

The Senate

Community Affairs
Legislation Committee

National Disability Insurance Scheme Bill
2012 [Provisions]

March 2013

© Commonwealth of Australia 2013

ISBN 978-1-74229-779-8

Secretariat

Dr Ian Holland (Committee Secretary)

Mr Gerry McInally (Principal Research Officer)

Mr Owen Griffiths (Principal Research Officer)

Mr Jarrod Baker (Senior Research Officer)

Mr Colby Hannan (Senior Research Officer)

Dr Patrick Hodder (Research Officer)

Ms Eloise Menzies (Research Officer)

Ms Carol Stewart (Administrative Officer)

Ms Ruth Edwards (Administrative Officer)

PO Box 6100

Parliament House

Canberra ACT 2600

Phone: 02 6277 3515

Fax: 02 6277 5829

E-mail: community.affairs.sen@aph.gov.au

Internet: www.aph.gov.au/senate/committee/senate_ca

This document was produced by the Senate Community Affairs Committee Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERSHIP OF THE COMMITTEE

43rd Parliament

Members

Senator Claire Moore, Chair	Queensland, ALP
Senator Rachel Siewert, Deputy Chair	Western Australia, AG
Senator Carol Brown	Tasmania, ALP
Senator Mark Furner	Queensland, ALP
Senator Bridget McKenzie	Victoria, NATS
Senator Dean Smith	Western Australia, LP

Participating members for this inquiry

Senator Sue Boyce	Queensland, LP
Senator David Fawcett	South Australia, LP
Senator Mitch Fifield	Victoria, LP
Senator the Hon. Lin Thorp	Tasmania, ALP

TABLE OF CONTENTS

Membership of the committee	iii
--	------------

Abbreviations	ix
----------------------------	-----------

List of Recommendations	xiii
--------------------------------------	-------------

Chapter 1

Introduction	1
---------------------------	----------

The referral	1
--------------------	---

Scrutiny of Bills consideration	1
---------------------------------------	---

Conduct of the inquiry	1
------------------------------	---

The evidence	1
--------------------	---

This report	3
-------------------	---

The National Disability Strategy	3
--	---

Productivity Commission inquiry into disability care and support	5
--	---

Response to the Productivity Commission report	8
--	---

The National Disability Insurance Scheme Bill 2012	10
--	----

Support for the NDIS	14
----------------------------	----

Chapter 2

Rights, capacity and control	17
---	-----------

Background	17
------------------	----

Applying a rights-based approach	18
--	----

Choice, Control and Capacity	22
------------------------------------	----

Accessibility	32
---------------------	----

Chapter 3

Assistance for people with disability and others: the role of advocacy	35
---	-----------

How is advocacy to be recognised?	35
---	----

Funding of advocacy services	36
------------------------------------	----

Meaning of 'person'	44
Chapter 4	
Becoming a participant	47
The effect of deeming a decision to have been made.....	48
Aged care or disability insurance: the age requirements.....	49
Developmental delay	55
Residence requirements	56
Disability requirements	58
Other eligibility criteria	61
Chapter 5	
Participant Plans	65
The making of the plan.....	65
Flexibility of the Plan	68
Power of the Agency and the CEO in the plan-making process	70
Definition of reasonable and necessary supports	74
Why does it matter if the participant is overseas?.....	76
Privacy	77
Chapter 6	
Registration of Providers	81
Registration.....	81
Workforce Issues	94
Chapter 7	
Nominees and appeal procedures.....	99
Nominees	99
Appeals	105

Chapter 8

Compensation provisions	111
Requirement to claim or obtain compensation	111
Lack of clarity in compensation provisions	122
Interaction between the NDIS and other compensation schemes	127
Committee view.....	130

Chapter 9

Agency, Board and Advisory Council	133
The National Disability Insurance Agency	133
Chief Executive Officer.....	134
Board of the agency	137
Advisory council	141

NDIS Additional Comments – Australian Greens

Framework for reform & ensuring ‘greater community participation’ and ‘full integration’ for people living with a disability	147
Individual Advocacy	149
Residency requirements.....	150
Portability	150
Age Requirement.....	151
Aboriginal and Torres Strait Islander peoples and the NDIS.....	151

Additional Comments – Coalition Senators

Coalition support	155
Beyond partisanship	156
A joint venture of all Australian Governments	157
The need for full information	158
A community effort	159
Conclusion.....	159

Appendix 1

Submissions and Additional Information received by the Committee.....	163
--	------------

Appendix 2

Public Hearings.....	237
-----------------------------	------------

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ABF	Australian Blindness Forum
ACT	Australian Capital Territory
ACTHRC	ACT Human Rights Commission
ADACAS	ACT Disability Aged and Carer Advocacy Service
ADJC	Aboriginal Disability Justice Campaign
AFDO	Australian Federation of Disability Organisations
AHRC	Australian Human Rights Commission
ALA	Australian Lawyers' Alliance
AMA	Australian Medical Association
AMG	Avant Mutual Group
ARATA	Australian Rehabilitation and Assistive Technology Association
BCA	Blind Citizens Australia
BIA	Brain Injury Australia
bill	<i>National Disability Insurance Scheme Bill 2012</i>
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CALD	Culturally and linguistically diverse
CEO	Chief Executive Officer
CIS	Centre for Independent Studies
COAG	Council of Australian Governments
COSSNSW	Council of Social Services New South Wales
DANA	Disability Advocacy Network Australia

DPC	Department of Premier and Cabinet
DSO	Disability Service Organisation
ECIA	Early Childhood Intervention Australia
EDAC	Ethnic Disability Advocacy Center
EM	Explanatory Memorandum
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FECCA	Federation of Ethnic Communities' Councils of Australia
HSOC Act	Health and Other Services (Compensation) Act 1995
HSU	Health Services Union
ICA	Insurance Council of Australia
ICF	International Classification of Functioning, Disability and Health
LCA	Law Council of Australia
MIGA	Medical Insurance Group Australia
NCOSS	National Council of Social Services
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDS	National Disability Services
NEDA	National Ethnic Disability Alliance
NIIS	National Injury Insurance Scheme
NPWDCC	National People with Disability and Carer Council
NSW	New South Wales
NSWDNF	New South Wales Disability Network Forum
OTA	Occupational Therapy Australia
PWDA	People with Disability Australia

RIDBC	Royal Institute for Deaf and Blind Children
SA	South Australia
SACOSS	South Australian Council of Social Services
SCV	Special Category Visa
SPA	Speech Pathology Australia
SSAT	Social Security Appeals Tribunal
Strategy	National Disability Strategy
TIPACL	Townsville Independence Program for Adult Community Living
UNCRPD	United Nations Convention on the Rights of Persons with Disability
VEOHRC	Victorian Equal Opportunity and Human Rights Commissioner
WHO	World Health Organisation
WWDA	Women with Disabilities Australia
YDAS	Youth Disability Advocacy Service

LIST OF RECOMMENDATIONS

Recommendation 1

2.18 The committee recommends that the conditional language of s3(1)(h) of the Bill be revised to more strongly reflect Australia's international human rights obligations such as those in relation to:

- civil, political, economic, social and cultural rights;
- the prevention of racial discrimination or torture; and
- people with disability, women, and children.

Recommendation 2

2.29 The committee recommends that clause 4 of the bill be amended to explicitly state that it is presumed that people have the capacity to make their own decisions unless objectively assessed otherwise.

Recommendation 3

2.30 The committee recommends that clause 5(a) of the bill be amended to read:

- (a) people with disability should participate actively in decisions that affect their lives, and be supported where necessary to enable this to occur.

Recommendation 4

2.53 The committee recommends that subclause 4(4) of the bill be amended to read:

- (4) People with disability should be supported to exercise choice and control and manage the associated risk in the pursuit of their goals and the planning and delivery of their supports.

Recommendation 5

2.65 The committee recommends that clause 5(d) be amended to read:

- (d) the cultural and linguistic circumstances and gender of people with disability should be taken into account.

Recommendation 6

2.66 The committee recommends that all explanatory material associated with the operation of the NDIS Scheme be provided in an easy-to-understand format such as Easy English.

Recommendation 7

3.34 The committee recommends that 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.

Recommendation 8

3.36 The committee recommends that the government make an ongoing commitment, outside the NDIS, to the funding of advocacy, noting the existence of advocacy schemes across all jurisdictions, and that the need for advocacy is likely to increase with the rollout of the NDIS.

Recommendation 9

3.37 The committee recommends that independent advocacy funding not be managed by the Agency, and that clause 6(2) remains unchanged.

Recommendation 10

3.42 The committee recommends that the government provide clarification, either in the bill or the explanatory memorandum, to ensure that those using the bill will understand that, unless the contrary is clearly intended, a 'person' in the bill includes companies and other incorporated bodies.

Recommendation 11

4.38 The committee recommends that the government, through COAG processes, identify mechanisms by which to provide adequate specialised disability support for people 65 and over who have disabilities not resulting from the natural process of ageing.

Recommendation 12

4.39 The committee recommends that, as a matter of priority, the government develop information for communication to members of relevant stakeholder groups about the scope for clause 25 (early intervention requirements) to address the needs of some people ageing with conditions that may not cause impairment until after they have turned 65.

Recommendation 13

4.40 The committee recommends that the government conduct further research into the costs and benefits of varying the NDIS age eligibility criterion.

Recommendation 14

4.50 The committee recommends that the government make a more detailed statement setting out the underlying rationale for the approach taken to the residency eligibility criterion.

Recommendation 15

4.62 The committee recommends that the government consult further with mental health organisations including statutory bodies about whether clause 24 of the bill, and related NDIS Rules, sufficiently take into account recovery approaches and the distinction between disability support and mental health services, to ensure the focus of the NDIS is on people with disabilities who have long-term consequences of their impairment (which may vary in intensity).

Recommendation 16

4.68 The committee recommends that the government ensure that people with disabilities who are in custody will have appropriate access to the NDIS.

Recommendation 17

4.69 The committee recommends that the Agency develop an information strategy to ensure that people with disabilities who are in custody, their carers and their advocates, are aware of the group's eligibility for services under the NDIS.

Recommendation 18

4.73 The committee recommends that the government revise the language of clause 26(1)(b)(ii) to ensure that examinations can be required to be conducted by a member of any appropriate profession.

Recommendation 19

5.14 The committee recommends that, where support is provided for an objective that will extend beyond the 12 month life of the plan, the NDIS Rules make clear that the assessment of the outcome of this support will take the long-term objectives into account.

Recommendation 20

6.47 The committee recommends that provision be made in the bill for a mechanism to ensure that service providers must have a system in place to manage potential conflict of interest, and the performance of that mechanism should be examined during the review of the Act in 2015.

Recommendation 21

6.72 The committee recommends that the Commonwealth continues to work with the States, Territories and relevant workforce organisations in the disability sector to ensure that implementation of the NDIS does not lead to more insecure working conditions in the sector, and that measures are put in place to enhance the skills, training and capacity of the disability workforce.

Recommendation 22

7.20 The committee recommends that in general where:

- a plan is being prepared, or a nominee is undertaking an act, and
 - at the time, the person with disability is unable to express their preferences, and
 - a formal advance directive (however described) is in effect for that person,
- the rules ensure that the plan is not made, or an act undertaken by a nominee, in contradiction of a preference expressed in the advance directive.

Recommendation 23

7.27 The committee recommends that the government ensure that either the bill or rules permit nominees to undertake an act only when the participant is not capable of doing, or being supported to do, the act.

Recommendation 24

7.30 The committee recommends that clause 91(1) be amended to delete the term 'severe'.

Recommendation 25

7.48 The committee recommends that,

- the government monitor and consult with stakeholders on complaints handling in launch sites; and

- **when the review of the legislation is being conducted under clause 208, the government consider the establishment of an external complaints handling mechanism between internal review and the AAT.**

Recommendation 26

8.81 The committee recommends that the bill be amended to allow a person, where they are required by the CEO to claim or obtain compensation for a personal injury, to elect to subrogate their rights to compensation to the agency.

Recommendation 27

8.82 The committee recommends that the government note submitters' concerns regarding legal advice and confidential communications provided to the agency, and further examine whether the bill should be amended to clarify that any such advice or communications by participants would not constitute a waiver of legal professional privilege.

Recommendation 28

9.33 The committee recommends that at least three members of the Board are people with disability.

Recommendation 29

9.54 The committee recommends that subclause 147(5) be amended so as to read:

- (5) In appointing the members of the Advisory Council, the Minister must:**
 - (a) have regard to the desirability of the membership of the Advisory Council reflecting the diversity of people with disability; and**
 - (b) ensure that all members are persons with skills, experience or knowledge that will help the Advisory Council perform its functions; and**
 - (c) ensure that:**
 - (i) a majority of the members are people with disability; and**
 - (ii) at least two of the members are carers of people with disability; and**

(iii) one or more of the members is a person who has skills, experience or knowledge of disability in rural or regional areas.

Note: Any member may fulfil one or more criteria in 147(5)(c)

Chapter 1

Introduction

The referral

1.1 On 29 November 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the National Disability Insurance Scheme Bill 2012, contingent upon its introduction in the House of Representatives,¹ for inquiry and report by 13 March 2013.²

1.2 References to page numbers in Committee Hansards are references to the Proof Hansard transcripts. Page numbers may differ to those in the Official Hansard when the Official Hansard becomes available.

Scrutiny of Bills consideration

1.3 The bills were considered by the Scrutiny of Bills Committee in its *Alert Digest No. 1 of 2013*. The Scrutiny of Bills Committee identified a number of concerns with elements of the bill. As of 12 March 2013, the committee had not prepared its final report on the matter.

Conduct of the inquiry

1.4 The committee advertised the inquiry in the national press and on its website and invited a large number of known stakeholders to make submissions. The committee received approximately 1600 submissions (listed at Appendix 1). Submissions are available for viewing on the committee's website http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/ndis/submissions.htm. 11 public hearings were held in a number of locations: Townsville, Brisbane, Newcastle, Sydney, Perth, Adelaide, Geelong, Melbourne, Hobart and Canberra. A list of stakeholders who appeared before the committee is set out in Appendix 2.

The evidence

1.5 With over one and a half thousand submissions, and eleven days of public hearings held across Australia in the space of five weeks, the committee amassed a wealth of information in a very short period of time.

1.6 The committee wishes to particularly place on record its appreciation to the hundreds of people with disability, their families and carers, whose accounts were submitted from all over the country. Few of those personal submissions are quoted in this report, and a large number of them were confidential. The accounts they

1 *House of Representatives, Votes and Proceedings*, 29 November 2012, p. 2013.

2 *Journals of the Senate*, 2012, p. 3481.

contained, however, spoke eloquently of the reasons why this revolutionary policy proposal is currently before the parliament. And, while not directly quoted, the accounts had a strong influence on the committee's understanding of the burning issues for people with disability and their carers. These included:

- The need for services to be available – there were many accounts of capped programs and eligibility constraints causing people to miss out on needed support;
- The need to end the delays – they harm everyone, and can have particularly harsh consequences for people with degenerative conditions;
- The need to end substandard services and provide choice – we often heard 'take it or leave it' approach to supports, and of a workforce with high turnover or insufficient skills;
- The need to prevent fragmentation – there were numerous accounts from exhausted carers and people with disability, tired of repeating their stories to service after service, and of services not coordinating with one another
- The need for the scheme to be extensive enough that unpaid carers, particularly families, get sufficient support – there was a disturbing number of accounts involving family breakdown linked to the demands of care.

1.7 The committee would like to thank the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) for its cooperation during the later stages of the inquiry, and in particular for its presentation of evidence to the committee at the hearing on 5 March 2013. The committee was pleased to note that the department had reviewed the evidence being received by the committee, and responded to many key issues raised with the committee.

1.8 Governments will sometimes follow the work of a parliamentary committee inquiry and use the evidence to influence their policy thinking before the committee finalises its report. Such a process was evident during the current inquiry. This is particularly important in the case of the Nation Disability Insurance Scheme (NDIS) because of the volume of evidence and time frames involved. While this report has targeted a significant number of issues raised by inquiry participants, it was unable in the time available to be exhaustive of the arguments, or proposed amendments, put forward by submitters. The committee expects that the government will continue to consider suggestions made to this committee by stakeholders, whether or not explicitly addressed in this report.

Availability of the Rules

1.9 A regular issue raised in the evidence for this inquiry was the lack of access to the draft Rules that would provide much of the detail on how the NDIS will function. People with disabilities, their families, carers and organisations were understandably frustrated that they were unable to answer many basic questions about the NDIS because the information was not yet available. The committee understands these frustrations, and regrets that hundreds of people who took the time to examine the legislation and provide detailed comment to the committee were unable to do so with the benefit of having the full legislative picture before them.

1.10 While the committee accepts that the officers of the Department of Families, Housing, Communities and Indigenous Affairs (department) were not 'sitting around twiddling our thumbs and wondering how late we can provide [the Rules] to the committee', the committee's inquiry was made more difficult due to a lack of knowledge regarding what the Rules contained.³

1.11 The committee considers that, as a matter of good public policy, when a bill seeking to institute significant national reforms is going to rely on extensive subordinate legislation, a draft of that ancillary material should be released as close as possible to the introduction of the bill itself, to enable both Parliament and the public to fully consider the issue before it.

This report

1.12 The structure of this report broadly reflects the order of material in the bill. It is organised as follows:

- The remainder of chapter 1 examines the history and context of the introduction of the NDIS, and places on record the strong support for the NDIS among submitters;
- Chapter 2 discusses the rights based approach, the need for a presumption of decision-making capacity on the part of people with disability, and accessibility issues;
- Chapter 3 discusses advocacy;
- Chapter 4 examines the processes around becoming a participant in the scheme;
- Chapter 5 looks at participant plans;
- Chapter 6 examines the provisions relating to registration of providers and conflict of interest issues that may arise;
- Chapter 7 considers the nominee provisions, and appeal mechanisms generally;
- Chapter 8 considers the compensation provisions and whether someone should be compelled to take legal action; and
- Chapter 9 considers a number of issues around the Agency, and the composition of the Board and Advisory Council.

The National Disability Strategy

1.13 Since the signing of the first *Commonwealth State Territory Disability Agreement* in 1991, which created a framework for the delivery of specialist disability services, agreements between the Commonwealth, state and territory governments have underpinned the development of public policy supporting Australians with a disability. Concern about inconsistencies in the framework, however, led to a Senate

3 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 65.

inquiry being initiated and undertaken by a predecessor of this committee. In February 2007, that committee concluded that a national disability strategy was required. It recommended that:

While the [Commonwealth State Territory Disability Agreement] should remain the basis for the delivery of disability services, the Committee does not consider that it is an adequate national strategic policy document. In order to ensure a coordinated national approach to improving the delivery of disability services, to ensure that people with disability access the services they require throughout their lives, to address interface issues within the disability sector and to ensure that future need for services is adequately addressed, a renewed national strategic approach is required. The Committee considers that a national disability strategy would reaffirm our commitment to equity and inclusiveness in Australian society for people with disability.⁴

1.14 During the 2007 election campaign, the Australian Labor Party committed to the formation of a national disability strategy. After Labor formed government, and following Australia's ratification in July 2008 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), a discussion paper on the development of a national disability strategy was released.⁵ In 2009, a report on this consultation was published.⁶

1.15 On 13 February 2011, the Council of Australian Governments (COAG) agreed to a ten year National Disability Strategy. The stated purpose of the strategy is to:

- establish a high level policy framework to give coherence to, and guide government activity across mainstream and disability-specific areas of public policy;
- drive improved performance of mainstream services in delivering outcomes for people with disability;
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability; and
- provide national leadership toward greater inclusion of people with disability.⁷

4 Senate Standing Committee on Community Affairs, *Funding and operation of the Commonwealth State/Territory Disability Agreement*, February 2007, p. 21; see also recommendation 4, p. 40.

5 Australian Government, 'Developing a National Disability Strategy for Australia', October 2008.

6 National People with Disabilities and Carer Council, *Shut out: the experience of people with disabilities and their families in Australia*, 2009.

7 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 14 January 2013), p. 9.

Productivity Commission inquiry into disability care and support

1.16 As part of the development of the National Disability Strategy, in November 2009 the then Prime Minister announced that the Productivity Commission (Commission) would examine 'the feasibility of new approaches for funding and delivering long-term disability care and support'.⁸ As the Commission noted, this decision followed 'a succession of reports that found that the current system to support people with disability and their families is deeply flawed and will increasingly be unable to meet people's needs'.⁹

1.17 The Productivity Commission's final report, *Disability Care and Support*, was provided to the government on 31 July 2011 and released on 10 August 2011. In its report, the Commission gave a bleak assessment of existing arrangements, concluding that the current system is unsustainable and characterised by 'what some call the "lottery" of access to services' where support available to people with significant disabilities differed depending on what state or territory the person resided in, as well as the timing or the origin of their disability.¹⁰ The Commission noted that the total annual funding provided to the disability sector by the Commonwealth, state and territory governments totals over \$7 billion.¹¹ It estimated that current spending would need to increase by an additional \$6.5 billion a year to provide the necessary support to people with disabilities.¹² However, it suggested that underfunding 'is only part of the problem'. The Commission identified a number of systemic failures, including:

- the fragmented structure of the disability system, and a lack of coordination, which have made it extremely difficult for service users and their families to access services;
- a lack of interstate portability of disability support;
- out-dated service models which distort allocation decisions;
- a lack of person-centred planning and consumer choice;
- uncertainty around waiting times and the availability of supports, meaning that families cannot plan for the future; and

8 The Hon. Kevin Rudd MP, Senator the Hon. Nick Sherry, the Hon. Jenny Macklin MP and the Hon. Bill Shorten MP, 'Australian Government to Consider New Approaches to Disability', *Joint media release*, 23 November 2009.

9 Examples given by the Productivity Commission include the 'Way Forward' report by the Disability Investment Group and the 'Shut Out' consultation report by the National People with Disabilities and Carer Council. Productivity Commission, *Disability Care and Support*, report no. 54, 31 July 2011, vol. 1, p. 93.

10 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., pp. 5–6.

11 Of which around \$2.3 billion is provided by the Australian government and \$4.7 billion is provided by the states and territories.

12 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 3.

- the 'lack of essential frameworks that would allow the system to identify and solve its problems', such as a strong governance structure and data systems.¹³

1.18 Overall, the Productivity Commission found that:

Current disability support arrangements are inequitable, underfunded, fragmented, and inefficient and give people with a disability little choice. They provide no certainty that people will be able to access appropriate supports when needed.¹⁴

1.19 The Productivity Commission's 86 recommendations detailed its proposal for two nationwide insurance schemes to be established: a NDIS and a National Injury Insurance Scheme (NIIS).

1.20 The Commission considered that an NDIS should provide insurance cover for all Australians in the event of disability. It would fund 'long-term high quality care and support (but not income replacement) for people with significant disabilities' that are, or are likely to be, permanent. The Commission estimated that around 410,000 people would receive scheme funding support under the scheme.¹⁵

1.21 An NIIS would coordinate services and supports available under accident insurance schemes for catastrophic injury, such as major acquired brain injuries, spinal cord injuries, burns and multiple amputations. The Commission envisaged that under the NIIS, there would be nationally-consistent, no-fault insurance arrangements in place in all states and territories for catastrophic injuries incurred from an accident.¹⁶ As the bill referred to the committee relates to the NDIS, the proposed NIIS is not examined further.

Overview of the Productivity Commission's proposed NDIS

1.22 The Productivity Commission recommended that the NDIS should perform three main functions. The first function would be to, cost-effectively:

- minimise the impacts of disability;
- maximise the social and economic participation of people with a disability;
- create community awareness of the issues that affect people with disabilities; and
- facilitate community capacity building.

1.23 The second function would be an information and referral service that would be available to people with, or affected by, a disability. Finally, the NDIS should provide individually tailored, taxpayer-funded support, which should be targeted at people with a disability that is, or is likely to be, permanent, and who have 'significantly reduced functioning in self-care, communication, mobility or

13 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 111.

14 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 5.

15 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 39.

16 See Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 43.

self-management and require significant ongoing support' or are in an early intervention group, 'comprising individuals for whom there is good evidence that the intervention is safe, significantly improves outcomes and is cost effective'.¹⁷

1.24 The Productivity Commission envisaged that the agency that would be created to supervise the NDIS would oversee assessments and determine efficient prices, but would also perform other roles such as research.¹⁸

The Productivity Commission's proposals for implementing and funding the NDIS

1.25 On how the transition to the NDIS should occur, the Commission suggested that the scheme be launched in mid-2014 in a few identified regions; regions that would, overall, incorporate all of the functions and structures that the NDIS would have. This would allow 'ongoing fine-tuning to test and refine the new scheme structures with a population that is not overwhelming. It would also help build a robust and sophisticated resource allocation process that would serve people's needs appropriately, while reducing the risks of cost blowouts'.¹⁹ In July 2015, the NDIS would progressively be extended nationally, with the final year of the rollout being 2018–19.²⁰ The Commission's estimates of the costs associated with this implementation schedule are reproduced in Table 1.

Table 1: Productivity Commission's estimates of the progressive costs of the NDIS, 2011–12 to 2018–19

<i>Year</i>	<i>Stage of implementation</i>	<i>Likely annual costs</i>
remainder of 2011-12	getting agreement	\$10 million
2012-13	planning the details of the scheme	\$50 million
2013-14	setting up legislation	\$550 million
2014-15	bedding down administrative arrangements	
2014-15	scheme begins with regional rollouts	\$900 million (net)
2015-16	first full year of national rollout	\$2.4 billion (net)
2016-17	second full year of national rollout	\$3.9 billion (net)
2017-18	third full year of national rollout	\$5.4 billion (net)
2018-19	final year — rollout now complete	\$6.5 billion (net)

Source: Productivity Commission, *Disability Care and Support*, report no. 54, 31 July 2011, vol. 1, p. 61.

1.26 The Productivity Commission recommended that the Australian government should be the sole funder of the NDIS. This should be achieved by pooling payments from consolidated revenue into a dedicated fund, the income from which would

17 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 63. Individuals with newly-acquired catastrophic injuries who are covered by the proposed NIIS would be excluded from receiving individually tailored, funded supports from the NDIS.

18 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 39.

19 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 57.

20 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 60.

provide stable revenue for the NDIS.²¹ However, the Productivity Commission did outline other acceptable funding models, including the use of intergovernmental agreements between the Australian government and the states and territories that provide 'a transparent and accountable basis for contributions by each jurisdiction'.²²

Response to the Productivity Commission report

1.27 In August 2011, soon after the Productivity Commission finalised its report, the government announced that it would 'start work immediately with states and territories on measures that will build the foundations for a National Disability Insurance Scheme'.²³ An advisory group led by Dr Jeff Harmer AO was established by the government and, within COAG, a select council of Commonwealth, state and territory treasurers and disability ministers was formed to consider the Productivity Commission's recommendations.²⁴

1.28 In October 2011, it was announced that the COAG select council had identified the key areas of reform that would be necessary to implement the NDIS and that the first stage of implementing the NDIS would commence by mid-2013.²⁵ As part of the 2012–13 Budget, the government committed to over \$1 billion to help fund the first stage of the NDIS (Table 2).

Table 2: Funding for first stage of the NDIS, 2012–13 Budget (\$m)

2012–13	2013–14	2014–15	2015–16
83.9	234.3	345.4	363.0

Source: Australian Government, *2012–13 Budget: Budget paper no. 2*, May 2012, p. 142.

Launch sites

1.29 In April 2012, the government announced that the NDIS would commence in selected launch sites from mid-2013.²⁶ During 2012 it was confirmed that the launch sites would be the Australian Capital Territory (ACT), the Barwon region of Victoria

21 The Commission also explored other options such as a dedicated levy on personal income, cutting GST payments or other transfer payments to the states, or by agreements to replace inefficient states taxes with more efficient Commonwealth taxes. See Productivity Commission, *Disability Care and Support*, 2011, Vol. 2, pp. 637–91, in particular recommendations 14.1–14.5 on pp. 690–91.

22 Productivity Commission, *Disability Care and Support*, 2011, vol. 2, pp. 690–91.

23 The Hon. Jenny Macklin MP, 'Productivity commission's final report into disability care and support', *Media release*, 10 August 2011.

24 Council of Australian Governments, *Communiqué of 19 August 2011 meeting*, www.coag.gov.au/sites/default/files/2011-19-08.pdf, pp. [3]–[4].

25 The Hon. Wayne Swan MP, the Hon. Jenny Macklin MP, the Hon. Bill Shorten MP and Senator the Hon. Jan McLucas, 'Early delivery of foundation reforms for National Disability Insurance Scheme', *Joint media release*, 20 October 2011.

26 The Hon. Jenny Macklin MP and Senator the Hon. Jan McLucas, 'National Disability Insurance Scheme to launch in 2013', *Joint media release*, 30 April 2012.

(includes Geelong and the surrounding area), the Hunter region of New South Wales (NSW) (includes Newcastle and the surrounding area), South Australia (SA) and Tasmania. Table 3 provides further information about the arrangements agreed to for these launch sites.

Table 3: Summary of NDIS launch site arrangements

Launch site	Details	Estimated valued of cash contributions to the scheme over the trial period
Australian Capital Territory	As at December 2012, details about the launch of the NDIS in the ACT are being finalised. It may start in July 2013 or July 2014 and may take a phased-in approach. An estimated 6,000 people under the age of 65 with disability will be covered.	Australian Government: \$43.8 million over 2014–15 to 2015–16; 2017–18 contributions not yet confirmed. ACT Government: \$113.8 million over 2014–15 to 2015–16; 2017–18 contributions not yet confirmed.
New South Wales (Hunter Region)	From 2013, all eligible persons in the region will be covered (about 10,000 people with significant and profound disabilities).	Australian Government: \$112.3 million over 2013–14 to 2015–16. NSW Government: Existing funding (capped at \$550 million over three years) plus an additional \$35 million over four years.
South Australia	From mid-2013, focus will be on children aged 0–5 with significant and permanent disability. By 2014–15 the age range will be 0–13 years, and 0–14 years in 2015–16. It is estimated that around 4,800 children will be covered.	Australian Government: \$22.7 million over 2013–14 to 2015–16. SA Government: \$20 million over 2013–14 to 2015–16.
Tasmania	From 2013, people aged 15–24 years will be covered (approximately 1,000 people with disability).	Australian Government: \$19.0 million over 2013–14 to 2015–16. Tasmanian Government: \$13.5 million over 2013–14 to 2015–16.
Victoria (Barwon Region)	From 1 July 2013 all eligible persons will be covered (an estimated 5,000 people with significant and profound disabilities).	Australian Government: \$94.5 million over 2013–14 to 2015–16. Victorian Government: \$130.7 million over 2013–14 to 2015–16.

Sources: The Hon. Julia Gillard MP, 'COAG progresses the National Disability Insurance Scheme', *Media release*, 7 December 2012; the Hon. Jenny Macklin MP, media releases dated 26 July 2012, 1 August 2012 and 12 August 2012; the *Intergovernmental Agreement for the National Disability Insurance Scheme* dated 7 December 2012; and the bilateral agreements for the NDIS launch between the Commonwealth and NSW, Victoria, South Australia, Tasmania and the ACT dated 7 December 2012, www.coag.gov.au/node/485 (accessed 15 January 2013).

1.30 In December 2012, the Australian and NSW governments agreed to a framework to implement the full NDIS in NSW by 1 July 2018. Under the agreement,

in 2018 the Australian government will provide \$3.32 billion of funding while the NSW government will contribute \$3.13 billion.²⁷

The National Disability Insurance Scheme Bill 2012

1.31 On 29 November 2012, the government introduced the National Disability Insurance Scheme Bill 2012 (bill)—the bill being examined by this inquiry—into the House of Representatives. The bill contains a proposed framework for the NDIS, including provisions that:

- outline the objects and general principles of the scheme;
- would establish the National Disability Insurance Scheme Launch Transition Agency (transition agency);
- outline the process for becoming a participant in the scheme; and
- would provide for a review of the operation of the legislation after a two-year period.

Objects and principles of the NDIS

1.32 The objects of the bill are contained in clause 3. They include: providing for the NDIS, supporting the independence and social and economic participation of people with disability, providing supports for participants during the NDIS launch, enabling people with a disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports, and facilitating the development of a nationally-consistent approach regarding access to, planning and funding of supports. Further objects include the provision of high-quality and innovative supports, raising community awareness and facilitating greater inclusion of people with disability, and giving effect to certain obligations that Australia has as a party to the UNCRPD.²⁸

1.33 Clauses 4 and 5 contain a number of principles to guide actions taken under the legislation, including the actions of people who may do acts or things on behalf of others. For example, paragraph 5(a) stipulates that it is Parliament's intention that 'people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves'.²⁹

Creation of the National Disability Insurance Scheme Launch Transition Agency

1.34 The transition agency is intended to oversee the implementation of the first stage of the NDIS. Chapter 6 of the bill proposes the creation of the transition agency as a statutory body subject to the *Commonwealth Authorities and Companies Act 1997*

27 National Disability Insurance Scheme, 'NDIS launch: NSW', www.ndis.gov.au/ndis-launch/launch-locations/nsw/ (accessed 15 January 2012).

28 National Disability Insurance Scheme Bill 2012, clause 3.

29 NDIS Bill, paragraph 5(a).

(CAC Act). The transition agency will be governed by a board³⁰ and supported by an advisory council 'made up of people with lived experience of disability and caring'.³¹ A Chief Executive Officer (CEO) would be responsible for the day-to-day administration of the transition agency; in July 2012 the government announced that Mr David Bowen would take up this position.³²

1.35 Under the provisions outlined in chapter 2 of the bill, the transition agency would provide a broad range of assistance, including:

- coordination, strategic and referral services, as outlined in chapter 3 of the bill, to ensure 'that there is 'no wrong door', and that people with disability are not passed from one service to another'; and³³
- funding to individuals and organisations for the purposes of enabling them to assist people with disability to realise their potential for physical, social, emotional and intellectual development, and to participate in social and economic life.³⁴

Participation in the NDIS

1.36 A person may make a request, in the required form, to participate in the NDIS. The transition agency must consider the request within 21 days unless: (a) further information; (b) an assessment; or (c) a medical, psychiatric or psychological examination is requested by the agency.³⁵ Eligibility and assessment of need will be based on the World Health Organisation's (WHO) *International Classification of Functioning, Disability and Health*³⁶ (ICF) and subject to access criteria, which include:

- age requirements (the person must be aged under 65 when they first enter the scheme or the prescribed age contained in the NDIS rules);

30 The responsible minister will appoint the chair (following consultation with host jurisdictions about the appointment). For board members other than the chair, both the Commonwealth and a majority of the group consisting of the Commonwealth and the host jurisdictions must agree to the appointment. See NDIS bill, clause 127.

