

# NSW DISABILITY NETWORK FORUM

## NSW Disability Network Forum Submission to: **Senate Standing Committee on Community Affairs** **Inquiry into the** **National Disability Insurance Scheme Bill 2012**

The NSW Disability Network Forum is pleased to provide this submission to the Inquiry by the Senate Standing Committee on Community Affairs into the National Disability Insurance Scheme Bill 2012. Member organisations of the NSW Disability Network Forum have contributed to this submission from their areas of expertise as well as including jointly agreed positions shared within the Forum. The NSW Disability Network Forum (the Forum) conducted two intensive discussion workshops on the draft Bill in late 2012.

If you require any further information or clarification, please contact the NCOSS secretariat.

### **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/](http://www.ncoss.org.au/component/option,com_docman/task,cat_view/gid,367/Itemid,78/)

### **NSW Disability Network Forum Member Organisations:**

Aboriginal Disability Network NSW  
Association of Blind Citizens of NSW  
Brain Injury Association NSW  
Deaf Society of NSW  
DeafBlind Association NSW  
Deafness Council (NSW)  
Institute For Family Advocacy  
Intellectual Disability Rights Service  
Multicultural Disability Advocacy Association of NSW

NSW Consumer Advisory Group - Mental Health  
NSW Council for Intellectual Disability  
NSW Disability Advocacy Network  
People with Disability Australia  
Physical Disability Council of NSW  
Positive Life NSW  
Self Advocacy Sydney  
Side By Side Advocacy Incorporated  
Council of Social Service of NSW

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## GENERAL COMMENTS

### **Importance of implementation and the foreshadowed Rules**

The NSW Disability Network Forum notes the many references to the Rules contained within the Bill but for which no detail or explanation has been provided during the Bill's consultation period. The Forum further understands that some of the issues raised in this submission may be resolved or answered in the Rules. However, without this information, the Disability Network Forum resolved to provide the most comprehensive feedback possible to the Inquiry.

The NSW Disability Network Forum acknowledges that safeguards have been built into the draft National Disability Insurance Scheme Bill (NDIS) for the protection of people with disability in extreme or adverse circumstances. There are dangers, however, that these safeguards become regular practice and could restrict the very choice and control that the Objects and general principles (sections 3, 4) seek to promote. The way in which this Bill is interpreted and implemented will be laid out in the Rules. Consequently, the Forum recommends that the Rules be framed within an enabling approach rather than in a restrictive or prohibitive manner to avoid always limiting options for the person with disability rather than promoting opportunities for independence and social, economic and political participation.

### **People with disability currently using community care services**

There are around 50,000<sup>1</sup> people with disability in New South Wales using community care services, not funded from NSW disability services. Many of these people rely on low level services such as domestic assistance, personal care, delivered meals or community transport to stay in their own homes and in their local communities.

While the NDIS eligibility criteria seem to include low level users of community care services, (refer section 24 *disability requirements* and section 25 *early intervention requirements*), there are concerns that these people may be screened out.

The NSW Disability Network Forum is concerned that people with disability who do not receive timely and consistent low level supports could escalate to very high level needs. They could then require intrusive, costly and needlessly premature service interventions that could have been avoided with comparatively inexpensive low level supports.

The Bill is very unclear on how people with disability relying on low level community care style services will be supported by the NDIS. Consequently, people with disability with low level needs must receive necessary supports under the NDIS and this must be made explicit within the Bill.

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<sup>1</sup> Australian Government Department of Health and Ageing (2011) *Home and Community Care Program Minimum Data Set 2009-10 Annual Bulletin*, Australian Government Department of Health and Ageing, Canberra, Table A3.

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## Ubiquitous Role of NDIS Transition Agency

Under the draft Bill, a person seeking to be an NDIS participant:

- Must approach the Agency to determine eligibility for a funding allocation
- When approved, must develop a Plan (see Part 2)
- Can use the Agency to develop a Plan, or someone else
- Submits the Plan to the Agency for approval to spend and implement their Plan
- Can nominate a Plan nominee (section 86) who is a personal advocate for the person in the development of the Plan; the Agency can also nominate this person under certain circumstances
- Can appoint a correspondence nominee who can receive correspondence alongside the person to assist with paperwork if the person wishes or requires it.
- May seek the services of a Registered Plan Management Provider (section 70) who can manage the funds under the approved plan if the participant wishes. (The Agency is available to fulfill this role)
- If the Agency is the fund-holder for a participant's plan (section 69 note1), the Agency will only purchase supports from a registered provider of supports – unlike other nominated fund holders who can also purchase supports from elsewhere.
- Acquittals for the funds and contracts are returned to the Agency.

