

Submission by the Australian Psychological Society

**Senate Community Affairs
Legislation Committee**

**National Disability Insurance
Scheme Bill 2012**

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Summary of recommendations

Recommendation 1: *That the NDIS Launch Transition Agency, as a matter of priority after its formation, develops strategies to ensure equity of access and continuity of care for participants transitioning from NDIS to aged care services in consultation with key stakeholders.*

Recommendation 2: *The cut-off age for eligibility of the NDIS be linked to other similar programs and entitlements.*

Recommendation 3: *Words such as "substantial", "reasonable" and "appropriate" be defined and applied to examples in the NDIS Rules.*

Recommendation 4: *The powers of the CEO be subject to appropriate oversight by relevant authorities, including other relevant legislation and the courts.*

Recommendation 5: *All references to "medical examinations" be changed to "health and/or psychosocial examination".*

Recommendation 6: *Drafting of 74 (1)(c) with specific reference to, or definition of, "person determined in writing by the CEO".*

Recommendation 7: *A maximum of two consecutive terms for members of the Board of the Agency, including the Chair (Part 2), and three consecutive terms for members of Independent Advisory Council (Part 3).*

Recommendation 8: *s.144 (1)(c) change to: "provides reasonable and necessary support, including early intervention supports and evidence based practice, for participants..."*

Introduction

The Australian Psychological Society (APS) thanks the Senate Community Affairs Legislation Committee for the opportunity to provide feedback on the National Disability Insurance Scheme Bill 2012 (the Bill). The APS, as the largest national professional association for psychologists with over 20,000 members, has special interest in the design and implementation of the NDIS as a significant portion of its membership are involved as service providers for people with disabilities.

An effective national scheme which addresses inequalities in the care of people with disabilities will enhance equal opportunities and autonomy for those participants and, in turn, promote inclusion in the workplace, training and learning. The APS believes the proposed scheme will provide quality clinical support and individual choice whilst maintaining built-in measures for best utilisation of the money.

An effective system is ensured by setting the right legislative foundations based on sound principles such as self determination. Just as important in the effective operation of the NDIS are the Rules that govern the scheme's operation. As these Rules were not available at the time of the NDIS Bill, the APS will only make reference to the Rules in this submission. The APS will be pleased to offer further feedback on the Rules once they are released.

General Comments

The APS applauds s.4 of the Bill outlining fifteen general principles. These principles not only underpinned the foundations of the Bill, they also orientated the reader to the way in which people with disabilities ought to be viewed and treated generally. The APS highly endorses the principles of self-determination and choice by people with disabilities and, in doing so, ratifies Australia's obligations under the Convention on the Rights of People with Disability.

The Bill contained words such as "*substantial*", "*reasonable*" and "*appropriate*". It would be useful for these words to be better defined and explained with some case illustrations in the accompanying Rules of the Bill in order to minimise confusion and potential for misunderstanding (see feedback below re s.24).

The APS acknowledges that the NDIS is not intended to duplicate existing services. However, the age requirement in accessing the NDIS remains an issue of concern. It has been raised previously that people living in aged care facilities often do not have the same level of access to disability services as those living in the community. Furthermore, people living in such facilities often have greater need for such disability support services. In this context, current services offered by the aged care sector to people with disabilities needs to be examined more carefully to ensure not only equity of access to disability support services, but also continuity of care of people with disabilities who may eventually require aged care services.

While it is a requirement for accreditation that aged care facilities offer support services for residents with disabilities, the majority of these tend to be confined to the physical aspects of their disabilities, such as shower chairs and hoists. There are minimal services for other types of disabilities, such as acquired brain injuries, if at all. The APS urges the NDIS Transition Agency to be cognisant of these gaps in service provision and access, and work in collaboration with aged care service providers and other stakeholders to address these in order to ensure equity and maintain continuity of care for people with disabilities as they transition into aged care.

Recommendation 1: That the NDIS Launch Transition Agency, as a matter of priority after its formation, develops strategies to ensure equity of access and continuity of care for participants transitioning from NDIS to aged care services in consultation with key stakeholders.

Feedback on specific sections of the Bill

S.22 of the Bill stipulates that the age requirement of the NDIS is for people aged under 65. The APS queries if this cut-off age is still appropriate. Recent changes to the age pension eligibility will see the cut-off age gradually raised to 67 by 2023 (<http://www.humanservices.gov.au/customer/enablers/centrelink/age-pension/eligibility-for-age-pension>) It would be appropriate for the NDIS Bill to reflect this.

Recommendation 2: The cut-off age for eligibility of the NDIS be linked to other similar programs and entitlements.

