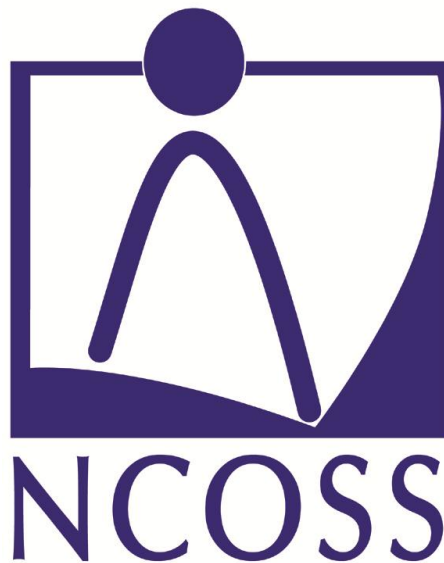


**National, State and Territory Councils of Social  
Service (COSS) Submission to the Senate  
Standing Committee on Community Affairs  
Inquiry into the National Disability Insurance  
Scheme Bill 2012**



**Prepared by Council of Social Service NSW (NCOSS)  
January 2013**

## About the COSS Network

This submission is made on behalf of the national COSS Network

Australian Council of Social Service (ACOSS)  
ACT Council of Social Service (ACTCOSS)  
Council of Social Service of NSW (NCOSS)  
Northern Territory Council of Social Service (NTCOSS)  
South Australian Council of Social Service (SACOSS)  
Queensland Council of Social Service (QCOSS)  
Tasmanian Council of Social Services (TasCOSS)  
Victorian Council of Social Service (VCOSS)  
Western Australia Council of Social Service (WACOSS)

The State Councils of Social Service are the peak bodies representing the needs and interests of service providers and their clients in the non-profit social service sector in Australia. Our members comprise community service providers, professional associations and advocacy organisations.

We provide independent and informed policy development, advice, advocacy and representation about issues facing the community services sector; a voice for all Australians affected by poverty and inequality; and a key coordinating and leadership role for non-profit social services across the country.

We work with our members, clients and service users, the non-profit sector, governments, departments and other relevant agencies on current, emerging and ongoing social, systemic and operational issues.

### 1. Transitional nature of Bill

The *Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch*, signed by the Council of Australian Governments (COAG) on the 7<sup>th</sup> December, 2012 sets out the objects for the first stage of the NDIS<sup>1</sup>. The Bill sets in place arrangements to allow the first stage of the NDIS to commence from the 1<sup>st</sup> July 2013. The Intergovernmental Agreement, Bill and accompanying Explanatory Memorandum make clear that this first stage, called the “launch” will inform when and how to proceed with a full scheme and does not set a precedent. However, the public long term commitment to the NDIS by the Commonwealth and states and territories means that the shape and design of the Bill will necessarily influence the shape of the scheme into the future. It is also important to provide some certainty for participants under the Scheme in the various launch sites, beyond the initial launch period contemplated by the Intergovernmental Agreement and the Bill.

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<sup>1</sup> Intergovernmental Agreement for the National Disability Insurance Scheme Launch, Clause 14

This submission has been prepared with a view to balancing the transitional nature of the Bill, developing an understanding of how best to meet the needs of people with disability under the scheme and providing certainty and sustainability of approach into the future.

## **2. Consultation Process**

The introduction of the NDIS is a significant and major reform involving the Commonwealth, state and territory governments, people with disability, their carers, family and others with whom they have significant relationships as well as service providers. The COSS Network is concerned that the consultation period for this Bill has occurred over the December-January summer holiday period when many stakeholders would have limited capacity to comment and/or consult with others regarding the Bill and its implications for the launch and operation of the NDIS. While understanding the need for this process to occur with a timetable to allow the consideration and passage of the Bill by Parliament to meet a starting date of the 1<sup>st</sup> July 2013, it is the view of the COSS Network, that such an important matter deserved proper and full consideration of the Bill in accordance with the Shared Principles outlined in the National Compact<sup>2</sup> and in particular, “we agree that authentic consultation, constructive advocacy and genuine collaboration between the sector and the Government will lead to better policies, programs and services for our communities”.

## **3. Objects and high level principles**

The COSS Network supports the objects and high level principles contained within the Bill. We note that the Bill conforms to Australia’s obligations under the Convention on the Rights of Persons with Disabilities. This could be improved upon by including a specific objective to, in conjunction with other laws, give effect to Australia’s obligations under the human rights instruments and the ILO instruments set out in the Human Rights and Anti Discrimination Bill 2012 and by prefacing the “Principles” with a statement that embeds them within a Human Rights framework.