31 Explanatory memorandum, p. 48.

32 According to the Minister's media release announcing the appointment, 'Mr Bowen has been a consultant to the insurance industry, health and disability sectors and was a member of the Independent Panel which advised the Productivity Commission in its inquiry into a national disability care and support scheme. A lawyer with a strong background in administrative and insurance law, Mr Bowen was also one of the architects of the NSW Lifetime Care and Support scheme and its inaugural CEO. He is the Chair of the National Injury Insurance Scheme Advisory Committee and previously also General Manager of the NSW Motor Accidents Authority for 11 years'. The Hon. Jenny Macklin and Senator the Hon. Jan McLucas, 'CEO appointed to lead NDIS Agency', *Joint media release*, 6 July 2012.

33 Explanatory memorandum, p. 7.

34 NDIS Bill, paragraph 14(a).

35 NDIS Bill, clauses 18, 20, 26.

36 Statement of Compatibility with Human Rights, p. 7.

- residence requirements (the person must reside in Australia and be either a citizen, holder of a permanent visa or a special category visa holder who is a protected Special Category Visa (SCV) holder—defined in clause 9); and
- disability or early intervention requirements (outlined in clauses 24 and 25 of the bill, these requirements are designed to 'assess whether a prospective participant has a current need for support under the scheme, based on one or more permanent impairments that have consequences for the person's daily living and social and economic participation on an ongoing basis').³⁷

1.37 Once a person becomes a participant, work by the transition agency to facilitate the preparation of their plan must occur.³⁸ The plan must contain the participant's statement of goals and aspirations and a statement of the supports that will be provided, including those funded by the NDIS.³⁹ A participant in the NDIS can request that the plan be managed either by themselves, a registered plan management provider of their choosing, or by a person specified by the transition agency.⁴⁰

1.38 The bill also outlines the processes by which:

- a person can make decisions for children with disabilities; and
- a nominee (a plan nominee and/or a correspondence nominee) can be appointed to make decisions on behalf of a participant.⁴¹

Impact on Philanthropy

1.39 The committee heard some concerns regarding the impact the introduction of the NDIS would have on philanthropic donations. A number of organisations that provided evidence to the committee rely on non-governmental funding. Those organisations, and those that support them, will be required to adapt to the new funding environment under the NDIS. For example, Mr Ah Tong from Vision 2020 Australia explained to the committee the tension and changes that the NDIS may cause:

Vision Australia has a \$90 million operating budget every year and 60 per cent of that comes through our fundraising, philanthropic giving, bequests, donations and other means. This is an issue, but when this issue comes up it comes up as an either/or type of discussion. What I mean by that is that people are suggesting that we would be better off to just not have this NDIS. That is not what we think should occur. It is an issue that we need to

37 NDIS Bill, clauses 21–25; explanatory memorandum, p. 12.

38 NDIS Bill, clause 32.

39 NDIS Bill, clause 33.

40 NDIS Bill, clause 33.

41 NDIS Bill, chapter 4.

deal with, but we think it is an issue that we need to deal with in collaboration with the reforms as they roll out.⁴²

1.40 When inquiring regarding the likely impact of the NDIS on philanthropic contributions, the committee received mixed evidence. The Australian Blindness Forum (ABF) indicated that the NDIS would have an impact:

We believe that the NDIS will have an impact on the philanthropic contributions of the Australian public to organisations that support people who have a disability.⁴³

...

I don't think that anybody is saying that we do not believe an NDIS is valid. What we are saying is do not forget about incredible contributions.⁴⁴

1.41 In contrast, Karingal Inc. – a not-for-profit organisation providing a range of services for people with a disability or mental illness – indicated that most philanthropic giving is not dependent upon strict assessments of financial need:

We are finding that philanthropists are keen to invest or donate to charities who have a sound track record of delivering what they say they will, irrespective of their financial positions. I do not know that that will be a major challenge, but it is something to be conscious of because, if that perception gets out, that would make it difficult.⁴⁵

1.42 Although it was not always clear from the evidence what the impact of the NDIS would be on charitable giving, there was an apparent consensus regarding the need to ensure that the right message regarding the NDIS is put into the public domain. It was emphasized to the committee that NDIS not be perceived as a cure-all that removes the need for charitable organisations and funding for them:

But if [people] are not educated about the fact that philanthropy is still very, very important then they may just naturally perceive that this is the [NDIS] and everybody with a disability is covered, and they are going to be ok.⁴⁶

1.43 While the NDIS is rightly seen as an improvement over the current disability support system, there will still be a need for charitable donations:

It is really important that our donors know that the NDIS, and the publicity it is getting – and rightly so, because it is a great reform – it is not a panacea. It is not going to fund everybody. We as an organisation are wondering, what do we do? We do not want to slam the NDIS and say: 'The NDIS isn't that good. It's not going to fund us,' because we think it is a good

42 Mr Ah Tong, Vision 2020 Australia, *Proof Committee Hansard*, 21 February 2013, p. 11. Cf. Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 18.

43 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, pp. 18–19.

44 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 21.

45 Mr Starkey, Karingal Inc., *Proof Committee Hansard*, 20 February 2013, p. 50.

46 Mr English, Australian Blindness Forum, *Proof Committee Hansard*, 22 February 2013, p. 23.

reform. On the other hand, we have to convey a message to our very generous donors that we still need donations.⁴⁷

1.44 While acknowledging the concerns raised, the department noted that other sectors that receive significant government funding have not subsequently been unable to raise private donations, and that the NDIS may actually enhance the fundraising capacity of organisations:

It is, however, not the experience of other sectors that public funding necessarily crowds out private donations and bequests, or makes an organisation that receives public funding unable to compete for private donations and bequests. Many health organisations that receive substantial amounts of government funding are also highly successful at raising private donations.

In addition, the design of the NDIS will allow providers to remain highly visible in the community. This will not shield providers from competition for private donations by organisation from other community sectors. However it will ensure that they have the resources, expertise and presence to actively market themselves in this increasingly competitive environment.⁴⁸

1.45 As summarised by the Royal Institute for Deaf and Blind Children (RIDBC): 'One of the challenges in the marketing of the NDIS is not to present a message that says: "this problem does not now need people to dip into their pockets."' ⁴⁹

Support for the NDIS

1.46 The committee heard overwhelming support for the introduction of an NDIS. The committee did not hear from a single submitter, be that an organisation or an individual, that did not support the introduction of some form of structural and funding overhaul of the provision of disability services and support. There were varying views on the scale of the scheme and how the scheme should be structured and paid for, but none thought the status quo provided adequate and equitable access to services.

1.47 Generally speaking, there was widespread support for the principles underlying the NDIS in its proposed form, and the scheme itself was regarded as a paradigm shift in the management of disability in Australia. The Australian Federation of Disability Organisations (AFDO) argued that 'the NDIS presents a once-in-a-generation opportunity for transformative change in the lives of people with disability.'⁵⁰ Nation Disability Services (NDS) – speaking for around 800 non-

47 Mr Hurd, Guide Dogs Victoria, *Proof Committee Hansard*, 21 February 2013, p. 10.

48 Ms Wilson, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 5 March 2013, p. 37.

49 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 8.

50 Australian Federation of Disability Organisations, *Submission 514*, pp. 2–3.

government organisations – similarly emphasized the life-changing importance of the NDIS, stating:

When implemented nationally the NDIS will transform disability support in Australia. It will expand access to disability services; increase choice for people with disability and their families and carers; generate economic and social benefits for Australia; and establish an equitable and efficient disability support system that is sustainable over the long-term.⁵¹

1.48 Carers Queensland expressed a complementary position, highlighting how the NDIS will alter service delivery:

The NDIS bill represents a move from a paternalistic platform of service determination and delivery to self-directed and self-managed support and assistance for people with disability who have decision-making capacity, enabling them to rightly assume and enjoy full responsibility for their lives and their citizenship.⁵²

1.49 The importance of the NDIS was reinforced by the evidence provided by Disability Advocacy Network Australia (DANA) – an organisation representing almost 70 agencies whose primary purpose is to provide independent advocacy support to people with disabilities:

The significance of the NDIS cannot be overstated. It has the potential to be the most important change to the provision of support for people with disability to occur in any nation, at any time.⁵³

1.50 Some witnesses, although supporting the idea of an NDIS, expressed caution regarding the proposed implementation, arguing that it was important to get it right the first time. The Law Society of South Australia, for example, argued that criteria and funding issues – among others – need to be resolved before the scheme comes into effect. While recognising the imperative of making the scheme operation, the Society cautioned that without resolving outstanding issues the NDIS may not meet the potential that it otherwise might.⁵⁴

1.51 But others, particularly those representing people with disabilities, preferred that the scheme be established, even if some changes are required at a later time. For example, the CEO of Townsville Independence Program for Adult Community Living (TIPACL) stated:

I have been waiting for an NDIS to happen for many years. Although what is proposed is not perfect, it is a start and all journeys start with a first step.⁵⁵

51 National Disability Services, *Submission 590*, p. 3.

52 Ms Walbank, Carers Queensland, *Proof Committee Hansard*, 30 January 2013, p. 2.

53 Disability Advocacy Network Australia, *Submission 516*, p. 2.

54 Mr White, Law Society of South Australia, *Proof Committee Hansard*, 19 February 2013, p. 35.

55 Mr Brown, Townsville Independent Program for Adult Community Living, *Proof Committee Hansard*, 29 January 2013, p. 39.

1.52 AFDO similarly acknowledged that the NDIS scheme may not be perfect, but argued that the proposed approach provides the opportunity to learn from the proposed test sites and use that information to improve any subsequent national system:

We know and we would acknowledge that the scheme is not going to be perfect from the start. We think that the mechanism of having launch sites is actually a really good way to deal with that. As long as the legislation and the rules are set up to provide enough flexibility in the areas where we need to do some learning and that we are very good about monitoring and evaluating those areas...Moving forward [with the NDIS] is possible and we think that moving forward should happen, but we really need to make sure that we [build] in the appropriate systems and supports to learn as we go along.⁵⁶

1.53 Representatives from the Tasmanian Department of Premier and Cabinet (DPC) assured that committee that they are 'keen to see the legislation proceed as quickly as possible', and that:

If there are hiccups along the way, they are not signs that the NDIS was a bad idea or that governments, stakeholders or families are doing anything wrong. It is just that this is a big thing and we all need to be aware of that, and to give the NDIS the time to mature and grow into the system that we all want it to be.⁵⁷

1.54 At the same time as recognising that it is inevitable that any new national program will have its challenges, everyone involved in the development and implementation of the NDIS is striving to make the scheme as successful as possible, as soon as possible. With that sentiment in mind, the following chapters of this report highlight a number of areas in which stakeholders sought amendment. The committee also presents recommendations to the Senate arising from issues raised during the course of this inquiry.

1.55 As noted above, the committee recognises that the NDIS is being launched across a number of sites, in some cases targeting particular age cohorts. The phased launch of the NDIS will allow people with disability, carers, advocacy organisations, service providers and governments to gain experience in the implementation of the NDIS and to consider whether improvements could be made to its design. The importance of learning from the launch sites is underlined by inclusion in the bill of a formal review of the legislation, to take place two years after the scheme commences. The committee endorses the phased approach and believes that there will be opportunities to implement lessons learned along the way.

56 Ms Hobson, Australian Federation of Disability Organisations, *Proof Committee Hansard*, 20 February 2013, p. 2.

57 Mr Evans, Department of Premier and Cabinet, *Proof Committee Hansard*, 22 February 2013, p. 8.

Chapter 2

Rights, capacity and control

Background

National Disability Strategy

2.1 The National Disability Strategy (Strategy) is a 10 year strategy developed by COAG in conjunction with the Australian Local Government Association. It sets out the vision that people with disabilities in Australia should be to be part of '...an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.'¹

2.2 The Strategy establishes what it calls 'An inclusive agenda' that recognises the diversity of people with a disability:

The Strategy recognises that not all people with disability are alike. People with disability have specific needs, priorities and perspectives based on their personal circumstances, including the type and level of support required, education, sex, age, sexuality, and ethnic or cultural background. Some experience multiple disadvantages. Sex, race and age can significantly impact on the experience of disability.²

2.3 The Strategy also explicitly adopts³ the principles set out in Article 3 of the UNCRPD and promotes their use as a key tool in addressing disadvantage for people with disabilities:

The Strategy will help ensure that the principles underpinning the [UNCRPD] are incorporated into policies and programs affecting people with disability, their families and carers. The [UNCRPD] is unique in that it is both a human rights instrument and a development instrument which aims to redress the social disadvantage of people with disability.⁴

2.4 It was during the development of the Strategy that the government asked the Productivity Commission to undertake its inquiry into a national disability 'long-term

1 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 27 January 2013), p. 8.

2 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 27 January 2013), p. 14.

3 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 27 January 2013), p. 22.

4 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 27 January 2013), p. 16.

care and support scheme, including consideration of a national disability insurance scheme'.⁵

2.5 As discussed in chapter one, the Productivity Commission report identified a number of failings in the current provision of disability services and funding models. The purpose therefore of the NDIS is to alleviate this disadvantage by creating a scheme that:

- will take an insurance approach that shares the costs of disability services and supports across the community;
- will fund reasonable and necessary services and supports directly related to an eligible person's individual ongoing disability support needs; and
- will enable people with disability to exercise more choice and control in their lives, through a person-centred, self-directed approach, with individualised funding.⁶

Applying a rights-based approach

2.6 A key theme in a significant number of the 1600 submissions that the committee received was whether the bill delivered on the policy intention of safeguarding and advancing the rights of people with disability. Many submissions identified a fundamental tension between the rights-based and entitlement-based language of the bill's objects and the UNCRPD on the one hand, and a range of processes in the bill on the other. Examples include the agency CEO's discretion in decision making, such as in assessing against the eligibility criteria, and the requirement that they "approve" of plans, restrictions over holidays etc.

UN Convention on the rights of People with Disabilities

2.7 The Bill includes reference to the UNCRPD in the objects of the bill. Paragraph 3(1)(h) states that the objects of the Act are to:

- (h) give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities.⁷

2.8 The Explanatory Memorandum (EM) expands on paragraph 3(1)(h) by setting out the specific Articles in the UNCRPD that the Bill will engage with. The EM also cites the International Covenants on Economic, Social and Cultural Rights; and Civil and Political Rights:

The legislation will engage the following rights:

5 *National Disability Strategy 2010–2020*, agreement of the Council of Australian Governments dated 13 February 2011, www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (accessed 27 January 2013), p. 20.

6 NDIS Bill, Explanatory Memorandum, p. 1.

7 NDIS Bill, paragraph 3(1)(h).

- The rights of people with disabilities in the *Convention on the Rights of Persons with Disabilities* (CRPD), especially Articles 3, 4, 7, 8, 12, 19, 20, 21, 22, 26, 28, 30, 31;
- The rights of children in the *Convention on the Rights of the Child*, especially Articles 12 and 23;
- Article 10 of the *International Covenant on Economic, Social and Cultural Rights*; and
- Article 17 of the *International Covenant on Civil and Political Rights*.

2.9 Pam Spelling from Independent Advocacy Townsville spoke to the committee from the perspective of an individual with a significant vision impairment as well as from an advocacy viewpoint. She contended that the concept of choice of control has to be stronger in the bill by explicitly citing the principles of the UNCRPD as the principles that underpin the legislation:

...the United Nations Convention on the Rights of Persons with Disabilities is somewhat absent in the bill framework in mentioning the rights of people with disabilities under the UNCRPD...I think that is a really critical part of the NDIS bill given that it is something that is going to include many people with disabilities more than ever before in terms of some level of support. It should be enshrined in a rights model. That is really so the rights of people with disabilities are promoted and protected within the bill.

The bill infers some of the rights in terms of people being able to have individual choice and control, but I think it needs to be strengthened by being quite explicit in using the UNCRPD.⁸

2.10 Ken Wade, Queensland Advocacy Incorporated, welcomed the inclusion of the UNCRPD in the objectives of the bill but commented that the wording is too broad:

...to its great credit, the bill has acknowledged the Convention on the Rights of Persons with Disabilities, and...it states that one of the objects is to put into effect certain obligations that the government has under the CRPD, but that leaves quite a wide range for interpretation of what those obligations are going to be.⁹

2.11 The Law Council emphasised the importance of the having clear direction on the face of the bill of Australia's obligations under various human rights instruments:

Human rights and fundamental freedoms have certain connotations, which basically the Law Council would seek to have enshrined in the legislation. We think it is very important that there be a link back to the convention and that that link be included in the objects of the legislation so that it is clear to

8 Ms Spelling, Independent Advocacy Townsville, *Proof Committee Hansard*, 29 January 2013, p. 23.

9 Mr Wade, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 30 January 2013, p. 16.

anyone interpreting the legislation that the government has in mind Australia's obligations under the convention in designing the legislation.¹⁰

2.12 Carolyn Frohmader from Women with Disabilities Australia (WWDA) also wanted a stronger statement within the objects and principles of the bill that would underpin the rights-based approach of the legislation. Ms Frohmader also questioned why the object of the bill that does cite the UNCRPD does not embrace all of the rights contained within the UNCRPD:

We are also really concerned about some of the language in the bill around the idea that it is predicated on human rights principles and a human rights framework. But setting out from the outset that one of the objectives is it would give effect to certain obligations under the CRPD seems to be like saying you can have a little bit of human rights. Either it does or it does not. I do not understand why that is in there given that the CRPD enables the progressive realisation of rights, so there is no reason that it cannot be there in its entirety.

2.13 Heidi Forrest, who gave evidence to the committee in Newcastle, went further by recommending that the bill explicitly states which Articles within the UNCRPD should be adopted in the legislation. Her submission provided a detailed recommendation for amendment to the bill:

That the NDIS legislation more comprehensively adopts the principles expressed in the *Convention on the Rights of Persons with Disabilities* (CRPD), particularly Article 8 Awareness Raising; Article 12 Equality Before the Law; Article 19 Living Independently in the Community; Article 20 Personal Mobility and Article 26 Habilitation and Rehabilitation.¹¹

2.14 DANA were also strong advocates of explicitly including the commitment to meeting Australia's obligations under the UNCRPD in the objects of the Bill. They suggested adopting the language of the Human Rights and Anti-Discrimination Bill 2012 which states as one of its objects:

“3(1)(b) in conjunction with other laws, to give effect to Australia’s obligations under human rights instruments ...(See subsections (2)...”

“3(2) The **human rights instruments** are the following, as amended and in force for Australia from time to time:

... the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).”¹²

2.15 AFDO agreed that human rights were not sufficiently enshrined in the legislation:

At present, the legislation does not provide for an approach centred on the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), let alone other human rights covenants which are relevant to the

10 Mr Parmeter, Law Council of Australia, *Proof Committee Hansard*, 5 March 2013, p. 12.

11 Ms Forrest, *Submission 495*, p. 2.

12 *Human Rights and Anti-Discrimination Bill 2012, Exposure Draft Legislation*. s(3)(1)(b).

rights based participation of citizens. If the legislation is to be interpreted well by a range of people for years to come, it must enshrine these rights more explicitly.¹³

2.16 However the Disability Discrimination Commissioner, Graeme Innes, and his colleague, Dr Helen Potts were of the view that the general reference to the UNCRPD in the bill, with particular Articles specified in the EM would be sufficient:

Dr Potts: My understanding of it is, it is in the statement of compatibility as well, when you look at that. The way it is written it says, 'The legislation will engage the following rights', and then it refers to the CRPD and the Convention on the Rights of the Child and the International Covenant on Economics, Social and Cultural Rights, but when it is speaking of the CRPD it says:

The rights of people with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD), especially Articles ...

so it is not exhaustive.

...

Mr Innes: I do not think that is a concern. As Helen says, it makes special reference to those articles, but includes the whole convention, so I do not think that is a problem.¹⁴

Committee View

2.17 Ensuring rights-based language in the primary legislation reflective of a rights-based approach to the NDIS is of huge significance for many stakeholders in the disability field. While the bill may be implemented within the context of the UNCRPD and give effect to obligations contained therein, the committee supports the removal of the conditional language of the current object (h) in clause 3 of the Bill. The views of a wide range of submitters would be accommodated by taking the same approach in the current bill as the government is taking in the Human Rights and Anti-Discrimination Bill 2012. The committee considered the suggestion by DANA and supported by many others, to refer to not only to the UNCRPD, but also the other Convention and Covenants specified in the EM. However it also drew some comfort from the view of the Disability Discrimination Commissioner that the current position is sufficient. On balance the committee were of the view that the language should be strengthened to coalesce with the Strategy's commitment to using the CPRD as 'a human rights instrument and a development instrument which aims to redress the social disadvantage of people with disability' as discussed in paragraph 2.3 above.

13 Australian Federation of Disability Organisations, *Submission 514*, p. 3.

14 Mr Innes, Disability Discrimination Commissioner and Dr Potts, Disability Rights Unit, Australian Human Rights Commission, *Proof Committee Hansard*, 1 February 2013, p. 34.

Recommendation 1

2.18 The committee recommends that the conditional language of s3(1)(h) of the Bill be revised to more strongly reflect Australia's international human rights obligations such as those in relation to:

- civil, political, economic, social and cultural rights;
- the prevention of racial discrimination or torture; and
- people with disability, women, and children.

Choice, Control and Capacity

The presumption of Capacity

2.19 The presumption of capacity of individuals with disabilities is a key issue for many stakeholders. Clause 4(8) of the bill states that:

People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise informed choice and engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.

2.20 Clause 5 of the bill outlines the intention that if actions are required to be undertaken by others on behalf of a person with a disability, this should be done in accordance with the general principles set out in clause 4. A further set of principles, the first of which is paragraph 5(a)—'people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves'¹⁵—will also guide actions.

2.21 The statement in subclause 4(8) makes reference to people with disability being 'equal partners in decisions that will affect their lives', whereas many submitters argued that a person with a disability should be the principal decision-maker for their own lives where possible (not merely an 'equal partner' with others).¹⁶

2.22 A number of submitters such as the Victorian Government and a range of disability organisations such as COTA Australia,¹⁷ Cerebral Palsy League of Queensland,¹⁸ and Queensland Alliance for Mental Health Incorporated did not think that the bill in its present form clearly demonstrated that 'participants have their own decision-making capacity',¹⁹ and should be strengthened by including an explicit statement that a person with disability should be presumed to have the capacity to make decisions.

15 NDIS Bill, paragraph 5(a).

16 See Pegg, Mallett or Hardaker, *Proof Committee Hansard*, 22 February 2013.

17 COTA Australia, *Submission 617*, p. 3.

18 Cerebral Palsy League of Queensland, *Submission 641*, p. 3.

19 Cathy O'Toole, Queensland Alliance for Mental Health Incorporated, *Proof Committee Hansard*, Wednesday 30 January 2013, p. 12.

2.23 The Victorian Government suggested that this be addressed by adding a new sub-clause to clause 5 to this effect, as well as making other amendments to the parts of clause 5 in order to strengthen the focus on the preferences and decisions of people with disability.²⁰ The rationale for these amendments is that the principles currently espoused in the bill do not make it clear that people should be supported in their decision making to the fullest extent possible in the first instance before any options for substitute decision making are explored.

2.24 Queensland Alliance for Mental Health Incorporated was of the view that 'with the correct support, it is possible for people to make decisions, where, on the surface, it may appear they may not have the capacity'. To ensure this they suggested the bill explicitly reflect the intent of the UNCRPD Articles 3 and 12:

...the bill needs to clearly demonstrate the assumption that participants have their own decision-making capacity. It is important that the bill closely reflects the intent of the United Nations Convention on the Rights of Persons with Disabilities, specifically the following articles. Article 3, general principle (a):

Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

And article 12 (3):

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

...Incorporation of these articles will ensure that substitute decision making is used only as a last resort.²¹

2.25 Queensland Advocacy Incorporated suggested that the NDIS mandate that guardianship arrangements in relation to decision-making be amended to ensure that a person has a role in their own decision making. Nick Collyer from the organisation cited arrangements in Canada and some states in the United States as a possible model:

Currently we do not have supported decision-making in any jurisdiction in Australia, but it is there in Canada and in some states of the United States, I understand. It is a new way of approaching guardianship. You may know that, under our current guardianship systems, we have a combination of best-interest decision-making and substitute decision-making. The problem with that is that there is no onus on the guardian—or the public advocate, as it may be in Victoria, for example—to ensure that the person has a role in their own decision-making. Supported decision-making is a specific mechanism—an agreement, essentially, that is set up between a support person and the person with a cognitive or intellectual disability or a mental health issue which ensures that that person has a role in all decisions about their life. We think that supported decision-making is the way to go and we

20 Victorian Government, *Submission 608*, Appendix A, p. i.

21 Ms O'Toole, Queensland Alliance for Mental Health Incorporated, *Proof Committee Hansard*, 30 January 2013, p. 12.

think that the NDIS bill should explicitly mandate supported decision-making.²²

2.26 AFDO contributed on what they perceive is a general lack of assumption of capacity in the legislation. In their submission they cite clause 4(4) 'People with disability should be supported to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports' and argued that the language of 'supporting people' was indicative of a presumption that capacity would be lacking:

This general principle speaks to a much broader problem with the underlying assumptions of this legislation: namely, it talks about 'supporting' people with disability to have choice and control over goals, rather than assuming that capacity for choice and control is inherent and acting accordingly.²³

2.27 The submission continued on to highlight what it saw as inadequate provisions for ensuring that the person with the disability is at the centre of the decision making for their own lives:

At present the draft NDIS legislation works on the basis that there may be circumstances where taking over control and choice for the person is appropriate, rather than enabling the person with assistance. Whether or not the term 'support' is meant to imply a collaborative relationship has become irrelevant, because the goal of that support is fundamentally different.²⁴

Committee View

2.28 The committee agrees with the concerns expressed by a number of submitters that the objects and principles of the bill do not presume capacity. In particular the Victorian government's suggested amendments to clause 5 would help ensure that capacity is presumed, and that the first position of the scheme would be to support individuals to make decisions themselves. If this was not possible, and had been objectively assessed as being not possible, then substitute decision making processes would be invoked.

Recommendation 2

2.29 The committee recommends that clause 4 of the bill be amended to explicitly state that it is presumed that people have the capacity to make their own decisions unless objectively assessed otherwise.

22 Mr Collyer, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 30 January 2013, p. 16.

23 Australian Federation of Disability Organisations, *Submission 514*, p. 5.

24 Australian Federation of Disability Organisations, *Submission 514*, p. 5.

Recommendation 3

2.30 The committee recommends that clause 5(a) of the bill be amended to read:

- (a) people with disability should participate actively in decisions that affect their lives, and be supported where necessary to enable this to occur.

Choice and Control

2.31 While the prospect of increased choice and control for persons with disabilities was universally welcomed by those who submitted and contributed to the inquiry, some potential challenges were also discussed. Duncan Brown from the TIPACL highlighted potentially unforeseen consequences for people with intellectual disabilities and their carers of this greater control:

The NDIS will obviously generate positive changes and foster increased choice and control for people with disabilities. This will be a challenge for people with intellectual disability who have difficulties in understanding those choices and expressing those opinions. People with intellectual disability—who are the majority of users of disability services, by the way—often rely on proxy decision makers. If those proxy decision makers themselves have difficulties in comprehending and decision making, or where they have no proxy decision makers, people with intellectual disability can be severely disadvantaged in self-directed, individualised funding systems in comparison to other people with disabilities.²⁵

2.32 The MS Society in Western Australia made a general point that the legislation has a general tone of mistrust and emphasised that people with disabilities are not accessing the system out of choice, but because they have a disability through no fault of their own:

Where power is concerned, I think that in many respects the general tone of the legislation smacks of mistrust and punitive action. I would just like to make the statement that we are not talking about people who are choosing not to work, who may be choosing to surf every day and to find every benefit they can find within the system. We are talking about people who, through no fault of their own, have a disability that has already impacted severely on their quality of life.²⁶

2.33 The ACT Disability Aged and Carer Advocacy Service (ADACAS) agreed that the legislation strikes the wrong tone and creates a potential scenario where the individual is not an equal partner in the relationship with the transition agency:

It is disappointing that at present the tenor of the bill focuses on managing risk and describes the participants as submissive to the agency in all of their

25 Mr Brown, Townsville Independence Program for Adult Community Living Inc., *Proof Committee Hansard*, 29 January 2013, p. 39.

26 Mr Stafford, MS Society Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 8.

interactions with it, rather than as equal partners in the creation of systems that enable them to live free and fulfilling lives.²⁷

2.34 Carers Queensland expressed concerns that the legislation offers no assurance that carers will benefit from the increase of choice and control directed at people with disabilities:

...the NDIS draft legislation marginalises our concerns and our contribution in determining service delivery options and assigning claim management responsibility and specialist interventions that will support and assist carers to effectively manage changed or deteriorating health or functionality. This marginalisation reinforces to carers the perception that control is outside of our sphere of influence—that is, carers can and will do the grunt work whilst practitioners, albeit well-meaning, make decisions with limited regard to our aspirations, thoughts and experiences.²⁸

2.35 Julie Guilfoile provided the committee an example of how her son, Eamon has had choice and control taken from his life since he moved into residential care. Ms Guilfoile's evidence illustrated how restrictions on care, be they through staffing issues or through organisational priorities of the care provider, remove the element of control for Eamon. In this specific case, Eamon is unable to socialise with his sibling due to this being unsupported by his service provider:

The other thing I will try and finish quickly is the sibling relationship. It is probably the most significant of Eamon's life span. His brother and sister will outlive us and their relationship with their brother is very important to all of them. Eamon allows his little sister to do things that he does not let anybody else do. He adores her. It is not possible for a staff member to take Eamon out with his sister. I am not sure why. That is seen to be unreasonable.²⁹

2.36 Ms Leanne Annette, a client of ADACAS who has cerebral palsy and resides in an aged-care home, succinctly described the lack of control she has in relation to her own care needs:

My needs have to fit in with the care rather than the care having to fit in with my needs.³⁰

2.37 Carers Victoria also suggested that choice and control should be extended to the families of people with disabilities, commenting that the bill does not include any reference to families and what their role should or could be:

While the draft legislation recognises the autonomy and independence of individual adults with a disability and their right to choice and control,

27 Mrs May, ACT Disability Aged and Carer Advocacy Service, *Proof Committee Hansard*, 4 March 2013, p. 11.

28 Ms Walbank, Carers Queensland, *Proof Committee Hansard*, 30 January 2013, p. 3.

29 Ms Guilfoile, Private Capacity, *Proof Committee Hansard*, 18 February 2013, p. 26.

30 Ms Annette, Client, ACT Disability Aged and Carer Advocacy Service, *Proof Committee Hansard*, 4 March 2013, p. 12.

which we thoroughly support, it does not set a framework to accommodate what is reasonable and necessary for families to provide; nor does it set a framework, which probably needs to be elaborated in the rules, to be inclusive of considering the support services needed by both the person with a disability and their family. We think the legislation should promote the option of joint or family plans rather than masking family needs in a participant plan where that is a couple or family's preference and where families need direct support to sustain their caring role.³¹

2.38 Monica McGhie from People with Disabilities Western Australia gave compelling evidence to the committee through a poem she wrote to illustrate how the notion of choice and control over her decisions, activities, and risk taking is played out in her everyday life:

I have no legs, so I get a wheelchair,
 I love my wheelchair, it moulds to my shape
 It can change and adjust as I grow and develop
 It goes in the direction I choose
 It travels at my varying pace
 It follows my lead
 It is quick to respond
 I pick the destination and choose all the routes
 We have been on one-way streets, gone through red lights and arrived at dead ends
 This has helped me to grow and learn and become a better driver
 I have no arms, so I get a support provider
 I love my wheelchair
 It never tells me to eat my veggies, wear a hat, muzzle my dog, go to bed,
 not use my credit card, stop smoking and ask my friends to leave
 and it never refuses to pour me another drink.
 It never says, 'No, that's not in your best interest.'
 'I cannot be your friend because you are a client.'
 'I am going on holidays and there is no one to cover.'
 'My duty of care trumps'
 'You have a choice'
 'So that won't be happening.'
 'My manager says no.'
 and it never, ever tells me off.
 I love my wheelchair.³²

2.39 Dr Taleporos expressed concerns from a Victorian perspective that the NDIS might represent a backward step if it limited the choices of individuals:

I do not know if the committee is aware, but in Victoria people with disabilities have a right to choose whatever service that they need as long as it fits within their plan and their goals. I am concerned that the way the

31 Ms Pierce, Carers Victoria, *Proof Committee Hansard*, 20 February 2013, p. 38.

32 Miss McGhie, People with Disabilities Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 39.

legislation has been drafted will be a backward step for Victorians, who currently have a lot more choice...They are able to employ their support workers directly. There are rules which they have to comply with – WorkCover and all the sorts of obligations that all employers have. That is available in Victoria. I want to see the freedom of choice that is available in Victoria extended across the country through the NDIS.³³

2.40 The concept of more choice and control for individuals with disabilities also presents challenges for disability service providers. The committee heard from providers about the challenges they faced in managing such a transformational change in how services are delivered and funded. Brett Edwards from Cootharinga in North Queensland explained the task ahead for his organisation:

Some of the key concerns and, I guess, opportunities and challenges for those individuals we support would be around self-direction, choice and control. The individuals we support have limited capacity to make some of those key decisions, so needing to support them and their families around a shift to self-direction we see is a fairly significant challenge. Looking also around the viability of those services currently, as we move towards individuals having more choice and control, a large portion of those individuals are in arrangements that are locked into block funding. An area is ensuring that we have viability around maintaining those supports for individuals but also enabling choice and control so that people can actually move as their lifestyles change, as their relationships change, as their needs change—so that we can accommodate that.³⁴

2.41 Peggy Campbell from Community Connection Inc., in Townsville also emphasised the scale of the task ahead for service providers:

In order for more traditional services to make the transition to an NDIS model of service, it will take a paradigm shift. Traditional services hold all of the power. They offer a service and the individual with a disability has to leave their life to get support. For example, a centre might have a spot available where that person can go from Monday to Friday, 9 am to 5 pm, and hang out with a whole heap of other people because that is the most cost-effective way to provide support, yet that person may want to go out and have everyday opportunities like everybody else and not go to a centre. They might have other interests that are not being satisfied if they go to the centre.³⁵

2.42 The potential tension between choice and control and the long term sustainability of a NDIS was an issue that was raised by the Association for Children with a Disability. They saw the balance being achieved through the Productivity Commission's idea of the Disability Service Organisation (DSO), which could provide

33 Dr Teleporos, Youth Disability Advocacy Service, *Committee Hansard*, 21 February 2013, pp. 38–39.

34 Mr Edwards, Cootharinga, *Proof Committee Hansard*, 29 January 2013, p. 10.

35 Ms Campbell, Community Connection Inc., *Proof Committee Hansard*, 29 January 2013, pp. 35–36.

the cost efficiencies required by having a whole-of-life focus on an individual, with the National Disability Insurance Agency (NDIA) provided the central source of funding:

The keys to NDIS's success is balancing the right to choice and control with efficient management. ACD proposes that a robust and effective link between the NDIA and direct service delivery must be the development of what the Productivity Commission called 'disability service organisations' on the one hand and a centralised fund management system that will achieve cost efficiencies.³⁶

Committee View

2.43 The committee became aware firsthand of the limitations some people with a disability can experience when their lives are regulated by those providing care. During a recent hearing as part of another inquiry the committee were unable to hear from four witnesses with disabilities because a single staff member of their residential care provider had called in sick and so they were unable to manage their transport requirements. It was a frustrating experience for everyone, illustrating what the committee heard many times throughout its inquiry.