The NSW Disability Network Forum accepts that the Agency has a role in determining eligibility for people to receive funding under the NDIS and a role in contract accountability as well as NDIS performance, monitoring, evaluation and review. This means that the Agency will be the regulator of the NDIS as well as the overall distributor of funding.

Several issues arise:

1. The Agency, as both government regulator and distributor of funds, will in some or many circumstances also act as a participant's planner, fund-holder and plan manager (i.e. broker of services). In some instances, the Agency can also nominate the person's nominee (Section 86). Despite the fact that the person's funding allocation is pre-determined, the Forum strongly recommends that the person/participant's planner, plan manager and fund-holder must be at arm's length from the government regulator and distributor to avoid any possibility of confusion or conflict of priorities or loyalties. This is a role for non-government organisations, Disability Support Organisations, independent advocacy and independent information agencies.
2. Section 33 (6) states that when individual funding is managed by the Agency, the Agency will only purchase supports from registered providers of supports. For participants who use the Agency as their plan manager and fund manager, this will in effect reduce their choice and control, their opportunities for innovation and possible personal development of the participant. The Forum sees no valid reason why participants using the Agency should have restricted access to purchasing arrangements as compared to any other participants using funding under the NDIS. There are concerns that this could result in discriminatory practices.

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## **Launch, Transition and Review**

Section 208 states that the Legislation will be reviewed two years after the commencement of Chapter 3 of the Bill, i.e. two years after the first participant's plan becomes effective. There is no mention of public consultation to the review. There are numerous references to the *Launch* of the NDIS and to the *Transition* Agency. Given the fast pace of the development and implementation of the NDIS across Australia (refer Heads of Agreement for the NDIS in NSW, December 2012), the Forum is concerned that the terms *Launch* and *Transition* will quickly become redundant and possibly misleading within the Bill.<sup>2</sup> The Forum recommends that references to the *Launch* of the NDIS become a discrete section and that references to the *Transition* are minimized.

## **Complaints and Appeals**

The Bill has no provisions for a rigorous complaints and appeals mechanism. The Forum understands that during the Launch sites period, existing complaints and appeals mechanisms will continue to operate within states and territories. However, this being National legislation, the Bill must provide comprehensive assurance to the participant and all parties of a quality complaints and appeals mechanism that covers the provision of quality supports, general supports by the Agency, complaints handling by the Agency and any other necessary matters. These must be dealt with by a third party, not by the Agency itself.

## **National Disability Strategy Outcomes**

Given that the NDIS is one of the measures of the National Disability Strategy, it is appropriate that the effectiveness of the NDIS is evaluated and measured against the stated principles and outcomes of the National Disability Strategy.

## **Participants can choose who should accompany them**

The draft Bill seems to indicate that participants can only be accompanied by a nominee to assessments or examinations (refer section 85). In actuality, people with disability choose different people to accompany them on different occasions, like anyone else. While a nominee is probably a preferred person, an NDIS participant must be able to be accompanied by any person of their choosing. This is in addition to the nominee status described in the Bill. This will be especially important for some people, for people in specific circumstances and for people in particular cultural groups.

## **Independent Advocacy and Independent Information**

The NDIS and people with disability supported by it will be assured of improved outcomes and operations with the ready availability of independent advocacy and independent information when needed and requested. The Forum contends that the enhanced and sustained provision of

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<sup>2</sup> Available at <http://www.nsw.gov.au/sites/default/files/pdf/Agreement-between-Commonwealth-and-NSW-Governments-NDIS.pdf>

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independent advocacy and independent information alongside the NDIS will improve the functioning of the NDIS in at least the following ways:

