignment of approaches address this risk in part.

33. Given the Crown Solicitor's advice noted above, it would be prudent for such amendments to be pursued and inconsistencies with the NDIS addressed through negotiation and collaboration with NDIS Commission and Federal Government.

### **Adult Safeguarding Scheme**

34. The Society notes the Office for the Ageing (Adult Safeguarding) Amendment Bill 2018 which established the Adult Safeguarding Unit (ASU).
35. The Society understands for its first three years of operation the ASU will respond to reports or concerns of abuse or neglect in relation to people aged 65 years and over, and 50 years and over for Aboriginal or Torres Strait Islander people. From 2022, the ASU will work with all adults who may be vulnerable to abuse, regardless of age.
36. The term 'vulnerable adult' is defined in section 3 of the *Ageing and Adult Safeguarding Act 1995* (SA) to include "an adult person who, by reason of age, ill health, disability, social isolation, dependence on others or other disadvantage, is vulnerable to abuse". Abuse is also defined and covers neglect, financial abuse and 'a denial, without reasonable excuse, of the basic rights of the vulnerable adult'. Upon receipt of a report, the ASU has statutory power to assess and investigate a report.<sup>1</sup> The Director may then report the matter to the appropriate professional body or refer it to the Ombudsman or Health and Community Services Complaints Commissioner.<sup>2</sup> The *Ageing and Adult Safeguarding Act* does allow for the Director to apply to the Magistrates Court for an order to protect the vulnerable adult from such abuse<sup>3</sup>, to properly assess whether the vulnerable adult has been abused, or is at risk of being abused<sup>4</sup>, or to allow the exercise of powers or the performance of functions under *Ageing and Adult Safeguarding Act* in respect of the vulnerable adult.<sup>5</sup>
37. The Society considers that both the ASU and CVS could be utilised as complementary safeguarding mechanisms, which could provide a legal safety net if offered at the same time for people with disability. The CVS is focused on visiting and inspecting premises and the services provided to people. In discharging that function, the Community Visitor sees the person with a disability and can be a friendly check-in while administering serious statutory powers. Whereas, the ASU will receive complaints of suspicions of abuse and either investigate, refer the matter or apply for a court order. It is a more legalistic approach and their focus is on the treatment on the individual

<sup>1</sup> *Ageing and Adult Safeguarding Act 1995* (SA), ss23-26.

<sup>2</sup> *Ageing and Adult Safeguarding Act 1995* (SA), ss 27-30.

<sup>3</sup> *Ageing and Adult Safeguarding Act 1995* (SA), s 31(1)(a)(ii)(A).

<sup>4</sup> *Ageing and Adult Safeguarding Act 1995* (SA), s 31(1)(a)(ii)(B).

<sup>5</sup> *Ageing and Adult Safeguarding Act 1995* (SA), s 31(1)(a)(ii)(C).

(i.e. abuse) rather than failings of services providers, which may not result in abuse but are not compatible with the human rights of people with disabilities. This is where the two schemes are complementary in their operation.

38. In terms of a legislative approach, the Society considers the CVS in conjunction with the ASU (once its scope widens) would serve to significantly address the current statutory gap in the protection of rights of those with a disability in South Australia.

Yours sincerely

A handwritten signature in black ink, consisting of a long, sweeping horizontal line with a small loop at the end, and a shorter, curved line underneath it.

Stephen Hodder

**CHIEF EXECUTIVE**

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