

24 January 2013

Committee Secretary
Senate Standing Committees on Community Affairs
National Disability Insurance Scheme Bill 2012
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

Background

AMPARO Advocacy welcomes the opportunity to provide comment on the draft National Disability Insurance Scheme Bill 2012, which we understand will provide a framework for the national scheme, including approaches to eligibility, necessary supports and planning processes. This submission will not attempt to provide a detailed analysis of the draft legislation but instead to highlight specific concerns that are relevant to vulnerable people from a NESB with disability.

AMPARO Advocacy is a non-profit community organisation which provides independent, individual and systemic advocacy, on behalf of vulnerable people from a non-English speaking background (NESB) with disability. AMPARO is governed by a voluntary management committee, the majority of whom are people from a NESB with disability and we are funded by the state government Department of Communities, Disability Services.

We advocate for vulnerable people, for whom language and/or cultural differences make it difficult to understand and negotiate systems and services and whose fundamental needs are not being met. Through our systemic advocacy we aim to influence positive sustainable change to attitudes, policies, practices and resources within governments and communities.

Introduction

AMPARO Advocacy's experience is that people with disability who have limited or no English language skills frequently encounter significant additional barriers to having their needs met and do not have equitable access to services and supports in line with other Queenslanders with disability.

Both the Productivity Commission Inquiry Report into Disability Care and Support and the Australian Government 'Shut Out' report raised concerns regarding the significant additional barriers experienced by people from a non-English speaking background with disability.

Many reports have been written drawing attention to serious issues of discrimination among this population, including ***“On the Sidelines: Disability and People from Non-English Speaking Background Communities”***, released in 2000 by the then Human Right and Equal Opportunity Commission.

The Productivity Commission Report identified that Indigenous Australians also experience significant systemic barriers to accessing services and supports and identified the need for additional measures within the NDIS.

“Supporting Indigenous Australians with a disability should be an important, specific goal of the NDIS. A key challenge to achieving this goal is overcoming the barriers to accessing services experienced by Indigenous people”¹.

AMPARO Advocacy cannot assume to speak on behalf of Indigenous Australians, however many strategies that will promote and support equitable access to the NDIS for people from a NESB, will also potentially benefit Indigenous Australians. AMPARO Advocacy believes that the Productivity Commission in its final report could have equally drawn stronger attention to the long-term systemic barriers that have caused serious disadvantage to people from a NESB with disability.

We note that the Productivity Commission highlighted the need for a specific goal within the NDIS to address their concerns for Indigenous Australians with disability. However while draft legislation recognises the need to take into account ***‘the cultural and linguistic circumstances of people with disability’*** as stated in Chapter 1, Section 5, which is extremely important, the legislation needs to be strengthened in other areas to ensure this principle is implemented².

Language barriers and isolation often means that individuals with disability from a NESB and their families do not have access to important information and are unaware of supports or programs that are available.

According to the Census of 2011, 9.8% of Queenslanders speak a language other than English at home. However preliminary figures from Disability Services Queensland NMDS Data for 2011-2012 show that only 2.75% of those receiving assistance from a disability service, come from a home where a language other than English is spoken a home. This figure was 2.5% in 2007.

These figures are disappointing and suggest that the disparity between the proportion of people from an NESB accessing disability services, compared to those from English speaking background, has barely changed in the past four years.

Access to professional interpreters is critical to ensuring that people who are not proficient in English are able to understand information, can make informed decisions, are able to communicate their needs, and can take advantage of opportunities to fully participate in

¹ Australian Government 2011, *Disability Care and Support, Productivity Commission Inquiry Report Vol.2*

² The Parliament of the Commonwealth of Australia 2012, *National Disability Insurance Scheme Bill 2012* No. , 2012. Families, Housing, Community Services and Indigenous Affairs.

Australian society. Provision of quality language services is central to the principles of access, equity and social justice, which contribute to an inclusive society³.

AMPARO Advocacy believes that current service systems do not always respond well to the language and cultural needs of people from a NESB with disability. Structural systemic barriers exist across Federal and State Governments programs, including barriers that restrict access to professional interpreters for people from a NESB.

Queenslanders with disability from a NESB do not have equitable access to services and supports due to a lack of cultural competency of the services system, and the limitations of a separate interpreting service.

In Queensland a separate interpreting service has been established to meet the needs of people with disability accessing state funded disability services. Unfortunately this service is limited in hours of operation, difficult to access and inefficient in its response due to funding restrictions. AMPARO Advocacy continues to question the existence of a separate interpreting service for people with disability, given that this service is less accessible, and less effective than that provided to other Queenslanders accessing state funded services.

In 2011 a survey of 131 community services in Queensland, also showed that over one third of respondents were unaware that they were entitled to access fee-free interpreting services to communicate with their clients⁴. Thus the development of cultural competence in service systems is crucial for those individuals with disability who choose to access specialist disability services.

Access to free professional interpreting services is necessary for people from an NESB with disability and their families to participate at all levels of the NDIS. AMPARO Advocacy is concerned that the costs of accessing interpreters are not shifted to individuals under the NDIS, and strongly supports that this obligation remains outside the NDIS and the responsibility of Federal and State governments.

AMPARO Advocacy considers the following additions to the draft National Disability Insurance Scheme Bill 2012 are necessary to support equitable access to the NDIS for people from a NESB with disability.

³ Queensland Accessing Interpreters Working Group October 2012, *Still a Matter of Interpretation*, Qld Council of Social Services.