- **Value for money:** at times when people are feeling overwhelmed, uncertain or confused and require external advice or reassurance from people with individual and systemic expertise, independent advocacy and independent information can provide this role at a very cost effective investment.
- **Safeguards:** Internal safeguards measures are never enough to provide adequate protections. For prospective and approved participants, their families, guardians and others the provision of a parallel independent advocacy and independent information alongside the NDIS to assist with NDIS and other issues affecting them will ensure that there are a range of protections for people who historically have been extremely vulnerable in many ways.
- **Early warning:** The support of timely, non-aligned, independent information and/or Independent advocacy could allow issues to be identified and handled with expertise at the earliest possible stage to avoid costly escalation. Further, this could enable the service or system to work better by identifying failures or opportunities for improvement, or by simply solving a problem for a person when there is nowhere else to go.
- **Levels of administration and cross-agency issues:** There is long standing expertise in many Independent Advocacy and Independent Information organisations in responding to the needs of people with difficult and/or complex issues, especially across a broad range of government agencies at the individual and systemic levels. This experience is important to the participant and their supporters in navigating the complex levels of federal, state and local government responsibility.
- **Board options and non-systems issues:** the support of independent advocacy and information is required in dealing with everyday issues do to with housing, budgeting, managing the household, personal decisions and accessing professional supports. While often not seen as imperative in the scheme of support services, these can be critical inhibitors to inclusion and participation or a good life. Independent advocacy and information can have the flexibility to address these everyday issues in the short and longer terms at the individual and systemic levels.
- **Assisting the NDIS to work better:** Building independent advocacy and independent information supports at an early stage, will ensure that there is flexible assistance for people with disability (particularly where there is no systemic capacity to respond). Flexible assistance for people with disability ensures that issues for the person with disability do not needlessly escalate, that gaps or program/system response issues can be identified quickly, that misunderstandings are competently and objectively managed and that whole-of-life issues are handled with care.

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## SPECIFIC COMMENTS

### Chapter 1 - Introduction

#### Section 3 Objects of the Act

The Objects are good and generally promote choice and control for the person. However, the NSW Disability Network Forum recommends that section 3 (1) (h) should give effect to all obligations of the UN Convention on the Rights of Persons with Disability (UNCRPD) rather than limiting to non-defined “certain” ones.

#### Section 4 General principles

- Delete the word “*should*” and strengthen with *have*
- section 4 (2) delete words to the *extent of their ability* as these words do not apply to any other person in Australia, i.e. people can only participate to the extent of their ability.
- section 4 (2) include *political* participation i.e. “contribute to social and economic and political life.”
- section 4 (11) (b) this must also include *open* employment
- section 4 (12) It is good that the role of families is acknowledged in this point.
- section 4 Additional Point: There is agreement on the National Disability Advocacy Framework across governments in Australia and Australia has ratified the UNCRPD. There must be a point about the access of people with disability to independent advocacy and information whenever needed to promote and protect their rights, as well as in relation to the NDIS.

#### Section 5 General principles for people who act on behalf of others

The NSW Disability Network Forum considered this entire section to be generally weak and should consequently be strengthened in the Bill.

- 5(a) This point must be strengthened. The Forum was concerned there would be too many assumptions drawn on behalf of people who could be supported to make decisions if only someone had appropriately supported them to participate in the decision making process. It was felt that people must be involved in the decision making process and properly supported to make decisions for themselves.
- 5(b) While agreeing with the concept, there was a question about why this point was included here. In any case, “*should*” must be replaced with “*will*”. The encouragement to engage with the community is not optional. Decision about that engagement by the participant is personal.
- 5(c) The decisions that the person with disability would have made for themselves must be the determining factor – not “*be taken into account*”. Accordingly, delete “*be taken into account*” and replace with “*will determine the decision or*”

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*act or outcome*" (or similar).

- 5(d) The Forum recommends that the word *identity* is included here: "the cultural and linguistic *identity* and circumstances of..." This respects the cultural identity of the person.

The provision of no cost interpreting services should be included for a range of languages to enable no-disadvantage access to the NDIS for the person and their family.

- 5(e) The Forum agrees with this point on supportive relationship relationships, friendships and connections to others. However, some people with disability may have few or no pre-existing significant relationships or may live on the margins. For these people the NDIS will be used to engender and develop these relationships. Therefore, the wording should be stronger such as "...will be supported and recognised." This will be a key safeguard for people with disability, for the person acting on behalf of others as well as for the NDIS.

## Section 7 Notice

The provision of notice in section 7 is a very good explanation, especially requiring that the notice is given in a manner most likely to be understood by the participant.

The NSW Disability Network Forum recommends that section 7 (2) while implied, must be explicit about providing information and notice in required formats.

