



## Association for Children with a Disability

Suite 2, 98 Morang Road, HAWTHORN 3122 (03) 98182000 [www.acd.org.au](http://www.acd.org.au)

### **Draft National Disability Insurance Scheme Bill 2012**

Submission to the Senate Standing Committee on Community Affairs

#### **Introduction**

Established in 1980, the Association for Children with a Disability (ACD) is a Victorian based non-profit community organisation representing children with a disability and their families living in Victoria. Our current membership includes over 2,000 families.

ACD welcomes the opportunity to comment on the National Disability Insurance Scheme Bill 2012 as it has been actively involved in contributing to the development of the NDIS since early 2011.

#### **General Comments**

On every occasion that ACD has made formal submissions in relation to NDIS we have highlighted the importance of understanding the needs of children with a disability or developmental delay, in the context of their family.

Through our day-to-day contact with families working to support their children with a disability, we have a very clear understanding of the issues they are grappling with and the challenges they face in trying to achieve the best for their child and family.

Young families have specific circumstances that impact on their caring capacities. Many are busy raising more than one child and the combined demands on them to support their whole family should not be underestimated. They are starting out, at the beginning of their journey as a family - establishing careers, often in the early stages of paying off a mortgage, working to sustain and enrich the relationship with their partner whilst nurturing and educating their children who are physically, emotionally and financially dependent on them ... a juggle at the best of times! The statistics around disability and caring make for very sober reading. Children's development hindered, parents' careers put on hold or disbanded, siblings emotional wellbeing adversely affected, long term financial independence of family threatened, relationships destroyed. Having access to the right support at the right time is an investment in the whole family, ensuring that "disability" does not jeopardise the chance of each family member realising their full potential and participating as equal members of the community.

ACD supports the submission provided to the Senate Standing Committee by Early Childhood Intervention Australia, as to the importance of the NDIS legislation recognising the Convention of the Right of the Child particularly with regard to the needs of children with a disability. It is for this reason that ACD recommends the definition of “participant” be extended to include “participant child” (where a child is a minor) and the associated clarification of the role of their families.

ACD is also a member of Disability Advocacy Network Australia and as such supports the comments and recommendations presented to the Senate Committee.

ACD believes that the tone of the draft Bill is quite risk averse and therefore contradicts the original intent of the NDIS. The Scheme should use principles of respectful engagement with people with a disability and their family carers. The overwhelming majority of eligible individuals are genuine and to become participants, will have already had their “credentials” scrutinised. Unless the legislation and accompanying documentation sets the right tone and approach an atmosphere of cynicism and distrust will permeate throughout the scheme and the relationships that develop between the Agency, participants and disability providers will become and remain toxic; a most unacceptable outcome, which undoubtedly be reflected in the level of reviews requested and appeals lodged against Agency decisions.

Other comments and recommendations by ACD are combined with those presented by DANA and outlined in **bold** below.

Section	Comments / Recommendations
<b>Part 2—Objects and principles</b>	
3 Objects of Act	<p>Replace 3(h) with the words used in 3(1)(b) Human Rights and Anti-discrimination Bill 2012 “in conjunction with other laws, to give effect to Australia’s obligations under the human rights instruments” listed in 3(2)</p> <p>And include Australia’s obligations under the Convention on the Rights of the Child Article 2 and 23.</p> <p>The NDIS should be situated within a human rights framework through appropriate</p>

	reference, not only to the UNCRPD, but all ratified and relevant human rights conventions.
4	<p>General principles guiding actions under this Act</p> <p>These principles should be clearly located within a human rights framework through beginning with: “People with disability have the same entitlement to realise their human rights and fundamental freedoms as other members of Australian society” and continuing “This means, among other things that .....”</p> <p>There needs to be included a clear statement of principle that is consistent with the National Disability Advocacy Framework, that establishes people’s entitlement to independent advocacy support i.e. a new paragraph “People with disabilities have a right to access independent advocacy support to promote, protect and ensure their full and equal enjoyment of all human rights enabling full community participation.”</p> <p>4(2) Insert “political” recognising that this is another aspect of life for which people with disabilities should be entitle to access support to be included.</p> <p>4(8) Replace reference to “best interests” with “interests”. The general population is not ordinarily required to make decisions in their “best interests”. Neither should people with disabilities be.</p> <p>This principle needs to be revised so as to comply with Article 12 of the UNCRPD to confirm the right of people with disabilities to exercise choice and be the decision-maker (with support as required) in relation to their lives.</p> <p>4(11)(b) Replace “employment” with “open employment” to move away from supporting</p>