S.24 (c) of the Bill states a person meets the disability requirement if “*the impairment or impairments result in substantially reduced functional capacity...*”. This clause would be open to considerable discussion and interpretation, and raises a number of questions such as:

1. Is there a percentage threshold by which “substantial” is defined or justified (as do currently under most third party compensation Acts)?
2. Do a number of less substantial impairments compound into one substantial impairment? If so, what are the thresholds of the lesser impairments (both in number and in percentage)? For example, someone may have moderately impaired vision, hearing loss and speech. While each impairment does not critically affect the function of the individual, their combined affect does and means that the individual needs assistance for everyday activities such as shopping, banking and using public transport. Under the above requirement, it would seem such a person meets the criteria, but an illustration of such a case in the accompanying Rules would assist in clarifying any potential confusion.

3. Is there a “weighting” applied to the various forms of impairment and their resultant functional incapacity? For example, how would the Bill (or accompanying Rules) determine if a person meets the requirement if they are able to live alone, as opposed to living with another person, to whom they are a primary carer? Similarly, the functional deficits of cognitive impairment are often greater than many physical impairments as it governs the individual’s behaviours and actions. Would cognitive impairments be rated higher or have a lower threshold as a result under the Rules accompanying the NDIS?

Recommendation 3: Words such as “substantial”, “reasonable” and “appropriate” be defined and applied to examples in the NDIS Rules.

The APS is cautious about the power of the CEO of the NDIS Transition Agency to obtain information in under **s. 55(1)** of the Bill, as the wording is broad and lacks detail. This section may give the CEO power to go beyond the rights of privacy of participants, and involve requests of information that is not relevant to participants’ care and which may lead to crossing of personal boundaries. Examples of inappropriate requests of information may include:

1. Previous and current relationships of the participant;
2. Where there is a history of abuse;
3. Where the participant is exploring sexuality; and
4. Where they may be using alternative therapies.

The APS acknowledges the intent **s.55** is to ensure the integrity of the NDIS, as per the explanatory memorandum. However, individual rights should not be overlooked in order to achieve this objective.

The broad powers of the CEO are also demonstrated in the section in relation to children, which outlines parental responsibility under **s.75** of the Bill. Currently, parental responsibility may be determined by the CEO. This level of decision making of the CEO needs to be oversighted if not limited and the definition of parental responsibility needs to include guardians as legislated under State law and rulings of the Family Court.

Recommendation 4: The powers of the CEO be subject to appropriate oversight by relevant authorities, including other relevant legislation and the courts.

In **s.36, 2b(ii)** and again in **s.50, 2b(ii)** of the Bill, it states that participants may need to “*undergo a medical, psychiatric or psychological examination...*”. The APS strongly urges these passages be changed to “*undergo a health and/or psychosocial examination...*”. The Bill is an important step in recognising the health and psychosocial impairments of people with disabilities, and their impact on the functional wellbeing of individuals. Indeed, the fifteen general principles (s.4) articulate very clearly and comprehensively the foundations of the Bill. It is unfortunate, therefore, to see the Bill continue to use outdated nomenclature such as “medical examination”, when such test are not suited to, and in some cases non-existent, in identifying functional requirements for people with disabilities to become independent community members. The APS recommended changes are consistent with the holistic and functions approach of the Bill.

Recommendation 5: All references to “medical examinations” be changed to “health and/or psychosocial examination”

The APS recommends a redrafting of **s.74, 1**. It is ambiguous in its current form:
74 Children

- (1) *If this Act requires or permits a thing to be done by or in relation to a child, the thing is to be done by or in relation to:*
- a) *the person who has, or the persons who jointly have, parents responsibility for the child; or*
 - b) *if the CEO is satisfied that this is not appropriate – a person determined in writing by the CEO.*

The APS contends that there is no way of adequately interpreting the above section of the Bill, as there is no definition the other “*person determined in writing by the CEO*”. Consequently, it seems to imply that if CEO thinks fit, he/she then has the necessary powers to do “*the thing in relation to a child*”, or another person, or another class of persons. The Bill may want to insert an additional clause specifying who “*a person determined in writing by the CEO*” can be.

Recommendation 6: Drafting of 74 (1) (c) with specific reference to, or definition of, “person determined in writing by the CEO”.

Other recommendations

The APS recommends a maximum of two consecutive terms for members of the Board of the Agency, including the Chair (**Part 2**), and three consecutive terms for members of Independent Advisory Council (**Part 3**). The limitations to the consecutive terms for Board and Council representatives will ensure dynamism and broader representation for the Board and Council, whilst still maintaining continuity.

Recommendation 7: A maximum of two consecutive terms for members of the Board of the Agency, including the Chair (Part 2), and three consecutive terms for members of Independent Advisory Council (Part 3).

In relation to the Independent Advisory Council, the APS recommends the following change to **s.144 (1) (c)**: *"provides reasonable and necessary support, including early intervention supports **and evidence based practice**, for participants..."* (additional words in bold). The APS supports embedding reference to best practice, where possible, in the framework. This is an important function of the supporting agencies and councils to be guided by evidence based principles and practice.

Recommendation 8: s.144 (1)(c) change to: "provides reasonable and necessary support, including early intervention supports and evidence based practice, for participants..."