## Section 8 Simplified outline

The NSW Disability Network Forum finds the inclusion of the simplified outline a very useful section.

## Section 9 Definition:

While the definitions are very useful, it is somewhat frustrating that many of the definitions simply refer to the sections rather than setting out the actual definition as indicated.

## CHAPTER 2 - Assistance for people with disability and others

### Section 13 Agency may provide coordination, strategic and referral services etc. AND

### Section 14 Agency may provide funding to persons or entities

The NSW Disability Network Forum refers to earlier comments on the inclusion in the NDIS of people with disability who now use and will require low level supports for example community care services. See comments in the General comments section.

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## **Section 14 Agency may provide funding to persons or entities**

The Forum strongly recommends that the Bill extends this section to enable the development of Disability Support Organisations, to provide independent advocacy and independent information, language interpreting services and other such support services that should not incur expenses from an individual's funding budget.

The NDIS is unclear on the issue of people in crisis. A new subsection should be added that covers the immediate needs of people with disability waiting to become participants under the NDIS and the development of individual plans.

## **CHAPTER 3 - Participants and their plans**

### **Section 19 Matters relating to access requests**

There are several sections within this Bill where the CEO requires additional information for an access request (i.e. to become a participant of the NDIS) or other purpose. For the prospective participant, this request could involve additional cost and significant difficulty to the prospective participant. For some people with disability, this request could prove a disincentive or even prohibitive to their application to the NDIS. The NSW Disability Network Forum recommends the provision of financial assistance and other considerations to these people.

### **Section 22 Age requirements**

The NSW Disability Network Forum is seriously concerned at the exclusion of people who acquire a non-age related disability at or after the age of 65 years, especially for whom the age care system does not provide suitable responses, for example motor neurone disease, multiple sclerosis and sensory disability.

### **Section 23 Residence requirements**

The residency requirements contained in this draft Bill are inconsistent with other comparable programs. The NSW Disability Network Forum is concerned at the apparent additional residency requirements in this Bill where no additional residency or citizenship requirements appear to apply in for instance Community Aged Care Packages, Extended Aged Care in the Home (EACH), EACH Dementia and many other aged care programs. The NSW Disability Network Forum recommends that it makes good economic and logistical sense to provide the NDIS to anyone in Australia who needs it, including refugees.

### **Section 24 Disability requirements**

Some people with very long term disability may be unable to prove they are absolutely permanent. This should not be a prohibitive criterion. Therefore, the Forum recommends



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to change “permanent” to “long term” in section 24 (1) (b) in line with United Nations Convention on the Rights of Persons with Disabilities.

Section 24 (1) (c) covers conditions that vary in intensity. This is a justifiable and insightful inclusion.

## **Section 24 Early Intervention requirements**

The Forum has received concerns that for some children with developmental delay there may not yet be sufficient research/evidence for early intervention measures, particularly obscure or rare genetic disorders and developing treatments and interventions.<sup>3</sup> This should not prohibit the provision of NDIS funding to those children and families where short term benefits are in the interests of child and family.

## **Section 26 CEO requests**

For people in rural and remote areas and people in some communities, 28 days will be insufficient for a CEO request under section 26 (3) (b). The NSW Disability Network Forum proposes that the CEO negotiates a reasonable timeframe with each participant where this timeframe may be insufficient.

## **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. NCOSS recommends a cooling off period and a requirement by the Agency to engage with the person and, where appropriate, appoint a nominee.

## **PART 2 – Participants’ plans**

### **Section 31 Principles**

The NSW Disability Network Forum found the following:

- (a) Very good that plans be individualised and
- (b) Very good that the plans will be directed by the participant.
- (c) to (j) Other principles are generally good
- (k) Concern at reference to “disability services” or “disability service provider”. Using their individual plan, the participant will purchase whatever approved supports will advance their goals and supports to progress their independence and their social, economic and political inclusion. This will no longer be limited to a traditional understanding of existing disability service providers. Consequently, the terms “disability services” and disability service provider” should be replaced with “supports” to build in the independence and inclusion referred to in previous principles.

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<sup>3</sup> Workshop discussion and key informant interview, 13 December 2012

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## **Section 33 (6) – Where individual funding is managed by the agency, supports can only be purchased from registered providers of supports.**

Please refer to previous General comments under heading *Ubiquitous Role of the Agency*.  
**Section 33 (6)** should be deleted.