		segregated settings.
5	General principles guiding actions of people who may do acts or things on behalf of others	<p>Principles contained in this clause should reflect the decision-making framework laid out in Article 12 of the UNCRPD.</p> <p>The proposed principles should be strengthened to ensure that it is the wishes of the person with disability that are given effect and that supportive relationships, friendships and connections with others are fostered, not simply recognised.</p>
6	Agency may provide support and assistance	6(2) Legal assistance should be made available for people with disabilities to seek external review of decisions made under the Act.
7	Provision of notice, approved form or information under this Act etc.	
<b>Part 3—Simplified outline</b>		
8	Simplified outline	
<b>Part 4—Definitions</b>		
9	Definitions	<b>Include ‘early childhood intervention supports’ due to the role of family in early childhood as outlined by ECIA.</b>
10	Definition of host jurisdiction	
11	Definitions relating to compensation	
<b>Part 5—Ministerial</b>		

<b>Council</b>	
12 Ministerial Council functions etc.	
<b>Chapter 2—Assistance for people with disability and others</b>	
13 Agency may provide coordination, strategic and referral services etc. to people with disability	
14 Agency may provide funding to persons or entities	
15 Agency may provide information	<b>Agency needs to be more accountable. Change wording to include specific timelines to replace "must use its best endeavours..."</b>
16 Agency may assist in relation to doing things under Chapter	
17 National Disability Insurance Scheme rules	
Additional Clauses	All areas of government activity where advocacy is required to ensure that people with disabilities have rights and opportunities equal to others should contribute to the funding

	<p>pool for independent advocacy.</p> <p>The Productivity Commission identified that advocacy would make an important contribution to the effective functioning of the NDIS and to the overall effectiveness of the NDIS in delivering on its key objectives.</p> <p>Thus the NDIS legislation should make provision for an appropriate proportion of NDIS funding to be allocated to the provision of independent advocacy support to people with disabilities. In line with Productivity Commission recommendations however it should protect the independence of advocacy by providing the funding to another government agency to distribute and administer.</p> <p>To allow for this there needs to be a new clause inserted into the NDIS legislation i.e.  “ the Agency may provide funding to other government agencies, to be used for the purpose of ensuring that people with disabilities have access to independent disability advocacy.”</p> <p>A further clause should also be included requiring the Agency to inform all potential and actual NDIS participants of their entitlement to independent support including independent advocacy support for any dealings that they may have with or related to the NDIS. This will assist in ensuring that the NDIS benefits those most disadvantaged and marginalised in its target group.</p>
<b>Chapter 3—Participants and their plans</b>	
<b>Part 1—Becoming a participant</b>	

18	Person may make a request to become a participant	
19	Matters relating to access requests	(2) When the CEO denies an access request, or makes any other decision, unfavourable to a person with disability, reasons for the decision should be provided to the person.
20	CEO must consider and decide access requests	.
21	When a person meets the access criteria	
22	Age requirements	<p>The NDIS should not incorporate an age restriction.</p> <p>The CRPD does not discriminate on the basis of age.</p> <p>The Draft Human Rights and Anti-discrimination Bill 2012 makes it unlawful to discriminate against a person on the basis of age in any area of public life.</p>
23	Residence requirements	<p>NDIS supports should be available to anyone who legally resides in Australia.</p> <p>Section 23 appears to be more restrictive than the similar Social Security Act restriction.</p> <p>Failure to provide reasonable and necessary supports is inhumane and will inhibit the capacity of the person and their family carers to contribute to Australian society. It is a restriction that is likely to cost society more in the end than it saves.</p>
24	Disability requirements	<p>This section too focussed on <i>function</i> rather than need.</p> <p>Section 24 appears to be more restrictive than the equivalent Social Security Act provision.</p> <p>To be consistent with the UNCRPD the impairment in (1)(b) should be or be likely to be “long-term” and the person’s support needs in 1(e) likely to continue “long-term”.</p> <p>Many, very significant impairments, are unknown in their duration.</p>

		<p>Many people currently in receipt of disability supports may be unable to establish permanence.</p> <p>The requirement in (1)(b) for the impairment to result in “substantially reduced functional capacity”, may lead to people, who would previously have accessed necessary HACC services like community transport or meals on wheels, not being eligible for the NDIS and hence not be funded to access these services.</p> <p>It is important that those people with reduced functional capacity that is not regarded as “substantial” remain, post NDIS, in a position to access necessary services and supports that enable them to maintain their otherwise independent lifestyle and contribution to the community. If this does not occur they are likely to quickly move to a situation of “substantially reduced functional capacity”.</p>
25	Early intervention requirements	
26	Requests that the CEO may make	<p>(1) (a) permits the CEO to request that “another person” provide information reasonably necessary for determining whether a person meets the access criteria and (3) says if that information is not forthcoming within a specified time the prospective participant is taken to have withdrawn the access request.</p> <p>The entitlement for a person to access the Scheme should not be able to depend on whether someone else provides requested information.</p> <p>A prospective participant cannot be responsible for the actions of another person.</p> <p>Many professions and a range of State legislation controls the information that third parties are legally permitted to provide to others.</p> <p>There are a variety of public policy reasons why people in certain professions (for example lawyers, medical practitioners, advocates, psychiatrists etc) should not be compelled to</p>



