



AASW

.....
**Australian Association
of Social Workers**

*Submission from the Australian
Association of Social Workers to
the Independent Review of the
National Disability Insurance
Act 2013*

October 2015

Introduction

The Australian Association of Social Workers (AASW) is the professional body representing more than 8,700 social workers throughout Australia. We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians. The social work profession is committed to the pursuit of social justice, the enhancement of the quality of life, and the development of the full potential of each individual, group and community in society. Social workers have worked extensively in the disability field for many decades.

Our submission responds selectively to the questions of most relevance to the Association and concerns of its members.

1. Do the objects and principles of the NDIS Act provide a sufficient basis for giving effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities?

The NDIS legislation as it stands does not adequately recognise the population of people with intellectual disability or cognitive impairment as major stakeholder in the Scheme. Some people with intellectual difficulties or cognitive impairment, and their families, have difficulty engaging with services and require a more time intensive and flexible response. Specialised experience and knowledge are needed to appropriately engage and plan with these participants and their families. One avenue to address improved design and operation of the Scheme for this group is for the Act to specifically acknowledge the impact of intellectual disability and cognitive impairment on the principles of choice and control, and commit to specialised access and planning support for these participants. Ensuring that the NDIA has the appropriate staff and equipment to ensure that the rights of people with intellectual disability or cognitive impairment are adequately supported and promoted, is critically important in the context of the Convention. A clause to this effect could be included, for instance, under Object e.

There is also a place in the Objects and Principles for specific mention of respect for cultural differences in the development of Plans and delivery of services.

In terms of equity, it is suggested that the Act explicitly commit to the higher cost of providing services in rural and remote Australia to ensure that obligations under the Convention encompass these individuals and communities.

The references to economic participation in the current legislation have proven to be too vague to drive increased employment for people with disability. We propose that the word 'employment' be added to strengthen the impact of the Act and contribute to the long term viability of the Scheme, while recognising that for some participants the goal of economic participation is a positive outcome.

3. How well do the access criteria enable government to further the objects and principles of the NDIS Act?

Section 29(1) (b) is problematic, in that it rules out a participant of the NDIS over the age of 65 years once he/she enters a nursing home or requires home-based care. To be equitable with younger people in nursing homes requiring intensive disability and health support, a participant aged over 65 years should only cease being a participant when they have age related health conditions which require 24 hour care.

We also have concerns regarding the early intervention access criteria for young children. All children should receive the range of early intervention services and supports which will optimise their development and long term outcomes, including those who have a mild disability or whose severity of disability status is unclear. Young children should receive a comprehensive range of services, including NDIS-funded, ILC and mainstream services as appropriate to their developmental requirements. The decision regarding NDIS access as an ongoing participant is more appropriately made when the child reaches school age.

4.

5. What amendments could be made to the legislative framework (if any) to:

a. Enhance the clarity of the access criteria?

b. Improve the effectiveness and/or efficiency of the access request process?

The combined provisions of Sections 20, 21 and 26 relating to access requests are confusing and potentially discriminatory to applicants, in that a person's request for access to the Scheme may be denied because the Agency has failed to meet the deadlines stated in the Act. In such a case the applicant has to begin the process again. These provisions should be simplified and changed to put the onus on the agency to meet deadlines and for it alone to be held accountable (e.g. by reporting to Parliament on the number of occasions that the deadlines have not been met) rather than penalising the applicant.

6. How well does the legislative framework's definition of what constitutes 'reasonable and necessary supports' support the independence and social and economic participation of people with disability?

In general terms the framework's definition provides an adequate guide to 'reasonable and necessary supports', however in practice the operationalisation of the definition has been inconsistent and problematic; most frequently there has been a conflict with the participant's understanding of 'choice and control'. It would be useful for the framework to clearly define the interaction between these two pillars of the Scheme.

In addition, under Section 31, Principles relating to Plans, it would be useful to make an explicit commitment to respect for cultural differences, including the requirement that participant plans and the services/supports provided be responsive and appropriate to the cultural background of the participant.

Similarly, under Section 34 (1) (c) requiring supports to represent value for money, it would be useful to add an amendment which explicitly recognises the different costs of providing services across the country, in particular remote areas, if 'reasonable and necessary supports' are to be

achieved.