It is also noted that the Bill complements existing measures to remove discrimination against people with disability and to provide them with support and assistance such as the Disability Discrimination Act 1992, the Disability Services Act 1986, the provision of income support through the Disability Support Pension, Carer Payment and Carer Allowance, the National Disability Strategy and the National Disability Agreement as well as Commonwealth, state and territory government programs. Given this relationship between a suite of policies, legislative measures and programs it is important to understand that changes to any of these measures over time may well impact, both positively and negatively, on the operation of the NDIS. It is important therefore to consider the interrelationship between measures and to ensure that any review takes these into account.

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<sup>2</sup> Australian Government (2011) *National Compact: working together* Canberra

#### 4. Independent advocacy and 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 COSS Network contends that the enhanced and sustained provision of independent advocacy and independent information will improve the functioning of the NDIS in 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 in a very cost effective manner. Provision of such information, advice and reassurance reduces the likelihood of reviews, complaints and delays.
- **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, independent information and/or 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 to do 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.
- **Mechanism to facilitate systemic advocacy:** independent advocacy and information allows better understanding at a whole of systems level of gaps, issues and solutions. This systemic advocacy in turn feeds into better outcomes for individuals through addressing systemic issues in a comprehensive and timely way.

The COSS Network sees independent advocacy and information as critical to the functioning of the NDIS and something that needs to be factored in to the scheme by being properly funded by Government. However, the nature of this support is such that it should not be considered to be part of the NDIS for the purpose of provision or allocation as part of an individual's plan or budget but be available on a collective basis. This maintains independence whilst also facilitating the best outcomes from the NDIS.

## **5. Eligibility for people with disability currently using community care services**

A large and significant number of people with disability currently only access support through community care programs rather than through specialised disability support services. Such services allow people with disability who access these services to be independent and to allow social and economic participation. The availability of such services means that for some people with disability their personal goals, objectives and aspirations are able to be met. It is unclear from the Bill, however, that people with disability who only access such support, or are otherwise, currently not accessing support will be eligible under the NDIS.

## **6. Ownership and control of people with disability over their plans**

The NDIS is underpinned by the principle of people with disability having choice and control in pursuit of their goals and the planning and delivery of their supports. This is supported by the COSS Network. This principle, while supported by many, has not always been reflected

in the administration and management of different programs providing supports to people with disability. It is important that in the first stage of the NDIS that education and support be provided regarding the development and setting of goals.

The COSS Network notes and supports the Bill's provisions to ensure the role of carers, family members and significant relationships are included in the processes of developing plans subject to the underpinning principle of people with disability having choice and control over their lives. People with disability choose different people to talk to about different things or to accompany them on different occasions, like anyone else. This needs to be recognized and supported. The draft Bill at Clause 85 seems to indicate that participants can only be accompanied by a nominee to assessments or examinations. 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.

## **7. Participants' support plans**

The COSS Network supports the intent of the National Disability Strategy to have "mainstream" services meet the needs of people with disability. We note that the Bill sets out that in developing a plan considering reasonable and necessary supports should take into consideration whether support is most appropriately funded through other general systems as part of universal access or in accordance with "reasonable" adjustments under anti discrimination laws. While supporting the intent of the Bill it is important to recognise that gaps can occur between systems and the impact is felt by the person with disability. The NDIS should have the flexibility to ascertain the practical effect of support from mainstream systems and access to such support on a case by case basis to minimise the impact on an individual from the failures of other systems.

There is no capacity in the Bill for crisis planning where an immediate change is necessary due to crisis. The Bill should contain a provision allowing for short term reviews and changes to a participant's support plan to quickly respond to crisis.

## **8. Nominees**

The Bill provides a significant role for nominees where they are appointed. There is potential for the development of skilled people and organisations who may take on such roles for participants. The skills, expertise and impartiality of nominees may provide reassurance to a person with disability regarding the development and management of their plan. Given this, it is important that the role of nominees recognises the fundamental principle of giving a person with disability choice and control over their lives. To ensure adherence to this

principle it is also important that nominees not be engaged in the provision of other supports.

The Bill as it stands appears to allow for appointment of someone with significant powers, without the participant having the opportunity to be tested by a Tribunal. Nominees have similar powers to guardians but with none of the usual natural justice protections and without complying with Article 12 of the UNCRPD.