		<p>provide information about their clients to third parties.</p> <p>(1)(b)(ii) Provision should be made for acceptance, as far as possible of earlier medical reports rather than requiring people to undergo further unnecessary examinations. In most cases if a person's plan is to address their functional support needs, the existence of their disability has been established for some other purpose, eg DSP so no additional medical assessment should be required.</p>
27	National Disability Insurance Scheme rules relating to disability requirements and early intervention requirements	The rules must enable the unique attributes and circumstances of each person to be given due consideration in determining whether a person meets the "disability requirements".
28	When a person becomes a participant	
29	When a person ceases to be a participant	<p>(1)(b) Refer to Clause 22 comments.</p> <p>It is unreasonable to remove the totality of a person's reasonable and necessary supports because they choose to accept some part of these supports from the aged or community care system. A range of disability specific equipment and supports are not provided in the aged care or community care systems but a person's need for these does not cease at age 65.</p>
30	Revocation of participant status	Before taking a decision to revoke a person's status as a participant in the NDIS the CEO should, in keeping with the principles of natural justice:

	<ul style="list-style-type: none"> <li>• give notice of an intention to revoke and the reasons for this</li> <li>• offer the person the opportunity to present their case for continuation; and</li> <li>• give due consideration to the person's case before making any revocation decision.</li> </ul> <p>The removal of support funding could have serious consequences for a person, including in relation to any contractual arrangements they may have entered into for the provision of services, so it is vital that if revocation is to proceed sufficient notice of revocation occurs to allow for a proper winding up of any support and associated employment and contractual arrangements.</p> <p>It is anomalous that the legislation provides for natural justice provisions to apply in relation to ceasing the registration of support providers [Section72] but not in relation to the revocation of participant status.</p>
<b>Part 2—Participants' plans</b>	
<b>Division 1—Principles relating to plans</b>	
31 Principles relating to plans	(k) This paragraph inappropriately assumes that a person's plan will involve "disability services" whereas it is likely that many people will look to other than specialist disability service providers to provide their funded supports.
<b>Division 2—Preparing participants' plans</b>	

32	CEO must facilitate preparation of participant's plan	<b>Current wording is disempowering – Agency should support participants to prepare their own plan. The plan belongs to the participant at all times. Alternatively participants might want to prepare their own plan.</b>
33	Matters that must be included in a participant's plan	<p>The planning provisions appear to give ownership and authorship of a person's support arrangements to the CEO. This will have the effect of removing from the person with disability, effective control and choice over key life decisions. It also has the potential to tie a person into support arrangements that are inflexible and inadequately responsive to the inevitable changes in a person's wishes and life circumstances.</p> <p>Government should seek as far as possible by its processes, to enable people with disabilities to exercise effective control over their supports through:</p> <ul style="list-style-type: none"> <li>• Providing an indicative Budget that is capable of delivering reasonable and necessary support</li> <li>• Providing resources, as required, to enable support planning involving people of the person's choosing</li> <li>• Approving a person's Budget following consideration together with the person of whether the indicative Budget is sufficient to resource their desired support arrangements</li> <li>• Checking in that the person's human rights are being respected and they are living as they wish.</li> <li>• Avoid decision-making about those aspects of a person's life that would not ordinarily fall within the purview of government for people without disabilities.</li> </ul>

	<p>It is important also that any front line agency person exercising delegated power from the CEO is knowledgeable about and is empowered to appropriately take account of any regional factors in their decision making.</p> <p><b>33 (6) Consideration should be given to supports being provided by the participants' person of choice as long as the Agency is satisfied that the participant's wellbeing is not at risk.</b></p>
34	<p>Reasonable and necessary supports</p> <p>While it is appropriate for the Scheme to specify those things that it will not fund as part of providing reasonable and necessary support (for example it should not fund support that operates in such a way as to breach a person's human rights) it is not appropriate for it to limit innovation and creativity by determining for a person what will work best for them in their particular set of circumstances. Today's good practice was yesterday's innovation.</p> <p>Nor should the Scheme prevent people from working within a Budget to save money in one area so as to be able to afford something of particular importance to them in another area.</p> <p>(e) Reasonableness in this paragraph should have regard to:</p> <ul style="list-style-type: none"> <li>• what is normative support provided by family etc. to people without disabilities.</li> <li>• the willingness of a person's family or community to step up in this regard – adults with disabilities are not in a position to compel family or community members to provide them with support.</li> </ul> <p>(f) The CEO should not assume that a "universal service obligation", in relation to a person's disability support needs, is in operation in another service system without ascertaining whether this is in fact correct.</p>

