



Submission to
The Senate
Standing Committee on Community Affairs
Legislation Committee
in response to the
***Inquiry into the National Disability
Insurance Scheme Bill 2012***

By the Australian Association of Social Workers
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Introduction

Thank you for the invitation to provide feedback on the National Disability Insurance Scheme 2012 Bill. Through this response the Australian Association of Social Workers (AASW) comments on:

- the NDIS Bill itself;
- the NDIS eligibility requirements; and
- implementation issues.

This response is informed by the AASW's Position Paper on Disability (Attachment 1) and its submission to the Productivity Commission on the draft Report on the Disability Sector (Attachment 2). Included in these papers is a description of the social work profession.

The National Disability Insurance Scheme (NDIS) Bill 2012

The objects and the principles expressed in the Bill are sound and are consistent with a number of values and aspirations of the Social Work profession. Apart from a much-needed facilitation of access and consistency of service provision, NDIS also has the potential to enable some people with significant disabilities to remain in the community rather than be prematurely accommodated in residential care.

It is pleasing to read that the NDIS Bill recognises the inherent dignity of people with a disability and their need for autonomy by stipulating their central role in making decisions about their goals, the support services they require and in managing the NDIS funds, where able to do so. The provisions to safeguard the interests of children and those who may require assisted decision-making are also appropriate.

The NDIS legislation states it is intended for people with a permanent disability, which results in 'substantially reduced functional capacity'. Among other objectives, it aims to support the independence and social and economic capacity of people with a disability. By focussing on this group across the nation, NDIS could simplify service access for people with disabilities.

One important way of achieving this is for services provided by registered support agencies (identified in 'participant plans') to avoid repeating assessments of the kind planned to be undertaken by the NDIS Launch Transition Agency. At the moment, service providers often conduct similar assessments to those already undertaken by referring agencies, thereby duplicating processes and creating barriers to service delivery. The NDIS Launch Transition Agency is in a position to negotiate the suite of intake and assessment tools that are essential to their role and agreed as sufficient by support provider agencies. (This does not apply to the more specialised assessments used in support provider agencies.)

The AASW has identified three main areas of concern regarding the NDIS legislation, two being in sections of the Bill.

1. Lack of Transparency in Meeting Specified Timelines

The first concern relates to Section 20 where the CEO can either decide an access request or seek further information within 21 days of the request being lodged. This places the onus on the Agency to deal with requests expediently. Similarly Section 26 requires that the further

action be completed within 14 days. However Section 21 (3) states that where either of these specified deadlines is not met by the Agency 'the CEO is taken to have decided that the prospective participant does not meet the criteria'. From the perspective of a person with a disability, their nominee or advocate, it is a leap to assume that a deadline not being met can only be due to a finding of ineligibility. Delays can arise from a number of causes, including internal Agency processes. If the Agency has failed to meet the timeline, it is unjust for the consequence to fall on the applicant. While the NDIS Bill provides for the applicant in this situation to seek a review or lodge another application, people with disability should not be burdened with these requirements in instances where the agency is responsible for the delay or does not communicate its deliberations in a timely way.

2. Inflexible Requirements to pursue Compensation

The other part of the Bill where there is concern refers to Chapter 5, Sections 104-105. Here the Agency requires a participant to take action to obtain compensation, the consequences of failure to do so being the suspension of their plan. This may place an onerous emotional or financial burden on the person with disability, for example, the person may have to take action against a family member or may be forced to incur unaffordable legal costs. The circumstances where compensation can or should be sought needs further consideration. This could also be an area where the CEO exercises discretion according to a set of guidelines or principles.

3. Costs of Service Coordination or Case Management

The inherent positive themes in the NDIS Bill are that people with a disability are able to participate in developing, monitoring and providing feedback on their own plan. Some will also be able to manage the budgets and service providers, perhaps only requiring occasional information or advice. Inevitably there will be others who will need more support and engagement either through a measure of service coordination or, where there are complex needs, case management. Where service coordination or case management is required, these costs should be incorporated into the funding allocation.