2.44 The concept of choice and control is a welcome aspiration of the legislation but the committee is of a similar view to many of the submitters that this intent is not always backed up by the detail as expressed in a number of the bill's provisions. The specific clauses where the committee thinks the bill has not achieved an appropriate balance will be discussed in the following chapters.

The 'dignity of risk'

2.45 Another matter repeatedly raised during the inquiry, related to the concept of choice and control, was the right of individuals with disabilities to take risks, and occasionally make mistakes like everyone else in society. Ms Epstein-Frisch from Family Advocacy emphasised to the committee that it was important that participants were allowed to take the same risks as other members of the community:

Part of the issue is risk—that is the significant worry that people have—and who is taking that risk. If you have, within a definition of high-risk clients and high-risk services, provision for people to show that they can take responsibility themselves for those risks that should be enabled. Yes, there should be safeguards and regulations in services that potentially pose a risk to individuals and for clients that are very vulnerable, but there should be avenues that you can still show reasons that you do not need to avail yourself of those anticipated safeguards.³⁷

2.46 Similarly, Independent Advocacy Townsville argued that:

I guess it is about even when that choice may at time put people at risk – and I do not mean huge risk or huge harm. I think there needs to be more

36 Mrs McGarry, Association for Children with a Disability, *Proof Committee Hansard*, 20 February 2013, pp. 18-19.

37 Ms Epstein-Frisch, Family Advocacy, *Proof Committee Hansard*, 31 January 2013, p. 47.

about people being able to make decisions and make mistakes, just like everyone else in the community. I think the bill needs to elaborate on the fact that people with disabilities can and do make decisions and, even if that means at times making mistakes, people with diminished decision-making ability also need to be able to make mistakes.³⁸

2.47 The committee heard that the underlying presumption should be that participants are capable of making the right choices for their own situation:

In the rules [discussion paper] I notice that it is 'should' dignity of risk underlie this whole thing about who can negotiate a plan and manage their plan. Absolutely, the default needs to be that we start from a point that people can do this. All we need to do then is consider with people what support can make that happen. Some will need none; some will need a lot; some will need something on a whole continuum in between. It has to be underpinned with a level of dignity of risk that says people have the right to do this.³⁹

2.48 It was put to the committee that the benefits of being able to make mistakes tend to outweigh the negatives of the mistakes themselves:

I think that there is often a concern that we need to make sure that bad things do not happen, but the real world is what it is. We know that people with disabilities want to live in the real world. We do not want to live in a world that is made up of hundreds of thousands of rules that prevent us from taking any risks. Sometimes risk leads to good outcomes and sometimes it lead to bad things happening – but we feel that the benefits definitely outweigh the risks.⁴⁰

2.49 The department responded to the committee that the intention is not to 'constrain' people by risk averse decision making:

The Department recognises that a decision to deny a participant's request that they manage all or a part of the supports in their plan needs to be handled with care in order to fulfil the objective that the Scheme enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports. In most cases this decision will be based on Section 44(2)(a), and that section provides that the threshold 'unreasonable risk to the participant' has to be crossed before the CEO can decide that a participant cannot manage all or part of the supports in their plan. The NDIS rules made pursuant to Section 44(3) have been designed also to ensure that this decision is only made after a rigorous risk assessment process that includes consideration of other safeguards that can be built around the participant. The Department is confident that the

38 Ms Spelling, Independent Advocacy Townsville, *Proof Committee Hansard*, 29 January 2013, p. 24.

39 Ms Pearman, Western Australia Individualised Services, *Proof Committee Hansard*, 18 February 2013, p. 44.

40 Dr Teleporos, Youth Disability Advocacy Service, *Proof Committee Hansard*, 21 February 2013, p. 39.

operation of this section will, in practice, ensure that people with disability are not constrained by risk averse decision making, and that decisions to limit the control and choice for a participant in relation to the management of their plan are only made when there is an unreasonable risk to the participant that cannot be addressed through other measures.⁴¹

2.50 There is an ongoing tension however between the desire for people to be free to make mistakes, and the importance of ensuring quality of care as more providers enter the market. The Queensland Alliance for Mental Health argued for the necessity of appropriate regulation:

But the bill needs to demonstrate that providing people choice of service will not compromise the quality of these services. Quality and risk management systems will need to be in place, we think, to ensure that people can enjoy the opportunity of choice, regardless of what option is chose, and also to be confident that they will continue to receive quality services.⁴²

Committee View

2.51 The committee agrees with the majority of submitters who promoted the idea of risk being managed by individuals wherever possible. This should flow from assessments of the capacity of people to manage their own affairs, based on objective assessments of their abilities. While accepting the assurances from the department that the risk assessment will include the 'consideration of other safeguards that can be built around the participant' that will still allow them to manage their own affairs, the committee is of the view this should be included in the general principles of the bill to ensure it underpins these processes.

2.52 The committee is supportive of the risk being managed by the individual where the individual has been assessed as being able to control their own funds. Being free to make mistakes requires that people are able to employ the people they wish to provide the services they need. The 'quality and risk management' assurances when risks are managed by the individual are the same that operate for the rest of the community: the importance of a business's reputation, the requirement to adhere to occupational health and safety legislation, and compliance with relevant industry and government guidelines and regulations.

Recommendation 4

2.53 The committee recommends that subclause 4(4) of the bill be amended to read:

- (4) People with disability should be supported to exercise choice and control and manage the associated risk in the pursuit of their goals and the planning and delivery of their supports.**

41 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 35.

42 Mr Nelson, Queensland Alliance for Mental Health Inc., *Proof Committee Hansard*, 30 January 2013, p. 14.

Accessibility

2.54 Several witnesses noted the language in several clauses, such as 7(2), that referred to things being done orally and/or in writing, and queried whether this kind of language was the most appropriate way to prescribe communication, given the diverse communication needs of people with disability.⁴³

2.55 The Federation of Ethnic Communities' Councils of Australia (FECCA) suggested that Clause 7(2) be amended to refer to modes of communication rather than oral and writing:

An explanation given under subsection (1) must be given **in more than one format accessible to the participant** ~~both orally and in writing~~ if reasonably practicable.⁴⁴

2.56 The Bolshy Divas pointed out to the committee that there appeared to be very little material produced that provided information on the various aspects of the bill in an easy-to-understand format:

One of the things that we were particularly concerned about with the legislation—and we understand that all legislation is pretty inaccessible in its language—was that there appeared to be very little attempt to produce information about the legislation in language that the average person can understand. There was an easy English overview, but there was so little in that that it was hard to find anything to comment on. It was left up to people with disability and their families to themselves produce some plain-language information about the legislation.⁴⁵

2.57 Independent Advocacy Townsville also remarked on the importance of appropriate communication in underpinning accessibility for individuals with disabilities:

Things like choice and control that people with disabilities need to exercise at all levels of accessing the NDIS are really important. It goes right down to the language that is used in the bill. It concerns us that 'best interests' is used in the bill when most of us in society do not make decisions based on best interests. It is about our interests. It sounds like semantics, but that is really important in talking about people with disabilities being able to exercise their right to choose.⁴⁶

2.58 Heidi Forrest suggested that the general principles of the bill should include something similar to the Victorian Disability Commissioner's recommendations:

[We] would also like to see the inclusion of a few other General Principles that were recommended in the submission to the Senate Inquiry from the Victorian Disability Services Commissioner:

43 FECCA, *Submission 551*, pp. 5–6.

44 FECCA, *Submission 551*, p. 6.

45 Ms Softly, Bolshy Divas, *Proof Committee Hansard*, 18 February 2013, p. 33.

46 Ms Spelling, Independent Advocacy Townsville, *Proof Committee Hansard*, 29 February 2013, p. 23.

- a. People with disability have the right to access information and communicate in a manner appropriate to their communication and cultural needs.⁴⁷

2.59 The National Ethnic Disability Alliance (NEDA) submitted that there should be a commitment in the Objects of the Act that recognises the barriers faced by people from both Aboriginal and Torres Strait Islands communities and people from culturally and linguistically diverse (CALD) backgrounds, and ensures equitable access for those people:

NEDA recommends for the Bill to acknowledge the additional barriers that people from NESB/CALD communities with disability may face. *NEDA further supports a comment from its member organisation, AMPARO Advocacy to include the following point to this section:*

- (i) Ensure equitable access to the NDIS by people with disability who may experience additional barriers, including Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse backgrounds.⁴⁸

2.60 NEDA also pointed out that there are often cultural issues around gender that can add to discrimination, particularly against women, and that this should be guarded against in the bill, particularly in relation to clause 5 where the principles guiding actions on behalf of another person are set out:

...refer to 5 (a), in consideration of gender and cultural roles, and the limits that are placed by the law in which “a person with disability can be involved in decision making processes ‘*where possible*’ it is crucial to understand that gender may affect women from NESB/CALD backgrounds with disabilities due to traditional expectations of gender roles in which they are often at risk of exploitation and negligent treatment from their male counterparts; and men may manipulate their power in making the decisions for women from NESB/CALD backgrounds with disabilities.

2.61 NEDA recommended the inclusion of 'gender' to paragraph 5(d) to offer some protection.

Committee View

2.62 The committee agrees that the range of communication needs should be recognised, and it believes subclause 7(1), which is an overarching requirement for all communication relating to the legislation, addresses this. That clause requires all significant information to be provided 'to the maximum extent possible to the person in the language, mode of communication, and terms which that person is most likely to understand'.

2.63 The committee agrees with NEDA's suggestion that gender should be considered in a cultural context as part of the principles that guide the actions of people representing others.

47 Ms Forrest, *Submission 495*, p. 4.

48 National Ethnic Disability Alliance, *Submission 614*, p. 3.

2.64 The committee was supportive of the suggestion by the Bolshy Divas that there should be more information available in a format that is easily understood by those it is intended to affect. While the committee does not think it practical to translate legislation itself into Easy English it believes there is significant scope for the provision of various associated documents and explanatory material in such a format.

Recommendation 5

2.65 The committee recommends that clause 5(d) be amended to read:

- (d) the cultural and linguistic circumstances and gender of people with disability should be taken into account.**

Recommendation 6

2.66 The committee recommends that all explanatory material associated with the operation of the NDIS Scheme be provided in an easy-to-understand format such as Easy English.

Chapter 3

Assistance for people with disability and others: the role of advocacy

How is advocacy to be recognised?

3.1 Disability advocacy comes in two forms:

Individual advocacy supports people with disability to exercise their rights, through either one-to-one support, or by supporting people to advocate for themselves individually, through a third party or on a group basis.

Systemic advocacy seeks to introduce and influence longer term changes to ensure the rights of people with disability are attained and upheld to positively affect the quality of their lives.¹

3.2 Ms Jacqueline Pierce from Karingal Inc. in Victoria described individual disability advocacy in the following terms:

I think the simplest way to think about advocacy is this. There are three roles. One role is to stand in front of a person and actually protect them when they need that. Another role is to stand beside somebody and empower and enable them to navigate their way through the service system. The final role of advocacy is ultimately to stand behind people and give them moral support and catch them when they fall. So I think that that is a nice, easy way to try and understand how advocacy can and should work for individuals with a disability.²

3.3 Systems advocacy was also discussed in detail throughout the hearings and submissions. Blind Citizens Australia (BCA) outlined why they thought there was an enduring role for advocates to ensure that the system reflected the needs and circumstances of its users:

NDIS will not address systemic barriers therefore there is a need for systemic advocacy...Our members continue to report the barriers they are experiencing in access to employment, access to public transport and access to acquiring information in a format that matches their needs.³

3.4 Many submitters commented that the bill was silent not only on the role of advocacy, or the funding of it, but that it omitted it almost completely. The Developmental Disability Council of WA and People with Disabilities WA posed the

1 Disability Policy Research Working Group, National Disability Advocacy Framework, clause 9, http://www.dprwg.gov.au/sites/default/files/attachments/national_disability_advocacy_framework.pdf (accessed 7 March 2013)

2 Ms Pierce, Karingal Inc., *Proof Committee Hansard*, 20 February 2013, p. 46.

3 Mrs Pascual, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 5.

question 'why is the legislation silent' on the role of advocacy?⁴ They argued that even if it is not being funded under the NDIS, 'it must still be enshrined in the context of a Bill which is designed to enable the promotion and provision of support and choice to people with a disability'.⁵ AFDO noted that, '[t]he legislation does not talk about, for instance, a right to advocacy support for people who access the NDIS.'⁶ BCA also contributed on this issue:

In the current bill, there is no reference to advocacy, in particular self-advocacy, which is vital in building the capacity of people with disability to make their own decisions and to question decisions. We recommend the inclusion of a clause in the general principles to cover this.⁷

3.5 DANA submitted there was a need to enshrine in legislation the right to advocacy services for anyone who needs it:

Missing from the stated objects of the draft Bill, as well as from substantive clauses, is any recognition that an entitlement to funded supports will necessarily entail a guarantee that independent disability advocacy is available to those who need it.⁸

Funding of advocacy services

3.6 Currently, disability advocacy organisations receive their funding from several sources. For example, the Brain Injury Association of NSW lists its primary funding sources the NSW Department of Family and Community Services, NSW Health, and FaHCSIA.⁹ DANA reported that in the 2011 financial year it received around 45 per cent of its funding from the FaHCSIA.¹⁰ It was reported that FaHCSIA provided funding to 60 advocacy organisations across Australia in 2011–12.¹¹

3.7 The Productivity Commission's report recognised the role that advocacy plays in securing equitable access to services for individuals and also for promoting systemic change. The report also recognised that a potential conflict of interest lay in

4 Developmental Disability Council of WA and People with Disabilities WA, *Submission 642*, p. 6.

5 Developmental Disability Council of WA and People with Disabilities WA, *Submission 642*, p. 6.

6 Ms Hobson, Australian Federation of Disability Organisations, *Proof Committee Hansard*, 20 February 2013, p. 1.

7 Mrs Pascual, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 4.

8 DANA, *Submission 516*, p. 6.

9 Brain Injury Association of NSW, *Funding Sources*, http://www.biansw.org.au/index.php?option=com_content&view=article&id=13&Itemid=14, (accessed 12 March 2013).

10 Disability Advocacy Network Australia, *Statement of Comprehensive Income for the year ended 30 June 2012*, <http://dana.org.au/wp-content/uploads/DANA-Financial-Statements-for-the-year-ended-30-June-2012.pdf> (12 March 2013).

11 FaHCSIA, *2011–12 Annual Report: Paving the Way*, p. 98.

advocacy organisations being reliant for funding on the body that they are likely to challenge:

Advocacy plays an important role in the disability system. Systemic advocacy pushes for broad policy and social change, while individual advocacy promotes the interests of particular individuals by acting on their behalf to resolve specific issues. These functions should lie outside the NDIS, reflecting the potential conflict of interest that would arise were the NDIS to fund advocacy bodies whose role was to challenge the disability system overseen by the NDIS. Current funding arrangements through FaHCSIA and various state and territory governments should continue.¹²

3.8 The Commission formalised these views in Recommendation 10.4 of its report:

The Australian Government, through the Department of Families, Housing, Community Services and Indigenous Affairs should continue to provide funding for general advocacy by non-government organisations, with no involvement by the National Disability Insurance Agency in this funding role.

*State and territory funding of disability advocacy groups should continue.*¹³

3.9 On the broad issue of funding DANA suggested that there will be a significant increase in the need for advocacy services following the introduction of the NDIS and that this needs to be reflected in budget terms. Their specific budget proposal was that advocacy funding should be proportionate to the total spend on disability:

[T]he amount of money that is provided for the advocacy sector should be relative to the total amount of funding for disability. In 2009, the advocacy sector received 1.3 per cent of what was, in that year, the total national disability funding under the National Disability Agreement. DANA have suggested, and is asking, that the current funding for advocacy be increased to maintain that same relativity. So as increased funding comes into the NDIS, that 1.3 per cent proportionately...comes into advocacy and, as the NDIS is rolled out completely, that advocacy funding is doubled within the next four years, and preferably that would happen quicker in the launch sites.¹⁴

Within the scheme or separate?

3.10 Whether advocacy services should be funded within the scheme or separately was the subject of much debate throughout the inquiry. The department indicated that it accepted the approach taken by the Productivity Commission to advocacy:

The Bill therefore does not include provisions that would allow the Agency CEO to fund formal advocacy services. The Department would consider

12 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 28.

13 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 82.

14 Ms Mallet, Speak Out Association of Tasmania, *Proof Committee Hansard*, 22 February 2013, pp. 42-43.

that funding for formal advocacy is better done through existing programs. Responsibility for funding of disability advocacy is shared between the Australian Government and state and territory governments. The Australian Government funds 59 agencies to provide disability advocacy through the National Disability Advocacy Program (NDAP). The NDAP provides people with disability access to disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights. In 2012–13 the Australian Government will provide \$16 million under the NDAP to fund 59 organisations across Australia. The Department understands that many advocacy organisations would see the NDAP and parallel programs in the States and Territories as the appropriate source of funding for formal advocacy.¹⁵

3.11 DANA sought independence of advocacy funding, but argued this did not mean the commitment to funding should lie outside the NDIS:

If NDIS is to be effective in targeting those most in need of supports, it must acknowledge that the funding of independent disability advocacy agencies (and the encouragement of family, friend and other informal modes of support) will be a necessary design feature of the Scheme. DANA urges the explicit provision, in the NDIS Bill, for the use of NDIS pool funds for this purpose. Those funds should not be administered directly by the proposed National Disability Scheme Agency (NDIA), but channelled to a suitable government agency to permit the expansion of existing disability advocacy programs.¹⁶

3.12 The Ethnic Disability Advocacy Centre (EDAC) indicated that the key matter was whether the funding originated from an agency whose decisions might be the subject of challenge by the funded advocate:

If the NDIS fund it I would think it would be a conflict of interest if NDIS is providing the service, because at some point advocacy may challenge what they do and you cannot be the service provider and the challenger at the same time, in my view. EDAC feels the same way. The importance of an independent advocacy service needs to be articulated in the legislation, and it needs to be funded outside because the NDIS is not the only agency that we may be challenging.¹⁷

3.13 Other organisations suggested that the funding should be embedded within the scheme, though again, independence remained a theme:

Blind Citizens Australia believes that advocacy should be independent of service provision and an NDIA. In the current bill, there is no reference to advocacy, in particular self-advocacy, which is vital in building the capacity of people with disability to make their own decisions and to question

15 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, pp 34-35.

16 Disability Advocacy Network Australia, *Submission 516*, p. 6.

17 Ms Rose, Ethnic Disability Advocacy Centre, *Proof Committee Hansard*, 18 February 2013, p. 46.

decisions. We recommend the inclusion of a clause in the general principles to cover this.

NDIS will not address systemic barriers therefore there is a need for systemic advocacy led by people with a disability for people with a disability. Our members continue to report the barriers they are experiencing in access to employment, access to public transport and access to acquiring information in a format that matches their needs. Final legislation should stipulate that an assigned percentage of total NDIS funding should be allocated to independent advocacy support administered independently of the NDIA or funding allocations sourced elsewhere.¹⁸

3.14 Bolshy Divas indicating that there needed to be a commitment to funding, but that the service itself should be independent:

Senator SIEWERT: In other words, some funding support within the NDIS but then still funded separately so that you have the independent advocacy?

Ms Softly: Yes. The advocacy needs to be independent from the system. I guess what I am saying is that the advocacy needs to be independent so that it can be effective and real advocacy, but it needs to be funded from somewhere.¹⁹

3.15 There was considerable concern that there might be an attempt to fund individual advocacy from within individuals' support packages.

3.16 Queensland Advocacy was among many submitters who objected to advocacy being funded through an individual's package. Its director Mr Wade commented that 'I think it is essential that that advocacy continues to be delivered to people without them having to find the money within their packages to pay for it.'²⁰ Amparo Advocacy Inc. didn't think it would be feasible to have advocacy funding attached to the individual as you would not know how much they required:

I would like to know how they are going to work out how much funding for advocacy they would give individuals. Firstly, you would not know who would require advocacy, so ultimately then you would have to give everybody funding for advocacy, to be fair. And you would not know whether the issue that the person may have is an issue that an advocate could resolve within a few weeks, or it may be an issue that could take several months, so trying to determine how much funding to allocate individuals I think would be impossible.²¹

3.17 DANA concurred that they were also strongly against this approach because it represented a fundamental misunderstanding of how advocacy works, and is likely to work:

18 Mrs Pascual, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 4.

19 Ms Softly, Bolshy Divas, *Proof Committee Hansard*, 18 February 2013, p. 36.

20 Mr Wade, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 30 January 2013, p. 20.

21 Ms Fordyce, Amparo Advocacy Inc. *Proof Committee Hansard*, 30 January 2013, p. 25.

The scariest part I read, across those hundreds of pages, was from you, Senator Boyce, in the Brisbane hearing: you reported FaHCSIA advice that they were thinking of having advocacy funding come from within a participant's fund and seeking responses from the witnesses there. That was a clear indication of not understanding the full trajectory that an applicant-participant will be going on, or the key role of advocacy in this case prior to getting anywhere near the front door of the NDIA—a clear misunderstanding of the role of advocacy with respect to a program like this.²²

3.18 Subclause 6(1) of the bill allows for the agency to provide support and assistance including funding for participants and prospective participants to meet their obligations within the bill:

- (1) The Agency may provide support and assistance (including financial assistance) to prospective participants and participants in relation to doing things or meeting obligations under, or for the purposes of, this Act.

Note: For example, the Agency might assist a participant to prepare the participant's statement of goals and aspirations by assisting the participant to clarify his or her goals, objectives and aspirations.

3.19 The agency CEO – Mr David Bowen – described how he envisaged the support to be provided to individuals and their families and carers. He added the proviso that protections will need to be in place to avoid any conflict of interest between those that provide the advice and those that provide the services required:

The agency will have, either as employees or contractors, local area coordinators and they can do some of that, but we also recognise that under the legislation there is an obligation on the agency to ensure that there are resources available to facilitate the preparation of a person's plan. Our expectation is that that will become a developing service. We are aware already of some service providers who want to step into that space, but on the very clear understanding that you cannot do that type of plan facilitation and then direct the person to your own service—there has to be a separation there. We are expecting that to become a new area that that becomes part of it.²³

3.20 The government's commitment to this kind of advocacy being funded within the scheme did, however, appear to be limited. In the department's opening statement for 5 March, the impression was given that this would be a marginal function, rather than one central to the agency's responsibilities (emphases added):

Some of the outcomes that Governments and people with disability expect of the Scheme, such as developing and fostering local networks of support for individuals and supporting decision making by people with disability as far as possible to ensure that substitute decision making is used only as a

22 Mr Owen, DANA, *Proof Committee Hansard*, 4 March 2013, p. 6.

23 Mr Bowen, National Disability Insurance Scheme Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 62.

last resort, will mean that the Agency *may on occasion* provide funding to advocacy organisations in the advocacy roles that do not involve formally representing people with disability in appeals or reviews of the Agency's decisions.²⁴

3.21 Advocacy Tasmania and Speak Out Association of Tasmania pointed out that there is an existing model for statutory recognition and funding of advocacy, in the *Aged Care Act 1997*.²⁵ Under Division 56, that Act gives advocates certain rights of access to the aged care system, by making it a legal responsibility of service providers:

to allow people acting for bodies that have been paid advocacy grants under Part 5.5 to have such access to the service as is specified in the User Rights Principles.²⁶

3.22 Part 5.5 of the *Aged Care Act* establishes a system of advocacy grants. It also addresses the issue of independence of advocates. Section 81-2 states in part:

(3) A body may not make an application [for an advocacy grant] under subsection (1) if it is:

(a) an approved provider; or

(b) a body that is directly associated with an approved provider.

3.23 As outlined above, there was general concern about how advocacy services would be funded under the NDIS. Developmental Disability Council of WA and People with Disabilities WA considered the possibility that general advocacy services could be funded by the agency through the mechanism provided by clause 14 of the bill. This is not entirely clear from either the bill or the explanatory memorandum:

While we recognise that chapter 2 implies a whole range of supports and services, as you will know from the legislation there is nothing really in that chapter; it makes implications without really giving much direction at all as to how that will be developed and put in place.²⁷

3.24 When the department was asked about chapter 2 of the bill, it appeared from the response that it was not intended to provide support for advocacy. For context, the Productivity Commission had discussed a tiered approach to a disability insurance scheme, and had described a 'tier 2' within that scheme:

Anyone with, or affected by, a disability could approach the scheme for information and referral services (as distinct from funded support). The scheme would also provide general information about the most effective care and support options. This would include providing linkages and referrals to relevant services for which the NDIS was not directly

24 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 35.

25 Mr Hardaker, Advocacy Tasmania, *Proof Committee Hansard*, 22 February 2013, p. 41.

26 *Aged Care Act 1997*, paragraphs 56(1)(k), 56(2)(h), 56(3)(i).

27 Ms Harvey, Developmental Disability Council of WA and People with Disabilities WA, *Proof Committee Hansard*, 18 February 2013, p. 39.

responsible, such as mainstream services and community support groups and services.²⁸

3.25 Explaining chapter 2 of the bill, the department responded using the Commission's concept of tier 2:

Dr Hartland: The PC talked about a group of people and provision called tier 2. This was for people who, but for an intervention, might become tier 3, and develop an [individual service package]; or for a broader group who needed referral and tapping into mainstream services. So chapter 2 in the bill effectively allows the agency to either do, or fund organisations to undertake, that range of activities that the PC described as tier 2. We have not used the tier 2 language, in part because we did not use the tier 3 language in the rest of the bill. It broadly covers that type of activity.

...It is expressed differently to the rest of the legislation because it is not an individual entitlement in the way that we wanted individual support packages to be. It is expressed in a much more careful way. We deliberately wanted to create certain entitlement for people who are participants and need an [individual service package] but we did not want to go that far in relation to tier 2. That is why the wording is slightly different.²⁹

3.26 It appears therefore that the bill may recognise individual advocacy through clause 6(1), in the context of supporting activities like the preparation of participants' statements of goals and aspirations, but there may not be an explicit mechanism for support of systemic advocacy.

The provision of legal advocacy

3.27 Clause 6(2) of the bill 'does not permit or require the Agency to fund legal assistance for prospective participants or participants in relation to review of decisions made under this Act'. There was criticism of this prohibition. The Australian Human Rights Commission (AHRC) considered this restriction to be unacceptable:

The Commission is of the view that consideration could be given to the provision of paid advocacy support on a sessional basis for participants or prospective participants making applications to the AAT. This approach would promote the right contained in section 4(7) of the Bill entitling people with disability the same rights as other members of Australian society to pursue grievances. It would also be pragmatic and promote efficiency as it would provide to a participant or prospective participant access to an advocate who understands the NDIS as well as the prospects of success of a particular request for review. This approach would be similar to the approach adopted through the Department of Veterans Affairs Ex-Service Organisation (ESO) Advocacy and Welfare Services.³⁰

28 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 12.

29 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 74.

30 Australian Human Rights Commissioner, *Submission 492*, p. 6.

3.28 The Law Society of South Australia's approach was slightly different, recommending that 'necessary and reasonable supports' could be defined to include legal services.³¹

3.29 Victorian Legal Aid expressed its concern about the effect of clause 6(2). It argued that there needs to be funding of legal support for review of decisions, though it would not have to be through the agency, and recommended the removal of clause 6(2).³²

3.30 On the other hand, Australian Lawyers Alliance did not raise a concern with Clause 6(2). It noted that 'legal assistance can be provided by the Disability Advocate Services which exist in each State or alternatively through the private legal profession'.³³

Committee view

3.31 A considerable amount of the concern about advocacy in the NDIS appears to have arisen from the complete silence of the bill's text on the subject, rather than from any explicit policy proposals that would marginalise advocacy in any way. The committee accepts the department's assurances that the bill is not intended to preclude advocacy, and that it is silent on the subject because the government adopted the principle, expressed by most stakeholders, that advocacy should be independent of the agency, so that advocates are able to challenge agency decisions.

3.32 People with disability and disability organisations are not going to be satisfied with the argument that the bill does not *prevent* advocacy. They are seeking positive recognition of its place in the system. Although the agency cannot provide independent advocacy on behalf of individuals, this does not mean the bill should not mention it at all. The bill establishes the whole NDIS, not just the agency, and as such there are options for recognition of advocacy in the bill, and these should be pursued. The most obvious way to give such recognition would be through inclusion in the general principles in clause 4, such as through amendment of existing subclause 4(12), which is about recognition of supporting persons, or through a standalone principle recognising advocacy.

3.33 The committee has also noted that advocacy grants are explicitly established under the Aged Care Act, as are rights of access for grant recipients. The committee hopes that consistent principles are being applied between aged care and disability care in respect of how advocacy is both recognised and funded.

Recommendation 7

3.34 The committee recommends that 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.

31 Law Society of South Australia, *Submission 595*, p. 2.

32 Victorian Legal Aid, *Submission 610*, pp. 5, 22.

33 Australian Lawyers Alliance, *Submission 618*, p. 25.

3.35 The committee notes that a right to be represented is not a *requirement* that someone be represented, nor is it a right for that representation to be funded through the agency. The committee is simply seeking recognition of the role of advocacy, and a signal of the expectation that advocates would be involved in many of the processes established by the bill.

Recommendation 8

3.36 The committee recommends that the government make an ongoing commitment, outside the NDIS, to the funding of advocacy, noting the existence of advocacy schemes across all jurisdictions, and that the need for advocacy is likely to increase with the rollout of the NDIS.

Recommendation 9

3.37 The committee recommends that independent advocacy funding not be managed by the Agency, and that clause 6(2) remains unchanged.

3.38 The committee discusses appeal mechanisms in chapter 7.

Meaning of 'person'

3.39 Several submitters were confused about the meaning of 'person' in the bill, an issue raised in several contexts, but particularly clause 14. Early Childhood Intervention Australia, and Novita Children's Services, for example, both queried what role companies limited by guarantee, or incorporated associations, could have in providing the kinds of services funded by the agency and envisaged in clause 14.

3.40 Clause 69 provides that a person can apply to become a registered provider of supports, but it was pointed out to the committee that unlike the Victorian Disability Act the bill does not include a definition of 'a person'.³⁴ New South Wales Disability Network Forum also called for clause 70 to be more explicit in enabling the inclusion of DSO, mainstream organisations, personal and informal supports and other entities to become registered providers of supports.³⁵

3.41 The confusion among submitters may arise because clause 14 includes 'persons or entities', and the bill defines 'entities' as partnerships or unincorporated associations,³⁶ yet contains no definition of person. As an added complication, in large parts of the bill (particularly in relation to plans) the term 'person' logically can refer only to natural persons. These different uses of terms in the bill may have meant that many stakeholders are unaware of, and do not assume, that a 'person' has the meaning attached to it by section 2C of the *Acts Interpretation Act 1901*, namely a 'body politic or corporate as well as an individual'.

34 Health and Community Services Complaints Commissioner of NSW, *Submission 449*, p. 10; Victorian Disability Services Commissioner, *Submission 430*, p. 14.

35 New South Wales Disability Network Forum, *Submission 523*, p.12.

36 NDIS Bill, clause 14.

Recommendation 10

3.42 The committee recommends that the government provide clarification, either in the bill or the explanatory memorandum, to ensure that those using the bill will understand that, unless the contrary is clearly intended, a 'person' in the bill includes companies and other incorporated bodies.

Chapter 4

Becoming a participant

4.1 The NDIS is a scheme designed around individuals with disability, and clauses 18 to 30 set out the process by which someone enters (and leaves) the scheme. These clauses include the eligibility requirements, which were the subject of much of the discussion among stakeholders.

4.2 Clauses 18, 19 and 20 establish a system for people to request to participate in the NDIS. Clause 20 sets a deadline of 21 days for the CEO of the agency to, at a minimum, take some key steps in the process of determining whether the applicant meets the eligibility criteria.

4.3 Clause 21 establishes the framework under which a person's eligibility to be a participant in the NDIS is assessed. It has three elements. The first subclause defines a set of conditions governing access to the NDIS. If someone meets those criteria, then the person has the right to be part of the NDIS. The second subclause is intended to ensure that some people already receiving disability supports under existing programs will be able to access the NDIS, even though they might not meet some of the criteria (for example if they are over 65 but already receiving support). The third subclause states that, if the CEO fails to act within the 21 days set out in clause 20, then the applicant is determined to not have met the access criteria. This particular subclause caused some disquiet amongst stakeholders.

4.4 An overarching concern of advocacy organisations and people with disability was that the bill would not create an entitlement for those meeting certain criteria. As such, it would not be consistent with the rights-based approach endorsed by the government, and agreed with by this committee (see chapter 2 of this report).

4.5 DANA for example argued that:

At no stage in the draft Bill is there the legislative formulation that we have come to expect with genuine entitlements. In other entitlement-based legislation (e.g., Social Security Act 1991) we see the consistent use of “A person is qualified for [pension, benefit] if the person has [description of eligibility criteria].”¹

4.6 An example of the construction of eligibility in the *Social Security Act 1991* is for the age pension:

- (1) A person is qualified for an age pension if the person has reached pension age and any of the following applies:
 - (a) the person has 10 years qualifying Australian residence;
 - (b) the person has a qualifying residence exemption for an age pension;

1 DANA, *Submission 516*, p. 5.

(c) the person was receiving a widow B pension, a widow allowance, a mature age allowance or a partner allowance, immediately before reaching that age;

(d) if the person reached pension age before 20 March 1997—the person was receiving a widow B pension, a widow allowance or a partner allowance, immediately before 20 March 1997.²

4.7 A related suggestion made by Developmental Disability Council of WA and People with Disabilities WA was that the legislation should 'have a notion of manifest eligibility, such as exists for the Disability Support Pension'.³

4.8 The committee agrees that the construction of eligibility used in the bill is slightly different to that in some other legislation such as the Social Security Act. Determining whether someone has a disability that is causing a significant impairment, or whether they would benefit from early intervention, is not always as straightforward as determining a person's birthdate. However, the committee nevertheless believes that the bill does create a right of access to the NDIS for those who meet the criteria. Specifically:

- Clause 18 gives anyone the right to make an access request;
- Clause 20 gives the CEO no discretion about whether to consider a request: all requests must be responded to;
- Clause 21 states that a person meets the access criteria provided that they satisfy certain eligibility requirements; and
- Clause 28 states that a person becomes a participant once the CEO is satisfied that a person meets the requirements: there is no discretion for the CEO to decline access, if the criteria are met.

