

NSW DISABILITY NETWORK FORUM

Supplementary Submission to Senate Standing Committee on Community Affairs Inquiry into the National Disability Insurance Scheme Bill 2012

The NSW Disability Network Forum (the Forum) is pleased to provide this **supplementary submission** to the Inquiry by the Senate Standing Committee on Community Affairs into the National Disability Insurance Scheme (NDIS) Bill 2012. This supplementary submission is in addition to the initial NSW Disability Network Forum submission provided in January 2013 and was offered as part of evidence to the Senate Inquiry at the hearing in Sydney.

About the NSW Disability Network Forum

Initiated in June 2011, the **NSW Disability Network Forum** comprises non-government, non-provider peak representative groups whose primary aim is to promote the interests of people with disability. The aim of the NSW Disability Network Forum (the Forum) is to provide a new avenue to build capacity within and across all organisations and groups so that the interests of people with disability are advanced through policy and systemic advocacy. The Council of Social Service of NSW (NCOSS) provides secretariat support to the Forum as part of funding from Department of Family and Community Services, Ageing, Disability and Home Care.

The NSW Disability Network Forum generally meets monthly to co-ordinate issues of significance among people with disability, make representations on disability issues in NSW to Government, advise Government and others on policies affecting people with disability and to promote issues relating to people with disability across the wider society.

More information and current reports from the NSW Disability Network Forum are available at http://www.ncoss.org.au/component/option,com_docman/task,cat_view/gid,367/Itemid,78/

Introduction

The NSW Disability Network Forum (the Forum) would like to acknowledge the generous time, energy and contributions of members of the NSW Aboriginal Community Care Gathering Committee, the NSW Assistive Technology Community Alliance and the National Council on Intellectual Disability and its agency partners, as well as key informant interviews with representatives of the NSW Futures Alliance, Pathways Early Childhood Intervention Inc., Attendant Care Industry Association and other experts in disability.

This submission also draws on other formal and informal input from seminars, forums and conferences that enhanced the Forum's understanding and advocacy of what is important in the development of the NDIS.

NSW DISABILITY NETWORK FORUM

OVERALL COMMENTS

The timing of funding to the participant

The timing of the allocation of NDIS funding to the participant is unclear. The Forum assumes the funding is assigned after eligibility is approved and before the Plan is completed. It would make more sense to allocate the funding after the reasonable and necessary supports are determined as the participant's Part B Plan is approved. This however could involve several assessments and informants have expressed concern at the potential number of repeat assessments. The Forum recommends that actual timing of the allocation of NDIS funding to the participant should be specified clearly in either the Bill or subsequently in the Rules.

SPECIFIC COMMENTS

Section 6 Agency may provide support and assistance

Section 6 (1) rightly allows the Agency to provide financial and other assistance to both prospective and existing participants in relation to the Act. The Forum strongly recommends that this includes courses and other assistance for life and goal planning, and other such developmental supports, to enable people with disability to open up their possibilities for independence and inclusion.

Section 6 (2) disallows the Agency from providing funding to participants who require legal assistance in relation to review of decisions. Given that this is likely to unfairly disadvantage people who may want to challenge a decision or the review of a decision, and the omission in the Bill of a clear and comprehensive complaints and appeals mechanism, the Forum strongly recommends that the Agency must have a requirement to enable the fair handling of participants' issues, including via the legal system. This must also include people acting for and on behalf of the participant as well as people concerned with the interests of the person with disability using the NDIS.

Section 9 Definitions

The Definition of **Developmental Delay** must include intellectual disability to remain current with international standards¹.

The NSW Aboriginal Gathering Committee is concerned that for some Aboriginal children, developmental delays are not identified or diagnosed until the child attends school which may mean the child has reached or exceeded the age of 6 years. With the support of the NDIS under the early intervention eligibility criteria, it is likely that the child could benefit through increased capacity and reduced future needs. Consequently, the Forum recommends that the age requirement for developmental delay be modified to account for the later identification of developmental delay.

¹ Refer National Council on Intellectual Disability Submission on the NDIS Bill.

NSW DISABILITY NETWORK FORUM

CHAPTER 2 Assistance for people with disability and others

The Forum is concerned that the Agency must have responsibility to actively alert people with disability to the benefits of the NDIS and supports available to them. An “open door” policy will not be sufficient to address inequities among some people with differing types or levels of disability, among people in some cultural groups and people living on the margins, including people in insecure housing, people who are in contact with the justice system, people without significant relationships and people with disability who are parents. The Forum advises it is important that the NDIS actively extends this assistance to children and young people with disability in the child protection and out-of-home-care systems and their parents, carers and families.

Section 21 (3) (a) access criteria

Where the CEO has not taken an action or made a decision about the prospective participant within the stated time period, the consequence must not fall to the prospective participant. The participant must not bear consequences of inaction by the CEO. The Forum recommends that this section must be deleted or the CEO must be compelled to act.