		<p>The preferences of the person with disability about who delivers their personalised disability support should be respected and implemented in circumstances where more than one government agency has funding responsibility.</p> <p>People with disabilities should not be deprived of access to their personalised disability supports (for example aids and equipment) simply because another service system (education, health, justice etc.) has become involved.</p> <p><b>The onus should not be on the participant to demonstrate why a requested support “is not more appropriately funded or provided through other general systems.....” Participants and family carers do not have the time to build justification to address this ‘qualification’.</b></p>
35	National Disability Insurance Scheme rules for statement of participant supports	(5) People with disabilities should not be penalised in terms of their access to the NDIS because they gave up their right to compensation [ref comments at Chapter 5].
36	Information and reports for the purposes of preparing and approving a participant’s plan	<p>The agency should require only a level of information necessary to support the approval of a personal budget and to assure itself that the planned support arrangements respect the person’s human rights, have the potential to deliver on the person’s goals and aspirations and do not involve the funding being used for prohibited purposes or activities.</p> <p>[Ref comments at 26(1)(b)(ii)]</p> <p><b>36(2)(b) The participant should have the right to select who will provide examinations that form documented evidence required for plan approval. Often practitioners who have no history of supporting a participant, are not in a position to provide a holistic assessment.</b></p>
37	When plan is in	(2) Participants should be able to flexibly use their personal Budget (to a prescribed limit)

	effect	to respond to their needs, with a requirement to inform the agency ahead of time only in specified circumstances.
38	Copy of plan to be provided	
39	Agency must comply with the statement of participant supports	
40	Effect of temporary absence on plans	<p>NDIS supports should continue to be available, without CEO involvement, to people travelling overseas when they are undertaking a normative activity that does not affect their residency.</p> <p>For example young people commonly travel overseas for lengthy periods at the conclusion of their schooling; retirees commonly take lengthy overseas holidays and workers commonly take overseas posting for extended periods.</p> <p><b>The whole intent of NDIS is undermined by the restrictive nature of this section. The right to make life choices is undermined and shifts control back to the Agency.</b></p>
41	Suspension of plans	
	<b>Division 3—Managing the funding for supports under participants’ plans</b>	
42	Meaning of managing the funding for supports under a participant’s	

	plan	
43	Choice for the participant in relation to plan management	(1) People should be able to decide that their funding for supports will be managed by a non-registered person, for example a family member, friend or generic community service. (3) If the participant is prevented from managing their funding by the operation of section 44 they should still be permitted to specify someone else (not caught by section 44) do to it for them.
44	Circumstances in which participant must not manage plan to specified extent	
45	Payment of NDIS amounts	
46	Acquittal of NDIS amounts	(1) Acquittal of NDIS amounts should involve showing that the money was spent on reasonable and necessary support in line with the plan as varied from time to time by the participant.
<b>Division 4—Reviewing and changing participants' plans</b>		
47	Participant may change participant's statement of goals and aspirations at any time	The participant should be at liberty to change their plan at any time, notifying the agency ahead of time only in specified circumstances or when a Budgetary change is required.

48	Review of participant's plan	<b>Where a participant is a child, there should be some explicit review times e.g. major transitions times – early childhood-primary school-secondary-school-post school. These major transitions require much more investigation, thought and planning for both the child and the family.</b> The Agency and the participant should be able to initiate a review of a participant's personal budget. No review should take place however without the involvement of the participant.
49	Outcome of review	
50	Information and reports for the purposes of reviewing a participant's plan	The Agency should also be able to request information from the participant necessary to assure itself of the matters detailed in section 36.
<b>Chapter 4—Administration</b>		<b>The process of providing to the Agency information, making requests, notifying changed circumstances need to be streamlined to avoid undue burden on participants and avoid labour intensive activities for Agency staff.</b>
<b>Part 1—General matters</b>		
<b>Division 1—Participants and prospective participants</b>		<b>I</b>
51	Requirement to notify change of circumstances	(1) (a) “plan” should change to “personal budget”
52	Requirements relating to notices	



53	Power to obtain information from participants and prospective participants to ensure the integrity of the National Disability Insurance Scheme	“in accordance with the participant’s plan” should be replaced with “on reasonable and necessary support”
54	Written notice of requirement	
<b>Division 2—Other persons</b>		
55	Power to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme	<p>Need to take account of a person’s right to privacy in relation to their personal information: see Article 22 UNCRPD.</p> <p>The Agency, though its information collection practices should not be in a position to override the National Privacy Principles or the privacy requirements applying to the professional practice of law, medicine, psychiatry, advocacy etc.</p>
56	Written notice of requirement	
57	Offence—refusal or failure to comply with requirement	See above

