

NDIS Additional Comments – Australian Greens

The Australian Greens welcome the introduction of a National Disability Insurance Scheme (NDIS) and support the concept of systemic change that provides greater choice and control for people living with a disability. This legislation represents the culmination of a strong community campaign, which was clearly demonstrated by the number of submissions made to this inquiry and the intense scrutiny with which it has been examined.

Like many of the people living with a disability who gave evidence to the inquiry, the Australian Greens are eager to see the launch sites begin operating on July 1, 2013 but want to ensure that the legislative framework is robust, and note that some important components of the scheme's operation are contained in rules that were not available until the very end of the inquiry.

The Australian Greens support most of the recommendations that have been in the majority report. However, there are still some issues that need to be addressed in order to establish a strong scheme with the capacity to deliver reform to how disability services are delivered in Australia.

The Australian Greens are considering amendments to the Bill that ensure that it meets the needs of all Australian people living with a disability.

Framework for reform & ensuring 'greater community participation' and 'full integration' for people living with a disability

The Australian Greens recognise that the overarching design of the NDIS has to achieve more than just changing how funding is allocated to people with a disability in order to achieve significant and lasting reform.

The National People with Disability and Carer Council submission emphasised the need for:

...cultural change that then leads to structural and systems change towards advancing participation of people with disability in Australian society... In this regard, Council's strong view is that an NDIS is not just about individual packages – it needs to empower people and communities to make changes that create greater community participation and full integration.¹

While the legislation has set in place a framework that can provide choice and control to the individual, the Australian Greens support the recommendations of the committee that the objects and principles of the Bill need to be strengthened to both emphasise how the NDIS will improve the human rights of people with a disability

1 National People with Disabilities and Carer Council, *Submission 612*, p. 1

and give dignity to the risk associated with individual choice and independent decision-making, rather than focusing on risk management at the expense of personal control.

However, in order to help ensure ‘greater community participation’ and ‘full integration’ for people living with a disability, the agency should also be empowered to push for systemic change in all areas of service delivery and this needs to be firmly embedded in the objectives and principles of the Bill and given operational effect within the relevant sections of the Bill.

If this is not a key role for the Agency, the Australian Greens share the concern of the National People with Disabilities and Carer Council that:

An NDIS could inadvertently end up expanding segregated services and paying for provision that should come from mainstream services.²

The Australian Greens believe that the Bill needs to be more explicit about the need for a strong interface between the NDIS and other services and believe that a key function of the agency is ensuring that people living with a disability have access to mainstream services and funding.

The Human Rights Commissioner, Grahame Innes, argued in his submission that:

The provision of standing to allow the Agency to take appropriate legal action to achieve large scale change would enable the Agency to advocate on a systemic level. This approach would reduce the cost of delivering individual services, because the environment would be more accessible. More importantly, it would move people with disability closer to substantive equality as it would provide a fairer and more effective means of achieving large scale change and resolution of issues either through negotiated settlements or court decisions where necessary while also enhancing access to justice and effective compliance with the legislation.³

The Australian Greens recommend that the Bill includes a principle that emphasises that ‘reasonable and necessary supports’ extends beyond financial support and capacity building to include an responsibility or function to ensure that people with a disability can live independently and participate fully in the community.

This function is broadly similar to the idea of ‘systemic advocacy’ that is covered extensively in the main report. Australian Greens share the view of the committee that individual advocacy and legal assistance should be independent of the Agency but we also believe the committee recommendation that the “the bill be amended to recognise the role of advocacy, and that the government consider as one option the amendment of clause 4 to recognise in the principles the roles of advocacy,” is insufficient to

2 National People with Disabilities and Carer Council, *Submission 612*, p. 1.

3 Australian Human Rights Commission, *Submission 492*, p. 8.

adequately embed the need for the agency to play a role in integrating its services with those of mainstream systems.