4.9 In other words, the agency's only role in these clauses is to determine whether the person meets the access criteria: they are not rationing places in a capped program, and they have no discretion about the decision whether a person can participate.

4.10 While this creates a rights-based framework for access, the appropriateness of that framework hinges on the application of the access requirements set out in clauses 22 to 25, and some of the methods for determining eligibility set out in clauses 26 and 27. The remainder of this chapter examines these issues.

The effect of deeming a decision to have been made

4.11 In describing the bill above, the committee noted the process under subclause 21(3), whereby if the CEO does not take action on an access request within 21 days, the prospective participant is deemed to not meet the access criteria.

4.12 This clause caused some concern. The department gave a valuable explanation of why this clause would be of benefit of prospective participants:

2 *Social Security Act 1991*, s. 43.

3 Developmental Disability Council of WA and People with Disabilities WA, *Submission 642*, p. 8.

This is actually protection for participants. I know it does not feel like that when you read it. What it means is that, if the CEO fails to make a decision in 21 days, if there were not this provision, it would put a person into limbo and they would not have a decision to appeal against. This clarifies that, if the CEO does not get his or her act together and make a decision, the person is not in limbo. They are protected by the fact that they act says a decision has in fact been made and they have something to appeal against. If you did not have this one in place, you would be putting participants at risk. I know it does not feel like that when you read it cold, but this is a really important protection to make sure people are not in a black space where the CEO has not made a decision, they do not know what is happening and they have nothing that they can take to review court to appeal against. So this actually helps people. We have debated internally a number of times to see if we really need this, and each time we look at it we think it is better and a much stronger protection for participants than the alternative.⁴

4.13 To fully understand how clause 21(3) will work, it needs to be read in the context of clause 100(5). That later clause automatically triggers a process of formal review of the decision (or in this case, the failure to make a decision within the timeframe). Thus, if the assessment of someone's application to enter the scheme has not commenced within 21 days, they get an automatic review of the situation by someone other than the CEO.

4.14 The committee agrees that, despite the counterintuitive wording in the bill, this is a significant positive protection for people seeking access to the scheme, imposing a very strong incentive on the agency to act swiftly on access requests.

Aged care or disability insurance: the age requirements

4.15 Any disability care system will need to sit alongside other care and support policies, and there needs to be rules and policies to guide how they interact. Foremost among these is the aged care system. Under clause 22 of the bill, a person would only be able to access the NDIS if they made an access request before they turned 65. At age 65 or above, people would be required to seek support through the aged care system.

4.16 The bill contains two qualifiers to this age cut-off. The first is that there may be additional age restrictions made under the NDIS Rules: the EM states that these reflect the fact that 'the Commonwealth has agreed with some host jurisdictions that the NDIS will be initially implemented in that launch site in relation to certain age cohorts only'.⁵ Examples include SA, where the scheme will commence with the age 0–5 cohort, and Tasmania, where it will commence by covering those aged 15–24.⁶ Thus, during the launch phase, age restrictions may be tighter than just being under 65.

4 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 54.

5 *Explanatory Memorandum*, p. 11.

6 See chapter 1 of this report for more detail.

4.17 The second qualifier arises from subclause 21(2), outlined above. If a person is 65 or over and is already receiving supports under a pre-existing program recognised under the NDIS Rules, then their age will not preclude them transferring across to the NDIS.⁷

4.18 The committee notes that participants do not have to exit the NDIS when they reach 65. Once they are participants in the scheme, they may remain within it.⁸ However, they cannot enter the disability support system for the first time above that age.

4.19 The committee received extensive comments on the restriction of eligibility to those who make an application below the age of 65.

4.20 Some submitters questioned whether the age cut-off was consistent with the objectives of the scheme, and in particular with supporting the rights of people with disabilities on a non-discriminatory basis. The submission of Futures Alliance typified this concern, saying:

We believe that the scheme would be more equitable, create greater equality, and be more in line with Australia's human rights obligations if the age requirements were removed or extended significantly so as to broaden the concept of disability and enable those who are ageing with a disability (rather than experiencing age-related diminishment of capacity) to receive the sufficient support for a full life. This would apply to both those people who have a disability before the age of 65, and to those who acquire a non-aged related disability after the age of 65.⁹

4.21 People With Disabilities Australia likewise raised the issue in the context of an appropriate protection of rights:

Access to the NDIS must be available to anyone who legally resides in Australia, regardless of their age or nationality. The Scheme is premised on the recognition that all people with disability are inherently valued and respected members of society, and are entitled to supports in order to enjoy their rights on an equal basis as others. It is a violation of the international human rights instruments to which Australia is a party to discriminate on the basis of age and/or nationality...

There are many people older than 65 years who have had a disability their whole life, and many who will acquire one through causes unrelated to ageing (for examples, motor neurone disease or multiple sclerosis). The aged care system in its current form cannot provide the highly specialist disability supports required by many of those people. Moreover, the age cut off implies that older people should not be provided with the opportunities to exercise choice and control over their lives like their younger

7 *Explanatory Memorandum*, p. 11.

8 Except if they have entered residential aged care or are being provided with community aged care (clause 29(1) of the bill). This was a source of concern for National Seniors Australia, *Submission 616*, p. 8.

9 Futures Alliance, *Submission 671*, p. 4.

counterparts, and that they deserve only generic rather than reasonable and necessary supports to meet their needs.¹⁰

4.22 These concerns based on principle were complemented by other concerns based on practice. Most were centred on the lack of suitable services in the aged care sector for people with various medical conditions and disabilities.

4.23 Combined Pensioners and Superannuants Association of NSW pointed out that there are 'differences in the types of assistance required by older people and people with disabilities' and that 'aged care services...may be inappropriate for [disabled people's] needs or simply not meet them'.¹¹ David Heckendorf argued that with the average age of entry to aged care being 84, younger entrants 'will not socially fit within the aged care system. Nor will the aged care system be equipped to provide the particular types of services required by this group'.¹² Polio Australia stated that 'there are no specialist Late Effects of Polio services in the aged care sector for polio survivors aged 65 and over'.¹³

4.24 BCA argued that evidence showed the aged care system was not adequate to the task, despite various reforms:

We are well aware that the Productivity Commission did a parallel inquiry into aged care, and we are well aware that there is some significant reform happening in that area, but what we would argue is that that reform is looking at frail aged, at ageing in place and at respite and other supports, but it is not looking at the specialist needs of people with disability. That is not just people who are blind; that is people with a whole host of disabilities.

I would like to quote something one of our members said to me in one of the consultations that I ran around Australia:

When the nursing homes for the blind closed down, it was said that all other nursing homes would cater for the blind and vision impaired people. We have come to realise that the promises made by these nursing homes in the end did not meet all the requirements of the blind and vision impaired

Likewise, our members are concerned that there is this coverall that the aged-care sector will just meet their needs, but often there is not that comprehensive understanding by aged-care providers of what it means to be blind, what the capacity of people who are blind is and the fact that people can be very independent with some aids, equipment, orientation and mobility. So what we want to see is a system that a person can access.¹⁴

10 People With Disabilities Australia, *Submission 557*, p. 9.

11 Combined Pensioners and Superannuants Association of NSW Inc. *Submission 606*, p. 3.

12 Mr Heckendorf, *Submission 634*, p. 6.

13 Polio Australia, *Submission 637*, p. 5.

14 Ms Jessica Zammit, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 3.

4.25 Other practical questions were raised, such as about the interaction of the 65 year age cut-off with other age-related provisions. It was pointed out that the age at which a person will become eligible for the aged pension is set to rise to 67 by 2023.¹⁵ The Productivity Commission report itself refers to the 'Aged Pension age' rather than to the age of 65.¹⁶ Several groups including the Physical Disability Council of New South Wales, queried how the age cut-off would interact with provisions in other legislation regarding Indigenous Australians, who gain access to some pension supports at 50 rather than 65.¹⁷ Others argued that there are existing programs or policy guidelines relating to aged care that do not use the age of 65 as the key criterion but other, later, ages. These include, for example, national benchmarks and policies relating to residential aged care.¹⁸

4.26 Not all inquiry participants argued against the age criterion. The Tasmanian Government argued in favour of the age cut-off as ensuring clarity of the boundaries between service systems. It also took the view that it was important not to undermine the financial sustainability of the scheme.¹⁹ This concern is shared by the Commonwealth.²⁰ The National People With Disabilities and Carer Council (NPWDCC) took the view that there should definitely be a cut-off, though it did argue that there may be a way to address possible service gaps through recognition of diagnoses, or a similar mechanisms.

4.27 Several organisations, including the AFDO and BCA, recommended removal altogether of any age restriction.²¹ More frequent were recommendations that there be some revision to the NDIS eligibility criteria. National Seniors Australia recommended that the NDIS be extended 'to include older Australians aged 65 and older with no significant age-related conditions'. Polio Australia suggested that 'the NDIS age limit be considered selectively for people whose disabilities result from various causes', such as polio.²²

4.28 The Australian Rehabilitation and Assistive Technology Association (ARATA) proposed that the CEO have the ability to allow entry to those over 65 'who acquire a disability best served by the systems and services of the NDIS'. ARATA considered that those with spinal cord or other traumatic injuries would be likely to fit

15 *Social Security Act 1991*, s.23.

16 For example, Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., pp. 179-182.

17 Physical Disability Council of NSW, *Submission 597*, p. 4.

18 Aged and Community Services Australia, Fact Sheet 2: Residential Aged Care, May 2011, <http://www.agedcare.org.au/publications/resources/fact-sheets/acsa-fact-sheet-2-2008-residential-aged-care.pdf> (accessed 6 March 2013)

19 Mr Evans, Tasmanian Government, *Proof Committee Hansard*, 22 February 2013.

20 *Explanatory Memorandum*, p. 11.

21 AFDO, *Submission 514*, p. 13; Blind Citizens Australia, *Submission 594*, p. 5.

22 Polio Australia, *Submission 637*, p. 6.

this category.²³ Other conditions that it was suggested might benefit from some form of discretionary rule include motor neurone disease and multiple sclerosis.²⁴ Another suggestion was to extend the ‘grandfathering’ provision in paragraph 21(2)(b) to include not only those already receiving supports but those who had already received a relevant diagnosis, but who may not yet have accessed supports.²⁵

4.29 One of the difficulties with creating exceptions to the age cut-off is that it will inevitably be difficult to equitably and objectively determine to whom the exception should apply. Some impairments are age-related and some are not; even some diagnoses can be age related in some cases and not others. Discussing vision loss, COTA explored some of these issues:

We agree that there is a correlation between vision loss and ageing so it could be seen as a part of the ageing process. However not all vision loss is ageing related and vision rehabilitation is a specialist service that is not included in the current suite of aged care services but sits in the disability service sector. If people over 65 are to be directed to the aged care sector for assistance with vision then the services needed to be adequately resourced to provide that service.²⁶

4.30 The committee received little evidence on the cost or other implications of extending eligibility beyond age 65. Brain Link Services drew attention to evidence from Victorian . In Victoria, the committee was told, the system had been reformed in 2006, so that people over 65 could access disability services. The result was:

Victoria has not had a swathe of people over the age of 65 swamping the disability sector. If we go back to what Dr Dyson said: evidence. If you look at what has happened at [Department of Human Services in Victoria], the people who are accessing disability services who acquire a disability over the age of 65, or are over 65 when they first need a disability service, are the same groups who are getting it under 65. It is not Alzheimer's. It is not people who are experiencing the natural effects of ageing that complicate with disability. It is virtually the same groups.²⁷

Committee view

4.31 The difficulty involved in resolving concern about the age criterion is reflected in the diversity of recommendations that stakeholders made to address it. It has been suggested that the Productivity Commission report proposed a scheme for those aged under 65. The Commission's position was:

A reformed aged care system, such as that proposed recently by the Commission in its parallel inquiry into aged care, would be a more

23 ARATA, *Submission 596*, p. 1.

24 Dr Baker, National Disability Services, *Proof Committee Hansard*, 4 March 2013.

25 Mr Ah Tong, Vision 2020 Australia, *Proof Committee Hansard*, 21 February 2013.

26 COTA, *Submission 617*, p. 5.

27 Mr Harris, Brain Link Services, *Proof Committee Hansard*, 21 February 2013, p. 59.

appropriate system for addressing disability resulting from the natural process of ageing.²⁸

4.32 It can be seen therefore that the Commission itself highlighted that not all disability in older people is a result of 'the natural process of ageing'. The Commission did not take a clear position on how assistance should be provided to older Australians experiencing disability that was not age-related.

4.33 Dr Galbally of the NPWDCC pointed out that when one policy area is reformed, as is currently proposed for disability services, it highlights any shortcomings in other policy areas, such as aged care. NPWDCC proposed a working group be established immediately to examine the relevant issues:

Now with the NDIS on the horizon the real deficiencies in the age care provision have been highlighted. Our recommendation is that first there be an immediate working group—or whatever government considers appropriate—to look at disability and ageing, and particularly to look at areas like assisted technology...The community focus of the NDIS, where the aim really is to participate in community, ought to be the same for ageing. Let ageing start that reform process. Indeed, the council will be recommending that as a separate issue—that the age care system sets up a review of its relationship to disability as a matter of urgency.²⁹

4.34 The committee notes the NPWDCC's recommendation that:

Section 22 should be revised to allow enough flexibility to enable the NDIS to support those people over 65 with severe and profound disability whose disability care and support needs cannot be met by the aged care system and/or other community service systems.³⁰

4.35 The department agreed that this is a difficult area, and discussions remain ongoing.³¹ It pointed out that the early intervention criteria under clause 25 would capture some of the situations that were being raised by witnesses. Mr Hartland also pointed out that the interventions don't have to be therapeutic in nature for the person to be eligible under clause 25.³² The committee recognises that there are a number of significant causes of disability, including multiple sclerosis and post-polio syndrome, for which the application of clause 25 would be relevant. However, these people would need to engage with the NDIS (or its predecessor schemes) for the first time prior to turning 65.

4.36 The committee also noted the suggestion made by National Seniors Australia and others, that a launch site be established that includes no age restriction, to determine whether this would be an appropriate approach. The committee can see the

28 Productivity Commission, *Disability Care and Support*, 2011, Vol. 1., p. 179.

29 Ms Galbally, National People with Disabilities and Carer Council, *Proof Committee Hansard*, 4 March 2013, pp. 26–27.

30 National People with Disabilities and Carer Council, *Submission 612*, p. [12].

31 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, pp 36, 57.

32 Mr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 57.

attraction of this option. However it notes that the NDIS sites are 'launch sites' from which the scheme is going to be expanded, not 'trial sites', which implies they may or may not continue. The committee is concerned that establishing an experimental launch site of this sort would present risks to equity across the scheme in the medium term, and could undermine the coherence of the NDIS. It would also require renegotiation of agreement between the Commonwealth, states and territories, potentially disrupting implementation.

4.37 The committee concludes, as have others, that the most important issue is not the eligibility criteria for the NDIS, but the adequacy and appropriateness of service provision, whatever scheme funds that service.

Recommendation 11

4.38 The committee recommends that the government, through COAG processes, identify mechanisms by which to provide adequate specialised disability support for people 65 and over who have disabilities not resulting from the natural process of ageing.

Recommendation 12

4.39 The committee recommends that, as a matter of priority, the government develop information for communication to members of relevant stakeholder groups about the scope for clause 25 (early intervention requirements) to address the needs of some people ageing with conditions that may not cause impairment until after they have turned 65.

Recommendation 13

4.40 The committee recommends that the government conduct further research into the costs and benefits of varying the NDIS age eligibility criterion.

Developmental delay

4.41 A less obvious age restriction occurs in the bill in relation to access to early intervention for children with developmental delay (subparagraph 25(a)(ii)). Under clause 9, developmental delay refers to certain circumstances in a child less than six years of age. Numerous submissions were received from families and professionals who indicated problems with obtaining clinical diagnoses or accessing services for their children, often indicating that problems were not confirmed until some years after they initially raised issues with schools or health professionals, while others expressed concern that services would cut out at an early age, regardless of whether they might have continued to benefit a child.

4.42 Several witnesses pointed out that developmental delay is often not detected until sometime after a child enters the school system.³³ This means it may not be identified until the child is six or seven years old. There can also be delays where the child comes from a non-English speaking background, and there can be similar issues

33 For example Disability Justice Advocacy, *Submission 431*, p. 3.

if the child comes from a humanitarian or refugee background.³⁴ It was suggested that the age be raised to 'under eight' rather than six, while the AFDO suggested there should be no age constraint, other than that developmental delay be diagnosed in a child.³⁵ Early Childhood Intervention Australia (ECIA) commented:

The definition of developmental delay raises significant questions for ECIA regarding what happens to children once they turn six. What will the level of supports be for these children and their families once they turn six and will they have to transition out of the NDIS or reapply? ECIA is concerned about what this will mean for children and families.

The diagnosis of developmental delay is very complex and children may be classified as having a developmental delay for over a decade without receiving a formal diagnosis. There are also significant grey areas when determining what is deemed to be a developmental delay. This certainly requires further research and discussion with the field by the Agency.³⁶

4.43 Novita Children's Services noted the clause and believed it 'would appear to provide the suitable criteria for access as a prospective participant'.³⁷

4.44 The department indicated that the age cut-off for developmental delay was based on a clear existing evidence base. It pointed out that this clause is only related to the early intervention requirements under clause 25. A child, whether under six or not, who is demonstrating functional impairment would be eligible to enter the scheme under clause 24. Clause 25 was designed to prevent any service gap emerging with young children who will benefit from support but do not meet the disability criteria of clause 24, particularly in relation to either the availability of specific diagnoses, or the permanence of any impairment.³⁸

4.45 The committee was satisfied with the department's explanation. Most of the submissions from parents who expressed concern about this clause were all either accessing, or seeking access, to assist children who were presenting with symptoms, issues or diagnosed disabilities that would mean they would potentially be considered for access under clause 24. The committee notes that these issues can be tested in the launch sites, particularly in SA, where the launch is focussed on children.

Residence requirements

4.46 Under subclause 23(1) of the bill, a person must be an Australian citizen, permanent visa holder or protected special category visa holder,³⁹ and also be residing

34 National Ethnic Disability Alliance, *Submission 614*, p. 5.

35 AFDO, *Submission 514*, p. 9.

36 Early Childhood Intervention Australia, *Submission 518*, p. 7.

37 Novita Children's Services, *Submission 441*, p. 3.

38 Ms Wilson and Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013.

39 The category of 'protected special category visa holder' is complex, and relies on definitions in clause 3 of the bill and section 32 of the *Migration Act 1958*. It is not relevant to the discussion in this section of the report.

in Australia, before they can be eligible for the NDIS. Some submitters argued that this excessively restrictive, and that the residence requirements should be constructed differently. The EDAC argued:

In terms of eligibility, we believe NDIS should be accessible for people with disabilities who have a legal right to live and work in Australia, not just those in possession of a permanent residency visa. This would include asylum seekers who have been recognised as refugees but still do not have their permanent residency.⁴⁰

4.47 FECCA argued that the most appropriate model on which to base the eligibility rules should be the country's other national insurance-based scheme, Medicare. Under the *Health Insurance Act 1973*, Medicare benefits are payable to Australian residents, including any person 'who is lawfully present in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by law'.⁴¹ They recommended amendment of the bill as follows:

23(1) A person **meets the residence requirements** if the person:

(a) ~~resides in Australia;~~ and is an Australian resident; and

~~(b) is one of the following:~~

~~(i) an Australian citizen;~~

~~(ii) the holder of a permanent visa;~~

~~(iii) a special category visa holder who is a protected SCV holder; and~~

(eb) satisfies the other requirements in relation to residence that are prescribed by the National Disability Insurance Scheme rules.⁴²

4.48 The committee asked the department why the eligibility criteria are different to those for Medicare. The department was not able to respond specifically on the Medicare criteria, but indicated that the government considered advice about a range of eligibility criteria, and concluded that:

There ought to be a test of residency that reflects the costs and value of the scheme. It is to support over a lifetime, meeting reasonable and necessary needs and, therefore, in order to benefit from a scheme that taxpayers will be funding, people should make these residency tests.

4.49 The committee understands the government's argument, but is not sure that it clearly establishes a distinction between the policy rationale for the NDIS and for Medicare.

40 Ms Rose, Ethnic Disability Advocacy Centre, *Proof Committee Hansard*, 18 February 2013, p. 46.

41 *Health Insurance Act 1973*, s. 3, extract from definition of 'Australian resident'.

42 See FECCA, *Submission 551*, p. 7.

Recommendation 14

4.50 The committee recommends that the government make a more detailed statement setting out the underlying rationale for the approach taken to the residency eligibility criterion.

Disability requirements

4.51 Clause 24 sets out the disability criteria for eligibility to enter the NDIS scheme. The clause has two elements. The first sets out five criteria all of which must be met:

- that there is a disability;
- that the impairment is, or is likely to be, permanent;
- that the impairment causes a reduction in function, for example in communication or mobility;
- that the impairment will 'affect the person's capacity for social and economic participation'; and
- that support needs 'are likely to continue for the person's lifetime'.

4.52 The second element of the clause recognises that, although the impairment is likely to be lifelong, it may vary in intensity.

4.53 The Law Council of Australia considered that more detail around the eligibility criteria should be in the bill. They contrasted the approach in the bill to that in the Social Security Act for the Disability Support Pension.⁴³ The Law Council's view did not appear to be widely shared.

4.54 Submitters appeared generally to be optimistic about the disability assessment criteria and processes for the bill, though it was often noted that their success will depend to a considerable degree on the rules and the success of the agency. BCA commended both the 'recognition around functional impairment and the fact that we are not looking at a medical model of disability; [and] the fact that there is recognition of episodic needs as opposed to episodic disability';⁴⁴ Occupational Therapy Australia (OTA) expressed similar views.⁴⁵ A number of advocacy organisations argued against there being a lot of detail in these parts of the bill; for example several major submissions, including those of the AFDO, DANA, and the NPWDCC, did not argue for more detail in the relevant provisions.⁴⁶

4.55 A different view was presented by the Attendant Care Industry Association, which represents people who provide 'paid care or support services delivered at a

43 Law Council of Australia, *Supplementary Submission 575*.

44 Ms Zammit, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 3.

45 Occupational Therapy Australia, *Submission 544*, p. 5.

46 Australian Federation of Disability Organisations, *Submission 514*, p. 16; Disability Advocacy Network Australia, *Submission 516*, p. 18; National People with Disabilities and Carer Council, *Submission 612*.

person's home or in their community to assist them to remain living in the community'.⁴⁷ The organisation drew attention to the ICF, and how the bill did not appear to be adopting it, despite a recommendation to that end by the Productivity Commission:

Many submissions to the Productivity Commission identified the International Classification of Functioning Disability and Health (ICF) as an internationally accepted system of comprehensively identifying disability-related need, by addressing body functions and impairments, activities of life and participation restrictions, and the environmental factors which enhance or impinge upon people's ability to participate. The Productivity Commission itself recommended (Recommendation 7.1) that the ICF should be used to identify the supports required to address the reasonable and necessary care and support for their life activities. The legislation has, however, adopted a very narrow, impairment-based eligibility approach, which may lead to a restriction on access to the scheme to people on the basis of diagnosis, as will the test of "permanency".⁴⁸

4.56 In response to questions the agency confirmed that the assessment tools they would be utilising are part of an ICF framework and therefore 'in accordance with the recommendation of the Productivity Commission'.⁴⁹ However they emphasised that care must be taken not to think that this was the only assessment that would be considered as it will be used alongside a number of other methods:

We have an assessment tool and we have a self-reporting tool at the front—both under development. The assessment tool for needs assessment has been developed in cooperation or with the great assistance of the expert working group and significant input from the states and territories.

Senator BOYCE: Can we have those tools provided to us, please, on notice?

Mr Bowen: Yes, we can provide that to you. I would put a caveat on it that, as a stand-alone document, it can be misread because it looks like a functional impairment assessment. It is critical to understand that that is not the starting or the end point; it is a tool that operates as a decision tree used by the planner and in that overall context of a planning conversation. This is a scheme that uses that as part of goal based planning. It is not a functional impairment assessment scheme. But, necessarily, we do have to assess the need for support. It is in the ICF framework, which is in accordance with the recommendation of the Productivity Commission. As an 80-page document, it is very deceptive to look at that and say, 'There's the agency's assessment tool'.⁵⁰

47 Attendant Care Industry Association, *Submission 505*, p. 3.

48 Attendant Care Industry Association, *Submission 505*, p. 7.

49 Mr Bowen, NDIS Launch Transition Agency, *Proof Committee Hansard*, Tuesday 5 March 2013, p. 49.

50 Mr Bowen, NDIS Launch Transition Agency, *Proof Committee Hansard*, Tuesday 5 March 2013, p. 49.

'Permanent'

4.57 One aspect of clause 24 where the committee is concerned about the message sent by the bill's language is the requirement that 'the impairment or impairments are, or are likely to be, permanent'. Several individuals and organisations expressed concern about this language, particularly in relation to psychiatric conditions. In mental health care generally there is a strong 'recovery focus', and it is also well known that some serious mental illnesses can be highly episodic in nature. The committee notes that the bill, in clause 24(2), recognises that impairments may vary over time.

4.58 The ACT Human Rights Commission (ACTHRC) queried whether there should be a focus on support that is long-term in nature, rather than in relation to an impairment that is 'permanent'.⁵¹ DANA had a similar concern.⁵² People With Disability Australia (PWDA) drew attention to this issue in the context of their belief that the bill more broadly should be modelled more closely on UN Convention principles:

The convention overall talks about disability in ways that could be quite useful for the NDIS. For instance, it uses the term 'long-term disability' rather than 'permanent', which actually reflects the way that disability is experienced in people's lives in a social rather than a medical context.⁵³

4.59 The NSW Mental Health Commission thought it was important that recovery principles are part of the way the scheme operates. The Commissioner Mr Feneley stated that he:

...will particularly be interested to monitor, firstly, how the scheme embodies the principles of recovery and autonomy, to normalise the expectation of recovery from mental health illness in the community—the goal being not to simply maintain a person's existing circumstances but to support their interest in returning to work, to family and to social life...⁵⁴

Committee view

4.60 The committee accepts that there was general support for the overall approach taken to the disability eligibility criterion, noting caveats about the importance of the rules in this context. The committee noted the issue raised about the opportunity presented by the NDIS to adopt an internationally-agreed standard such as the ICF, and will be interested to see how the suite of assessment tools and strategies used by the Agency, including those that are considered part of the ICF framework, will work in practice.

4.61 The committee agrees that it would be desirable that the design of the NDIS not work against the recovery focus that is central to mental health objectives, nor

51 ACT Human Rights Commission, *Submission 640*, pp. 4–5.

52 Disability Advocacy Network Australia, *Submission 516*, p. 18.

53 Mr Wallace, People With Disability Australia, *Proof Committee Hansard*, 4 March 2013, p. 57.

54 Mr Feneley, NSW Mental Health Commissioner, *Proof Committee Hansard*, 4 March 2013, pp. 67–68.

against recovery and rehabilitation options that may open up in the future through research and innovation.

Recommendation 15

4.62 The committee recommends that the government consult further with mental health organisations including statutory bodies about whether clause 24 of the bill, and related NDIS Rules, sufficiently take into account recovery approaches and the distinction between disability support and mental health services, to ensure the focus of the NDIS is on people with disabilities who have long-term consequences of their impairment (which may vary in intensity).

Other eligibility criteria

People with disabilities held in custody

4.63 The committee holds a longstanding and serious concern about detention and management in prisons of persons with cognitive impairments, whether with or without a current conviction. It has previously met with representatives of the Aboriginal Disability Justice Campaign (ADJC) on this subject, and the organisation provided evidence to the current inquiry. The cases of people with cognitive impairments who are held indefinitely in prisons represent a disturbing and difficult challenge for both disability and justice systems. The ADJC believes that the majority of such people are Indigenous Australians.

4.64 The ADJC reasoned that the NDIS could make a significant difference to these individuals—but only if they can access it:

[Aboriginal Disability Justice Campaign] is extremely concerned about access to the NDIS for Indigenous Australians with a cognitive impairment who are assessed as mentally impaired through the criminal justice process or are detained in prisons and psychiatric units.

Particularly worrying is how the NDIS proposes to ensure that Indigenous Australians who are detained in prisons and psychiatric units on either remand or under custodial supervision order will become participants. At this point in time there does not exist in courts, prisons and psychiatric units, assessment processes for cognitive impairment and referral processes into the disability services system that either divert people from prisons / psychiatric units or provide a pathway out of prisons / psychiatric units.

The ADJC observes that there is no identified pathway for the ‘Agency’ to access people with a cognitive impairment, detained under mental impairment legislation. The outcome of this lack of identified access means that people with a cognitive impairment, particularly Indigenous Australians with a cognitive impairment, many of whom are detained in prisons outside of the major metropolitan cities will continue to be overlooked, nor provided with treatment of significant benefit, and detained in prisons and psychiatric units indefinitely.⁵⁵

55 Aboriginal Disability Justice Campaign, *Submission 503*, p. 4.

4.65 Victorian Legal Aid noted that there is a large prison population in the Barwon region launch site. It indicated there should be consultation to ensure the delivery of the NDIS within prisons, and for transition of prisoners with a disability into the community upon release:

VLA encourages the government to give close consideration to how the NDIS will be delivered to people serving custodial sentences and recommends that the Agency consult with the Adult Parole Board, Corrections Victoria, Forensicare and the Department of Human Services during the implementation of the NDIS to ensure an integrated approach to the provision of post-release services.⁵⁶

4.66 The department was asked about how the NDIS scheme would apply to people in custody. Dr Hartland responded:

Broadly, if you are in prison you may still remain a participant but we would not be expecting to provide some supports to you, such as support for accommodation, but there might be some things that the NDIS should provide that are not properly provided by the prison system.⁵⁷

Committee view

4.67 The committee again places on record its deep concern about the treatment of people who have a disability and are being held in custodial facilities including gaols, sometimes without a charge or a conviction. Prison systems have been failing these people for a long time, and the committee sees no evidence that this situation is likely to change.

Recommendation 16

4.68 The committee recommends that the government ensure that people with disabilities who are in custody will have appropriate access to the NDIS.

Recommendation 17

4.69 The committee recommends that the Agency develop an information strategy to ensure that people with disabilities who are in custody, their carers and their advocates, are aware of the group's eligibility for services under the NDIS.

Professional examinations under clause 26

4.70 Clause 26 of the bill allows the CEO request certain information or actions for the purpose of assessing an access request. One of the things the CEO may ask for is 'a medical, psychiatric or psychological examination (whether or not at a particular place), and provide to the CEO the report, in the approved form, of the person who conducts the examination'.⁵⁸

4.71 The scope of this authority was queried by WWDA:

56 Victorian Legal Aid, *Submission 610*, p. 25.

57 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 68.

58 NDIS Bill, subparagraph 26(1)(b)(ii).

But, regarding the CEO being able to demand that someone have an assessment by a doctor, psychiatrist or a psychologist; I am just thinking about living here in Tasmania: what happens when doctors have closed their books? What happens if you live in some sort of regional or remote location where there is only one doctor, and what if you do not like that doctor, or they do not like you? Or you do not want that doctor to be your assessment person?

Ms Swift: Or you do not see your disability as something medical and would not think to go to a doctor.

Ms Frohmader: Where is the provision within this for the use of allied health professionals, particularly in locations where there are not doctors, psychiatrists and psychologists? Consider the role of nurse practitioners, for example, in Indigenous communities, and things like that.⁵⁹

4.72 Submissions from professional associations OTA and Speech Pathology Australia (SPA) did not raise concerns about the scope of this clause. Yet the committee is not sure why the only examinations that can be required are 'medical, psychiatric or psychological', given the wide range of causes of disabilities that is envisaged in clause 24(1)(a).

Recommendation 18

4.73 The committee recommends that the government revise the language of clause 26(1)(b)(ii) to ensure that examinations can be required to be conducted by a member of any appropriate profession.

59 Ms Frohmader and Ms Swift, Women With Disabilities Australia, *Proof Committee Hansard*, 22 February 2013, p. 36.

Chapter 5

Participant Plans

The making of the plan

5.1 The central element of the NDIS is that all funding and support will be dictated by a participant's plan. The plan consists of two principal parts, the *statement of goals and aspirations* developed by the participant, and the *statement of participant supports* that will be provided by the scheme in response to the 'participant's support needs, goals and aspirations, circumstances and informal supports.'¹

5.2 These two elements are further broken down and described in more detail through supplementary information provided to the committee by the department. The information provided also states that the statement of supports will estimate what supports will be required 'over the expected 12 month life of the plan'.²

5.3 The kind of outcomes for the participant that would be considered as part of the first element of the plan—the statement of goals and aspirations—could include:

- wellbeing;
- independence;
- social, civil and economic participation;
- developing and maintaining relationships; and
- choice and control.³

5.4 The agency will then consider information received from the participant through a self-reporting mechanism, as well as the results of the various assessments of the needs and requirements of the participant, in the making of a statement of support. These assessments may include both an assessment of the functional capacity of the participant and a risk assessment.⁴

5.5 Western Australia Individualised Services commented that the onus on the individual to develop a 'life plan' is not something that should be expected in the legislation, instead suggesting that the legislation should be looking at a narrow description of the plan:

We have a specific point about preparing participants' plans, and that has been a pretty common theme so far. This is one of the areas that has generated a lot of response, with lots of people asking, 'But do you have a life plan that you share with others?' I think this is about the fact that it has

1 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

2 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

3 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 13.