## **Section 34 Reasonable and necessary supports**

The NSW Disability Network Forum is concerned at the reference in section 34 (c) to what it is reasonable to expect of families, networks and community. This suggests that the CEO makes an autonomous judgment with no obvious or explicit reference to the individual situation or circumstance regarding what the participant wants from family, carers, networks, or the community or what they are willing to or able to provide.

## **Section 34 (f) (i) universal service obligations**

The NSW Disability Network Forum has concerns about the blanket exclusions in the reference to universal service obligations. The Forum certainly agrees that universal service systems must maintain responsibility for the provision of services to people with disability as part of their regular and expected service provision to all people in Australia, for example health, education, transport, employment, justice, communications. However, the Forum also recognises that the failures within these universal systems have dire consequences for the person with disability. The National Disability Strategy must continue its implementation towards improvement in this respect.<sup>4</sup> The Forum contends that there must be some flexibility in this section to account for the often inadequate provision of services to people with disability under universal service obligations; for example, where the Health system will not pay for a person with challenging behaviour to have a familiar worker to accompany them during a difficult hospital stay. There are many similar examples for education and other universal systems.

## **Section 40 Temporary absence**

The NSW Disability Network Forum recommends that, in line with other temporary absences, section 40 (2) (a) *grace period* should be extended to 26 weeks.

## **Section 43 Choice for participant in plan management**

Regarding a registered plan manager specified by the Agency, the NSW Disability Network Forum determined that the wording of section 43 (5) would not sufficiently protect the interests of the participant. The Forum considers that this section should be strengthened in favour of the choice of the participant or their nominee or parent, guardian, advocate in making this choice. The Forum proposes deletion of the words “as far as reasonably practicable” in the current

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<sup>4</sup> Evidence Base for the National Disability Strategy: [http://www.fahcsia.gov.au/sites/default/files/documents/05\\_2012/nds\\_evidence\\_base\\_nov11.pdf](http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nds_evidence_base_nov11.pdf)

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wording as the CEO must only “have regard to” the wishes of the participant in choice of plan manager.

## **DIVISION 4 – Reviewing and changing plans**

All sections in this Division must make explicit that there must be no review without the involvement of the participant.

### **Section 48 Review of participant’s plan**

There is no capacity in the Bill for crisis planning i.e. where an immediate change is necessary due to crisis. This section must have the capacity to quickly respond to crisis.

## **CHAPTER 4 - Administration**

### **Part 2 - Privacy**

Section 60 (1) and subsequent sections refer to a “person” not defined in this Bill. The NSW Disability Network Forum is concerned that, while this may appear to be superficially reasonable, the person could have access to participants’ plans and other private details. Participants’ plans will contain personal details about the individual person with disability, their hopes and dreams, details about their family and significant relationships and their local community. As well, the Plan could describe when the participant will be present or absent at their home, their regular movements and those of others in their immediate vicinity. With access to this kind of information, it would conceivably be possible for a person to build an identity profile of a participant or other significant person for improper purposes. It is therefore unacceptable to allow access in this Bill to persons not specifically defined.

### **Section 60 Protection of Information held by Agency**

In section 60 (2) (d) (iii), delete the words “or implied” because the nominee, parent, guardian or advocate acting for the participant must give consent, if not the participant.

The term “policy development” in section 60 (3) (c) is too broad for the release or disclosure of such private and personal information unless it is de-identified and has been adjudicated by a third party such as an ethics committee or equivalent. In saying this, the NSW Disability Network Forum actively supports the Agency in ongoing policy development towards the improvement of the NDIS and the National Disability Strategy.

### **Part 3 – Registered providers of supports**

**Section 69 Application to be a registered provider of supports AND**

**Section 70 Registered providers of supports**

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The NSW Disability Network Forum contends that it is a conflict of interest for a provider of supports (service provider) to be also managing the funding for supports, and not only for the one participant. There are concerns that this could serve to restrict the options of the participant to only those supports that the service provider can offer. The Forum contends that a provider of supports must remain separate from a funds manager.

The NSW Disability Network Forum recommends that section 70 be more explicit in enabling the inclusion of disability support organisations, mainstream organisations, personal and informal supports and other entities to become registered providers of supports.