6.

- 7. What amendments could be made to the legislative framework (if any) to:**
- a. Improve the effectiveness and/or efficiency of the participant planning and assessment process (including review)?**
 - b. Improve the effectiveness and/or efficiency of the access request process?**

To date there has frequently been unnecessary duplication of effort and reluctance from the NDIA to engage with sources of knowledge and experience about what has been effective in supporting participants. If relevant service providers, allied health staff, schools, and where appropriate employers, are included in initial assessment and planning processes with the participant's permission, appropriate plans can be more readily developed. It is also essential that the Rules enable support providers to have access to the Plan, if effectiveness and efficiency of planning processes and subsequent outcomes are to be achieved.

- 8. How well does the legislative framework enable government to promote innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports?**

While the AASW supports the Objects and Principles of the NDIS, the Scheme is both a large scale social reform and a major disruptive change, framed by the legislation. Many social workers report that their organisations, and the individuals and families they support, are at present experiencing confusion, insecurity and significant chaos as they grapple with the changes and realignments to the service delivery system, and in some instances shortfalls. At this stage, this sense of disconnect is more frequently reported to us and is more observable than the opportunity for innovation. There is little in the legislative framework that helps drive or assist in the capacity for innovation, best practice, quality and continuous improvement, although there will always be individuals and organisations who break through in innovative ways.

Contrary to the intent of the legislation, the potential exists for some competitive market practices which may be attractive to participants, to in fact undermine quality and best practice, unless there is a strong Quality and Safeguarding Framework.

- 9. Do the registration requirements strike the right balance between supporting principles of choice and control, including in relation to taking reasonable risks and the rights of people with disability to freedom from abuse, neglect and exploitation?**

At this stage, the AASW considers that the right balance has not been struck between the principles of choice and control and the right to freedom from abuse, neglect and exploitation. Section 33 (6) of the Act requires providers of supports to be registered only when the Agency manages the participant's plan. This is inadequate. Services such as personal care, behavioural support, community participation, and therapeutic services should not be provided by unregistered providers irrespective of who is managing the Plan. We recommend that registration requirements be extended to all services in this class regardless of who is managing the Plan. As a self-regulating professional association, we are particularly concerned about the opportunity which currently exists for non-qualified or inadequately qualified people to promote themselves as social workers, in the

absence of the requirement for NDIA registration and proof of qualification.

10.

11.

12. How well do the nominee provisions provide choice and control to, and protect the rights and wishes of people with disability?

We support the adoption of the Australian Law Reform Commission's recommendations to bring national consistency to the language and functions of the supported or substitute decision-making role, described as 'nominee' in the NDIS legislative framework.

13. What amendments could be made to the nominee provisions (if any) to:

a. Enhance effectiveness and/or efficiency?

b. Ensure the legislative framework interacts appropriately with State and Territory legislation?

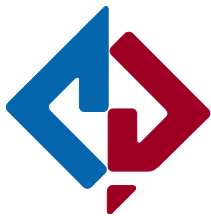
As it stands, a nominee is an appointment of last resort and to our knowledge has been infrequently used. Most commonly, supported or substitute decision-making has remained in the informal support realm, which is not subject to training, quality or accountability requirements. This is not an appropriate level of protection for people unable to manage their own affairs. The role of nominee in the legislation (or representative in ALRC terminology) is more accountable. We support the greater use of the nominee provisions, and the adoption of the terminology and responsibilities outlined in the ALRC concepts of Supporter and Representative.

We have observed that interaction with state systems has been problematic, however, because the relevant offices responsible for guardianship or administration provisions have not been resourced to take on the additional responsibilities arising from the NDIS. This resourcing issue must be addressed if the system is to function adequately, particularly in light of the ALRC recommendation that the CEO of the NDIA access these state or territory provisions.

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



Glenys Wilkinson
Chief Executive Officer



AASW

.....
**Australian Association
of Social Workers**

T 02 6232 3900
F 02 6230 4399
E ceo@asw.asn.au

National Office

Unit 9, Block C, Trevor Pearcey House
28-34 Thynne Street
Bruce ACT 2617

Postal Address

PO Box 4956, Kingston ACT 2604

Incorporated in the ACT

ACN 008 576 010 / ABN 93 008 576 010