4 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 14.

been seen as 'the' life plan of a person, rather than a plan for investment in the support that will facilitate things that describe social and economic participation for that person at this particular time in their life stage, and I think we should discriminate between those in the legislation.⁵

5.6 Carolyn Frohmader from WWDA highlighted the potential difficulties in expecting someone to develop a life plan but restrict what parts of the plan would be supported by the NDIS:

I did ask the drafters if, for example, this person doing their life plan with their life aspirations and goals and they would like to be a mother, and they are a single woman with a disability, are they allowed to spend their NDIS money on assisted reproduction? And he nearly died. It was like, 'No, don't be ridiculous.' And I said, 'Well, why not?' If you ask somebody to set out their life goals, plans and aspirations and part of that is, 'I would like to be a mother and I would like to purchase access to the donor sperm program,' why not?⁶

5.7 ADACAS also commented on whether it was appropriate to expect someone with a disability to provide a 'life plan' when no-one else in society is expected to do so as a condition of accessing services:

The bill puts the participant's plan, particularly that statement of goals and aspirations, right in the very centre of the entire enterprise. Along with the support plan, it becomes the singular instrument by which supports are determined, measured, funded and all the rest. The requirement for this statement is in itself discriminatory. No other group or individual in our society has to submit a list of life goals and a plan before getting on with living—neither must they seek permission before the change their mind about those goals.⁷

5.8 Dr Galbally from the NPWDCC spoke of the huge effect that the development of a plan that includes aims and aspirations could have on people. To assist in the management of this change Dr Galbally recommended that DSOs should be established in the role envisaged by the Productivity Commission in their report:

[T]he day-to-day planning, coaching, I guess that is a way of putting it, is most important especially in the early days, but I would imagine it would remain important for quite a time. To suddenly have the chance to plan, to dream and to think what you might like to do with your life is going to be quite new for many people. We have therefore recommended that the role for the disability support organisations that was in the Productivity Commission's report be re-raised. This could be a great role for them and a

5 Ms Walker, Western Australia Individualised Services, *Proof Committee Hansard*, 18 February 2013, p. 41.

6 Ms Frohmader, Women with Disabilities Australia, *Proof Committee Hansard*, 22 February 2013, p. 38.

7 Mrs May, Aged and Carer Advocacy Service, *Proof Committee Hansard*, 4 March 2013, p. 11.

very important role for the building of capacity of individuals but also of communities.⁸

5.9 The legislation has an extensive number of principles relating to plans that underpin plan development. The committee received evidence from carers organisations that questioned whether the bill's principles relating to the plan should reflect that the ability to exercise control over their own life is often facilitated by their families or carers:

Chapter 3, part 2, division 1, 31(g) should be modified so that it is underpinned by the right of the participant to exercise control over his or her own life to the maximum extent possible while recognising the support, assistance and judgement of family may be essential to the development of plans for some people with a disability.⁹

5.10 The Mental Health Fellowship of North Queensland also emphasised the important of families or carers being centrally involved with the development of a participant's plan:

Planners and assessors need to be guided in determining the plan for the person with a mental illness. They need to be guided by what the family members and carers are saying. The information I am getting from carers and family members, particularly through our Cairns carers hub, is that they are in the dark most of the time.¹⁰

5.11 Craig Wallace from PWDA expressed concern over the structure of the scheme, comparing it to the United Kingdom system which allocates funding first and then the participant sets their goals accordingly:

The draft bill asks that the plans contain a statement about the goals, objectives and aspirations of the participant. We have a problem with the language of 'goals'. Many people just want to live ordinary lives. Some of our members were of the view that the bill was being really prescriptive around plans. The process as described in the legislation is, one, a person is assessed as eligible; two, you make the plans; three, lastly, the funds are allocated. In the UK they actually do it the other way around so that the person knows the scope of the funding envelope and can then have a discussion about what the plan looks like, firstly, rather than the agency doing it.¹¹

5.12 Children with Disabilities Australia were strongly of the view that the making of a plan, particularly in relation to children, should be the role of the agency and not the individual or their family:

8 Dr Galbally AO, National People with Disabilities and Carer Council, *Proof Committee Hansard*, 4 March 2013, pp. 25–26.

9 Ms Pierce, Carers Victoria, *Proof Committee Hansard*, 20 February 2013, p. 39.

10 Mr Audas, Mental health Fellowship of North Queensland, *Proof Committee Hansard*, 29 January 2013, p. 8.

11 Mr Wallace, People with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 59.

The absolute requirement for all participants to prepare a statement of goals and aspirations is, thus, very problematic where children with disability are concerned...Many families would indeed be insulted by the need to complete such a statement on behalf of their child in order to access essential supports, and we believe families should not have to do this in order to access funding. For some families with school-age children, goals and aspirations will be related to their child's ongoing health issues or their educational attainment, which are not even the primary role of the NDIS. For other families, as with many people across the community, the formal setting of goals is a highly contrived activity. The responsibility for developing a coherent goal based service plan that is absolutely relevant to the child's family sits with the NDIS. It is unreasonable to expect participants and families to present their life and needs in a bureaucratic format. CDA accepts that there is a need for a service plan in order to activate funding; however, the relevance and purpose of this additional plan in the scheme's design is highly questionable. As such, we recommend the removal of this requirement for participants.¹²

Committee View

5.13 The committee understands that the development of a statement of goals and aspirations is a useful way of including all of the facets of a person's life that contribute to their wellbeing. It also provides a long-term perspective that could inform what supports might be used to realise a long-term goal. However the long-term perspective does not appear to be mirrored by the provision of supports, which are to be provided for the '12 month period of the plan'. The question for the committee is whether this disconnect will have any material effect. The committee is concerned that if a support is provided to achieve a long term goal such as assisting the participant to access tertiary education, or long term physical rehabilitation, this could be reassessed each 12 month period and potentially be stopped if certain targets were not met. This could have undesirable consequences for the realistic and long-term pursuit of goals.

Recommendation 19

5.14 The committee recommends that, where support is provided for an objective that will extend beyond the 12 month life of the plan, the NDIS Rules make clear that the assessment of the outcome of this support will take the long-term objectives into account.

Flexibility of the Plan

5.15 The department provided the committee with information on how flexible the plans will be in practice. This flexibility will be guided by a set of principles:

The plan will support flexibility in sourcing supports, regardless of how or by whom the plan is being managed, by:

12 Ms Gotlib, Children with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 60.

- providing information to individuals to support choice during planning and the implementation of the plan;
- building the individual's capacity, where required, to exercise choice and control;
- ensuring that supports are age and life stage appropriate and take into account developmental needs, particularly for children;
- recognising that individual needs vary from week to week as part of normal life and therefore providing flexibility in the quantum and frequency of all supports purchased over the life of the participant's plan, as long as the total value of the plan is not exceeded;
- acknowledging that the basis for determining the level of supports included in the plan is based on a best estimate at the time the plan is developed, thus requiring an approach that allows some overs and unders between relevant funded supports.¹³

5.16 Vivienne Williams from Kids Matters Occupational Therapy commented on the importance of the plan being reviewed at regular intervals, and that the responsibility for this should lie with someone other than the participant:

With the plan, I think it is very important that it is reviewed yearly because things change. I would have concerns that people have a plan and then for logistical reasons that is their plan and even though it is written in the legislation that, yes, they have the entitlement to review it, I think there should be structures in place that it is regularly reviewed and not just left up to people who may not be aware or able.¹⁴

5.17 The flexibility of the plan and the ability for it to react quickly was an issue raised in relation to the management of chronic disease. MS Australia described the impact that a rapid deterioration of a condition could have on a person and their family:

It is the nature of the chronic disease and the interplay between the systems and someone's quality of life. As we said before, the right services are needed at the right time, so the response to changing plans needs to be rapid. Also plans need to really be individualised to the participant. With MS specifically there are hidden symptoms of fatigue and a lack of insight that can drive a family into breakdown.¹⁵

5.18 Dr Baker from NDS also highlighted the importance of designing a scheme with the capacity to react quickly to deal with points of crisis or emergency:

It is a critical function of any disability support system that is can respond to the unpredictable circumstance; to the emergency; to things that cannot easily be built in to a person's plan. The bill does give the capacity for that

13 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment D, p. 14.

14 Ms Williams, Kids Matters Occupational Therapy, *Proof Committee Hansard*, 30 January 2013, p. 15.

15 Ms Tame, MS Australia, *Proof Committee Hansard*, 31 January 2013, p. 26.

to happen and for the agency to review a plan at short notice. Where there needs to be more thought in the legislation is for a new entrant—someone who needs to become a participant very quickly. The agency needs the flexibility to be able to fund support for someone who seems eligible without them having to go through any time-consuming eligibility check.¹⁶

5.19 Kathryn Hough from Empowering People in Communities in Western Australia also specifically discussed the issue of having a 21-day period to decide on whether someone is eligible or not in the context of emergency or crises:

My sense is that when a crisis occurs people need support immediately. Family may be able to assist or put some interim supports in place but, in some examples here, if a family member who is the primary carer is seriously ill they will have to be flown to Perth for medical treatment, and the response for this needs to be immediate, within hours. Seeking 21 days for approval could be problematic.¹⁷

5.20 The department responded specifically to the argument that having to wait 21 days for a decision on eligibility does not mean that that is the period that everyone must wait. The bill states that a decision must be made 'within 21 days' and Dr Hartland added:

I would say that this time frame does not mean that you have to wait 21 days. If someone came to the agency in crisis, the agency would be able to respond immediately.¹⁸

Committee View

5.21 The committee shared the view raised by numerous contributors that any scheme must consider the changing nature of various disabilities, and reflect the associated needs in the support it provides. The supplementary information provided to the committee by the department on how the plan will be structured to manage changing requirements satisfies the committee that the scheme is likely to be flexible and broad enough to adapt to changing conditions.

Power of the Agency and the CEO in the plan-making process

5.22 The committee received evidence, alluded to in chapter 2, which questioned the extent of the powers of the agency in general, but particularly in relation to the participant's plan.

5.23 AFDO described the extent of the powers and what safeguards they considered should be built in to the systems to prevent misuse of those powers:

There is a lot of power given to the CEO or their delegated authority in this legislation... They have the power to compel people to get certain kinds of

16 Dr Baker, National Disability Services, *Proof Committee Hansard*, 4 March 2013, p. 73.

17 Ms Hough, Empowering People in Communities, Western Australia, *Proof Committee Hansard*, 5 March 2013, p. 30.

18 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 54.

assessments. They kick-start a person's plan. They have the power to approve or not approve a person's plan. They have the power to look at reviews and complaints. So there is a lot of power that is potentially vested in the one person as a delegated authority. The key thing is to ensure two things: firstly, that you do not have a situation where it is just one person, or one delegated authority, in areas where there is going to be some difficulty or where some careful decisions have to be made. There needs to be an approach where people can go to a tribunal, or a panel of people, for those decisions to be made. Secondly, it is about putting back some of the give and take into allowing people to push back... It is about creating further steps for people to appeal or to have some say in how this works, making it more collaborative and making sure that there is more than just one person and that it is a bit more transparent.¹⁹

5.24 The Association for Children with a Disability also commented on how to design the powers of the CEO to achieve the responsible management of public funds, while ensuring participants have the opportunity to manage an appropriate level of risk:

It is the way in which the legislation is written—that it is one person, this CEO, and obviously it is not; it is actually the agency...but it is really important to have safeguards in place too. It is all about the balance of what is essentially public funding and the importance of making sure that that is used effectively, but people definitely have some control and choice within that. As I said right at the very beginning, it is also about balancing the sustainability of the scheme. Therefore, it would be a matter of looking at each instance that you are suggesting, where the CEO has veto or power, and then recognising whether that is appropriate not. We have said that it is important that the ownership of the plan sits with the participant—in our case, that is children and their family.

5.25 The MS Society in WA spoke of the uncertainty and anxiety that the language in the bill may cause to participants:

Much of the work talks about the CEO being satisfied, it talks about approved form. Section 48(4) says that the CEO may conduct a review of the participant's plan at any time. I really need to point out how unsettling that can be for people for disabilities. The scheme, ironically, is geared towards providing surety, certainty and peace of mind for the individual with a disability on a long-term basis rather than the vagaries of the cap process, which you heard about in the earlier conversations. I am just anxious that we do not accidentally unsettle people who are very vulnerable with statements such as those.²⁰

5.26 PWDA commented on the extent of the CEO's powers and the need for an effective appeals system, and an explanation of the circumstances in which the powers will be exercised:

19 Ms Hobson, Australia Federation of Disability Organisations, *Proof Committee Hansard*, 20 February 2013, p. 6.

20 Mr Stafford, MS Society Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 8.

The CEO has a lot of power under the bill. They can appoint nominees, specify which individuals can manage their own plans, require people to pursue compensation, reveal information to other agencies, ask people to repay funds and intervene in some areas outside the NDIS supports. The mechanisms for review and appeal need to be clear. These powers in some areas should be tempered. The reality will be that these powers are delegated—it [does] not actually mean the CEO, it means a delegate—so how is decision making at the local level going to happen? How is that delegation going to be exercised?²¹

5.27 The department's evidence to the committee provided the rationale for the various powers of the CEO throughout the bill. On the general point of whether too much power in decision making was vested in the hands the agency the department made the following argument:

While the National Disability Insurance Scheme is intended to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports, it also has to provide a structure for decisions about the expenditure of a very significant amount of public funding. The allocation of funding to individuals is ultimately the responsibility of the Agency CEO. This is a responsibility that the Agency CEO should exercise in close partnership with people with disability and their families, carers and on occasion their advocates, but it is inevitably a decision making power that the Agency CEO has to exercise. The issue is whether the core decision points for the Agency CEO, and the associated information gathering powers, should be specified in legislation, or allowed to be done by the Agency CEO under the general administrative powers which officers responsible for the expenditure of public funding have available to them. The Bill reflects the judgement that it is more transparent, and ultimately protects the rights of people with disability to a greater extent, to have the powers of the Agency CEO clearly specified. This ensures that where appropriate the CEO's exercise of these powers can be scrutinised by external review bodies. In simple terms, specifying what the CEO is able to do also allows the law to be clear as to what the CEO is not able to do and therefore provides important protections to people with disability who are, or want to be, participants in the scheme.

5.28 David Bowen, the CEO for the agency, responded specifically to concerns that have been raised throughout the inquiry in relation to the practical application of the powers of the CEO:

The Bill and the rules speak of the CEO making all decisions and requesting information. Some commentators are concerned that this suggests all decisions may be made in Canberra and may even be made personally by the Agency CEO. This is not the intention, indeed far from it. Clause 202 of the Bill permits the CEO to delegate powers and functions under the legislation. There will be delegation of the CEO powers to Agency employees at all launch sites. The policy is to have all decisions

21 Mr Wallace, People with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 59.

made by employees situated as close to NDIS participants, prospective participants, carers, nominees, support providers and other stakeholders as possible.²²

5.29 The committee also received the draft rules relating to the powers of the CEO in a variety of circumstances set out in the primary legislation. The rules set out criteria that the CEO must consider before coming to a decision. For example the criteria that would help decide whether a participant would be able to manage their own supports funding or whether this would present an unreasonable risk to them are:

- (a) whether material harm, including material financial harm, to the participant could result if the participant were to manage the funding for supports to the extent proposed, taking into account the nature of the supports identified in the plan;
- (b) the vulnerability of the participant to:
 - (i) severe physical, mental or financial harm; or
 - (ii) exploitation; or
 - (iii) undue influence;
- (c) the ability of the participant to make decisions;
- (d) the capacity of the participant for financial management;
- (e) whether, and the extent to which, any risks could be mitigated by:
 - (i) the participant's informal support network; or
 - (ii) any safeguards or strategies the Agency could put in place through the participant's plan.

3.9 The safeguards referred to in paragraph 3.8(e)(ii) could include, for example:

- (a) setting a shorter period before the participant's plan is reviewed; or
- (b) setting out regular contacts between the Agency and the participant; or
- (c) providing funding for supports (for example, budgeting training) that would assist the participant to manage their own plan.²³

5.30 Nicholas Mann from Slater and Gordon lawyers did not see the powers conferred to the CEO as being exceptional or unusual:

Certainly the powers conferred in this bill are similar to those that you would find in Comcare. They are perhaps a little stronger than some of the

22 Mr Bowen, NDIS Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 39.

23 *National Disability Insurance Scheme draft Rules—Plan Management*, Part 3 Unreasonable risk—criteria for decision, pp. 6–7.

state legislation, such as the state insurance powers, but I do not think we see anything new or novel about the powers conferred in this bill.²⁴

Committee View

5.31 As discussed in chapter 2 the committee understands the concerns of submitters who were concerned about the general tone of the legislation and the apparently heavy handed nature of some of the powers of the CEO and the consequent implications these could have for the concept of choice and control. The nature of the NDIS policy and legislation development process, including the lack of availability of draft Rules due to time constraints, and commentators not being in receipt of all the information, has led to perceptions being created that may not be reflective of how the scheme will operate.

5.32 The information provided to the committee in the form of draft Rules, operational guidelines and evidence from senior officials from the department and the agency, has alleviated many of the concerns of the committee. In the context of the scheme being developed progressively using launch sites, the government's explicit commitment to learning through the launch process, and with the statutory review of the bill (clause 208), the committee is content that the powers of the CEO in the making and operation of the plan are appropriate.

Definition of reasonable and necessary supports

5.33 Clause 34 of the bill sets out criteria that must be satisfied in order for the support to be funded. These criteria are as follows:

- (a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
- (b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
- (c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
- (d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
- (e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
- (f) the support is most appropriately funded or provided through the National Disability Insurance Scheme, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
 - (i) as part of a universal service obligation; or

24 Mr Mann, Slater and Gordon, *Proof Committee Hansard*, Thursday 21 February 2013, p. 16.

- (ii) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability;
- (g) the support is not prescribed by the National Disability Insurance Scheme rules as a support that will not be funded or provided under the National Disability Insurance Scheme;
- (h) the funding of the support complies with the methods or criteria (if any) prescribed by the National Disability Insurance Scheme rules for deciding the reasonable and necessary supports that will be funded under the National Disability Insurance Scheme.²⁵

5.34 Mr Rehn from the RIDBC voiced his concerns over the definition of 'reasonable and necessary supports', particularly around the criteria of value for money in clause 34(c):

We are a little concerned about the aspects of section 34, 'Reasonable and necessary supports', especially paragraph (c), which includes an economic rationale with the inclusion of value for money as a determining factor in assessing 'reasonable and necessary'. This is compounded by the statement that benefits achieved will be used as an undertaking factor in assessing value for money. This is extremely contentious from our perspective and we can foresee many issues arising from that paragraph.²⁶

5.35 Novita Children's Services in SA expressed their concern that there wasn't enough detail in the bill to assess whether or not the definition is appropriate and would cover the requirement supports:

One of our concerns is that the bill should not be passed until due consideration of those rules is provided for since in sections 26 and 27 around assessment and also section 34—the definitions of reasonable and necessary supports—there is quite a reliance on rules to articulate what those sections actually mean.²⁷

With clause 35 concerning reasonable and necessary support the issue is the same. Until we see the rules we do not know what might be included and what might be precluded.²⁸

5.36 Dr Maree Dyson made an interesting point that switching the two criterion may have an impact on the decision making when it comes to assessing the supports that will be funded:

I would reverse the notion of 'reasonable and necessary' to put 'necessary' as the first consideration. You ask: 'Is the response needed?' and then you move into discussions about the extent to which the funding and support is

25 NDIS Bill, clause 34.

26 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 3.

27 Mr Rappensberg, Novita Children's Services, *Proof Committee Hansard*, 19 February 2013, p. 11.

28 Mr Thompson, Novita Children's Services, *Proof Committee Hansard*, 19 February 2013, p. 12.

in fact reasonable. I think the emphasis is the wrong way around. There has to be a focus on outcomes.²⁹

Committee View

5.37 The committee has now seen draft rules that prescribe the criteria for the types of supports that will be provided and/or funded by the agency.³⁰ They are comprehensive, and while the committee cannot speak for the submitters who were concerned about what could constitute a 'reasonable and necessary' support, the committee is satisfied that the detail provided in the rules responds to the kinds of concerns raised during the inquiry.

Why does it matter if the participant is overseas?

5.38 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 draft rules provide detail on various circumstances where this period could be extended: Clause 40 states:

40 Effect of temporary absence on plans

- (1) A participant for whom a plan is in effect may be temporarily absent from Australia for the grace period for the absence without affecting the participant's plan.
- (2) The ***grace period*** for a temporary absence of a participant is:
 - (a) 6 weeks beginning when the participant leaves Australia; or
 - (b) if the CEO is satisfied that it is appropriate for the grace period to be longer than 6 weeks—such longer period as the CEO decides, having regard to the criteria (if any) prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.
- (3) If a participant for whom a plan is in effect is temporarily absent from Australia after the end of the grace period for the absence, the participant's plan is suspended from the end of the grace period until the participant returns to Australia.
- (4) For the purposes of this section, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of paragraph 23(1)(a)).

5.39 The Association for Children with a Disability submitted that this clause represented an impost by the agency on the lives of people with disabilities:

29 Dr Dyson, Private capacity, *Proof Committee Hansard*, 21 February 2013, p. 50.

30 National Disability Insurance Scheme Draft Rules, *Rules for registered providers of supports*, received 5 March 2013.

This is an insurance scheme, not a welfare-to-work scheme. Why is it any business of the Agency whether the participant is overseas, provided it is consistent with the plan?³¹

5.40 Bolshy Divas posed the same question: 'should people with disability be allowed to go on holiday, and should they have to ask permission?'³² DANA argued that:

NDIS supports should continue to be available, without CEO involvement, to people travelling overseas when they are undertaking a normative activity that does not affect their residency.³³

5.41 Others, while not necessarily rejecting the provision outright, thought the period was too short. Service provider Novita Children's Services agreed it was too short, suggesting an extension of 'at least a further 4 weeks'.³⁴

Committee View

5.42 The committee notes 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). It notes that this provision, while of concern to some submitters, also has the benefit of allowing the CEO to continue to provide reasonable and necessary supports reflecting a person's circumstances, including circumstances involving travel. The committee is pleased to see that the draft rules explicitly recognise a range of circumstances in which extended overseas travel may be sought, and that these are to be considered by the CEO in processes under clause 40 of the bill.

Privacy

5.43 There were some concerns raised in evidence about the privacy provisions in Chapter 4 of the bill. The Queensland Disability Network commented generally on the issue by providing an example of when the privacy of people with disabilities is breached inappropriately, or information is requested by care givers beyond what is necessary:

With regard to privacy: QDN believes again that this is a very important window where currently some non-essential information relating to the person's life is shared with care givers. I can give a personal example in this instance where I once had a HACC service visiting my house and they wanted to know what form of contraception I was using. It had no relevance to wiping the kitchen benches. I think there is a level of intrusion and invasion into the personal aspects of life for people with disability which

31 Association for Children with a Disability, *Submission 741*.

32 Bolshy Divas, *Submission 564*, p. [11].

33 Disability Advocacy Network Australia, *Submission 516*, p. 23.

34 Novita Children's Services, *Submission 441*, p. 5.

has gone on for too long. Only information which is relevant to support needs to be shared with those delivering the support.³⁵

5.44 The Office of the Australian Information Commissioner commented specifically on sections of the bill around the interaction between state and federal laws, proposing that efforts be made to ensure consistency across jurisdictions:

[I]t appears that the National Disability Insurance Scheme Launch Transition Agency (NDIS Agency) will be covered by the Privacy Act and that the Information Privacy Principles will apply to its operations. However, it is unclear the extent to which other entities participating in the Scheme will be covered by privacy law. Some non-government organisations may be covered by State or Territory privacy law where they are contracted by State or Territory agencies to provide services on behalf of government. Others may not be covered by privacy law in States where no such legislation exists. Further, if a participating entity falls within the small business exemption in the Privacy Act it will not be covered by Commonwealth privacy law. Given the amount of personal information that will be collected and used under the Scheme, it will be important to ensure appropriate and consistent coverage of all participating entities under privacy law.³⁶

5.45 The department responded to the concerns of the Commissioner as set out in their submission with the view that the provisions in the bill were fairly standard and well tested in various Commonwealth laws:

Dr Hartland: These are reasonably standard provisions in Commonwealth legislation to protect information that the agency acquires and to allow the agency owner to share it under limited and transparent conditions. So the rules on protection and disclosure of information that we have provided to you outline the circumstances where the agency CEO may disclose information. These are reasonably standard, I think, for Commonwealth acts. I do not think we have departed a great deal from other areas. It has an added complexity that it has to interact with state laws, so it is probably a bit more complex in its expression than we are when we do it in social security, but—

Ms Wilson: I am a bit surprised that there are concerns from the Privacy Commissioner, to be honest, because these provisions are pretty well known and pretty well tested in a range of other Commonwealth laws.³⁷

5.46 The committee also noted that departmental officials are scheduled to meet with the Australian Information Commissioner to discuss the concerns outlined in his submission.³⁸ The committee anticipates that if any amendment to the provisions that

35 Ms Vicary, Queensland Disability Network, *Proof Committee Hansard*, 30 January 2013, p. 4.

36 Office of the Australian Information Commissioner, *Submission 486*, p. 2.

37 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 73.

38 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 73.

ensure consistency across jurisdictions was required, this would be considered by the department.

Chapter 6

Registration of Providers

6.1 This chapter highlights comments and concerns received by the committee in relation to the registration of 'providers of supports' under the NDIS. The criteria regulating the registration of providers are outlined in chapter 4, part 3, clauses 69 – 73 of the bill. The committee was also supplied by the department with draft Rules that form an important part of the framework for provider registration.¹

Registration

6.2 Clause 69 establishes the framework for a person or entity to become a registered provider of supports and/or a manager of funding for supports. Clause 70 outlines the process for the agency CEO to approve an application made under the preceding clause. Clause 71 stipulates when a person or entity ceases to be a registered provider, and clause 72 outlines the process for the CEO to revoke the registration of a provider of supports. The bill is complemented by the rules which provide further guidance on the functioning of these clauses. Clause 73 sets out the scope for which rules may be made governing registered providers.

6.3 Registration is only *required* for providers wishing to contract directly with the agency.² The department highlighted the rationale of having a cohort of registered providers:

Provider registration is critical to enable:

- A listing of potential providers to inform participant decision making, while noting providers can join this listing at any time;
- Payments to be systematically made where the plan or elements are not self-managed;
- Information on supports and related information such as compliance with relevant regulations is known and maintained by the provider.³

6.4 The department informed the committee that registration requirements balanced community expectations of risk management, oversight of public expenditure, and ease of compliance:

To limit the Agency to using providers who are registered, but to ensure that the process for registration is not onerous on providers. To this end the Rules have been designed to limit the impost on providers while enabling

1 National Disability Insurance Scheme Draft Rules, *Rules for registered providers of supports*, received 5 March 2013.

2 NDIS Bill, Subclause 33(6).

3 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 35.

the Agency to collect information that the community would reasonably expect should be able to be provided quickly and easily by any provider of specialist disability support.⁴

6.5 The committee noted the concerns in Deaf Australia's submission, that the potential complexity of the registration and compliance process may discourage organisations and individuals from registering:

...the requirements to register as a provider and the requirements with which providers must comply may be so onerous that they (a) limit people with disabilities as to who they can choose as their support providers and (b) make it too difficult for people with disabilities themselves to be providers of supports.⁵

6.6 Evidence received from the agency CEO indicates that registration requirements will not be overly burdensome considering the potentially large volumes of public money being expended:

At its core, registration calls for the [Australian Business Number] and the bank account details to enable payments to flow and providers to be identified appropriately. Providers will also be asked to identify the services they want to offer and what quality assurance and standards they comply with, if any....This material will be important to inform participant and Agency decision making.⁶

6.7 As the rules were not available to stakeholders when preparing submissions or appearing at hearings throughout this inquiry, the committee did not receive any specific comment regarding their content. On the face of it, the draft rules provided to the committee relating to the registration of providers strike a balance between assuring quality, and preventing unnecessary red tape for prospective registrants.

6.8 The committee heard divergent views on the level of regulation that should accompany (ongoing) registration. The committee heard that during this process of deregulation of the disability services market it was important to ensure that there are appropriate safeguards in place:

There is a fair bit in the legislation about the registration of providers. As a provider that currently works in a very regulated market, we see the implementation of the NDIS as totally deregulating, something that we have never experienced before. We think that with a newly formed deregulated market there will be an influx of other organisations. That is okay, but shiny new toys often present themselves in ways with little validation beneath. We feel that the quality control provisions and the assessment and validation processes will be critically to ensuring that we are able to offer safe alternatives to people with disabilities.⁷

4 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 35.

5 Deaf Australia, *Submission 577*, p. 2.

6 Mr Bowen, National Disability Insurance Scheme Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 40.

7 Ms Graham, Samaritans Foundation, *Proof Committee Hansard*, 31 January 2013, p. 55.

6.9 Queenslanders with Disabilities also anticipated that the sector will see the emergence of new providers offering niche, targeted services as participants and their advocates seek the best services for their unique needs:

We are going to see a power shift where people with disability and their families need to go to the service that meets their needs. If I were projecting forward, I would see maybe some emergence of small niche providers who really meet the needs of a niche market.⁸

6.10 The Victorian Equal Opportunity and Human Rights Commissioner (VEOHRC) noted the importance of ensuring that adequate oversight mechanisms are in place as new providers emerge to meet the growing market:

Ensuring adequate oversight is particularly important as the market develops new forms and suppliers of services during that trial. This will include new private and community service providers but could also include arrangements where parents or carers engage themselves or family members to provide supports...In developing the NDIS rules in relation to registered providers, consideration must be given to appropriate processes for registration and clarification of how oversight mechanisms would work in such circumstances, including the interplay with existing state legislation.⁹

6.11 The committee was cautioned by the NPWDACC that the registration requirements should not act as barriers to entry, rather than being genuinely necessary for the particular risk.¹⁰ It was likewise noted by the National Councils of Social Services (NCOSS) that, while registration is an important quality assurance mechanism, it should not act as a barrier to entry:

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.¹¹

6.12 The VEOHRC emphasized that for the NDIS to be as beneficial as possible to participants it is important that 'persons and entities are assessed and confirmed to be appropriately skilled to provide the service before they are registered.'¹²

8 Ms Vicary, Queenslanders with Disability Network, *Proof Committee Hansard*, 30 January 2013, p. 9.

9 Victorian Equal Opportunity and Human Rights Commissioner, *Submission 589*, p. 5.

10 National People with Disabilities and Carers Council, *Submission 612*, p. [21].

11 National Councils of Social Services, *Submission 645*, p. 9.

12 Victorian Equal Opportunity and Human Rights Commissioner, *Submission 589*, p. 6.

6.13 The evidence was generally consistent in calling for some registration to ensure the quality of services provided and necessary safeguards for consumers. It was the scope and mechanism of those protections that was the subject of competing evidence.

6.14 The NPWDACC called for the criteria for registration and compliance to be graduated according to participant-, service-related-, cost-related- and market-related risk.¹³ Similarly, DANA and BCA argued that the degree of complexity of the registration and compliance process should be commensurate with the level of risk posed by the service to participants.¹⁴ As noted by Queenslanders with Disability Network: 'an inverse relationship must exist between the capacity of the participant and the level of safeguards required to protect them.'¹⁵

6.15 This approach was fleshed out more fully by the CEO of NDS:

There is no simple answer. But the appropriate approach to registration of providers and qualifications is a risk based approach. We think that there are several dimensions of risk that should influence that decision. One is the characteristics of the participant. If we are thinking about a participant who has cognitive impairment or an intellectual disability or who is vulnerable in some other way, then the checks and the management of risk should be greater and the registration of providers should be more onerous.

A second dimension is the type of service provided. If the type of service provided involves intimate personal contact or intrusive bodily contact, such as tube feeding, then there clearly need to be qualified people involved and the risk is higher. But if the service is gardening then I would have thought that the generic consumer regulations that apply to gardening would be sufficient.

A third dimension is the cost. If the agency is to invest heavily in, let us say, a piece of equipment such as an electric wheelchair they may want to insist that some fairly rigorous standards apply to that equipment, because there is a substantial public investment in it.

The fourth dimension to risk, in our view, is a chronological one. It is recognising that at the outset the NDIS support market will be quite new, both to participants and to providers, neither of whom are used to operating within a market based system. We have lived for decades with a system in which demand for services has greatly exceeded supply. Participants are not used to making sophisticated purchases of disability supports. Not-for-profit providers are not used to this sort of marketing of what they do. It may be that at the outset the NDIS disability market is more highly

13 National People with Disabilities and Carers Council, *Submission 612*, p. [20].

14 Disability Advocacy Network Australia, *Submission 516*, p. 26; Blind Citizens Australia, *Submission 594*, p. 10.

15 Ms Vicary, Queenslanders with Disability Network, *Proof Committee Hansard*, 30 January 2013, p. 4.

regulated than it might be in 10 years' time after there has been a maturing of the system, the participants and the providers.¹⁶

6.16 The draft rules and evidence received from the CEO of the agency appear to indicate that a risk-rated registration and compliance mechanism is going to be utilised by the agency:

The NDIS Bill and Rules aim to achieve a balance between effective choice and control for participants and management of risks for vulnerable people. The Bill requires that the CEO be satisfied that a provider meets the criteria prescribed by the Rules. The draft Rules set out the following criteria for registration:

- An ABN and account with a financial institution (to enable efficient payments by the Agency)
- Agreement to the Agency's terms of business
- Compliance with workplace and employment laws (if an employer)
- Compliance with criminal laws
- Qualifications, experience and capacity to provide supports for which they wish to be registered

The level of qualification, experience and capacity will be considered in relation to the type and level of risk associated with the support to be provided.¹⁷

6.17 The committee heard that many service providers are already registered under various programs and processes and that the NDIS registration should attempt to avoid unwarranted duplication:

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.¹⁸

6.18 Similarly, ANGLICARE Sydney was keen to know whether state-based verification processes for registering providers would be sufficient for national accreditation or if 'alternative and duplicate processes will be required of service providers – which is both costly and time consuming.'¹⁹

6.19 Going one step further, the Centre for Cerebral Palsy argued that longstanding, existing providers of disability services should be automatically registered by the agency, arguing:

16 Dr Baker, National Disability Services, *Proof Committee Hansard*, 4 March 2013, p. 72.

17 FaHCSIA, *Submission 615*, Supplementary Submission 6152, *Attachment F*, pp. 18–19.

18 National Councils of Social Services, *Submission 645*, p. 9.

19 ANGLICARE Sydney, *Submission 434*, p. 5.

Many disability service organisations have provided services to people with disabilities/families with distinction over a long period of time. Many have been categorised as 'preferred providers' by State/Territory authorities. While acknowledging the need to ensure service quality and financial security, the NDIS needs to acknowledge the role of these service providers by giving them automatic registration.²⁰

6.20 The agency allayed these concerns informing the committee that:

In accordance with the Bilateral Agreements, the existing safeguards and quality assurance systems of host jurisdictions in the launch sites will be utilised. These systems recognise the National Quality Framework and the revised National Standards for Disability Services which are currently being finalised.²¹

Plans managed by the Agency: the impact of Clause 33(6)

6.21 The committee heard concerns about the restrictions that Clause 33(6) may place on who can provide services. Clause 33(6) states:

To the extent that the funding for supports under a participant's plan is managed by the Agency, the plan must provide that the supports are to be provided only by a registered provider of supports.²²

6.22 The effect of this clause is that participants who are having their plan wholly managed by the agency will only be able to access services provided by registered service providers, whereas other nominated fund holders will also be able to purchase supports from elsewhere.²³ As explained by the CEO of the agency: 'When a person is self-managing their plan and directly purchasing supports, they have the freedom to purchase supports from any provider.'²⁴

6.23 Providers of supports who wish to be contracted by the agency will be required to be registered in accordance with clause 69. Providers who do not wish to be contracted by the agency, but intend to provide services to self-managing individuals are not required to become registered providers.