<b>Division 3—Interaction with other laws</b>		
58	Obligations not affected by State or Territory laws	State and Territory laws with respect to privacy matters and human rights should not be overridden by the NDIS legislation. If they are it may give rise a breach of Article 22 paragraph 2 UNCRPD.
59	Interaction with Commonwealth laws	
<b>Part 2—Privacy</b>		
60	Protection of information held by the Agency etc.	<p>(2) (d)(i) “for the purposes of this Act” is too broad, given the wide purview of the Act objectives. The phrase should be replaced with a listing of the purposes which might be considered necessary over and above those covered in (ii) and (iii). All purposes specified must additionally be consistent with the purposes of the Act.</p> <p>(3) If protected information is to be released to others for the purposes specified in this paragraph it should be de-identified unless the participant has given their permission.</p>
61	Offence—unauthorised access to protected information	
62	Offence—unauthorised use or disclosure of protected information	
63	Offence—soliciting	

	disclosure of protected information	
64	Offence—offering to supply protected information	
65	Protection of certain documents etc. from production to court etc.	.
66	Disclosure of information by CEO	This provision gives the CEO unusually wide disclosure powers in relation to the personal information of participants. Consideration should be given to whether this is in contravention of Article 22 UNCPRD and/or could be regarded as indirect discrimination on the basis that this kind of information is not ordinarily obtainable by government, without the person's permission, about people other than those with a disability. It potentially puts people with a disability in the position of having very large numbers of government officials and others know very personal details about their lives.
67	National Disability Insurance Scheme rules for exercise of CEO's disclosure powers	
68	Part does not affect the operation of the	

	Freedom of Information Act 1982	
	<b>Part 3—Registered providers of supports</b>	
69	Application to be a registered provider of supports	The degree of complexity of the registration process imposed on the provider should be commensurate with the level of risk posed by the service to the other human rights of the particular person. It should not operate so as to unnecessarily limit the person's choices about who delivers their services.
70	Registered providers of supports	Allowing a funding manager to also provide planned supports creates a conflict of interest that has strong potential to limit the choices and control of the person with disability. It was for this reason not approved by the Productivity Commission and should not be permitted. <b>Recommended that this section be reconsidered as in its current form, undermines the integrity of the Scheme.</b>
71	When a person or entity ceases to be a registered provider of supports	
72	Revocation of approval as a registered provider of supports	
73	National Disability Insurance Scheme rules for registered	

	providers of supports	
<b>Part 4—Children</b>		
74	Children	<p>(1)(b) and (5) The removal of parental authority should not take place without Court or Tribunal order.</p> <p>(2) The person should be able to choose a non-registered plan manager.</p> <p><b>Legal and ethical considerations that relate to parental authority must be the same for all children – including children with a disability.</b></p>
75	Definition of parental responsibility	
76	Duty to children	<p>This section needs to give effect to the United Nations Convention on the Rights of the Child</p> <p><b>Requires criteria to guide determining what constitutes ‘reasonably believes’.</b></p>
77	Revocation of determinations under section 74	
<b>Part 5—Nominees</b>		
<b>Division 1—Functions and responsibilities of nominees</b>		
78	Actions of plan nominee on behalf of participant	<p>(5) This provision makes the plan nominee (if appointed by the CEO) the person who decides on the level of involvement a person with disability has in the determination and management of their plan. It gives the plan nominee power and control over a person’s life without an independent consideration having taken place by a properly constituted body of</p>

		all the relevant factors.
79	Actions of correspondence nominee on behalf of participant	
80	Duty of nominee to participant	The duty of the nominee should be to act on participant instructions or in accordance with the framework established under Article 12 of the UNCRPD.
81	Giving of notices to correspondence nominee	
82	Compliance by correspondence nominee	
83	Nominee to inform Agency of matters affecting ability to act as nominee	
84	Statement by plan nominee regarding disposal of money	
85	Right of nominee to attend with participant	