The Australian Greens also note that s14 already allows the agency to provide funding to other persons or entities for the purposes of enabling them both to assist people with a disability and in the performance of the Agency's functions. By inserting a clause about the role of the agency to ensure that other areas of life such as education, employment, housing and public transport are accessible to people with a disability as part of ensuring access to necessary and reasonable supports, the agency is also strengthened in its ability to empower other organisations such as disability support organisations and systemic advocates to play a role in supporting the integration of the NDIS and other services and build individual capacity to access those services.

Recommendation 1

That the principles of the bill include a separate and specific reference to the role of the agency in undertaking systemic advocacy to increase access to services that are not funded by the NDIS for people living with a disability as part of ensuring access to “reasonable and necessary supports”.

Individual Advocacy

As covered in the main committee report, many submitters drew a clear distinction between systemic advocacy to improve access for all people with a disability in specific areas of need, and specific, individual advocacy, particular advocacy for individuals who have a dispute with the NDIA.

On the weight of the evidence, the Australian Greens share the view of the committee that in principle the funding for specific legal assistance should be separate to the funding administered by the NDIA. However, the Australian Greens also recognise that this requires the government to make an ongoing commitment to fund advocacy and legal aid.

The role of advocacy is brought into sharp focus by the mechanisms by which participants and others can seek to challenge the decisions of the agency. The Australian Greens support the recommendation that the launch sites should monitor this aspect and emphasise that advocates need to be included as some of the key stakeholders to be consulted.

Recommendation 2

That Government increase the funding for available for legal assistance and advocacy that is conducted on behalf of a person/people living with a disability.

Recommendation 3

That when the review of the legislation is being conducted under clause 208, the government also examine how individual advocacy has been funded and the

ability of participants to access advocates and legal assistance in order to determine whether further provisions for advocacy are required within the NDIS legislative framework.

Residency requirements

Under Clause 23(1) of the bill, a person must be an Australian citizen, permanent visa holder or protected special category visa holder, and also be residing in Australia, before they can be eligible for the NDIS.

The Australian Greens do not believe that the Department evidence set forth in 4.48 of the majority report clearly establishes a distinction between the policy rationale for the NDIS and for Medicare. Rather, the Australian Greens agree with the arguments from organisations such as the Ethnic Disability Advocacy Centre and FECCA that this is unnecessarily exclusionary and that refugee still awaiting their permanent residency and their children should not be excluded from the scheme.⁴

Recommendation 3

That the government adopt the same approach in the NDIS bill to the residence eligibility criteria as that taken in section 3 of the Health Insurance Act 1973.

Portability

Clause 40 of the bill provides for the suspension of a participant's plan in circumstances where the participant is absent from Australia beyond what is termed a 'grace period' of 6 weeks.

The Australian Greens note that the report already contains residency requirements for participants. It also requires participants to notify the CEO if they have a change of circumstances relevant to their participation or their plan (clause 51). The Australian Greens do not see a need for the additional, intrusive requirement that the CEO be advised if the person is absent from Australia for more than six weeks. This reads as though it has been inappropriately lifted from social security law, but it is inappropriate in the NDIS context, as long as the absence is consistent with the plan. If there is a specific reason why extended international travel would interfere with the appropriate provision of supports or was assessed as presenting an unacceptable risk, which could be addressed through the plan.

The Australian Greens also point out that the NDIS itself is not a welfare payment. Where a person with disability is also on income support that might have, for example, particular activity or job-seeking requirements, their travel would be constrained, in the same manner as persons without a disability, through other Social

4 See FECCA, *Submission 551*, p. 7; Ms Wendy Rose, Ethnic Disability Advocacy Centre, *Proof Committee Hansard*, 18 February 2013, p. 46.

Security Act requirements. However a person with disability not under such obligations should not have them applied just because they are participants in the NDIS.

Recommendation 4

That clause 40 be deleted.