6.24 The committee heard concerns that participants impacted by clause 33(6) may be disadvantaged vis-à-vis participants whose plans are not managed by the agency:

We are very concerned that if the agency manages a person's plan then the agency will only purchase from registered providers of supports. If a participant has a plan manager that is not the agency then that participant can purchase from anyone but if the agency is your plan manager they can only purchase supports from a registered provider of supports thereby limiting who they would purchase supports from. We know that lots of

20 Centre for Cerebral Palsy, *Submission 598*, p. 3.

21 FaHCSIA, *Submission 615*, Supplementary Submission 6152, *Attachment F*, p. 19.

22 NDIS Bill, subclause 33(6).

23 New South Wales Disability Network Forum, *Submission 523*, p.3.

24 FaHCSIA, *Submission 615*, Supplementary Submission 6152, *Attachment F*, p. 19.

people will go to the agency for their eligibility and then stay with them for lots of other roles. We think that could be (1) discriminatory and (2) at the very least limit the options of the people who choose the agency for plans. It is not in the interests of people with disability and is a very poor choice of roles for the agency.²⁵

6.25 UnitingCare Australia argued similarly:

Creates a potential disadvantage in both choice and price for those having their funding managed by the Agency. UnitingCare Australia is concerned that this requirement may be of particular relevance to those people with a disability who may have limited informal supports and/or advocates to assist them. This could include vulnerable cohorts who experience additional disadvantage due to factors such as homelessness, mental illness, drug and alcohol use and or ageing with a disability, further compounding their existing disadvantage.²⁶

6.26 The New South Wales Disability Network Forum (NSWDNF) conclude that the impact of this clause would not only be to reduce choice, but to limit personal development of the participant:

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.²⁷

6.27 Going some way to address these concerns, the agency informed the committee that:

Should the participant want a provider not currently registered, this is also easily addressed with the provider joining the registration listing, noting that the listing can limit that provider to only being available for that participant.²⁸

6.28 Assuming that most organisations providing services to people with disabilities will register, and the ability of a participant to request a specific provider, the choice available to people who are having their plans managed by the agency should not be significantly impinged.

6.29 Currently the registration requirements of subclause 33(6) apply only to providers being contracted directly by the agency. NDS proposed that the

25 Ms Regan, Council of Social Services New South Wales, *Proof Committee Hansard*, 31 January 2013, pp. 13–14.

26 UnitingCare Australia, *Submission 635*, pp. 6–7.

27 New South Wales Disability Network Forum, *Submission 523*, p. 3.

28 Mr Bowen, National Disability Insurance Scheme Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 39.

requirements to use registered providers be extended beyond the plans managed by the agency based on a risk-rated model:

Not all services which can be purchased under the NDIS should be provided by a registered provider of supports. Services such as gardening or cleaning could, for many people, be purchased from generic gardening or cleaning companies. However, support that is person or requires disability support skills (such as personal care, community participation, behavioural support and early intervention therapies) should only be sourced from registered providers. This should be so whether the plan manager is the NDIS Agency or a non-government 'plan management provider'.

Section 33(6) should specify that when a plan is managed by the Agency *or by a plan management provider, certain classes of supports* will require a registered provider (the NDIS Rules will contain the criteria for determining classes of supports). This would ensure the Agency or plan management provider uses only registered providers for disability support while allowing generic services to be sourced more broadly.²⁹

6.30 The majority of the evidence received by the committee did not support additional registration requirements being imposed in excess of those already in the bill. The committee heard that:

There is a great risk of suffocating the intent of having people having choice and control by overregulating what could be a wide range of potential suppliers of services and support.³⁰

6.31 This tension between managing systemic risk and personal was discussed in Chapter 2 of this report.

Committee View

6.32 The committee understands that clause 33(6) only applies to funds managed by the agency. As indicated by the selection of evidence above, the committee heard from a large number of organisations and individuals who were concerned regarding the impact of this clause on the provision of services for people having their funds managed by the agency. The committee was persuaded by the evidence – cited earlier in this chapter – from the agency and the department regarding the necessity of proper oversight of public money, and also the ability for participants to nominate their own registered provider. While the committee considers it prudent that the impact of clause 33(6) be explained to prevent any confusion on the part of participants and prospective service providers, the committee considers that subclause 33(6) should remain in its current form.

6.33 In relation to the suggestion from NDS that providers of certain classes of supports should be registered, the committee anticipates that market forces will act to encourage most prospective providers to register. Although plans not managed by the

29 National Disability Services, *Submission 590*, pp. 6–7.

30 Ms Walker, Western Australian Individualised Services, *Proof Committee Hansard*, 18 February 2013, p. 42.

agency can source services from any provider – registered or not –, registration will confirm to a prospective customer that the provider abides by the NDIS Rules and other laws, and has measures in place to deal with complaints and prospective conflicts of interest. The register will also act as a convenient catalogue from which services can be located. As a result, the committee does not believe that there is need for further amendments in relation to the registration of providers at this time.

Conflict of interest

6.34 A number of stakeholders expressed concerns regarding the proposed legislation allowing a manager of the funding for supports to also provide planned supports, thus creating a conflict of interest.³¹ For example, Disability Justice Advocacy called for the two roles to be kept entirely separate:

[Disability Justice Advocacy] believes there is great potential for both actual and perceived conflicts of interests where a plan management provider for supports is able to manage funding for supports. It is recommended that these roles be kept entirely separate.³²

6.35 It was contended by NSWDNF that:

The [NSWDNF] 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 fund manager.³³

6.36 Brain Injury Australia (BIA) provided another reason for keeping plan management providers and providers of supports separate:

[disability service providers] are not likely to be the best or most appropriate entities to manage the funding of participants — due to (a) conflict of interest issues, and (b) the need to ensure that the system does not revert to a [disability service providers]-centred model (i.e. 'block-funding' by another name/method). Keeping the terms distinct will help to ensure that there is no presumption in the NDIS that [disability service providers] will (or should) become [plan management providers].³⁴

6.37 It was suggested that plan management and provision residing in the same entity may not result in the best outcomes for participants:

If service providers undertake that planning for an individual then we will be losing some of the safeguards that we could have. Some of the conflicts

31 Disability Advocacy Network Australia, *Submission 516*, p. 26; Disability Justice Advocacy Inc., *Submission 431*, p. 4; New South Wales Disability Network Forum, *Submission 523*, p.3; Parents of Deaf Children, Aussie Deaf Kids and Parents of the Hearing Impaired of South Australia, *Submission 579*, p. 9.

32 Disability Justice Advocacy Inc., *Submission 431*, p. 4.

33 New South Wales Disability Network Forum, *Submission 523*, p.12.

34 Brain Injury Australia, *Submission 528*, p. [51].

that would come when the service provider was involved in planning would be, for example, a tendency to nominate their own services as best-fit for the purpose. They would be much less able to look at the effectiveness of the plan when it has actually been implemented.³⁵

6.38 Deaf Australia raised the spectre that allowing plan management providers and providers of supports to undertake both functions concurrently would mean that, for the participants, little would change under the NDIS compared to the prevailing system. They stated:

Allowing providers of supports to also provide planning and fund management mean that for many people with disabilities nothing much will change, they will still be going to the same organisation for all their needs, as they do now. This will not lead to increasing independence, choice and control for people with disabilities. It will also not provide incentives for service providers to reimagine their services and develop new types of services to meet new needs, or for new support providers to emerge in a more mature market.³⁶

6.39 Similarly, Children with Disabilities Australia argued that allowing registered providers to simultaneously act as plan managers and providers of supports:

...waters down the ambition of the sector reforms that the NDIS has signalled. Participants must be offered a range of options for the management of their plan so as not to limit choice, however their service provider should not be available as a choice in this area.³⁷

6.40 DANA similarly noted that the potential for conflicts between the best interests of the registered service provider and the participant was the reason that the Productivity Commission did not support single entities being vested with plan management and service provision roles, and on this ground that DANA has called for the legislation to be amended.³⁸

6.41 It was recognised that by Deaf Australia that in regional and remote contexts it may not always be feasible to have separate plan management and service providers. In such cases it was recommended that the agency could undertake the role of plan management provider.³⁹

6.42 NDS expressed support for the current structure of clause 70 arguing:

Participants should be able to choose their plan management providers as well as their support providers. As long as there are plan management providers that are independent of support providers available as an option, and that plan management providers are required to disclose all relevant interests including financial interests (in a manner similar to financial

35 Ms Epstein-Frisch, Family Advocacy, *Proof Committee Hansard*, 31 January 2013, p. 44.

36 Deaf Australia, *Submission 577*, p. 2.

37 Children with Disabilities Australia, *Submission 607*, p. 8.

38 Disability Advocacy Network Australia, *Submission 516*, p. 26.

39 Deaf Australia, *Submission 577*, p. 2.

advisors), NDS believes a participant should be free to choose a support provider to manage their plan. In some cases, the registered disability service provider will be the entity that the participant trusts, has a relationship with, and believes best understands their goals.⁴⁰

6.43 The Centre for Cerebral Palsy also noted that the differentiation of a manager of the funding for supports from support providers goes against the current trend where many support providers also manage funds.⁴¹

6.44 The CEO of NDS did not dismiss the concerns of potential conflicts of interest arising, but argued that they were manageable in the same way as potential conflicts of interest in other domains are managed:

I understand the contrary argument that it is related to potential conflict of interest if a support provider is also a plan management provider, but in our view that conflict can be managed, and to prohibit any cases where a support provider was also a plan management provider would deny participants choices that they may want to make...As long as that plan management provider declares any conflict of interest—just as that is a requirement for financial advisers generally—and that there are available independent providers that they can choose from, that would seem to us adequate protection. An additional protection might be that the agency itself could audit referral patterns—just as government does with GPs—so that if it were the case that all the business of a participant were directed from a plan management provider to a single support provider, at least the question could be raised.⁴²

6.45 The committee was informed that potential conflicts of interest are addressed in the draft rules. The committee learnt that:

When the provider seeks to be registered to provide supports and manage funds on behalf of a participant, they also need to demonstrate they have mechanisms in place for dealing with the (perceived) conflict of interest.⁴³

Committee View

6.46 Given the level of concern raised with the committee, that conflict of interest between those managing funds for supports and those providing services needs to be avoided, the committee is of the view that provision for a mechanism to prevent this conflict is best made explicit in the primary legislation rather than facilitated through the rules. The committee is not intending that the mechanism itself be stated in the bill, but that the bill should indicate that a mechanism needs to be in place. The detail can then be addressed through rules.

40 National Disability Services, *Submission 590*, p. 8.

41 Centre for Cerebral Palsy, *Submission 598*, p. 3.

42 Dr Baker, National Disability Services, *Committee Hansard*, 4 March 2013, p. 71.

43 FaHCSIA, *Submission 615*, Supplementary Submission 6152, *Attachment F*, p. 19.

Recommendation 20

6.47 The committee recommends that provision be made in the bill for a mechanism to ensure that service providers must have a system in place to manage potential conflict of interest, and the performance of that mechanism should be examined during the review of the Act in 2015.

Complaints regarding registered providers

6.48 The committee heard many calls for the establishment of effective and accessible complaints mechanisms.

6.49 Youth Disability Advocacy Service (YDAS) recommended the establishment of an independent complaints handling body that can respond to complaints about services providers.⁴⁴ It was argued that:

This body would be responsible for making service providers accountable to the National Disability Standards. It would also support the resolution of disputes between service users and service providers.⁴⁵

6.50 This view was also put to the committee by the VEOHRC who recommended that:

A complaints system for participants to bring complaints against registered providers and the Agency must be established as a matter of priority. For such a system to be meaningful and effective there must also be appropriate resourcing of individual and systemic advocacy.⁴⁶

6.51 It was noted by the ACTHRC that the proposed complaints mechanism in the bill was limited to registered providers.⁴⁷ Many participants will access services from individuals and companies that are not registered providers, and it was argued by the ACTHRC that:

While it may not be appropriate to apply all the same criteria that will apply to registered providers, people with disabilities who experience problems with service provision should, as a minimum, be entitled to access an independent and impartial complaints authority to seek assistance in resolving those concerns.⁴⁸

6.52 The committee is pleased to note that many of the concerns raised by stakeholders during the course of this inquiry appear to have been addressed in the recently released draft rules.

6.53 The committee was informed by the department that in the beginning, the NDIS will use the existing complaints infrastructure in the states and territories in relation to complaints regarding registered providers:

44 Youth Disability Advocacy Service, *Submission 583*, p. 5.

45 Youth Disability Advocacy Service, *Submission 583*, p. 5.

46 Victorian Equal Opportunity and Human Rights Commissioner, *Submission 589*, p. 5.

47 ACT Human Rights Commission, *Submission 640*, p. 12.

48 ACT Human Rights Commission, *Submission 640*, p. 12.

In the states and territories there are quality assurance processes and review bodies, effectively, that enable complaints to be dealt with in relation to service providers. In the first instance, the agency will pick up and use those processes. As the disability commissioners would make clear, these are quite complex and run from a series of fairly routine complaints—what has happened; quality assurance—but they also reach back to things like restrictive practices. Unpicking that for limited sites quickly is risky, so we have decided to build on the existing organisations, pick them up and use them and make sure the agency can interact with them.

It is those processes where complaints about the behaviour of a service provider get dealt with, and there are established processes to do that. So we will use those in launch sites.⁴⁹

6.54 Under the draft rules provided to the committee, a registered provider must inform the agency that a complaint has been made, and the registered provider must notify the agency of the action that the provider takes in relation to the complaint.⁵⁰

6.55 In response to a complaint, the CEO of the agency has the power under the rules to revoke the registration of a registered provider:

The provider is the subject of a complaint to a responsible authority about the standard, effectiveness or safety of the provider's provision of supports or management of the funding for supports, regardless of whether those supports are provided or funded under the Act.⁵¹

6.56 The department also emphasized to the committee that under the new scheme participants will be able to move service providers if they are unhappy with the service they are receiving. As was explained to the committee:

[The] other dimension of the new scheme here is that, if the individuals are unhappy with that support provider, they can move because their funding is individualised. Once a scheme is working, it is not a grant system which is paid to the provider as a lump sum in respect of the capacity; the individual has their own money which then goes to the provider that they choose. So, if they are unhappy with that provider and there are alternative providers, just like any consumer they can take their money elsewhere, to another provider.⁵²

Committee view

6.57 The committee has carefully noted the concerns cited during the course of the inquiry regarding the lack of the inclusion of a complaints mechanism in the bill.

6.58 The committee notes that the need for formalised complaints mechanisms for registered providers should not be less under the NDIS than under older disability

49 Dr Hartland, FaHCSIA, *Committee Hansard*, 5 March 2013, p. 65.

50 FaHCSIA, *Submission 615*, Supplementary Submission 6152, *Attachment E*, p. 9.

51 National Disability Insurance Scheme Draft Rules, *Rules for registered providers of supports*, para 5(2)(d), p. 10.

52 Ms Carmody, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 66.

support schemes. Participants, like other members of the community, will be free to use the services they wish and will vote with their feet if they are receiving poor service. For many people, the cost of dealing with the complexity and stress of resolving a complaint will not outweigh the benefit of moving to an alternative provider who is able to meet the expectation of the participant.

6.59 Nevertheless, changing providers can present challenges, and choice is not always available, particularly in regional and remote areas, or for highly specialised services or equipment. For these reasons, it is vital that there is a formal complaints process recognised in the bill, and that there is a defined pathway by which complaints can have the capacity to affect a service provider registration, if the provider fails to respond adequately to those complaints.

6.60 The draft rules and evidence provided by the department and the agency have satisfied the committee that for the purposes of the launch sites the complaints provisions in place regarding registered providers are sufficient to protect the interests of participants and the integrity of the scheme.

Workforce Issues

6.61 Various organisations discussed the impact the NDIS will have on the disability sector workforce. Potential issues raised included the risk of increased casualisation of the workforce due to reductions in block funding and the need for increased flexibility. The prospect of shortages of appropriately skilled staff, and the need for training across the sector, were also discussed by some stakeholders.

6.62 The Queensland Alliance for Mental Health Incorporated spoke of how service providers faced a challenge in restructuring the workforce to respond to the changing nature of service delivery that NDIS will bring:

People have spoken to us about how managing in this new environment will have an effect on workforce and workforce planning, how it will have an effect on how they manage their staff and the sorts of management skills they will need to bring in, the sorts of structures their organisations will need to be mindful of as they design perhaps a way to pitch the services they provide to people, the way they promote their services and the sort of money that might be needed to change their organisation to manage this effectively.⁵³

6.63 Cootharinga North Queensland also discussed the impact of the NDIS on workforce planning and the problems that attracting and retaining appropriately skilled staff, particularly in rural and regional areas:

We welcome the dramatic increase of funding that is expected, but we also anticipate that there are going to be some significant issues for developing an appropriately skilled workforce. We are concerned too about a potential for a move to casual employment in the sector. With individual choices it is going to become more of a challenge to offer ongoing, secure full-time

53 Mr Nelson, Queensland Alliance for Mental Health Incorporated, *Proof Committee Hansard*, 30 January 2013, p. 12.

work, and the prevalence of part-time work is expected to increase. There are going to be challenges for organisations like ours to retain and develop staff in an environment which may see an increase in casual employment. The challenges of developing an enhanced workforce are certainly bigger in regional and rural areas and certainly in those areas that are affected by other employment opportunities such as mining.⁵⁴

6.64 The Health Services Union (HSU) referred to the emphasis the Productivity Commission had put on the provision of a sufficiently trained and skilled workforce to ensure the sustainability of an NDIS:

[T]he Productivity Commission clearly identified that workforce was a key issue in terms of quality outcomes and sustainability of the NDIS and that, without resolving this issues, it will be difficult to promote consumer choice, consumer control and facilitate the introduction of the NDIS. The Productivity Commission also clearly identified that a highly skilled workforce is required to provide high-quality daily supports to individuals with complex needs.⁵⁵

6.65 HSU was also strongly of the view that the true costs of the service delivery should be included in an individual's package, to ensure that service providers could meet the fixed costs associated with providing their services:

We are concerned to ensure that the structure of funding arrangements built in and around individualisation also includes balanced and complementary funding to service providers to support the real cost of service delivery, including the range of capital, fixed, training, compliance, quality and other collective operational costs that go to providing training and to ensure that those service providers are able to secure and support the ongoing professional development of a quality workforce. Funding streams need to be built into the system that deal with sustainable service provision effectively.⁵⁶

6.66 United Voice noted that the bill has the potential to create a fragmented workforce that will ultimately lead to a drop in the quality of service provisions:

[T]here are three key issues that we see will cause fragmentation in the sector. One of those is the capacity for a person with a disability to enter into a direct employment relationship. There are also issues around a person with a disability and/or their carer employing family members at a reduced wage rate. We also have concerns around the 'funding follows client' model without a clearly articulated workforce strategy in place. The way that this can impact on the disability services workforce is by things like limiting career progression and opportunities and limiting salary progression through the opportunity to move up classification levels based on skills and experience. We are also concerned around some attitudes—the attitude that

54 Mr Walsh, Cootharinga North Queensland, *Proof Committee Hansard*, Tuesday 29 January 2013, pp. 11-12.

55 Mr Williams, Health Services Union, *Proof Committee Hansard*, Monday 4 March 2013, p. 18.

56 Mr Williams, Health Services Union, *Proof Committee Hansard*, Monday 4 March 2013, p. 18.

is represented by not having a workforce strategy with respect to improving staff qualifications and standards.⁵⁷

6.67 United Voice thought that the advisory council should oversee workforce matters in the sector with a view to increasing the capacity, skills and quality of the staff working in the sector:

The key recommendations in the United Voice's submission is that the composition of the independent advisory council include trade union representation—those unions with relevant coverage of the disability workforce; that the NDIS bill recognises that the disability services workforce is a key part of the implementation of the NDIS; and that the bill needs to explicitly provide funding and other mechanisms to solve the current and future workforce issues.⁵⁸

6.68 The department referred the committee to the measures already in place through the launch of the NDIS, but also through the continuing work done by the states and territories in trying to attract people into the sector:

There is some funding associated with the launch that is about workforce and sector development, but the ongoing upgrading of skills and the maintenance of skills in the human services workforce is an ongoing issue. The funding provided for support for individuals should include that as an overhead, but it is a broader issue across the community services workforce that is present. To some extent, there has already been quite a lot of effort in some states and territories put into attracting, retaining and developing skills and a workforce in this area—for example, work that New South Wales has done in what is called Care Careers, and the agency intends to piggyback on that.⁵⁹

6.69 The agency also committed to addressing any gaps in the provision of appropriately skilled staff as the scheme is rolled out over the trial sites.

Attracting people and the provision of specialist skill programs would be something that we would look at out of the workforce and sector development fund, where there may be gaps in the current qualifications and skills of people—say, for people with complex behavioural needs or those who need particular elements of nursing care associated with their physical disability. We will look at that stuff and address it if there is a gap in the market.⁶⁰

6.70 Finally, the department also pointed out that a range of existing compliance requirements for employers would be in place for anyone employed in the sector:

Dr Hartland: If it is a requirement of the law—and this does not replace the law in relation to the Fair Work Act or other aspects of the law—we are

57 Mr Milroy, United Voice, *Proof Committee Hansard*, Monday 4 March 2013, p. 19.

58 Mr Milroy, United Voice, *Proof Committee Hansard*, Monday 4 March 2013, p. 19.

59 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, Tuesday 5 March 2013, p. 75.

60 Mr Bowen, NDIS Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 75.

asking providers to declare that they meet the law and they will have to meet the law by the operation of those statutes.

CHAIR: So it is your plan that goes to the agency using registered providers and there would be an expectation that award rates would be paid for care work, as it is now known. But if someone is self-managing, is there any requirement for them to actually follow award rates in payment for—

Dr Hartland: Yes, because the law is clear on this.

...

Ms Wilson: If you look at the requirements for registered providers and at the revocation, part 4 and part 5, it makes pretty clear that compliance with that area of law is important.

Senator SIEWERT: That is clear, and then if they are individually managing their own package and individually contracting people—

Ms Wilson: If a person is in an employee relationship with someone, they would have to meet all the requirements of an employer and there will be, as there are in the states and territories, resources developed to give them a checklist of what that involves, so there would be an expectation that, if they are going to formally employ someone, they meet all those requirements—tax, super, OH&S et cetera.⁶¹

Committee View

6.71 The committee views the implications for the disability sector workforce as one of the key issues in the implementation of the NDIS. Insufficient protection for workers in the industry will ultimately erode the quality of services provided to the participants of the scheme. The need for a highly skilled, trained and motivated workforce is paramount to the success of the NDIS and representatives of workers should be valued partners in its delivery.

Recommendation 21

6.72 The committee recommends that the Commonwealth continues to work with the States, Territories and relevant workforce organisations in the disability sector to ensure that implementation of the NDIS does not lead to more insecure working conditions in the sector, and that measures are put in place to enhance the skills, training and capacity of the disability workforce.

61 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 72.

Chapter 7

Nominees and appeal procedures

Nominees

7.1 Chapter 4 part 5 of the bill creates what are called *plan nominees* and *correspondence nominees*. Nominees are people who may be authorised to do things on behalf of an NDIS participant. They may be nominated by the participants themselves, or by the CEO of the agency. Before the CEO can nominate someone, the bill requires a number of things to be considered, including:

- Any wishes expressed by the participant;
- Whether the person consents to being a nominee;
- Whether they are able to discharge the duties of a nominee set out in clause 80 of the bill;
- Any existing state or territory guardianship arrangements; and
- Anything else required under the rules to be considered.¹

7.2 A plan nominee may be appointed for all aspects of the plan, but the appointment can also limit the matters for which the person is a nominee.²

7.3 On 5 March 2013, the department provided to the committee some draft rules relating to nominees. These provided some additional detail that the government proposes to add on the process of appointment, including that the CEO must have regard to:

- (a) whether the participant would be able to participate effectively in the NDIS without having a nominee appointed;
- (b) the principle that a nominee should be appointed only when necessary, as a last resort, and subject to appropriate safeguards;
- (c) any formal guardianship arrangements that might be in place;
- (d) whether the participant has supportive relationships, friendships or connections with others that could be:
 - i) relied on or strengthened to assist the participant to make their own decisions; or
 - (ii) improved by appointment of an appropriate person as a nominee.³

1 NDIS Bill, clause 88.

2 NDIS Bill, subclause 86(3).

3 National Disability Insurance Scheme Draft Rules – *Nominees*, from FaHCSIA, received 5 March 2013, clause 3.2.

7.4 The draft rules also indicate that wishes expressed non-verbally, or expressed to third parties such as support workers, must be considered.⁴ The draft rules also go into more detail about how the CEO should approach guardianship matters, stating:

The CEO is also to have regard to the following:

(a) the presumption that, if the participant has a guardian whose powers and responsibilities are comparable with those of a nominee, the guardian should ordinarily be appointed as nominee;...

(c) the desirability of preserving family relationships and informal support networks of the participant;

(d) any existing arrangements that are in place between the person and the participant;...⁵

7.5 While the bill requires that the CEO 'have regard to whether a person has guardianship of the participant', the draft rules are more blunt about what this should involve, saying 'The CEO is to consult, in writing, with any guardian in relation to any appointment'.⁶

7.6 Clauses 89 to 92 set out a range of circumstances and processes for the cancellation or suspension of nominees. These include clause 91, under which the CEO may suspend an appointment of a nominee if the CEO believes 'that the person has caused, or is likely to cause, severe physical, mental or financial harm to the participant'.

7.7 Issues raised regarding nominees included how the processes would interact with existing state and territory guardianship arrangements; whether the bill sufficiently reflected a rights-based approach; and whether the conditions set for suspension of nominee status were appropriate.

Guardianship and nominees

7.8 States and territories have existing arrangements under which an individual or organisation may be appointed as a guardian for a person with disability. An organisation with guardianship may also be a service provider. Many submitters queried how the new arrangements would interact with these existing systems.

7.9 Existing guardianship arrangements contain procedural safeguards that some submitters wanted preserved, as well as seeking to avoid duplication. ADACAS stated:

It is not appropriate for the CEO to assume quasi-guardianship appointment powers without the safeguards that are afforded by tribunal systems within each jurisdiction, rather ADACAS believes the NDIS legislation should

4 National Disability Insurance Scheme Draft Rules – *Nominees*, FaHCSIA, received 5 March 2013, clause 4.6(b).

5 National Disability Insurance Scheme Draft Rules – *Nominees*, from FaHCSIA, received 5 March 2013, clause 4.8.

6 National Disability Insurance Scheme Draft Rules – *Nominees*, from FaHCSIA, received 5 March 2013, clause 4.11.

cross reference to state guardianship laws and that these established processes should be used to appoint nominees without the participants consent only if there are grounds to do so.

Recommendation 5.2: That the NDIS legislation recognises current state and territory substitute decision-making mechanisms regarding guardianship and financial management, and not put in place additional mechanisms for substitute decision-making.⁷

7.10 PWDA made a similar point:

Australia has existing State and Territory guardianship legislation and tribunals in each jurisdiction with powers to appoint substitute decision makers, guardians, financial managers, to review and monitor their actions, and to consider the welfare of the person they act for. Therefore, the powers relating to Nominees are not only unnecessary but introduce a quasi-form of guardianship which would operate outside of the safeguards provided by the legislation and tribunals.⁸

7.11 Victoria's Office of the Public Advocate recommended:

That the NDIS legislation provide explicit recognition of state and territory-based substitute decision-making arrangements. This includes the appointment of administrators as well as guardians, and relevant personal appointments of substitute decision makers under enduring powers of attorney.⁹

7.12 The committee discussed with Tasmanian organisations the interaction between advocacy, guardianship and existing arrangements in jurisdictions:

as pointed out in the DANA submission there is some confusion there about how those state-based substitute decision-making processes will work and articulate with the NDIS, given that the nominee process seems to be that the NDIA can appoint whoever they want. So there is some confusion there. We believe that there is a system in place in each state. They are not perfect, but they are currently going through review and reform processes. If, theoretically, those processes will be responsible for supporting many people with impaired capacity through the NDIS they will also need to have a much more enhanced supported decision-making role. Most states, most guardianship boards are conscious of that nowadays.¹⁰

7.13 There was some concern raised about the possible interaction between a person's responsibilities as a nominee and as a service provider, and whether a conflict of interest could arise.

Finally, around nominees and guardianship, a nominee under the NDIS should not cancel out state provisions and legislation around guardianship.

7 ADACAS, *Submission 582*, p. 8.

8 People With Disabilities Australia, *Submission 557*, p. 14.

9 Office of the Public Advocate (Victoria), *Submission 2*, p. 3.

10 Mr Hardaker, Advocacy Tasmania, *Proof Committee Hansard*, 22 February 2013, p. 45.

There needs to be provision within the legislation to deal with that. There also needs to be more rigour put in to defining the difference between a nominee and a guardian, and to have provision so that where there is a perceived, a potential or a real conflict of interests between the nominee and the best interest of the person, there is a safeguard or a function to enable the dismissal of the nominee or to override it.¹¹

7.14 At its hearing on 5 March, the committee was advised by the department that it is considering a number of issues for possible amendment, following consultation with states and territories, and that this may include aspects of the nominee provisions discussed above.¹²

Committee view

7.15 The committee agrees that it is important that existing state and territory processes be recognised and respected, and acknowledges that these provide procedural safeguards that benefit people with disability. Where state or territory guardianship processes are under review, the committee endorses the adoption of strong safeguards that give primacy to the rights of a person with disability to make their own decisions, or to be supported to make their own decisions, wherever possible.

7.16 The committee believes that the draft rules make clear the intention of the Commonwealth to use existing guardianship arrangements to the greatest extent possible when appointing nominees under the NDIS. However the committee does believe that the national scheme does require nominees as a matter of law, so they should not be omitted altogether from the draft bill.

Advance directives or advance statements

7.17 VICSERV raised the possibility that advance directives or advance statements could be useful in the development of statements of goals and aspirations, as well as in potentially identifying appropriate supports. This could be the case where someone may lack a nominee, but have an advance directive of some kind in place. These statements 'could be very useful in deciding what supports would help that person in imagining and getting the services that they need'.¹³

7.18 Ms Crowther from VICSERV was asked how the advanced directives might be relevant to the NDIS, given that they are generally a health policy instrument. She explained:

The NDIS agency will not have the capacity to compel—that capacity will remain with the clinical treatment mental health services—but it will have a capacity to assist the process of planning for that person to make some decisions: for instance, 'You said you wanted this to happen in this

11 Mr Sheppard, Uniting Care Community Options, *Proof Committee Hansard*, 21 February 2013, p. 27.

12 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 43.

13 Ms Crowther, VICSERV, *Proof Committee Hansard*, 4 March 2013, p. 67.

environment; here is how you can get some of those services for that.' The fundamental issue that we are worried about is that with the interventions being placed in NDIS it may remove the person's control over what they need to do. As soon as you remove that control, the person's self-efficacy and the person's skills begin to diminish.¹⁴

7.19 A lot of evidence was received that emphasised the importance of identifying and acting on the decisions and preferences of people with disability. The committee received very limited evidence on the specific subject of advance directives in this context. However their importance, and the need to ensure they are recognised and respected, has been a recurring theme in the Community Affairs committees' work. Given the need to give primacy to the rights and decision-making preferences of the participant in the NDIS process, the committee sees the potential in advance directives being able to contribute valuable information, particularly during the preparation of participant plans.

Recommendation 22

7.20 The committee recommends that in general where:

- **a plan is being prepared, or a nominee is undertaking an act, and**
- **at the time, the person with disability is unable to express their preferences, and**
- **a formal advance directive (however described) is in effect for that person,**

the rules ensure that the plan is not made, or an act undertaken by a nominee, in contradiction of a preference expressed in the advance directive.

Nominees and a rights-based approach

7.21 As outlined in chapter 2 of this report, there were widespread concerns about whether some parts of the bill were sufficiently reflective of a rights-based approach. This was a common concern with the provisions relating to nominees. Submitters, who did not have access to the draft rules when writing their submissions, were concerned about the lack of constraints around decision-making in relation to the appointment of nominees. They expressed concern that the tone of the section did not reflect the rights and principles set out at the start of the bill.¹⁵

7.22 The draft rules, cited above, appear to address a range of these issues, by being more prescriptive about steps that must be taken through the process of appointing nominees, as well as defining how nominees are to act.

7.23 An example of this concerns clause 78 of the bill. The clause governs nominees taking action on behalf of plan participants. It currently states that those

14 Ms Crowther, VICSERV, *Proof Committee Hansard*, 4 March 2013, p. 68.

15 See for example ADACAS, *Submission 582*; People with Disabilities Australia, *Submission 557*.

nominees appointed by the CEO may only take actions 'if the nominee considers that the participant is not capable of doing the act'.

7.24 The Victorian Government argued that this language does not fully address the potential for the participant to engage in the decision-making process. It argued that the clause should be amended to restrict nominees to taking actions only 'if the nominee considers that the participant is not capable of doing, or being supported to do, the act'.¹⁶

7.25 Under the draft rules provided on 5 March, it is proposed that actions of nominees be restricted in the way described by the Victorian Government:

A plan nominee appointed at the request of the participant has a duty not to do an act unless satisfied that:

(a) it is not possible for the participant to do, or to be supported to do, the act himself or herself; or

(b) it is possible for the participant to do the act himself or herself, but the participant does not want to do the act himself or herself.¹⁷

7.26 The committee agrees with the Victorian Government's concern, and that the Rules should address this matter.

Recommendation 23

7.27 The committee recommends that the government ensure that either the bill or rules permit nominees to undertake an act only when the participant is not capable of doing, or being supported to do, the act.