<b>Division 2—Appointment and cancellation or suspension of appointment</b>		
86	Appointment of plan nominee	Nominee appointments that occur, other than at the participant's request, should be made by an independent body (not the Agency) having taken into account the views and interests of the person with disability.
87	Appointment of correspondence nominee	Nominee appointments that occur other than at the participant's request should be made by an independent body (not the Agency) having taken into account the views and interests of the person with disability.
88	Provisions relating to appointments	(4) If the decision-making power of a person is to be removed then this should occur only in accordance with State/Territory Guardianship arrangements.
89	Circumstances in which the CEO must cancel appointment of nominees	
90	General circumstances in which CEO may cancel or suspend appointment of nominees	Cancellation or suspension of a nominee appointment when the appointment was made by independent body should only be done by the independent body after considering the views of the participant and the nominee.
91	Suspension etc. of appointment of nominees in cases of	

	severe physical, mental or financial harm	
92	Other matters relating to cancellation or suspension of appointment	
93	National Disability Insurance Scheme rules may prescribe requirements etc.	
94	CEO's powers of revocation	
<b>Division 3—Other matters relating to nominees</b>		
95	CEO's powers to give notices to participant	
96	Notification of nominee where notice is given to participant	It is not clear why the CEO is permitted to choose not to give the correspondence nominee a notice that is provided to a participant – particularly in circumstances where the correspondence nominee is appointed at the participant's request.
97	Protection of	



	participant against liability for actions of nominee	
98	Protection of nominee against criminal liability	
<b>Part 6—Review of decisions</b>		
99	Reviewable decisions	<p>All decisions of the CEO affecting the rights or interests of a person with disability should be subject to merits review, not simply those listed in this section.</p> <p>This is because each decision has the potential to dramatically influence the life opportunities and choices available to the person with disability.</p> <p>All CEO decisions unfavourable to the person with disability should have reasons provided with the decision.</p>
100	Review of reviewable decisions	<p>The Act should permit a broader group of people to request the review of a reviewable decision including those representing the interests of a person with disability and those representing the interests of a class of affected or potentially affected people with disability.</p> <p><b>A copy of the written record must be provided to the participant.</b></p> <p><b>100(6) Need to define timeline. “as soon as reasonably practical” is unacceptable.</b></p>
101	Variation of reviewable decision before review completed	
102	Withdrawal of	

	request for review	
103	Applications to the Administrative Appeals Tribunal	The reviewing Tribunal should be some variation on the SSAT or Veterans Review Board. The Tribunal decision-makers should include people with relevant disability knowledge and experience. The AAT involves a very formal legalistic process not well suited to people with disabilities or their usual financial circumstances.
	<b>Chapter 5—Compensation payments</b>	
	<b>Part 1—Requirement to take action to obtain compensation</b>	
104	CEO may require person to take action to obtain compensation	<p>A person should not be obliged to take action to obtain compensation in order to access NDIS supports. Compensation actions are commonly all-consuming and life altering, draining of the emotional, financial and other personal resources of the person and their loved ones. They can require the person to emphasise their disability, downplay their capacities and continually relive traumatic events in ways that negatively impact on their capacity to rebuild their life with disability.</p> <p>Additionally such actions require the attribution of blame. An intention of the Scheme was to disconnect any considerations of fault from the entitlement to support.</p> <p>To take legal action is to incur significant costs, some of which need to be paid at the time they are incurred and some at the conclusion. Costs incurred include costs associated with investigation for probity, legal representation, medical reports, IT support, Application fees, Hearing fees, Barristers fees, and Accountants fees for economic loss assessment. When a person takes legal action they also run the risk of being required to pay the costs of the</p>

	<p>other party.</p> <p>If legal action is taken the person needs to seek an Award amount to cover all their future costs including medical expenses, loss of future earnings etc. because a payout triggers activity on the part of other agencies like Medicare and the Taxation Office.</p> <p>Most people with disabilities, eligible for the NDIS, will have limited financial resources with which to pay the ongoing costs of legal action and may be unwilling to risk the loss of any existing assets to cover cost orders. This means that action, in many cases would only be possible if Legal Aid or Community Legal Centres were to provide the necessary legal representation. At present, given the level of demand on their services, this is not likely without these agencies receiving dedicated funding for this purpose.</p> <p>Query: What is the relationship between this provision and the NIIS? Does the existence of insurance coverage or the success of an insurance claim situate the person within the NIIS rather than the NDIS?</p> <p>Query: Rather than require the person to take action, the action could instead be taken on their behalf by the NDIA as per section 50 Safety Rehabilitation and Compensation Act 1988. The possible impact on people with disabilities of this approach needs to be explored.</p>
105	<p>Consequences of failure to comply with a requirement to take action to obtain</p>

	compensation	
	<b>Part 2—Agency may recover compensation fixed after NDIS amounts have been paid</b>	
106	Recovering past NDIS amounts from certain judgements	
107	Recovering past NDIS amounts from consent judgements and settlements	
108	Debts resulting from section 106 or 107	
	<b>Part 3—Recovery from compensation payers and insurers</b>	
109	CEO may send preliminary notice to potential compensation payer or insurer	
110	Offence—potential compensation payer	

	or insurer	
111	CEO may send recovery notice to compensation payer or insurer	
112	Preliminary notice or recovery notice suspends liability to pay compensation	
113	Compensation payer's or insurer's payment to Agency discharges liability to participant	
114	Offence—making compensation payment after receiving preliminary notice or recovery notice	
115	Liability to pay the Agency if there is a contravention of section 114	
<b>Part 4—CEO may</b>		