⁴ Queensland Accessing Interpreters Working Group October 2012, *Still a Matter of Interpretation*, Qld Council of Social Services.

Chapter 1 Introduction

Part 2 Objects and principles

The Australian Government has ratified the United Nations Convention on the *Rights of Persons with Disabilities (CRPD)*, as such, there is an expectation that the NDIS legislation will comply with and support the implementation of the relevant rights afforded by the CRPD.

To strengthen the contribution the NDIS legislation can and should make, to the implementation of Australia's obligations to the full range of human rights instruments, the following recommendation by DANA⁵ should be included:

- To **3 Objects of the Act** replace:

(h) *Give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities*, with objective **3(1)(b)** of the ***Human Rights and Anti-Discrimination Bill 2012 Exposure Draft***, which says

“**3(1)(b)** in conjunction with other laws , to give effect to Australia's obligations under human rights instruments

“**3(2)** The ***human rights instruments*** are the following, as amended and in force for Australia from time to time:

(a) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);

(b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);

(c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

(d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);

(e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);

(f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);

(g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).”

Additional Measures to Overcome Systemic Barriers

The draft legislation does not provide adequate assurance that, through additional measures, people from a NESB with disability will have equitable access to the NDIS. Given that disadvantage to this group is entrenched in current systems, greater emphasis within the NDIS legislation is needed to address this.

⁵ Disability Advocacy Network Australia 2013, *Submission to Senate Standing Committee on Community Affairs National Disability Insurance Scheme Bill 2012*, January 2013.

To address our concerns we recommend that the Act include the following object:

- To **3 Objects of the Act** :
 - (i) *Ensure equitable access to the NDIS by people with disability who may experience additional barriers, including Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse backgrounds.*

Chapter 6—National Disability Insurance Scheme Launch Transition Agency

It will be crucial to expand the functions of the Agency to undertake additional measures to implement the Objects of the Act and to guarantee equitable access to the NDIS for those disadvantaged by current service systems and approaches. AMPARO Advocacy recommends adding:

- To **118 Functions of the Agency**:
 - (i) *To promote the National Disability Insurance Scheme to Culturally and Linguistically Diverse Communities through culturally appropriate targeted strategies to ensure awareness of the scheme and its benefits.*

Chapter 3

Part 1 Becoming a participant.

AMPARO Advocacy is aware thought our work with individuals, of New Zealand citizens with disability who are from a non-English speaking background, who have settled permanently in Australia since early 2001 are who are not eligible to receive support from Department of Communities, Disability Services.

Under the current draft legislation these individuals would also not meet the residency requirements; however we believe that the NDIS should be available to all persons with disability legally able to reside in Australia. Many of these individuals and families are working and contributing to Australian society in varied and meaningful ways, including working and paying taxes. It is unfair, inhumane and discriminatory to restrict their access to fundamental supports through the NDIS.

- To **23 Residence requirement**, add:
 - (iv) A person meets the residence requirements if the person is legally entitled to reside in Australia.

The legislation refers to disability as being '*permanent*' and '*likely to continue for the person's lifetime*'. This is contrary to the CRPD which refers to person with disabilities as those with 'long-term' impairments. Given there is an obligation on the Australian Government to ensure all new legislation complies with and implements their obligations under the convention we recommend the following:

- To **24 Disability requirements**, change:
 - (1) (b) should be likely to be 'long-term' and
 - (1) (e) likely to continue 'long-term'.

- **30 Revocation of participant status**

AMPARO Advocacy supports the *rules of natural justice* being applied to the all decisions made in relation to potential or active participants of the NDIS. Where decisions are made that are unfavourable to the person, the principles of procedural fairness must be applied by decision makers. This would include the Agency's decision to revoke a person's status as a participant in the National Disability Insurance Scheme Launch.

Access to Independent Advocacy

The Productivity Commission's Report recognised the critical need for independent advocacy and that even with an NDIS, vulnerable people with disability would continue to need advocates to represent their interests, to raise concerns and to assist them, or make complaints on their behalf. The Productivity Commission's Report confirmed this and supported the need to appropriately fund independent advocacy in the following statement: ***"Individual and systemic advocacy should continue to play an important role in the disability sector under the NDIS, and should be sufficiently funded to do so"***⁶.

In Recommendation 10.4, the Productivity Commission advised that the Australian Government, State and Territories that currently fund disability independent advocacy groups, should continue to do so and that advocacy should be independent from the NDIA.

Chapter 1

Part 2 – Objects and principles

AMPARO Advocacy fully supports this recommendation and the proposal by the Disability Advocacy Network Australia (DANA) to add to the General Principles guiding the Act:

- *A strong commitment to ensuring people with disability are entitled to independent advocacy.*

To support this commitment the legislation should:

- *Allocate an appropriate proportion of the NDIS funding to the provision of strong independent advocacy for people with disability.*

It will be important that the NDIS legislation makes provision to undertake appropriate research and evaluation of the scheme and monitor the participation rates of people from a NESB with disability.

Conclusion

AMPARO Advocacy defends, protects and promotes the rights and interests of vulnerable people from a NESB with disability. We recognise there is great potential for a National Disability Insurance Scheme to make a historic difference to the way in which Australians with disability choose to live their lives. To ensure that people with people from an NESB with disability are able to participate in all aspects of the NDIS, including the fundamental design of the scheme, the legislation must be amended to address the additional systemic barriers that will prevent equitable access to the scheme.

⁶ Australian Government 2011, Disability Care and Support, Productivity Commission Inquiry Report Vol. 1