'Severe' harm?

7.28 Under clause 91, the CEO would be able to suspend a nominee if the CEO 'has reasonable grounds to believe that the person has caused, or is likely to cause, severe physical, mental or financial harm to the participant'. This clause caused concern, with submitters arguing it set the bar too high.¹⁸ Given that this is a discretionary power as currently drafted, several submitters queried why the CEO should have to wait until the risk was of 'severe' harm before having power to act. The Victorian government argued that the word 'severe' should be deleted.¹⁹ Victorian Legal Aid agreed.²⁰

16 Victorian Government, *Submission 608 Appendix 1*, p. ii.

17 National Disability Insurance Scheme Draft Rules – *Nominees*, from FaHCSIA, received 5 March 2013, clause 5.6.

18 For example, Faye Druett OAM, *Submission 626*, p. 11.

19 Victorian Government, *Submission 608*, Appendix A, p. iii.

20 Victorian Legal Aid, *Submission 610*, p. 14.

7.29 The department in evidence indicated that it was considering a change in the terminology here and that 'severe' may not have been the most appropriate word to use.²¹

Recommendation 24

7.30 The committee recommends that clause 91(1) be amended to delete the term 'severe'.

Appeals

7.31 Clause 99 of the bill sets out a list of 22 different decision points within the bill that are subject to review. There are two stages of review available. Under clause 100(5), there is first an internal review by someone not involved in the original decision. It states:

If:

- (a) the CEO receives a request for review of a reviewable decision;
or
- (b) the CEO is taken to have made a reviewable decision because of subsection 21(3) or 48(2);

the CEO must cause the reviewable decision to be reviewed by a person (the reviewer):

- (c) to whom the CEO's powers and functions under this section are delegated; and
- (d) who was not involved in making the reviewable decision.

7.32 If a person is not satisfied with the outcome of the clause 100 review, then under clause 103 a person may apply to the Administrative Appeals Tribunal (AAT) for a review of the internal reviewer's decision.

7.33 Submitters agreed that decisions should be able to be reviewed. Two main questions were raised about the way the bill deals with reviews. First, submitters queried why some decisions have been omitted from the scope of review. Second, there were concerns raised about whether the appeal processes provided in the bill were the most appropriate.

Scope of review

7.34 The South Australian Council of Social Services (SACOSS) noted that while many decisions are subject to review, there is at least one instance where the bill does not require the CEO to make a decision. As such, it is not open to the review procedures in the bill. The Council suggested that decisions under clauses 44 and 197 should be able to be reviewed:

In relation to s197, while it is reasonable to give the CEO discretion not to make a decision if a request or application is not in the required form, the "decision" not to make a decision should be reviewable. It is conceivable,

21 Ms Wilson, Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 73.

for example, that a person is unable to include all information or documents in making an access request (s19). The “decision” not to make a decision on the access request in this situation should be able to be reviewed. Further, there should be a requirement to inform the applicant of what they have failed to comply with.

In relation to s44, the legislation places strong emphasis and importance on giving effect to the participants’ wishes, including in relation to management of funding. However, when a decision is made under s44 to refuse a plan management request, that decision is not reviewable and there is no requirement for reasons to be given. This is inconsistent with the principles underlying the legislation and the clear rights of the participant to manage their own plan.²²

7.35 The Welfare Rights Centre identified several decisions that are not subject to review in the bill:

For example, in the current draft there is no provision to appeal debt recovery (s190 – 195). Also omitted from the list, and as identified in only an initial review of the draft legislation (this is not an exhaustive list) are sections: 13, 26(3), 30, 40(4), 44(2) and 77. Several of these sections involve discretionary powers (such as special circumstances waiver) and it is inappropriate that a single officer has the power to make such a decision which is then not appealable.²³

7.36 YDAS, while not identifying any particular clause of concern, supported comprehensive review options:

All decisions of the CEO affecting the rights or interests of a person with disability should be subject to merits review, not simply those listed in this section. This is because each decision has the potential to dramatically influence the life opportunities and choices available to the person with disability.²⁴

7.37 The SACOSS identified two approaches to change the scope of reviewable decisions: to include additional decision points in the list in clause 99; or to abandon the list and simply state that any decision by the CEO should be subject to review.²⁵ The Welfare Rights Centre recommended adopting the approach currently taken in the *Social Security (Administration) Act 1999*, which essentially states that all decisions are subject to review, unless specifically included in a list of exemptions.

7.38 Some of the non-reviewable matters raised by submitters are not actual decisions, or are easily remedied by actions other than seeking a review of the decision (for example by submitting a new access request, which can be done at any time). One of the other points raised by Welfare Rights Centre is in fact listed in

22 South Australian Council of Social Services, *Submission 646*, p. 6.

23 Welfare Rights Centre, *Submission 507*, pp. 1–2.

24 Youth Disability Advocacy Services, *Submission 583*, p. 8.

25 South Australian Council of Social Services, *Submission 646*, p. 6.

clause 99 (review of a decision under clause 30). The committee sought clarification about why decisions under paragraph 44(2)(a) are not reviewable and was advised that it is in fact reviewable, because it forms part of the overall decision to approve a participants plan under subclause 33(2). Subclause 33(2) explicitly draws into that decision the procedures agreed by the CEO for managing the funding of supports, when it says that the statement must include 'the management of the funding for supports under the plan (see also Division 3)'. The division 3 in question includes clause 44.

7.39 The committee was satisfied that a sufficient range of decisions is reviewable under the bill.

Who should review?

7.40 A number of submitters suggested there should be an intermediate stage of review, while others did not comment on the number of stages, but queried who should be responsible for each step. RIDBC argued:

We would certainly like to see a more independent review process. It is not transparent to have an internal review process, even if it is with a different person to the decision maker. There should be an interim independent step prior to going to an Administrative Appeals Tribunal, which is an onerous task for any person with disability in our experience.²⁶

7.41 Carers Victoria thought that 'the skill, training and expertise of AAT members in complex disability matters appears limited'. It suggested that reviews be conducted by an independent commissioner established for the purpose.²⁷ Vision 2020 Australia considered the proposed internal review process to lack independence, while the AAT was not sufficiently accessible. Like Carers Victoria, it advocated a stand-alone review body similar to Victoria's Disability Services Commissioner.²⁸

7.42 Others, such as Legal Aid NSW, suggested that there should be an additional tier of appeal levels, between internal review and the AAT, as there is in the area of social security administration:

[U]nlike in the social security jurisdiction, which provides for review by the Social Security Appeals Tribunal (SSAT), there is no extra tier of review between internal review and the AAT. Legal Aid NSW submits that the SSAT provides for lower cost, quicker and more efficient review than the AAT. As there is no equivalent forum available for reviews of NDIS decisions, this might potentially lead to a large volume of requests to review decisions at the AAT.²⁹

26 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 4.

27 Carers Victoria, *Submission 566*, p. 9.

28 Vision 2020 Australia, *Submission 513*, p. 10.

29 Legal Aid NSW, *Submission 502*, p. 4.

7.43 During the hearing, Legal Aid NSW expanded on some of the reasons the Social Security Appeals Tribunal (SSAT) might be a more appropriate body, not only for people with disability, but also for the agency:

We would advocate for one because obviously internal review picks up mistakes pretty quickly and cheaply, and maybe a third you will fix up. But to give people that opportunity to appeal to someone independent but without the cost of the AAT—at the AAT, of course, the agency has to be represented, so that is another cost to the agency, whereas at the SSAT the agencies do not appear. You have single members at the SSAT, and you do not have the same kind of lengthy process. We recommend something like that.³⁰

7.44 The ACTHCR similarly suggested replacing the AAT with a specialist tribunal with more appropriate procedures, similar to SSAT.³¹ PWDA stated:

The procedures of the Administrative Appeals Tribunal are too formal and legalistic for the purpose of NDIS appeals. It would be more appropriate for a specific NDIS Appeals Tribunal to be constituted, perhaps as a section of the Social Security Appeals Tribunal, or established separately along similar lines. One advantage of this approach would be the distinct and easily locatable case law that would develop over time; ensuring uniformity and transparency in the application of CEO decision making across Australia. People with disability and other people with the relevant skills, knowledge and experience should sit on any NDIS Appeals Tribunal or panel.³²

7.45 On the other hand, the committee heard from experienced witnesses who thought the AAT could be most appropriate. The Commonwealth's Disability Discrimination Commissioner stated:

The commission is supportive of decisions of the agency being reviewed by the Administrative Appeals Tribunal, and we have set out in our submission the importance of the provision of advocacy support for such processes. We have done that because not only is it just patently unfair for a person with a disability—45 per cent of whom are living in poverty—to have to go up against a major national agency but also the provision of an advocate in those circumstances facilitates the processes and often leads to a quicker and greater resolution.³³

7.46 Responding to these issues, the department explained that the AAT is preparing extensively for their role. They have met with the department and advisory group. Their intention is to utilise alternative dispute resolution models and to

30 Ms Finlay, Legal Aid NSW, *Proof Committee Hansard*, 1 February 2013, p.16.

31 ACT Human Rights Commission, *Submission 640*, p. 9.

32 People With Disabilities Australia, *Submission 557*, p. 15.

33 Mr Innes, Disability Services Commissioner, *Proof Committee Hansard*, 1 February 2013, p. 33.

establish protocols tailored to reflect the needs of stakeholders in the area.³⁴ The committee was also provided with some operational guidelines for the handling of internal review. These addressed a range of issues that came up throughout the inquiry, such as:

- Indicating that a 'person dissatisfied with an adverse decision can contact the original decision maker who can change the decision... This should be useful in cases where the reasons for decision show that a relevant matter may have been overlooked, misunderstood or given too little weight. It may also be useful where the person had difficulty accessing or understanding the reasons';
- Guaranteeing that decisions will be accompanied by reasons in plain English; and
- Specifying that a support person can be involved in review processes.³⁵

7.47 The department reminded the committee that the review of the Act (under clause 208) would look at the appeal mechanisms, such as the effectiveness of review by the AAT, and whether they needed further development.³⁶

Recommendation 25

7.48 The committee recommends that,

- **the government monitor and consult with stakeholders on complaints handling in launch sites; and**
- **when the review of the legislation is being conducted under clause 208, the government consider the establishment of an external complaints handling mechanism between internal review and the AAT.**

Other

7.49 The committee noted a technical matter identified by the NSW Ombudsman regarding the drafting of paragraph 99(j), where it noted 'the reference to paragraph 74(4)(c) appears to be an error. The relevant reference appears to be paragraph 74(5)(c)'.³⁷ The committee expects this will already have been identified, but draws attention to the matter in case it is yet to be corrected.

34 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013.

35 FaHSCIA, *Submission 615*, Supplementary Submission 6152, Attachment E, pp 16-17.

36 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013.

37 NSW Ombudsman, *Submission 599*, p. 6.

Chapter 8

Compensation provisions

8.1 The EM to the bill outlines that the NDIS is 'not intended to replace existing entitlements to compensation'.¹ Chapter 5 of the bill deals with the interaction between the NDIS and other compensation schemes for personal injury (including through workers' and motor vehicle accident compensation schemes) and common law actions. Compensation is defined in clause 11 as compensation in respect of personal injury 'wholly or partly in respect of the costs of supports that could be provided under the NDIS'.

8.2 Submissions and witnesses raised a large number of concerns with the compensation provisions in the bill. Broadly, these concerns focused on:

- the requirement to claim or obtain compensation;
- the lack of clarity regarding the operation of the compensation provisions; and
- the interaction between the NDIS and other compensation options.

Requirement to claim or obtain compensation

8.3 Clause 104 empowers the CEO to require a person take reasonable action to claim or obtain compensation in circumstances where the person is, or in the CEO's opinion may be, entitled to compensation in respect of a personal injury and the person has taken no action, or no reasonable action, to claim or obtain the compensation. Even where a person has agreed to give up their right to compensation, the CEO may form an opinion that the person may be entitled to compensation 'if the CEO is satisfied that the agreement is void, ineffective or unenforceable'.²

8.4 In this situation, the CEO may require the person to take reasonable action to claim or obtain the compensation within a specified period. Under clause 105, if a NDIS participant does not take the required action within the period specified then their plan is suspended or will not come into effect until they take the required action. If a prospective participant does not take the required action, their plan may still be prepared, but will not come into effect until they take the required action.

8.5 Under subclause 104(3) the CEO must have regard to a number of factors in considering whether it is reasonable to require a person to take an action. These include:

- the disability of the person;
- the circumstances giving rise to the entitlement or possible entitlement;
- the impediments the person may face in recovering compensation;

1 Explanatory Memorandum, p. 42.

2 NDIS Bill, subclause 104(6).

- any reasons given by the person for why they have not claimed or obtained compensation;
- the financial circumstances of the person; and
- the impact of the requirement to take action on the person and their family.³

8.6 Further, under subclause 104(4), the CEO must not require a person to take action to claim or obtain compensation unless the CEO is satisfied that the person 'has reasonable prospects of success'.

Support for policy aim

8.7 There was general support for the policy aim of ensuring that the NDIS did not replace existing entitlements to compensation, even where witnesses did not support the specific mechanism in the bill. For example, NDS agreed there was a 'financial imperative for the NDIS to ensure that legitimate compensation claims are pursued through the courts' but described the power to require a person to take legal action as 'onerous'.⁴ Similarly, PWDA agreed that '[i]f a person acquires a disability in a circumstance whereby compensation may be recoverable, it is likely to be in the interests of public policy, as well as the person concerned, for that avenue to be pursued'.⁵

8.8 The Law Council of Australia (LCA) noted that there is an 'overarching justification' for the compensation provisions in the NDIS Bill, 'that in order for the NDIS to be sustainable in the long term, it is appropriate that existing compensation authorities and insurers are required to assist in defraying the costs of long term care and support, as presently required under existing arrangements'.⁶ Slater and Gordon Lawyers also observed that the common law plays an 'important role in injury prevention and alleviating pressures on the public health and social security system'.⁷

8.9 The department stated that it was important that NDIS 'includes mechanisms to ensure that statutory and private compensation providers continue to meet their current obligations to people with disability and that there is no double dipping in terms of funding for care and support'.⁸

Concerns

8.10 A large number of witnesses and submitters considered that the clauses of the bill which empower the CEO of the agency to require NDIS participants to claim or

3 NDIS Bill, subclause 104(3).

4 National Disability Services, *Submission 590*, p. 9. Also see Disability Directory, *Submission 601*, p. 11.

5 People with Disability Australia, *Submission 557*, p. 15; see also *Proof Committee Hansard*, 4 March 2013, p. 58.

6 Law Council of Australia, *Submission 575*, p. 12.

7 Slater and Gordon Lawyers, *Submission 533*, p. 5.

8 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 4.

obtain compensation were inappropriate.⁹ These concerns regarding the requirement to claim or obtain compensation (the requirement) focused on a number of areas, including:

- the potential detrimental impact of the requirement on persons with a disability;
- the capacity of persons with a disability to undertake legal action;
- objections to the principle of compelling a person to take legal action;
- that the requirement would undermine the policy approach of the NDIS;
- the effect of the requirement on legal professional privilege;
- the potential impact of the requirement on children and families;
- the application of the requirement to persons with cerebral palsy, which would be contrary to a recommendation of the Productivity Commission;
- the broader cost implications of the requirement to seek compensation;
- objections to granting such discretion to the CEO in relation to compensation decisions; and
- possible detrimental effect on the timing of the receipt of compensation.

Impact on persons with a disability

8.11 Many persons who provided evidence on the requirement expressed their concerns regarding the potential impact of persons with a disability of being forced to undertake legal action to claim compensation. For example, Professor Harold Luntz noted that '[l]itigation is always stressful' and argued that 'vulnerable people in the position of those receiving benefits under the scheme should never be required to take action to recover those benefits for the Commonwealth'.¹⁰ Similarly, Avant Mutual Group (AMG) pointed out that '[t]hose seeking support under the NDIS may well be the least able to take on either the financial risk of claiming unsuccessfully, or the emotional stress of conducting litigation'.¹¹

Capacity to claim or obtain compensation

8.12 The capacity of persons with a disability to claim or obtain compensation was an area of concern for a number of organisations which gave evidence. For example, the Federation of Community Legal Centres Victoria and Women with Disabilities Victoria noted that 'many people with disabilities already find it immensely difficult to

9 For example, Tasmanian Government, *Submission 540*, p. 2; Australian Federation of Disability Organisations, *Submission 514*, p. 27; Brain Injury Australia, *Submission 528*, p. 2; Victorian Government, *Submission 608*, p. 2; Disability Advocacy Network Australia, *Submission 516*, p. 7; Mr Thompson, Novita Children's Service, *Proof Committee Hansard*, 19 February 2013, p. 12.

10 Professor Harold Luntz, *Submission 425*, p. 1; see also Dr Maree Dyson, *Proof Committee Hansard*, 21 February 2013, p. 53.

11 Avant Mutual Group, *Submission 527*, p. 5.

navigate the legal system and are often unable to obtain the legal and other advocacy assistance that they need'.¹²

8.13 In particular, the potential financial implications of legal proceedings were emphasised. DANA stated that most people eligible for the NDIS will have limited financial resources and listed the broad range of costs which could be incurred by a person with a disability required to claim or obtain compensation:

To take legal action is to incur significant costs, some of which must be paid at the time they are incurred and some at the conclusion. Costs incurred include costs associated with investigation for probity, legal representation, medical reports, information technology support, application fees, hearing fees, barristers' fees, and accountants' fees for economic loss assessment. When a person takes legal action they also run the risk of receiving an order to pay the costs of the other party.¹³

8.14 The AFDO also stressed the uncertainty of legal proceedings:

A requirement to seek compensation is inherently unfair because even where it takes into account all the circumstances listed, the outcome – and the toll in terms of time, money and emotional distress – could never be truly known at the outset. People with disability would bear some financial cost even in 'no cost' judgements because of the need to pay for legal experts, assessments and other things vital to seeking compensation.¹⁴

8.15 Carers Australia suggested that the CEO should 'consider matters such as the person feeling unable to undergo further stress and anxiety with the uncertainty and cost of legal proceedings, and whether, even if successful, the costs of litigating will largely consume any award made'.¹⁵ Queenslanders with Disability Network considered that 'if there is going to be a requirement for people to pursue litigation and compensation for injuries...this will need to be supported by a litigation arm in the [agency] simply because the onus of this will be too difficult for people with disability to do on their own'.¹⁶

Principle of compulsion

8.16 The principle of compelling a person with a disability to undertake legal action to claim or obtain compensation was also questioned. For example the Cerebral Palsy Alliance commented:

Currently, no Australian citizen can be compelled to take action to obtain compensation and the possibility that the CEO of the Agency could invoke this for some prospective participants seems at odds with the Convention of

12 Federation of Community Legal Centres Victoria and Women with Disabilities Victoria, *Submission 571*, p. 15.

13 Disability Advocacy Network Australia, *Submission 516*, p. 28.

14 Australian Federation of Disability Organisations, *Submission 514*, p. 27.

15 Carers Australia, *Submission 672*, p. 26.

16 Ms Vicary, Queenslanders with Disability Network, *Proof Committee Hansard*, 30 January 2013, p. 3.

the Rights of Person with Disabilities. It hardly seems in line with involving people with disabilities in the decision making process and the fundamental principle of choice and control to compel them to take action for compensation.¹⁷

8.17 The Law Society of South Australia also did not consider that the safeguards in the bill are sufficient. It pointed out that the overall effect of the bill's provisions could be that 'a participant may be coerced to pursue legal proceedings whether they want to or not, and they may be or will be required to bear all the risk of the outcome'.¹⁸

Policy approach of the NDIS

8.18 Others argued that the requirement to seek compensation undermined the policy approach of the NDIS in benefiting persons with disabilities. For example, DANA commented the legal actions usually involved the 'attribution of blame' when an intention of the NDIS was to 'disconnect any considerations of fault from the entitlement to support'.¹⁹ The AFOD also argued:

[T]he ability to compel an individual to seek compensation undermines the universal insurance model that the NDIS is meant to represent; as the legislation currently reads, it would be universal but only for people not compelled to seek funding elsewhere.²⁰

8.19 Similarly, the Australian Medical Association (AMA) commented:

Together, clauses 104 and 105 work against generating a cultural shift that Australians with disabilities and their families do not need to pursue compensation for the costs of support. Under a truly 'no fault' scheme, disabled Australians should not have to take action – or be required by the CEO of the Agency to take action – against medical practitioners for the costs of lifetime care and support.²¹

Legal professional privilege

8.20 Others submissions and witnesses were concerned whether, under the bill's compensation provisions, a person could be compelled to reveal the legal advice they had obtained or waive legal profession privilege.²² The LCA argued:

Where privilege has not been abrogated and is not waived, it would be inappropriate to coerce a person to disclose legal advice by suspending care and support entitlements under the scheme, as provided for under clause

17 Cerebral Palsy Alliance, *Submission 457*, p. 5.

18 Law Society of South Australia, *Submission 595*, p. 3.

19 Disability Advocacy Network Australia, *Submission 516*, p. 28.

20 The Australian Federation of Disability Organisations, *Submission 514*, p. 27.

21 Australian Medical Association, *Submission 573*, p. 1.

22 For example, see Law Council of Australia, *Submission 575*, p. 13; Slater and Gordon Lawyers, *Submission 533*, p. 23.

105. It may also place the participant at a disadvantage in any subsequent litigation they might be required, or choose, to pursue.²³

8.21 Slater and Gordon Lawyers considered that legal professional privilege should be viewed in the context of the broader aims of the scheme:

The Agency is better able to protect the scheme from financial strain if it is in a position to understand the effect of legal advice provided to participants about their prospects of a successful claim. Without this ability, there is a significant risk that private insurance obligations and costs will be transferred to the scheme, risking its long term viability.²⁴

8.22 To address these concerns, Slater and Gordon Lawyers argued that the bill should clarify:

- that a participant providing confidential communications with their lawyer to the agency does not constitute a waiver of legal professional privilege; and
- that copies of legal advice and other confidential communications provided by participants to the agency should be exempt from Freedom of Information laws.²⁵

Impact on children and families

8.23 A key issue for several disability organisations was the potential impact of a requirement to seek compensation on children and families. For example, NDS described the requirement to seek compensation as being 'being significantly at odds with the best interests of people with disability', noting that it could 'potentially mean taking legal action against a close relative, even a relative who may be involved in a caring role'.²⁶ Similarly, the MS Society (WA) considered the clauses in the bill 'ignores the sensitive dynamics where there may be family involvement'.²⁷ In particular, Novita Children's Service highlighted the significance of compensation decisions in relation to children with a disability and their families noting that 'in many smaller communities, families end up actually suing hospitals which they have to access subsequently to receive services for their disabled child'.²⁸

8.24 The NSWDNF argued the CEO needed to be aware of the negative outcomes of a requirement to seek compensation. It stated that 'the pursuit of a compensation case for medical or other negligence at or after birth could cause irreparable damage within the family, resulting in rifts in the personal and social support networks that the

23 Law Council of Australia, *Submission 575*, p. 13.

24 Slater and Gordon Lawyers, *Submission 533*, p. 23.

25 Slater and Gordon Lawyers, *Submission 533*, p. 24.

26 Mr Simpson, National Disability Services, *Proof Committee Hansard*, 18 February 2013, p. 19; see also The Centre for Cerebral Palsy, *Submission 598*, p. 4.

27 Mr Stafford, MS Society WA, *Proof Committee Hansard*, 18 February 2013, p. 8.

28 Mr Thompson, Novita Children's Service, *Proof Committee Hansard*, 19 February 2013, p. 13.

person with disability values and relies on and that the NDIS seeks to promote and strengthen'.²⁹

Cerebral palsy

8.25 The Productivity Commission's report on *Disability Care and Support* made a specific recommendation in relation to cerebral palsy:

The NDIS should fund all cases of cerebral palsy associated with pregnancy or birth, and that meet the NDIS eligibility criteria. Common law rights to sue for long-term care and support needs for cerebral palsy should be removed, though access to damages for pecuniary and economic loss and general damages would remain, where negligence can be established.³⁰

8.26 The reasons for this recommendation included that 'most cases of cerebral palsy cannot be avoided through clinical practices [and] it is particularly hard to reliably determine whether clinical care was the cause in any individual case'.³¹ Medical Insurance Group Australia (MIGA) raised a particular concern in relation to cerebral palsy matters, noting that the under the Productivity Commission proposal the cost of cerebral palsy matters were to be passed to NDIS without 'a requirement to recoup'. It was concerned the bill appears to require sufferers from cerebral palsy to 'seek recovery from third parties'.³²

8.27 Novita Children's Services detailed some of the problems for families in relation to seeking compensation for cerebral palsy:

[A] decision to proceed, or not to proceed with litigation is frequently difficult for parents of children with cerebral palsy. The difficulty of proving medical negligence, as the cause of cerebral palsy and as a basis for compensation, is generally high. Those cases that do proceed often are unresolved during the individual's childhood and adolescence and frequently are not finalised until adulthood. That is, they may often continue for fifteen to twenty years, or even beyond. The litigation may involve legal expenses generally beyond the means of most Australian families. The prohibitive legal costs are often the greatest dis-incentive for families.

[T]he prospect of spending years of their lives tied up in litigation is heartbreaking. Many of them prefer to focus on the extra work that they have, day by day, in caring for their disabled child. For them, there can be a conscious decision not to litigate because of the pain and turmoil that the prolonged legal battle will have on their lives. In addition, the respondent to

29 NSW Disability Network Forum, *Submission 523*, pp. 14–15.

30 Productivity Commission, *Disability Care and Support*, Vol. 2, 2011, Recommendation 18.5, p. 914.

31 Productivity Commission, *Disability Care and Support*, Vol. 2, 2011, p. 851.

32 Medical Insurance Group Australia, *Submission 521*, p. 2.

the claim will often be the local hospital where, in the meantime, they need to access services for many years.³³

Cost implications

8.28 The Insurance Council of Australia (ICA) acknowledged that the wording of requirement to seek compensation is similar to other provisions which currently exist in social security legislation. Nonetheless, it held concerns that the wording and administration of the requirement by the agency 'may have an impact on the frequency of claims made in various compensation schemes' and 'an increase in the level of legal representation in claims may also impact on the level of compensation scheme costs'.³⁴ Similarly, MIGA, a member of ICA, argued that the requirement for NDIS participants to seek compensation may increase the costs of claims handled by insurers, the number of matters litigated and insurance premiums.³⁵ It stated:

If the cost of all matters dealt with by the NDIS where there is an allegation of negligence are still to be recouped from insurers, then a key component of the Productivity Commission recommendations will not be achieved. Instead of there being reductions in premiums, which would then be offset by a levy for the [National Injury Insurance Scheme], most likely premiums will not reduce (and in fact may increase).³⁶

8.29 The Royal Australian College of General Practitioners also noted the requirement to seek compensation would have 'a significant impact on medical practitioners and medical indemnity insurers as "compensation payers"' and sought further consultation about the broader ramifications for the medical profession, including the potential impact on medical indemnity insurance costs.³⁷

8.30 The Victoria Government suggested that in order to ensure the impact of the NDIS on existing schemes is neutral, it will be important to limit the agency's incentives to undertake 'speculative litigation' (where the agency initiates an action, but the individual would not otherwise have done so).³⁸ Queensland Advocacy also highlighted a risk the agency may develop a practice of requiring participants and prospective participants to seek compensation as a matter of course:

[The Agency] must not on any account be allowed to grow so attached to the preservation of the capital it administers on behalf of people with disability that it comes to require in every case where chance may exist,

33 Novita Children's Services, *Submission 441*, p. 6. See also, Cerebral Palsy Alliance, *Submission 457*, p. 5.

34 Insurance Council of Australia, *Submission 488*, p. 5.

35 Medical Insurance Group Australia, *Submission 521*, pp. 2–3.

36 Medical Insurance Group Australia, *Submission 521*, p. 3.

37 Royal Australian College of General Practitioners, *Submission 584*, p. 3.

38 Victoria Government, *Submission 608*, Attachment A, p. 5.

however meagre, of obtaining compensation, that NDIS applicants commence legal action to recover that compensation.³⁹

Discretion of CEO

8.31 In relation to the powers of the CEO under the bill, the department commented:

The Bill reflects the judgement that it is more transparent, and ultimately protects the rights of people with disability to a greater extent, to have the powers of the Agency CEO clearly specified. This ensures that where appropriate the CEO's exercise of these powers can be scrutinised by external review bodies. In simple terms, specifying what the CEO is able to do also allows the law to be clear as to what the CEO is not able to do and therefore provides important protections to people with disability who are, or want to be, participants in the scheme.⁴⁰

8.32 However, a number of concerns were raised regarding the broad discretions granted to the CEO under the clauses of the bill relating to compensation. The Australian Lawyers' Alliance (ALA) held the view that individual should have the right to choose whether or not to pursue a legal claim and within the time period they choose. It highlighted that some individuals may have to wait years before it is appropriate to commence their legal claim 'to see the effects of their injury'. Fast tracking this process to meet the 'specified period' in the CEO's notice may mean 'that individuals could receive less than the amount to which they would otherwise be entitled'.⁴¹

8.33 The Cairns Community Legal Centre noted that legal advice 'as to the prospects of success is usually sought after the injured person's condition has stabilised, all relevant independent medical assessments have been conducted and all discoverable material has been exchanged'. It questioned how the CEO could be 'satisfied' that a participant has 'reasonable prospects of success' without the benefit of all relevant information.⁴² AMG also commented:

[I]t is not clear just how the CEO would make his decision that a claim does or does not have "reasonable prospects of success". In our experience, this can be an extremely difficult decision, requiring multiple experts' and lawyers' opinions often at significant cost. It could take a number of years before a participant has his or her condition sufficiently clearly diagnosed to enable a properly informed decision to sue to be made.⁴³

39 Queensland Advocacy, *Submission 497*, Supplementary Submission, p. 9.

40 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

41 Australian Lawyers' Alliance, *Submission 618*, p. 11.

42 Cairns Community Legal Centre, *Submission 604*, p. 23.

43 Avant Mutual Group, *Submission 527*, p. 6.

8.34 Similarly, the Victorian Government queried the appropriateness of the CEO determining the legal question of whether an agreement is void, ineffective or unenforceable under subclause 104(6).⁴⁴

Effect on timing of compensation

8.35 Some submitters expressed concern that clauses 104-105 would effectively mean that participants or prospective participants would be forced to wait until the resolution of legal proceedings for compensation, before they could access supports under the NDIS. For example, the ICA was concerned that the requirement to seek compensation may need clarification to ensure NDIS recipients are not prevented from accessing early intervention services while consideration of appropriate compensation actions is occurring.⁴⁵

8.36 However, this interpretation of the operation of the requirement was disputed. In particular, the Centre for Independent Studies (CIS) supported the compensation provisions in the bill, highlighting that 'individuals only have to initiate a claim for compensation, prior to receiving NDIS supports, they do not have to wait until they receive that compensation to receive NDIS supports':

[S]omeone who is already receiving NDIS supports may be required to initiate a claim...and the NDIS transition agency is able to recoup the cost of providing NDIS funded supports to someone who is successful in their claim. It is clear that initiating a compensation claim does not exclude an individual from receiving NDIS funded supports.⁴⁶

8.37 The department confirmed that a claim underway would not delay the provision of supports, commenting:

The operation of the Bill would ensure that a potential participant who may have a right to compensation is supported by the NDIS while their compensation claim remains unresolved. This is an important aspect of the approach in the Bill because it ensures that if someone is injured they can have their support needs addressed immediately without having to wait for often lengthy legal proceedings to be finalised.⁴⁷

Subrogation

8.38 A broad range of witnesses and submitters suggested or recommended that the bill be amended be given the agency the power in certain circumstances to subrogate the rights of a participant to make a claim for compensation.⁴⁸ Subrogation would

44 Victorian Government, *Submission 608*, Attachment A, p. iv.

45 Insurance Council of Australia, *Submission 488*, p. 5.

46 Centre for Independent Studies, *Submission 569*, p. 5.

47 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

48 For example, Avant Mutual Group, *Submission 527*, p. 6; National Disability Services, *Submission 590*, p. 10; Queensland Advocacy, *Submission 497*, Supplementary Submission, p. 9; Mr Kerin, Australian Lawyers Alliance, *Proof Committee Hansard*, 19 February 2013, p. 39; Law Society of South Australia, *Submission 595*, p. 3; Disability Directory, *Submission 601*, p. 11; Australian Human Rights Commission, *Submission 492*, p. 8.

allow the agency to take over the rights to compensation of a participant against a third party. For example, AHRC suggested:

[T]hat serious consideration be given to the inclusion of the insurance law principle of subrogation in the Bill, thus enabling the Agency to pursue compensation litigation. This inclusion would ensure that rather than participants or families deciding whether to risk incurring court costs pursuing an individual compensation claim, the Agency would have the ability to manage risk and make decisions about whether to pursue an individual matter purely on the basis of its merits, and prospects of success.⁴⁹

8.39 As currently drafted, Slater and Gordon Lawyers had the view that the powers granted to the CEO in the bill were unlikely to be utilised often:

In our many years of experience with similar provisions in other schemes concerns regarding compensation recoupment arrangements rarely arise. In fact, having scanned our literally tens of thousands of case histories in the preparation of our submissions we have not been able to find a single occasion where this power has caused a problem.⁵⁰

8.40 Nonetheless, Slater and Gordon Lawyers noted that a subrogation of a right to compensation in the bill was not unprecedented and similar provisions exist in several analogous pieces of legislation.⁵¹ It commented that it is 'reasonable to consider the inclusion of subrogation powers available to most statutory insurance schemes, including the Transport Accident Commission (TAC) and Comcare'.⁵²

8.41 The LCA also recommended that a new subclause should be inserted, 'stating that, if the participant or prospective participant does not wish to pursue a claim they might have at common law or under a statutory compensation scheme, the [Agency] may exercise a right to subrogate the claim'.⁵³

8.42 NDS also recommended:

The CEO should have the power to require a participant or prospective participant to make a no-fault claim to a statutory authority; but the power to require a participant to make a common law claim should be substantially restricted. Instead, the Agency itself could take on and manage the compensation claim on behalf of the participant or potential participant as it relates to the cost of support (with permission and where the claim is assessed as likely to be successful). This should not extinguish the participant's right to pursue compensation under other heads of damage—

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

50 Mr Grech, Slater and Gordon Lawyers, *Proof Committee Hansard*, 21 February 2013, p. 13.

51 Mr Grech, Slater and Gordon Lawyers, *Proof Committee Hansard*, 21 February 2013, p. 17.

52 Slater and Gordon Lawyers, *Submission 533*, p. 20.

53 Law Council of Australia, *Submission 575*, p. 14.

loss of income and pain and suffering; exercising this right should remain the responsibility of the participant.⁵⁴

8.43 The Victorian Government agreed that the approach taken in Chapter 5 was not appropriate. It considered a suite of mechanisms may be required to allow the agency to adapt its approach to cost recovery to the relevant context - including whether there is statutory or common law liability, or whether the compensation scheme in question is fault-based or no-fault.⁵⁵ It identified three alternative approaches:

- a provision similar to section 107 of the *Transport Accident Act 1986* (Vic), which would enable the Agency to take over the conduct of proceedings against a third party initiated by an NDIS participant or prospective participant (a subrogation);
- a provision similar to section 104 of the *Transport Accident Act 1986* (Vic) and section 138 of the *Accident Compensation Act 1985* (Vic), which would enable the Agency to initiate an action in its own name to recover compensation (an indemnity), provided there is a legal liability that can be pursued;
- an approach similar to that taken in the *Health and Other Services Compensation Act 1995* (Cth), which would enable the NDIS to create a statutory charge over any damages arising from a participant's successful claim for compensation; or other mechanisms may also be available.⁵⁶

8.44 The department noted that subclauses 104(3) and 104(4) safeguards had been included in the bill as a result of consultations 'to ensure that any request to take action to pursue compensation is reasonable with regard to both the participant's or potential participant's circumstances, and the participant's or potential participant's prospects of success'. It was confident 'these sections...together operate so that in practice no participant or potential participant would be required to take action to obtain compensation that would put them at emotional or financial risk'.⁵⁷ However, the department also commented that subrogation was one of a range of issues that have been raised in regard to the NDIS bill that 'the minister and the Commonwealth' were considering.⁵⁸

Lack of clarity in compensation provisions

8.45 A frequently raised concern was the lack of clarity in the compensation provisions of the bill. In particular, submitters and witnesses questioned how the provisions would operate in practice, highlighted uncertainty in the wording of the

54 National Disability Services, *Submission 590*, p. 10.

55 Victorian Government, *Submission 608*, Appendix A, p. v.

56 Victorian Government, *Submission 608*, Appendix A, p. iv.

57 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

58 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 46.

provisions and the lack of detail regarding how compensation would be assessed. For example, the AMA noted that the bill 'confers significant discretionary powers on the CEO and the Agency through "may" clauses' and that significant details 'will be contained in the rules which are not available'. It concluded that 'the medical profession and the disability community are limited in being able to determine the extent to which the Bill meets their expectations of the NDIS'.⁵⁹

8.46 Similarly, Ms Eve Brown from Financial Services Council considered all the provisions around repayment of NDIS from compensation awards should be clarified:

It is not clear whether amounts are to be repaid from special or general damages awards and which heads of damage amounts are to be repaid. Compensation amounts under certain heads of damage, such as future economic loss, should not be repayable to the NDIS as this would leave NDIS participants worse off.⁶⁰

Compensation and supports

8.47 Clause 35 allows NDIS rules to be made about the content of the participant's statement of supports. Subclause 35(4) provides for rules to be made to deal with compensation payments when determining what reasonable and necessary supports will be funded or provided to participant.⁶¹

8.48 LCA submitted that subclause 35(4) is 'unclear as to how compensation payments are to be taken into account in determining reasonable and necessary supports and sought ' greater clarity as to how these provisions are intended to be applied, given the significant impact this may have on participants' entitlements under the NDIS'.⁶²

Recovery of compensation after NDIS support

8.49 Clauses 106-108 provide for the agency to recover the cost of supports already funded under the NDIS where compensation is subsequently secured by settlement or judgement in respect of a person's impairment.