	<b>disregard certain payments</b>	
116	CEO may disregard certain payments	
	<b>Chapter 6—National Disability Insurance Scheme Launch Transition Agency</b>	
	<b>Part 1—National Disability Insurance Scheme Launch Transition Agency</b>	
117	Establishment	
118	Functions of the Agency	<p>The Agency function must be to:</p> <ul style="list-style-type: none"> <li>• deliver on the objects of the Act as detailed in Section 3</li> <li>• to report on the Agency's success in achieving the objects</li> <li>• advise on improvements to legislation, rules and policy which would assist in achieving the objects.</li> </ul> <p><b>The first role of the Agency should be to improve the quality of life of people with a disability and their families. To state in 118(1)(a) deliver the NDIS is too broad and a statement about outcomes for the people it is designed to assist should be front and centre.</b></p> <p><b>118(1)(d) needs to be more explicit including acknowledgement that</b></p>

		mainstream/universal services have a requirement to support all people including people with a disability. Also it is important to recognise that unless there are incentives for mainstream to support people with a disability or conversely, consequences if they do not, then the likelihood of improved responses by mainstream/universal services are unlikely.
119	Powers of the Agency	
120	Charging of fees	
121	Minister may give directions to the Agency	
122	Agency does not have privileges and immunities of the Crown	
<b>Part 2—Board of the Agency</b>		
<b>Division 1—Establishment and functions</b>		
123	Establishment	
124	Functions of the Board	(1)(b) should be “to determine objectives, strategies and policies to be followed by the Agency in implementing the objects of the Act.” It is important to link the work of the agency at every point to the overarching goals sought to be achieved by the legislation.

125	Minister may give the Board a statement setting out strategic guidance for the Agency	
<b>Division 2—Members of the Board</b>		
126	Membership	
127	Appointment of Board members	Board membership should include a minimum of 2 people with lived experience of impairment/s resulting in substantially reduced functional capacity. Prior to appointment Board members should make full disclosure of any potential conflicts of interest in carrying out their Board work.
128	Term of appointment	
129	Acting appointments	
130	Remuneration and allowances	
131	Leave of absence	
132	Outside employment	A Board member should not be able to hold any position (paid or unpaid) that may involve a conflict of interest in carrying out their duties as a Board member. This would capture, for example, governance roles in service-providing organisations.
133	Resignation of Board members	
134	Termination of appointment of Board members	



135	Other terms and conditions of Board members	
<b>Division 3—Meetings of the Board</b>		
136	Convening meetings	
137	Presiding at meetings	
138	Quorum	
139	Voting at meetings	
140	Conduct of meetings	
141	Minutes	
142	Decisions without meetings	
<b>Part 3—Independent Advisory Council</b>		
<b>Division 1—Establishment and function</b>		
143	Establishment	
144	Function of the Advisory Council	<p>The Advisory Council’s function should include providing advice to the Board about the way the Agency meets the Section 3 objects including UNCRPD compliance.</p> <p>(f) “Innovation” is not valuable for its own sake. What is important is the promotion of the provision of high quality supports, innovative or otherwise.</p>

		(3)(c) and (d) should be deleted because these are matters about which the Board needs sources of advice, independent of the Agency, to allow it to manage risk and make good strategic decisions.
145	Advice of the Advisory Council	
<b>Division 2—Members of the Advisory Council</b>		
146	Membership	
147	Appointment of members of the Advisory Council	At least half the membership of the Advisory Council should be people with lived experience of impairment/s resulting in substantially reduced functional capacity. Members of the Advisory Council should be appointed having regard to their capacity to represent on the Council the views and experiences of a broad constituency of people affected by the NDIS.
148	Term of appointment	
149	Acting appointments	
150	Remuneration and allowances	
151	Leave of absence	
152	Disclosure of interests to the Minister	
153	Disclosure of	

	interests to the Advisory Council	
154	Resignation of members of the Advisory Council	
155	Termination of appointment of members of the Advisory Council	(2)(d)The inclusion of this provision is not supported. It gives the Minister an unreasonably wide discretion to terminate the appointment of someone to the Advisory Council. Appropriate reasons for termination are covered in other parts of the section.
156	Other terms and conditions of members of the Advisory Council	
<b>Division 3—Procedures of the Advisory Council</b>		
157	Procedures of the Advisory Council	
<b>Part 4—Chief Executive Officer and staff etc.</b>		
<b>Division 1—Chief Executive Officer</b>		
158	Establishment	
159	Functions of the	