## **Part 4 - Children**

The NSW Disability Network Forum recommends that the UN Convention on the Rights of the Child as well as the United Nations Convention on the Rights of Persons with Disabilities must be the guide for this section.

## **PART 5 – Nominees**

The NSW Disability Network Forum is concerned at the potential conflict of interest where service providers could be appointed as the plan or correspondence nominee. This should be disallowed in the interests of the participant. The Forum strongly recommends the Agency should engage the assistance of disability support organisations or independent advocacy agencies.

### **Section 78 Actions of plan nominee**

As previously explained, there is concern that the CEO could automatically appoint a plan nominee (section 78 (5)) for a class of people or pre-determined groups of people with disability. (See comments under section 44.) In this respect, disability support organisations or independent advocacy and independent information agencies would be of assistance to the participant and the CEO.

### **Section 81 notices to correspondence nominee**

Section 81 (2) (a). It is very good that the CEO intends to communicate in the same way as if to the participant. This demonstrates respect.

### **Section 85 Nominee to attend with participant**

As explained in the General Comments, the participant should be able to take anyone they choose with them, not restricted to the nominee. This will be especially important for people in some cultural communities, for some people with disability and for some people with specific histories, for example people with disabilities with challenging behaviours. .

Section 85 (1) (d) could be easily misconstrued and should be deleted or reworded. There must be no possibility of the Agency or other Government agency excluding someone whom the participant chooses to accompany them to appointments, except in extreme circumstances. Doctors and physicians almost always consent to people having someone with them but

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sometimes ask that the person steps aside during the actual examination. In a Bill where the Object is “to enable people with disability to exercise choice and control...” s3 (1) (d) and a principle for the participant’s plan is that “it should be directed by the participant” s31 (b) it is unacceptable for anyone other than the participant to determine who accompanies them to appointments.

## **Section 86 Appointment of plan nominee AND**

### **Section 87 Appointment of correspondence nominee**

NCOSS understands that on rare occasions the CEO might need to appoint a plan and/or nominee but this must be an arm’s length process to avoid conflicts of interest and to preserve the integrity of the participant’s autonomy/choice and control. Again, disability support organisations or independent advocacy agencies would be of assistance to the participant and the CEO in these circumstances.

### **Section 88 provisions re appointments**

Section 88 (4) suggests that the CEO is not compelled to appoint an existing guardian as a nominee. Where a guardian exists, they should be appointed as a nominee according to the participant’s wishes. [If there is a problem, then that problem must be appropriately resolved, not simply avoided by the appointment of an alternate nominee which could serve to compound the problem for the participant.] If a nominee exists and a different person is appointed as a guardian, then the guardian should become the nominee.

The Forum is concerned that there will be significant numbers of people with disability who will not have a family member or significant person who is willing and able to act as a nominee.

### **Section 90 cancel or suspend the appointment of nominees**

In any notices provided by the CEO under Section 90, the CEO must be compelled to give reasons and/or explanations for the contents of the notices.

### **Section 91 severe harm**

The NSW Disability Network Forum contends that where the nominee/person has maliciously caused severe harm, or where the CEO believes this was intended, the CEO must be compelled to make a report to the authorities, not just suspend or cancel the nominee appointment.

### **Section 97 Protection of participant against liability**

The NSW Disability Network Forum believes this to be a very important protection for the participant.

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## Part 6 – Review of decisions

This section is critical for the confidence of people with disability to participate in the NDIS, as well as for its implementation and the quality of supports provided under the scheme.

The Bill contains no rigorous complaints and appeals mechanism for participants and this is a major omission.

Equally, the ready access to independent advocacy and independent information for prospective and existing participants, their families, guardians and nominees is a necessary and essential component for the successful implementation of the NDIS. Again, this fundamental element is not included in the Bill and its omission is a failure of the proposed legislation. Refer previous comments in the General Comments section of this submission.

### Section 99 Reviewable decisions

The NSW Disability Network Forum recommends that all decisions should be reviewable and that creating a list (section 99) will necessarily and possibly inadvertently overlook or omit an important reviewable decision now or in the future. Consequently, the Forum recommends that all decisions should be reviewable and that the list is deleted.

### Section 100 Review of reviewable decisions

The Forum recommends that an advocate or any person should be able to request a review of a decision, not just the participant or nominee. This will provide a valuable safeguard for the vulnerability of the person with disability in various settings.