Section 24 Disability requirements

There is concern that the description in section 24 (1) (a) does not cover people with some genetic conditions who justifiably require and will be entitled to the support of the NDIS. Therefore, the Forum recommends that this section be amended to include “other genetic conditions”.

Section 29 When a person ceases to be a participant

Section 29 (d) indicates that a person ceases to be a participant as soon as he or she notifies the CEO in writing that he or she no longer wishes to be a participant. Many people with disability living on the margins or in uncertain circumstances waver in their approach to disability support. The Forum recommends a cooling off period and a requirement by the Agency to engage with the person and, where appropriate, referral to external support.

Section 44 when a participant must not manage a plan

Regarding the participation of people in decisions and their plans, the Forum has received some intense wisdom regarding a tendency by some over-zealous or prejudiced decision-makers to make assumptions about groups or classes of people with disability automatically considered unable to make or even be involved in their own decisions and plans. In keeping with the Objects and Principles of the NDIS (sections 3 and 4), the Forum strongly recommends that every person using the NDIS should be individually approached and no automatic assumptions should apply, based on stereotypes of level or type of disability, geographical or living circumstances, cultural identity or any other general characteristic or grouping.

NSW DISABILITY NETWORK FORUM

Section 59 Commonwealth laws

The NSW Disability Network Forum is concerned that if people do not know the provisions of Commonwealth laws, they cannot exercise their rights under this section. Further, the lack of this information could cause people to inadvertently contravene these laws. The Agency must have a requirement to actively inform participants, their nominees, parents, guardians and other people with disability in contact with the NDIS, of the relevant provisions of Commonwealth and jurisdictional laws in this and other sections.

Section 74 Children

In discussing the sections on Children, the draft Bill raised a number of questions for the Forum. The Forum determined simply to pose these questions as feedback:

- What about children with disability in out of home care (OOHC), including children under care of the Minister?
- Who interprets when the parental responsibility is being upheld?
- What is the impact and effect of child protection legislation on this draft Bill?
- What happens when there is simply a difference of philosophy between the Agency and the parents in the care of the child with disability?
- What about young people in the juvenile justice system, where there is a clear lack of support and obvious developmental delay? Who identifies these young people coming out and who takes responsibility?
- What about many younger Aboriginal people who themselves are in a caring role, many of whom have a disability?

Section 74(1) (b) – The agency may determine that someone other than a person with parental responsibility can act for a child (up to 18 years)

In developing the Rules for this section, the Forum recommends that particular consideration must be given to the needs of many children and young people on the fringe who do not have a person with parental responsibility who is willing and able to act for the child or young person.

PART 5 – Nominees

The NSW Aboriginal Community Care Gathering Committee has developed a range of policy statements designed to improve the provision of supports to people with disability and older people. The latest version *Challenge Change and Choice 2011*² contains a chapter on Aboriginal and Torres Strait Islander people with disability. The Gathering Committee insists that Aboriginal people with disability must be offered the choice of Aboriginal nominees by the CEO. The NSW Disability Network Forum contends that this provision must also apply to people from other cultural and language groups.

² Available at <http://ncoss.org.au/resources/120704-challenge-change-choice.pdf>

NSW DISABILITY NETWORK FORUM

Section 172 Annual Reports

The Forum recommends that the Annual Reports should also report on progress against the Key Performance Indicators of the Agency, and include comparisons to previous years over time.

Section 182 Debts to the Agency

In section 182 (4) there could be breaches for people with disability in the keeping of records, similar to social security legislation requirements etc. The Forum recommends that special consideration should be extended to people, especially people living on the margins, and assistance provided where necessary.

Section 192 Waiver of debt

It is appropriate that specified debts can be waived but the CEO should be empowered to waive debts under other circumstances as well as in extraordinary circumstances.

Conclusion

The NSW Disability Network Forum appreciates the opportunity to provide input to the Senate Standing Committee on Community Affairs Inquiry into the National Disability Insurance Scheme Bill 2012. If you require any further information or clarification, please contact the NCOSS Senior Policy Officer, Christine Regan at chris@ncoss.org.au ph. 02 92112599 ext. 117

NSW Disability Network Forum Member Organisations:

Aboriginal Disability Network NSW	NSW Consumer Advisory Group - Mental Health
Association of Blind Citizens of NSW	NSW Council for Intellectual Disability
Brain Injury Association NSW	NSW Disability Advocacy Network
Deaf Society of NSW	People with Disability Australia
DeafBlind Association NSW	Physical Disability Council of NSW
Deafness Council (NSW)	Positive Life NSW
Institute For Family Advocacy	Self Advocacy Sydney
Intellectual Disability Rights Service	Side By Side Advocacy Incorporated
Multicultural Disability Advocacy Association of NSW	Council of Social Service of NSW