There are a cluster of other issues that should be considered in relation to the NDIS Bill, such as the support people with disability will receive to complete a request for access; the need for flexibility in both administrative processes and the development of plans (for example to cater for people living in rural and remote areas, Aboriginal people); and the need to adapt the funding of plans to reflect varying cost structures in different parts of the country.

Eligibility of People with a Disability for NDIS

Although the government has estimated the number of people who are likely to participate in the first stage of NDIS and the accompanying budget allocation, it is not clear if NDIS is anticipated to be an uncapped program. The limits signalled in the legislation appear to be centred on the person having a permanent 'substantially reduced functional ability' and the intention by NDIS to provide 'reasonable and necessary services'. This gives rise to questions, including:

- What constitutes 'substantially reduced functional ability'?
- Will there be threshold criteria or a prioritisation of access to NDIS?

- What are 'reasonable and necessary services'?
- What happens to people with a disability who are not eligible for NDIS?

The first three points may be covered by the rules to be developed by the NDIS Agency. The final point is raised because the objects and principles of the Bill appear to refer to all people with a disability. At the moment there are vulnerable groups that could be at risk of being excluded from NDIS or given low priority due to the absence of family or other formal advocates. One example refers to the residents of private, pension-level supported residential accommodation and some types of boarding houses. These compromised settings often house adults with Acquired Brain Injury, mental illness and other forms of disability. Residents use most, if not all, their Disability Pension in fees, leaving little or no capacity for social and economic participation.

Another example is the small proportion of people aged over 65 years presently in receipt of disability services and often residing in group homes. The legislation is unclear as to whether they will be eligible for NDIS. This ambiguity should be rectified and provision be made to enable them to continue receiving disability services until such time as the more intensive care and services offered by residential aged care are required.

It is understandable that the new Bill confines itself to the legislative requirements. However the NDIS Bill, rules or policy should underscore the importance of the Agency and disability, mental health and aged care services in other jurisdictions working together with people who are on the interface of their systems.

Implementation of NDIS

No doubt experiences in the launch sites will provide valuable information in regard to implementation. Among the implementation issues that need to be planned for and monitored are:

- managing transition from block funding to individual funding packages without threatening the viability and sustainability of the current service system;
- assessing the impact of the new funding arrangements on the workforce – increasing casualisation, with the attendant risks of not attracting qualified staff or investing in professional development;
- potentially losing useful group programs or collective responses due to individualising the funding arrangements;
- responding to the needs of people with a disability and the issues of ageing;
- avoiding a possible reluctance for registered support providers to share knowledge and experience in a competitive environment;
- the diversion of funds to marketing rather than service provision in order to attract the greatest number of clients and ensure service provider viability.

From a social work perspective, service delivery should balance the need for greater client choice and autonomy with a co-operative, system improvement approach. In its April 2011 submission to the Productivity Commission on their draft Report on the Disability Sector (see Attachment 2), the AASW noted that market forces may not ensure the elimination of shortcomings in service quality,

breadth and availability. Therefore it is gratifying to see the NDIS legislation requires the Launch Transition Agency to facilitate innovation, research and best practice as well as to build community awareness of the social contributors to disability. Evidence from these activities has scope to improve the quality and operational standards of NDIS and of registered support providers.

Conclusion

In summary, the AASW endorses the NDIS for:

- recognising people with disabilities' rights to be self-determining;
- ensuring access to resources for people with disabilities and their families;
- committing to facilitate innovation, research and best practice.

However, the AASW encourages the Commonwealth government to consider:

- clarifying of meaning of key terms, particularly 'substantially reduced functional ability' and 'reasonable and necessary services';
- modifying the content of sections 21, 104 and 105 to be more transparent and respectful of people with a disability or at a minimum allowing the CEO more discretion in their interpretation;
- being responsive to the local circumstances of people with a disability in terms of costs and funding allocations;
- monitoring access to NDIS by vulnerable, marginalised groups;
- monitoring the impact of the NDIS on the disability, mental health and aged care service sectors and any flow-on effects to people with a disability.

Thank you again for the invitation to comment on the NDIS Bill.

Submitted for and on behalf of the Australian Association of Social Workers Ltd

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