Where the CEO initiates a review of a decision, the CEO must give reasons for the review with the notice of the review.

## CHAPTER 5 – Compensation Payments

The NSW Disability Network Forum recognises the personal trauma and sometimes prohibitive resources that a compensation case can require of a person with disability and their family after an injury, regardless of time past. Consequently, the Forum recommends that, where a person has decided not to seek compensation but the CEO requires it, the person can cede their compensation rights to the Agency to act on their behalf. However, the Agency must manage this situation very sensitively and with compassion because, in deciding to pursue a compensation case, the CEO could still re-traumatise the person with disability and their family in the interests of financial gain.

The Agency CEO should beware of potential for negative outcomes of a requirement to seek compensation. For example, the pursuit of a compensation case for medical or other negligence at or after birth could cause irreparable damage within the family, resulting in

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gaps in the personal and social support networks that the person with disability values and relies on and that the NDIS seeks to promote and strengthen.

## **Section 105 Consequences of failure to comply**

In requiring a participant to seek compensation under section 105 (1), the CEO may need to provide financial and other assistance to the participant to take this action.

Section 105 (3) should be deleted as it is a threat of no support until action is taken. In light of previous comments, this will result in unnecessary hardship for a person and could be discriminatory.

## **Chapter 6 - NDIS Transition Agency**

### **Section 118 Functions of the Agency**

Section 118 (1) (b) should also include ... “to manage and to advise and report on the operations and achievements of the NDIS....including quality outcomes”. The managing and reporting should not solely revolve around financial sustainability but also, in line with the Objects and Principles, it should focus on the quality outcomes and achievements of the NDIS and people with disability.

### **Section 124 Functions of the Board**

One of the necessary and explicit functions of the Board must be to receive advice from the Independent Advisory Council. This complements and completes the stated function in section 144 of the Advisory Council to provide advice to the Board.

### **Section 127 Appointment of Board members**

There must be a requirement on the Board of the Agency to have actual people with disability as Agency Board members in high level and executive positions. This requirement is neither explicit nor implied in the Bill. The NSW Disability Network Forum is confident that there would be people with disability with the knowledge, skills and ability across Australia who would be willing and able to fulfill the role as Agency Board members if approached.

The NSW Disability Network Forum strongly recommends that the Chair of the Independent Advisory Council has a role on the Agency Board.

### **OMISSION Disclosure of interests to the Minister**

### **OMISSION Disclosure of interests to the Board**

As the Agency Board members will be responsible for overseeing NDIS finances and operations worth billions of dollars, these sections are especially necessary within this proposed legislation. Sections that reflect for the Agency Board the requirements in sections 152 and 153 for members of the independent advisory council should be included in the Bill.

# NSW DISABILITY NETWORK FORUM

## **Section 144 Function of Advisory Council**

The NSW Disability Network Forum considers that the Independent Advisory Council will be in a unique position to provide advice to the Agency Board, on both the actions and operations of the Agency as well as the Board. Accordingly, the Council must be enabled to provide that advice for consideration by the Board.

- Delete section 144 (3) (c): The Advisory Council must be able to provide advice on corporate governance of the Agency
- Delete section 144 (3) (d): The Advisory Council must be able to provide advice on money and funding handled by the Agency

## **Section 157 Procedures of Advisory Council**

It is very good that the Independent Advisory Council determines its own procedures.

## **Section 172 Annual Reports**

The annual reports of the Agency must be made public in a timely manner and in accessible formats.

## **Section 174 Quarterly reports**

Data collated for the Agency should be made public, and available according to jurisdictions. Data on the number of people turned away, for whatever reason, should also be included.

## **Chapter 7 - Other matters**

### **Section 188 Written notice of requirement**

For section 188 (5): the person should be able to take any person or advocate of their choosing to accompany them.

The NSW Disability Network Forum advises that 14 days might be difficult for people living in rural or isolated areas. The Forum proposes that a reasonable period is negotiated where this timeframe may be insufficient.

### **Section 208 Review of Act**

The NSW Disability Network Forum contends that any review of the Act must public and include public consultation prior to finalisation of the review report.



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## 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 secretariat, Christine Regan at [chris@ncoss.org.au](mailto:chris@ncoss.org.au) ph. 02 92112599 ext. 117

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