



6 March 2013

Senator Claire Moore
Chair, Senate Standing Committee on Community Affairs
Parliament House
CANBERRA ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator Moore

FURTHER INFORMATION – NATIONAL DISABILITY INSURANCE SCHEME BILL 2012

Thank you for inviting the Law Council of Australia to give evidence at today's hearing into the *National Disability Insurance Scheme Bill 2012*, at Parliament House in Canberra.

In its evidence and submissions to the Inquiry, the Law Council stated that the NDIS Bill relegates too many issues to be dealt with under the NDIS Rules, which have only today been released for comment.

In response to this, the Law Council was asked to comment on how this approach compares with the approach under other legislative schemes, such as the *Social Security Act 1991* (Cth).

To assist the Committee, I have enclosed a copy of Part 2.3 of the *Social Security Act 1991*, which outlines the criteria for the disability support pension. As you will note, Part 2.3 outlines the relevant criteria in significant detail, including the level of impairment required, the age criteria, residence requirement and definitions of 'continuing inability to work', 'severe impairment', 'actively participated', etc.

While the Part 2.3 is also supplemented by statutory instruments, including the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011*, which sets out more detailed criteria and definitions, the legislation itself clearly provides a much greater degree of guidance as to eligibility than presently exists in the NDIS Bill.

The Law Council submits that the *Social Security Act 1991* provides a preferable model in terms of legislative standards. The Law Council considers that, as far as practicable, matters which affect rights and eligibility for entitlements ought to be enshrined in legislation. This approach ensures that there is appropriate Parliamentary supervision of

changes which might affect those entitlements and clearer guidance for scheme participants, or prospective scheme participants, as to their eligibility and entitlement to certain supports.

The Law Council would be pleased to provide further information if it will assist the Committee.

Yours sincerely

Nick Parmeter
Manager, Civil Justice