The COSS network considers that this section of the Bill requires a greater focus on supported decision-making processes with people who use nominees placed at the centre of the decision making process.

### **9. Particular needs of people with disability “on the margins”**

Given the research and education role of the NDIS Launch Transition Agency, the COSS Network would ask that particular attention be given to understanding the needs of people with disability who may be considered to be “on the margins” because of their particular circumstances. Such groups could include people with disability in insecure housing, people with disability who are in contact with the justice system, people with disability who are without significant relationships, people with disability who are parents and people with disability who are refugees and asylum seekers.

The COSS Network does not support the exclusion of asylum seekers from eligibility to the NDIS.

### **10. Complaints and appeals mechanisms**

The COSS Network notes the review mechanism and appeals processes outlined in the Bill. It is also noted that the Bill provides that the NDIS Launch Transition Agency will not provide funding for the purposes of seeking a review under the Act. The COSS Network would stress the importance of facilitating adequate legal advice and support for people who may wish to question a decision especially during the first stage of the NDIS. Government needs to consider how to support access to timely and appropriate independent advice on such matters. This will ensure transparency and equity in the early stages of the Scheme and provide important lessons for its ongoing development.

It is noted that while the Bill provides a review and appeals mechanism, there is no clear complaints mechanism outlined to deal with issues regarding the quality of services and supports or the implementation of plans. The COSS Network understands that during the launch period, existing complaints and appeals mechanisms will continue to operate within states and territories. However, this being National legislation, the Bill should provide comprehensive assurance to the participants and all parties of a quality complaints

mechanism that covers the provision of quality supports, general supports by the Agency, complaints handling by the Agency and any other necessary matters.

### **11. Role of the NDIS Launch Transitional Agency**

The Bill provides that the NDIS Launch Transitional Agency have a broad and wide ranging role encompassing administrator and regulator of the Scheme; approver, developer and manager of plans and funds; funder; researcher and educator. It will be important to establish clear procedures to avoid potential or perceived conflict between roles, especially that of regulator, funder and plan manager.

It will be important for the Agency to engage broadly with stakeholders and the public to be able to meet its specified roles. The implication from the Bill is that the Advisory Council will be the main point of engagement and advice for the Agency. However, the composition of the Advisory Council is limited by its size and does not contemplate members having a representative role that would allow Council members to seek input and advice from member organisations and networks. This is an important consideration to enable the Advisory Council to provide wide ranging and considered perspectives on the needs of people with disability and the operation of the scheme. This capacity on the part of the Advisory Council members does not however substitute for mechanisms and procedures to allow ongoing engagement with stakeholders and the public.

### **12. Agency Governance**

The Bill provides for a Board with an emphasis on having a corporate governance skills mix and an Advisory Council with members who have lived experience of disability. It is unfortunate that the distinction made in the wording of the Bill leaves an impression that a person with lived experience of disability would not have the necessary corporate and/or governance skills to be considered for appointment to the Board. It is recommended that active consideration be given to having a person with disability appointed to the Board.

### **13. Registered Providers**

The Bill provides that organisations can seek to be registered providers of services, as either managers of funds and/or providers of support. The Bill further provides that where the Agency is the plan manager only registered providers can be used for that individual's plan supports.

While registration is an important mechanism to improve and maintain appropriate quality in service provision and to develop a market for such services it is possible that some organisations may not wish to register but still provide support to individual people with disability. There is a concern that the requirement to be registered where the Agency is the



plan manager may, in the initial stages, limit options thereby constraining choice and control of the person with disability. It is unclear why this distinction is necessary.

It is also important to recognise that many organisations who may wish to become registered providers have already complied with various standards and quality assurance processes that are relevant to the quality of supports provided to people with disability. The registration process needs to assess what standards and systems are already in place and their adequacy and relevance to avoid unnecessary duplication.

#### **14. Rules**

It is noted that the Bill contains many references to the Rules for which no detail or explanation has been provided during the Bill's consultation period. The COSS Network acknowledges that safeguards have been built into the Bill 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 seek to promote. The way in which this Bill is interpreted and implemented will be laid out in the Rules. It is necessary, therefore, 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.

#### **15. Review Process**

While the Bill provides for an independent review of the legislation, once enacted, given the significance of the broad reform that is being supported by the Bill, there is a need to explicitly require public consultation and input, and specifically with people with disability, into the review process.