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25th January 2012

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE INQUIRY INTO THE NATIONAL DISABILITY INSURANCE SCHEME BILL 2012

Open Minds is a community managed organisation which provides a range of support services to people with disability, mental illness, and acquired brain injury in South East Queensland. Formally known as The Queensland Wattle League, Open Minds has been providing services to the community for 100 years, with 2012 marking our Centenary of Service.

Open Minds is pleased to have the opportunity to provide comment on the National Disability Insurance Scheme Bill.

Open Minds understands the Bill reflects extensive work undertaken with states and territories, and with people with disability, their families and carers, disability care workers, service providers and advocates on the design, funding and governance of an NDIS. We encourage consistency across states in terms of how the NDIS operates in order to reduce the impact on people with a disability and their families who may transition across states and territories.

Open Minds supports Clause 3 which indicates one of the key aims is to promote the provision of high quality and innovative supports to people with disability. However, we believe it is important to consider how innovation be will measured; as well as taking into account that promoting innovation requires allowances for people with a disability and their families the freedom to experiment with ideas and potentially make mistakes, to experience the dignity of risk.

Clause 5 indicates *it is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with both the general principles set out in Clause 4 and the following principles:*

- a) *people with disability should be involved in decision-making processes that affect them, and where possible make decisions for themselves;*
- b) *people with disability should be encouraged to engage in the life of the community;*
- c) *the judgements and decisions that people with disability would have made for themselves should be taken into account; and*
- d) *the cultural and linguistic circumstances of people with disability should be taken into account;*
- e) *the supportive relationships, friendships and connections with others of people with disability should be recognised.*

Open Minds agrees with all of these principles but in addition, we believe it is vital that the community also be encouraged to engage actively with people with disability. We are

interested to know what, if any, community development principles will be considered and promoted.

Clause 24(1) indicates *that person meets the disability requirements if the impairment or impairments are, or are likely to be, permanent (this includes impairments that are chronic or episodic in nature)*. Open Minds applauds the reference to the episodic nature of mental illness. We also support Clause 25 which outlines the requirements for meeting eligibility around early intervention requirements.

Clause 26 states that:

2. *For the purposes of subsection (1) impairment or impairments that vary in intensity may be permanent, and the person's support needs in relation to such an impairment or impairments may be likely to continue for the person's lifetime, despite the variation.*

Open Minds believes this clause requires clarification to address under which circumstances an impairment may and may not be considered permanent. This will provide clarity around the eligibility of a person with a psychosocial disability related to mental illness whose impairment may change due to the episodic nature of their illness. If any such impairment is not considered permanent for the purpose of subsection 1 this may exclude people with who experience significant psychosocial disability for extended periods of time and whose impairments are likely to be exacerbated if appropriate treatment and or disability supports are not received. If their supports are intended to be provided under Clause 25 as suggested above, (that is, the person has a chronic episodic condition and is in the early stages of relapse or recovery), then we believe this also requires additional clarification.

Clause 34 indicates *that for the purposes of specifying, in a statement of participant supports, the general supports that will be provided, and the reasonable and necessary supports that will be funded, the CEO must be satisfied of all of the following in relation to the funding or provision of each such support:*

- a) *the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;*
- d) *the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;*

Open Minds is concerned that points a) and d) in particular are open to interpretation and are rather subjective. We are interested to know how current good practice will be determined; what processes will be in place to assess requests for alternative or non-traditional services; and what processes will the person with a disability and/or their families be required to undertake to argue their case for funding for a service which may be considered alternative.

Clause 42(2) indicates *that for the purposes of the statement of participant supports in a participant's plan, in specifying the management of the funding for supports under the plan as mentioned in paragraph 33 (2)(d), the plan must specify that such funding is to be managed wholly, or to a specific extent, by:*

- a) *the participant; or*
- b) *a registered plan management provider; or*
- c) *the Agency; or*
- d) *the plan nominee.*

While we fully support this, we are interested to know what protections are in place for people who may not have decision making capacity or whose capacity may fluctuate due to the episodic nature of their illness?

Clause 43(5) indicates *if the funding for supports under a participant's plan is to be managed to any extent by a registered plan management provider specified by the Agency, or by the Agency, the CEO must, so far as reasonably practicable, have regard to the wishes of the*

participant in specifying who is to manage the funding for supports under the plan to that extent. Open Minds queries whether this means the CEO determines this? We would expect it more reasonable for a board or panel to make these decisions with appropriate representation from consumers.

Regarding *Clause 44* and *Subclause 44.3*, relating to the determination of reasonable risk under plan activities, Open Minds strongly believes the NDIS will need to ensure that reasonable risk is guided by the participant. This process will also need to include input from the participant's carer.

A number of provisions in the Bill allow for the CEO to make requests that the prospective participant undergo an assessment or a medical, psychiatric or psychological examination in relation to making determinations. This includes, for example, *Clause 26*, in determining whether a person meets the access criteria, and *Clause 50*, for the purpose of reviewing a plan. It remains unclear whether medical, psychiatric or psychological assessments are able to determine disability support requirements for people with a psychosocial disability related to a mental illness. Open Minds supports the approach from the MHCA which suggests the assessment processes for people with a psychosocial disability related to a mental illness must follow, as closely as possible, the principles of the International Classification of Functioning. While the Bill's Explanatory Memorandum Statement Compatibility with Human Rights states that *Eligibility and assessment of need will be based on the World Health Organisation's International Classification of Functioning, Disability and Health (ICF)*; this is not yet specified in the Bill.

Open Minds appreciates the opportunity to provide comment.