	CEO	
160	Appointment of the CEO	
161	Acting appointments	
162	Remuneration and allowances	
163	Leave of absence	
164	Outside employment	
165	Disclosure of interests	
166	Resignation of the CEO	
167	Termination of appointment of the CEO	
168	Other terms and conditions of the CEO	
<b>Division 2—Staff etc.</b>		
169	Staff	
170	Services of other persons to be made available to the Agency	
171	Consultants	

<b>Part 5—Reporting and planning</b>		
<b>Division 1—Reporting</b>		
<b>Subdivision A—Reporting by Board members</b>		
172	Annual report	The Agency should report in their Annual Report on the achievement of the Section 3 objects of the Act and on participant satisfaction with the performance of the Agency. The Annual Report should be a public document, made broadly available and in a wide variety of formats
173	Giving certain information to the Ministerial Council	
174	Quarterly report to the Ministerial Council	
<b>Subdivision B—Reporting by the Agency</b>		
175	Giving information requested by Commonwealth, State or Territory Ministers	
<b>Subdivision C—Reporting by the Minister</b>		
176	Giving certain	

information to the Ministerial Council	
<b>Division 2—Planning</b>	
177 Corporate plan	(4) The Corporate Plan should show how it is that the objectives, strategies and policies to be followed by the Agency and the performance indicators for the assessment of Agency performance link to the achievement of the Section 3 objectives.
<b>Part 6—Finance</b>	
178 Payments to the Agency by the Commonwealth	
179 Payments to the Agency by the host jurisdictions	
180 Application of money by the Agency	
<b>Part 7—Miscellaneous</b>	
181 Taxation	
<b>Chapter 7—Other matters</b>	
<b>Part 1—Debt recovery</b>	
<b>Division 1—Debts</b>	
182 Debts due to the Agency	A debt should be incurred to the Agency to the extent only that a person's budget was knowingly spent on supports that could not be regarded as reasonable or necessary.
Division 2—Methods of recovery	

183	Legal proceedings	The time period in which to commence legal proceedings for debt recovery should not extend beyond 6 years after the debt was incurred. Extended time periods create long term stress that negatively impacts on a person's health and well-being.
184	Arrangement for payment of debt	Replace the existing provision with something like "A debtor should not be taken to have capacity to repay the debt if recovery would result in "financial hardship" or in an inability to access reasonable and necessary support ."
185	Recovery of amounts from financial institutions	
<b>Division 3—Information relating to debts</b>		
186	Power to obtain information from a person who owes a debt to the Agency	
187	Power to obtain information about a person who owes a debt to the Agency	Ref to earlier comments about s 55.
188	Written notice of requirement	
189	Offence—refusal or failure to comply with requirement	
<b>Division 4—Non recovery</b>		

	<b>of debts</b>	
190	CEO may write off debt	
191	Power to waive Agency's right to recover debt	
192	Waiver of debt arising from error	
193	Waiver of small debt	
194	Waiver in relation to settlements	
195	Waiver in special circumstances	(b) financial hardship and the disability of the debtor should not be excluded from the special circumstances that can be considered for the purposes of waiver of a debt.
<b>Part 2—General matters</b>		
196	Method of notification by CEO	
197	CEO not required to make a decision	
198	Protection of participant against liability for actions of persons	
199	Protection against criminal liability	
200	Evidentiary effect of	



	CEO's certificate	
201	Delegation by the Minister	
202	Delegation by the CEO	
203	Application of Act to unincorporated bodies	
204	Time frames for decision making	
<b>Part 3—Constitutional matters</b>		
205	Act binds Crown	
206	Alternative constitutional basis	
207	Concurrent operation of State laws	
<b>Part 4—Review of the Act</b>		
208	Review of operation of Act	<p>The review must involve seeking the views of the Scheme participants, people with disabilities, and their consumer and advocacy organisations.</p> <p>The Terms of Reference for the Review should be co-designed with consumer and advocacy organisation representatives.</p>
<b>Part 5—Legislative instruments</b>		

209	The National Disability Insurance Scheme rules	The Rules will be in the form of a disallowable instrument.
210	Regulations	
	<b>Additional Notes</b>	The Bill does not establish independent complaints handling mechanisms in relation to the actions of service providers. This means that participants seeking to use an independent mechanism will need to rely on existing State and Territory mechanisms which are variable in their application and efficacy. State and Territory mechanisms will not be available to participants who wish to complain about the NDIA unless the NDIA agrees to submit to the jurisdiction of the State/Territory agency for this purpose.
		There is a potential for conflict in the role of the NDIA if they are simultaneously a service provider (possible if a participant elects to have the NDIA manage their fund) and a system manager.
		The Bill does not rule out the future use of means testing and/or co-payment mechanisms which is of concern in an environment of fiscal restraint.