Age Requirement

The issue of how those who are over 65 will access adequate support has been acknowledged by the majority report, and one way or another the Government needs to ensure that there is not a cohort of people who are living with a disability and are over 65 such as those with Post-polio syndrome who may develop their condition too late to access the NDIS early intervention provisions but who will also not receive appropriate care within the Aged Care system. The Australian Greens believe that either we need to completely remove the age restriction and include over-65s in the existing launch sites as appropriate, or the Government needs to put in place specialist support services for those over 65 who have a non-age related disability, that will not be picked up by the early intervention component.

Aboriginal and Torres Strait Islander peoples and the NDIS

The Australian Greens recognise that Aboriginal and Torres Strait Islander peoples living with a disability have significant difficulty accessing appropriate services.

The committee heard a range of evidence about how the NDIS might be tailored to meet the needs of Aboriginal and Torres Strait Islander peoples.

Although some Aboriginal and Torres Strait Islander people will be included within the launch sites as part of a broader cohort, the committee heard evidence from Mr Griffiss, from the First Peoples Disability Network Australia, who said:

South Australia obviously is an area where we would see great opportunity given that it is a whole-of-state thing. Our concern there, though, is the practicalities given that it is only a child trial. In literal terms, if we were to go into a community and say, 'Look, we're going to support the children, but sorry; you fellows are missing out,' it is not going to play well. I do not think that would be unique to Aboriginal communities, necessarily. But that is going to be the challenge there. The Hunter definitely presents an opportunity, because there are large Aboriginal populations in that part of the state. So they are the two launch areas that we are focused upon, but we do argue for our own stand-alone one also to work in parallel and do some learnings against both, if you like. I think that would be valuable for the agency going forward.⁵

5 Mr Griffiss, The First Peoples Disability Network Australia, *Proof Committee Hansard*, 19 February 2013, p. 25.

Submitters emphasised that Aboriginal communities have specific needs, including consideration of culture and language when engaging with the NDIS:

Ms Rankine told the committee:

I commend the government for the NDIS, but it needs to be done specifically for Aboriginal people—including cultural standards and cultural protocols—for them to understand why you are delivering this as a service to the people. As Indigenous peoples with disabilities, if we have lived a life we are capable of doing that.⁶

Mr Simpson of the National Disability Services (Western Australia), told the committee that:

There are two key themes that I would like to address. The first is the need for the National Disability Insurance Scheme to adequately reflect the diversity of communities around Australia, especially the differing needs and issues in rural and remote areas, and cultural and language differences among different populations, particularly Aboriginal people.⁷

In order to gain a better understanding of how the NDIS can address the needs of Aboriginal and Torres Strait Islander peoples, The First Peoples Disability Network Australia suggested:

Groote Eylandt as a potential Aboriginal launch site because of the high rates of a particular form of disability there, which senators may be familiar with. It is a very severe and profound disability over time, and has physical disability aspects to it as well as a whole range of different aspects. Also, it is isolated because of its location. That would potentially be a good location for getting a better understanding of how we can make the system work in a remote location, because there are service providers that operate there, and they do that quite well. There would be a need to learn more about how they can do better with more resources. There is also a need to focus on larger regional centres... And then there is the urban experience too, which needs to be better understood. There is no doubt that there are more options in urban settings, but it does not necessarily mean that we are seeing greater access for Aboriginal people with disability.⁸

The Australian Greens support the views put forth by the First Peoples Disability Network Australia and would like to see the creation of an additional launch site that focuses on delivering the NDIS to one or more rural and remote Aboriginal

6 Ms Rankine, First Peoples Disability Network Australia, *Proof Committee Hansard*, 19 February 2013, p. 31.

7 Mr Simpson, National Disability Services Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 18

8 Mr Griffiss, from the First Peoples Disability Network Australia, *Proof Committee Hansard*, 19 February 2013, p. 28.

communities in order to develop a better understanding of the needs of these communities and service delivery challenges that the NDIS needs to address.

Recommendation 5

That the Government create an additional launch site that focuses on delivering the NDIS to one or more rural and remote Aboriginal communities.

Senator Rachel Siewert

Australian Greens