8.50 ICA considered that further analysis of the impact of these clauses on particular compensation schemes is required before the NDIS is implemented.⁶³ It noted this part of the bill was 'designed to ensure that the size of claims payable under various compensation schemes is not increased by the provision of NDIS support services'. However, it believed:

[T]he extent of services available from the NDIS may have an impact on claimant behaviour which could potentially increase the size and frequency of claims made under various statutory and common law compensation

59 Australian Medical Association, *Submission 573*, p. 2.

60 Ms Brown, Financial Services Council, *Proof Committee Hansard*, 5 March 2013, p. 12.

61 Explanatory Memorandum, p. 18.

62 Law Council of Australia, *Submission 575*, pp. 7–8.

63 Insurance Council of Australia, *Submission 488*, p. 4.

schemes...[T]he practical effect of the objectives of the NDIS to meet the aspirations of the participant may result in greater claims costs in other compensation schemes...Greater claims costs may then have an effect on the level of premiums charged in those compensation schemes.⁶⁴

8.51 The ALA cautiously welcomed the 'the concept of payment of past NDIS amounts from judgments, thus allowing for a repayment system similar to that already adopted with Medicare and Centrelink which have operated for many years'. However, it cautioned that there appeared to be a lack of legislative guidance to the judiciary to 'specify' the portion of the amount of compensation that should be a component for supports of a kind provided under the NDIS.⁶⁵

8.52 LCA also supported the principle that the Agency 'should have the capacity to recover past NDIS amounts from that component of lump-sum compensation payments awarded by judgment or agreed by way of common law settlement, particularly to avoid "double dipping"'.⁶⁶ However, it noted that the clauses in the bill are based on the recovery provisions in the *Health and Other Services (Compensation) Act 1995* (HSOC Act) and that '[t]he experience with these provisions when first introduced (in this form) was that all settlements were held up for months, causing significant hardship to people with a potential liability under the HSOC Act. It recommended that bill should be clarified to state that unless an insurer has received a notice from the agency, the insurer is not required to withhold payments to the injured person.⁶⁷

Recovery from compensation payers and insurers

8.53 Clauses 109-115 provide for the agency to recover amounts from compensation payers and insurers. Where a participant, or prospective participant, makes a claim against a third party (the potential compensation payer) or insurer for compensation relating to their impairment, the CEO may give a preliminary notice to the potential compensation payer or insurer stating the CEO may wish to recover an amount from the person (clause 109).

8.54 The CEO may also send a recovery notice to a compensation payer or insurer, where an NDIS amount has been paid to a person under a participant's plan, and a compensation payer or insurer is liable to pay compensation to the participant in relation to their impairment. The compensation payer or insurer becomes liable to pay the agency for the amount specified in the notice (clause 111).

8.55 The bill creates an offence where a potential compensation payer or insurer, who has received a preliminary notice, does not advise the CEO within seven days after becoming liable to pay compensation (clause 110). The bill also creates an offence where a potential compensation payer, or an insurer, pays an amount of

64 Insurance Council of Australia, *Submission 488*, p. 4.

65 Australian Lawyers' Alliance, *Submission 618*, p. 13.

66 Law Council of Australia, *Submission 575*, p. 15.

67 Law Council of Australia, *Submission 575*, p. 15.

compensation to someone other than the agency, where a preliminary notice or recovery notice has been issued (clause 114).

8.56 Both broad and specific concerns were raised regarding these clauses of the bill. For example, the ICA highlighted the administrative impacts of this recovery regime on its members:

Our members currently comply with the different recovery regimes currently in place for economic loss and medical expense payments. Our members are concerned that the implementation of a third, slightly different recovery regime under NDIS will add to the administration costs involved in various compensation schemes...The ICA submits, that wherever possible, measures are taken to streamline the recovery process and promote harmonisation across recovery regimes.⁶⁸

8.57 Further, the ICA highlighted that there are likely to be administrative complexities where there is a dispute as to which NDIS payments are recoverable from a compensation payer. It stated:

If, for example, a person suffering from a pre-existing disability and in receipt of NDIS payments subsequently suffers a compensable injury we submit that there is currently no mechanism in the legislation to determine which payments are in fact recoverable...This may be exacerbated in compensation schemes where periodic payments are made, such as workers compensation where rehabilitation plans may conflict with NDIS support plans.⁶⁹

8.58 MIGA also noted that settlement of claims usually involved the agreement of a single lump sum amount paid immediately after agreement, which provided certainty to insurers as to their liability. It stated:

The draft NDIS legislation refers to the potential recovery by the NDIA of care costs. The legislation does not indicate at what point the recovery amount will be determined or by what mechanism. We are concerned that it may result in the payment of recovery amounts across many years as care is provided to the disabled person. Recovery on this basis from insurers would create significant uncertainty about the final cost and the timing of payments into the future.⁷⁰

8.59 The Victorian Government listed a number of specific potential issues with the wording of clause 111 which provides for the CEO to issue recovery notices. In particular, it noted that, as currently drafted, there is no capacity for a compensation payer or insurer to contest the amount they are liable to pay to the agency.⁷¹ Further, the Victorian Government highlighted the lack of clarity in clause 110 which would create an offence where a potential compensation payer or insurer, who has received a

68 Insurance Council of Australia, *Submission 488*, p. 5.

69 Insurance Council of Australia, *Submission 488*, p. 6.

70 MIGA, *Submission 521*, p. 3.

71 Victorian Government, *Submission 608*, Attachment A, p. ix.

preliminary notice, fails to provide written notice to the CEO within seven days of becoming liable to pay compensation. It commented:

It is unclear when a compensation payer 'becomes liable'. An insurer or statutory agency generally becomes liable at the point of accepting a claim (or on the date a tribunal makes an order). However, it is not clear at what point a party subject to a common law claim for compensation 'becomes liable' for the purposes of this clause.⁷²

Future support costs

8.60 The lack of detail in relation to the treatment of future support costs under the compensation provisions was an area of concern. The ALA highlighted that there was 'currently no legislative clarity about "future" NDIS costs – only those sustained prior to the judgment'.⁷³

8.61 Carers Australia pointed out that the definitions in relation to compensation 'are extremely broadly drawn and refer to amounts made under an award of compensation that is "wholly or partly in respect of costs of support that *may* be provided to a participant":⁷⁴

Given that no-one will know what will be provided under the NDIS into the future this formulation seems to capture any amounts made under an award that can be characterised as perhaps being in respect of future support. It is also of concern that the legislation proposes to pick up as compensation payments 'wholly or partly in respect of the costs of supports that may be provided to a participant' even if the award does not specifically identify an amount as such.⁷⁵

8.62 In relation to recovery of amounts awarded for future care and support, the LCA commented:

[T]his is a challenging area in which to legislate. While judgments usually determine amounts by reference to specific heads of damage, including future care and support, only a very small proportion of matters proceed to judgment. The majority of cases settle in the interlocutory stages and many matters involve agreement to a lump-sum without specifying amounts for each head of damage. Accordingly, it may be difficult in any given case to determine what amount has been awarded for future care and support. This is further complicated by discount rates applying to damages awards for future losses in all jurisdictions, as well as cases involving contributory negligence by the plaintiff.⁷⁶

72 Victorian Government, *Submission 608*, Attachment A, p. viii.

73 Australian Lawyers' Alliance, *Submission 618*, p. 14.

74 Carers Australia, *Submission 672*, p. 16 (emphasis in original). This is a reference to definitional text contained in subclause 11(1).

75 Carers Australia, *Submission 672*, p. 16.

76 Law Council of Australia, *Submission 575*, p. 15; see also Mr Redpath, Law Council of Australia, *Proof Committee Hansard*, 5 March 2013, p. 11.

8.63 The LCA suggested two approaches to minimise the prospect of disputes about how much participants should contribute toward future care and support. The first would involve the agency providing notice to the participant as to the required contribution in advance of a settlement agreement or judgement. Under the second approach the agency would require the participant to fund their own support for a certain period 'which is similar to the process that is currently applied in relation to Centrelink benefits following an award of compensation in respect of future care and support or economic loss at common law'.⁷⁷

8.64 Slater and Gordon considered that '[t]here is no valid reason for the provisions relating to recovery of past benefits to sit apart from the calculation of future medical benefits' and recommended the bill be amended to allow the agency to provide notification to a participant prior to resolution of their claim. The notification would list:

- payments made by the agency to date for otherwise compensable supports, services or treatment with the amount the Agency wishes to recoup clearly identified; and
- recoupment from compensation the agency estimates that it will seek for future NDIS services and supports.

8.65 Slater and Gordon stated that the 'Agency would then be in a position to recover past payments made as set out in the Bill, and future benefits after taking into account its estimate, and the settlement amount received'.⁷⁸

Interaction between the NDIS and other compensation schemes

8.66 The lack of detail regarding interaction between the NDIS and other compensation schemes, including the proposed NIIS was also raised. For example, the Victorian Government stated that the 'interface between the NDIS and State-based statutory compensation schemes gives rise to a number of complex issues, which are not currently addressed by the Bill'.⁷⁹

The Bill or NDIS rules will need to ensure that a person with disability who requires funded support does not 'fall between two stools', for example, due to differences in eligibility requirements between schemes, or statutory limitations or exclusions...The Agency will also need to work with other schemes to clarify responsibilities where there is dual liability...and to minimise administrative complexity in relation to managing and accounting for ongoing or future payments between schemes. (Chapter 5 is primarily concerned with past payments.) It is likely that additional complexities arising from the interface between the NDIS and other schemes will become apparent once the NDIS is operational.⁸⁰

77 Law Council of Australia, *Submission 575*, p. 16.

78 Slater and Gordon Lawyers, *Submission 533*, p. 22.

79 Victorian Government, *Submission 608*, p. 5.

80 Victorian Government, *Submission 608*, p. 5.

8.67 The Victorian Government considered 'a protocol for resolving disputes between the NDIS and State schemes should be developed, along with a mechanism to facilitate the exchange of information'. This would ensure that the liabilities of the NDIS and state schemes can be determined cooperatively without the need to resort to litigation.⁸¹

Relationship between the NDIS and an NIIS

8.68 The NIIS is a proposed scheme to provide no-fault insurance coverage for Australians who acquire a disability from a catastrophic injury and require lifetime care and support. Originally proposed by the Productivity Commission together with the NDIS, an NIIS is under consideration by the government. An NIIS Advisory Group has been established assist the government consider the Productivity Commission's NIIS recommendations.⁸² A key rationale in the Productivity Commission's recommendation for the creation of an NIIS funded by insurance premiums and state and territory funding, separate to the NDIS, was to 'send price signals that encourage greater incentives for safety'.⁸³

8.69 Some submissions highlighted a lack of clarity about the relationship between the NDIS and the proposed NIIS.⁸⁴ For example, PWDA considered the role of the NIIS 'needed to be examined in relation to' Chapter 5.⁸⁵ DANA also considered that the intersection of NDIS and the proposed NIIS would be 'difficult terrain for prospective participants'.⁸⁶

8.70 The AMA noted also that [w]ithout the details of [the NIIS] scheme being available, it is very difficult to assess the interface between the NDIS and the NIIS' and the requirement to seek compensation.⁸⁷ Despite this, several organisations suggested that certain categories of injury should be covered by the NDIS rather than the NIIS. For example, AMG argued that 'medical accident injuries be covered by the NDIS and not the NIIS, leaving the NIIS to cover motor accidents, workplace accidents and general accidents and avoiding the costs of "converting" each State-based motor accident compensation scheme to deal with medical accidents'. It considered that the costs and complexities arising from having both a national NDIS and eight state based schemes dealing with medical accidents were not justified.⁸⁸

8.71 MIGA also commented:

81 Victorian Government, *Submission 608*, p. 5.

82 The Hon Bill Shorten MP, Minister for Financial Services and Superannuation, 'Government's Advisory Group supports next steps in development of a National Injury Insurance Scheme', *Media Release*, No 037, 25 June 2012.

83 Productivity Commission, *Disability Care and Support*, 2011, Vol. 2, p. 865.

84 For example, Tasmanian Government, *Submission 540*, p. 2.

85 People with Disability Australia, *Submission 557*, p. 16.

86 Disability Advocacy Network Australia, *Submission 516*, p. 7.

87 Australian Medical Association, *Submission 573*, p. 5.

88 Avant Mutual Group, *Submission 527*, p. 3.

[W]e would suggest that given the complexities of causation and negligence, and funding, that all medical accidents should be covered by the NDIS rather than being split between the NDIS and the NIIS, at least in the initial years of operation...This would allow time for the costs of both schemes to emerge and for a more appropriate assessment of the potential allocation of costs to take place.⁸⁹

8.72 However, the CIS supported the compensation provisions in the bill, noting that they reflect the distinction between the NDIS and the NIIS, as well as the responsibility of the states to establish comprehensive injury insurance schemes:

The NDIS is intended to be a national scheme funded through core government revenue, while the NIIS is intended to be a federated scheme funded through compulsory insurance premiums and levies that will use price signals to help prevent risky behaviour. Without these compensation measures, individuals who may already be covered through compulsory third party insurance schemes (eg. Victoria's Transport Accident Commission (TAC) or NSW's Lifetime Care and Support Authority) will be able to make claims for disability care and support from the NDIS, despite the fact they are eligible to receive support from a state based scheme...

In addition to preventing cost shifting from states to the Commonwealth, the compensation measures in the bill also ensure that taxpayers do not pay for lifetime disability care and support twice – once through their compulsory third party insurance premiums, and again through their taxes to pay for the NDIS. Effectively, the compensation measures in this bill prevent the double taxation of Australians.⁹⁰

8.73 The ALA also commented:

The taxpayer should not have to support the cost of another person's irresponsibility or intentional wrongdoing behaviour, where an individual can seek a remedy that holds the wrongdoer liable. To remove the liability of another through creating a 'no fault' system, in reality, creates a 'no liability' system. This leads to reductions in safety, transparency and responsibility.⁹¹

8.74 At Additional Estimates, officers from the department indicated to the committee that there may be ongoing 'boundary issues' between the NDIS, the NIIS and other compensation avenues and that these matters were under consideration.⁹² Examples of these 'boundary issues' were also illustrated:

[Y]ou will still need a way of dealing with someone who, say, is in NDIS and unfortunately gets hit by a car or a tram and therefore has a separate claim. You will still need ways of resolving that. You will still need ways of resolving the issue of people who come to an NDIS but may have

89 MIGA, *Submission 521*, p. 2.

90 Centre for Independent Studies, *Submission 569*, pp. 5–6.

91 Australian Lawyers' Alliance, *Submission 618*, p. 12.

92 FaHCSIA, *Proof Committee Hansard*, 14 February 2013, p. 69.

another claim...It is not a problem that will evaporate entirely with an NIIS.⁹³

Committee view

8.75 The committee acknowledges the many concerns raised by many witnesses and submitters in relation to the compensation provisions in the bill. A number of these concerns relate to an interpretation of the clauses of the bill which suggests that prospective participants may be forced to wait for the outcome of proceedings to claim or obtain compensation before they could access support under the NDIS.⁹⁴ The department has clarified that 'the intent behind these provisions is not to deny potential participants access to support under an NDIS until their claim for compensation is resolved'.⁹⁵ The department had also indicated that it does not expect the requirement to claim or obtain compensation provision to be used extensively, stating that 'parallel provisions in social security law are very rarely used'.⁹⁶

8.76 Despite these assurances, the committee holds a number of concerns in relation to this aspect of the bill. In particular, disability organisations made it clear to the committee that the pursuit of compensation could be a sensitive and problematic issue for participants.

8.77 In the view of the committee, participants should not be compelled to undertake legal action to claim or obtain compensation, unless certain safeguards are attached. Instead, the bill should provide the participant or prospective participant (or their guardian) with an option to subrogate their right to compensation. Where a person receives a notice under clause 104, that person should be able to elect that the agency subrogates or assumes their rights to compensation, and the agency should have the standing to undertake those legal proceedings. If the person in this situation decides to claim or obtain compensation themselves, the agency should indemnify the person for any reasonably foreseeable adverse consequences arising from this action.

8.78 Essentially, the bill should provide people with a disability (or their guardian) with a choice. The committee considers this approach would be more in keeping with one of the key objects of the bill 'to enable people with disability to exercise choice and control in pursuit of their goals',⁹⁷ while still ensuring that a mechanism in place to ensure that compensation claims are pursued where appropriate.

8.79 Further, participants or prospective participants should be able to provide legal advice which they have sought in regard to compensation issues without the risk of waiving legal professional privilege. In the view of the committee, this should be clarified in the bill.

93 FaHCSIA, *Proof Committee Hansard*, 14 February 2013, p. 69.

94 For example, Avant Mutual Group, *Submission 527*, p. 5.

95 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

96 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

97 NDIS Bill, Subclause 3(d).

8.80 The committee acknowledges the many issues of clarification raised by witnesses and submitters in relation to the other compensation provisions in the bill. The committee notes that the draft NDIS rules relating to compensation issues have not yet been publicly released by the department. The committee further notes that department 'has been closely monitoring the submissions and comments at the hearings related to the treatment of compensation in the Bill'.⁹⁸ The committee anticipates that the draft NDIS rules will substantially clarify the issues raised by submitters in relation to compensation issues.

Recommendation 26

8.81 The committee recommends that the bill be amended to allow a person, where they are required by the CEO to claim or obtain compensation for a personal injury, to elect to subrogate their rights to compensation to the agency.

Recommendation 27

8.82 The committee recommends that the government note submitters' concerns regarding legal advice and confidential communications provided to the agency, and further examine whether the bill should be amended to clarify that any such advice or communications by participants would not constitute a waiver of legal professional privilege.

98 FaHCSIA, *Proof Committee Hansard*, 5 March 2013, pp. 34, 45–46.

Chapter 9

Agency, Board and Advisory Council

The National Disability Insurance Agency

9.1 The Bill establishes the National Disability Insurance Scheme Launch Transition Agency (agency) under the *Commonwealth Authorities and Companies Act 1997*. The primary function of the agency is 'to deliver the National Disability Insurance Scheme'.¹

9.2 Clause 118 outlines the prescribed functions of the agency.² The agency will play a central role in assessments and plan management, the appointment of nominees, the registration of providers, referral services, and provision and acquittal of funding.

Employment within the agency

9.3 The committee heard that the agency could provide, where suitable, employment opportunities for people with disabilities. Australia's Disability Discrimination Commissioner Mr Innes put forward a compelling case for ensuring that the agency employs people with disabilities:

I would come from the position that an organisation that represents the whole community and the diversity of our community is a much stronger, more effective and more inclusive organisation and, from the perspective of clients of the organisation, a more representative organisation. And if we are talking about an organisation that delivers services to people with a disability, given the far lower levels of employment of people with a disability in our workforce—54 per cent, I think, as against 83 per cent of the general population participating in employment—then the situation cries out for some fairly drastic measures.

I was not, until several years ago, a supporter of targets or quotas in this sense. But I have come to the view, supported by situations in the Public Service, where I see that the level of employment of people with a disability has in the last six months dropped below two per cent and is now 1.9 per cent, that the only way to give people with a disability a fair go and to balance the major disadvantage they face in the workforce—in the same way that women have in the past and still do in some areas—is to set targets or quotas. And if you are going to have a quota or a target anywhere, why wouldn't you have it in the agency delivering services to people with disability?

I would assert that a quota or target like that would not cause a significant problem with respect to the merit principle. I think the merit principle is in fact often relied upon to disadvantage diverse groups within our

1 NDIS Bill, Paragraph 118(1)(a).

2 NDIS Bill, Subclause 118(1).

community—because of the narrow way it is interpreted. If you interpret merit as including lived experience of disability, you would have to think the NDIS would be the first place you should start with such a quota or target.³

9.4 The committee heard that recruiting people with disabilities was one of the ways in which the agency could model supporting people with disabilities through employment opportunities.⁴

9.5 The committee was assured by the CEO of the National Disability Insurance Scheme Launch Transition Agency that the agency is striving to be a model employer and is encouraging people with a lived experience of disability to apply:

As the Agency builds its workforce, people with disabilities are being specifically encouraged to apply for employment. As positions are advertised, the job vacancy information packs contain relevant information encouraging people who have an understanding or lived experience with disability to apply and noting that the Agency is being established as a model employer.⁵

Chief Executive Officer

9.6 The bill outlines in some detail the role and powers of the agency CEO. Many of the powers of the CEO, such as those in relation to plans, registration of providers, nominees, litigation, review and advocacy are discussed elsewhere in the report. This section provides a general discussion of the scope and use of power vested in the CEO. The department provided the committee with some guidance on why the role of the CEO has been articulated as it is in the bill:

The Bill reflects the judgement that it is more transparent, and ultimately protects the rights of people with disability to a greater extent, to have the powers of the Agency CEO clearly specified. This ensures that where appropriate the CEO's exercise of these powers can be scrutinised by external review bodies. In simple terms, specifying what the CEO is able to do also allows the law to be clear as to what the CEO is not able to do and therefore provides important protections to people with disability who are, or want to be, participants in the scheme.⁶

Powers of the Chief Executive Officer

9.7 The committee heard concerns that the expansive powers of the CEO perpetuated the top-down approach that has previously characterised disability services, with Mr Owen from DANA noting:

3 Mr Innes, Australian Disability Discrimination Commissioner, *Proof Committee Hansard*, 1 February 2013, p. 31.

4 Mr Tulley, Office of the Health and Community Services Complaints Commissioner, *Proof Committee Hansard*, 19 February 2013, p. 2.

5 Mr Bowen, National Disability Insurance Scheme Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 40.

6 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 34.

My experience is largely with state based programs; in the disability area most people's experience is—where the role of the secretary or the director-general has a similar sort of presence as this legislation does. At that level it is not surprising but it is worryingly business as usual. I would have hoped that across party lines and across jurisdictions if there was one thing the NDIS was not going to be it was business as usual yet this is straight out of central casting in the kinds of provisions that run top-down programs determining what will happen to and for people.⁷

9.8 DANA concluded in this regard that 'we do not agree that the way to safeguard a person with disability is to make the CEO responsible for all decisions.'⁸

9.9 A key point of contention was the discretion the bill grants the CEO in a number of circumstances to make decisions that will significantly impact on the lives of people with disabilities and their families. The department argued that it was necessary in such a scheme as the NDIS that the CEO have the right to make decisions, rather than the use of formulaic hurdle requirements:

The allocation of funding to individuals is ultimately the responsibility of the Agency CEO. This is a responsibility that the Agency CEO should exercise in close partnership with people with disability and their families, carers and on occasion their advocates, but it is inevitably a decision making power that the Agency CEO has to exercise.⁹

9.10 Furthermore:

As we said in our opening comments, there is still an element where the CEO is going to have to be able to make rigorous decisions. We will be looking at providing funding packages of \$200,000 or \$300,000 to a significant number of people, and that is a very big decision that needs to have some rigour around it. It is really a matter of getting the balance right. It is not possible to run an insurance-based scheme where there is, effectively, an entitlement to everybody who meets eligibility criteria without having some rigour in being able to make some judgements.¹⁰

9.11 Activ Foundation questioned this assumption and suggested that the bill should be amended to place the onus on the CEO to provide reasons why someone is ineligible based on stated requirements, rather than leave such decisions up to the discretion of the CEO:

Having a bill whereby, if you apply for access—and you may request access and the CEO may disallow it, or the CEO has to be satisfied that you are actually entitled to access—does not, to me, provide an entitlement scheme at all, and I would encourage you to look at the bill and look at that

7 Mr Owen, Disability Advocacy Network Australia, *Proof Committee Hansard*, 4 March 2013, pp 4–5.

8 Ms Simmons, Disability Advocacy Network Australia, *Proof Committee Hansard*, 4 March 2013, p. 7.

9 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 33.

10 Dr Hartland, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 69.

in terms of changing the tenor of the legislation. Surely we can actually get some certainty, be it via the rules or via the bill, whereby we state certain requirements that are necessary in order to be entitled and individuals can actually meet those requirements—and they are entitled per se. Let the CEO, if the CEO has a view, have the onus of actually saying, 'You are not entitled, for these reasons', rather than the person having to apply, wait, and then have to respond, if you like...To actually have the bill include the myriad discretions that the CEO has does not give a sense of entitlement at all.¹¹

9.12 At the heart of the issue appears to be the conflict between the necessity of governments ensuring the proper expenditure of public funds, and the concerns of many that people with disabilities will be disadvantaged through granting large discretionary powers to the CEO who must ensure the fiscal viability of the NDIS. As was noted by the Association for Children with a Disability:

It is all about the balance of what is essentially public funding and the importance of making sure that that is used effectively, but people definitely have some control and choice within that.¹²

Committee view

9.13 The committee has in chapter 4 outlined its view that there is in fact an entitlement-based framework in place in the bill. It also however accepts that there needs to be a transparent and rigorous approach to the funding package decisions, and that the bill sets out to achieve that. The committee would definitely expect that reasons would be given for funding decisions; indeed, in the event that anyone were to seek review or appeal of any of the decisions covered by clauses 100 and 103, the reasons would be essential.

9.14 The committee recognises the concerns raised regarding granting the CEO or the CEO's delegate discretionary powers, especially as it relates to access to the NDIS. However, the committee believes that the flexible approach taken by the bill will provide better individual outcomes than a prescriptive approach. The committee believes that there is a greater risk with a prescriptive approach that some people would be disallowed on technicalities and variances between experts' opinions of ability.

Delegation

9.15 The department expressed concern that some stakeholders may have misinterpreted the bill, and particularly the role of the CEO, as meaning that all decisions will come back to one individual who is far removed from the daily reality of the participant. The department assured the committee that this was not the case and the references to the CEO throughout the bill refer to the office of the CEO, and that most functions will be delegated to the appropriate level:

11 Mr Vis, Activ Foundation, *Proof Committee Hansard*, 18 February 2013, p. 9.

12 Mrs McGarry, Association for Children with a Disability, *Proof Committee Hansard*, 20 February 2013, p. 19.

The Bill and the rules speak of the CEO making all decisions and requesting information. Some commentators are concerned that this suggests all decisions may be made in Canberra and may even be made personally by the Agency CEO. This is not the intention, indeed far from it. Clause 202 of the Bill permits the CEO to delegate powers and functions under the legislation. There will be delegation of the CEO powers to Agency employees at all launch sites. The policy is to have all decisions made by employees situated as close to NDIS participants, prospective participants, carers, nominees, support providers and other stakeholders as possible.¹³

9.16 Recognising this, some stakeholders took the next step to ask how the powers are going to be delegated in practice, and with what effect. For example, PWDA queried:

The reality will be that these powers are delegated – it [does] not actually mean the CEO, it means a delegate – so how is decision making at the local level going to happen? How is that delegation going to be exercised?¹⁴

9.17 Similarly, the Carers Alliance queried how complex or contested decisions would be escalated internally within the agency:

For all intents and purposes it will be bureaucrats who will be making decisions. Accordingly, additional safeguards must be in place to ensure that prohibitive decisions can be escalated up the chain so that the CEO can give a fair hearing.¹⁵

9.18 The evidence received by this committee did not explicitly answer these queries, however the committee is hopeful that the lessons learnt from the launch sites will provide evidence of any emerging governance problems that need to be addressed in a national implementation.

Board of the agency

9.19 Chapter 6 Part 2 of the bill would establish a board that has oversight of the agency. Clause 124 outlines the functions of the board, namely to ensure the 'proper, efficient and effective performance of the Agency's functions', and to provide strategic direction in line with strategic guidance from the minister.¹⁶ The board will also be responsible for appointing the second and subsequent CEOs of the Agency.¹⁷

13 Ms Wilson, FaHCSIA, *Proof Committee Hansard*, 5 March 2013, p. 39.

14 Mr Wallace, People with Disabilities Australia, *Proof Committee Hansard*, 4 March 2013, p. 59.

15 Carers Alliance, *Submission 976*, p. 10.

16 NDIS Bill, Clauses 124–125.

17 NDIS Bill, Subclause 160(1). Note that the first CEO of the Agency will be pointed by the Minister according to subclause 161(6).

Board membership and structure

9.20 The board comprises a chair and eight other members. Subclause 127(2) outlines the eligibility criteria for appointments to the board:

A person is eligible for appointment as a Board member only if the Minister is satisfied that the person has the skills, experience or knowledge in at least one of the following fields: (a) the provision or use of disability services; (b) the operation of insurance schemes, compensation schemes and schemes with long-term liabilities; (c) financial management; (d) corporate governance.

9.21 In making appointments, the bill requires the minister to ensure that 'the board members collectively possess an appropriate balance of skills, experience or knowledge in the fields mentioned in subclause two (see above).¹⁸

9.22 It was put to the committee by the NPWDCC that the board should also play a role in reflecting the NDIS's mission to advance the rights of people with disabilities and include adding 'demonstrated knowledge of and commitment to disability rights' to the areas of knowledge, skills and experience listed in subclause 127(2).¹⁹

9.23 A common concern regarding the future composition of the board was the lack of a requirement in the bill that the board include people with disabilities. It was argued to the committee that:

The board recruitment process should actively seek to identify people with disability who possess the skills, knowledge and lived experience required to be members of the to be members of the NDIS Board.²⁰

9.24 Similarly, the Council of Social Service New South Wales (COSSNSW) argued, 'we believe that people with disabilities could sit on the board and do have the skills, expertise and knowledge to sit on the board.'²¹ Noting the importance of people with disabilities having a voice on the board, Blind Citizens Australia argued that:

People with a disability should not have those positions simply because they have a disability but because they have developed the skills and knowledge as well as the first-hand experience necessary to comprehend the nature and consequences of decisions made for people who have disabilities, and the long-term sustainability of an NDIS.²²

9.25 While emphasizing the importance of having disabled people represented on the board, Mr Abrahams of Ai-Media informed the committee of the risk of creating a two-tiered board if its constituency was regulated by quotas:

18 NDIS Bill, Subclause 127(6).

19 National People with Disabilities and Carer Council, *Submission 612*, p. 31.

20 National People with Disabilities and Carer Council, *Submission 612*, p. 32.

21 Ms Regan, Council of Social Services NSW, *Proof Committee Hansard*, 1 February 2013, p. 13.

22 Mrs Pascual, Blind Citizens Australia, *Proof Committee Hansard*, 21 February 2013, p. 5.

I do share the concerns about putting a quota in place simply on the basis that, once you have a quota in place, there can be an appearance of two classes of directors appointed to a board and therefore someone with a disability who is perfectly qualified to be on the board in and of their own right will then perhaps be questioned as to whether they are only there in order to fill a particular quota.²³

9.26 Mr Bowen of the National Disability Insurance Scheme Launch Transition Agency emphasized to the committee that although it is not mandatory to have board members with disabilities, it is a factor that the minister would take into account:

For both the board and the advisory council the selection criteria specifically include knowledge of and lived experience of disability. That does not go to the extent of mandating that, but it does make it clear that it is an important factor to take into account.²⁴

9.27 The committee noted that even if a requirement was include to include a number of members with disabilities, they would still have to meet the quality criteria laid out in subclause 127(2) requiring a board member to have the 'necessary skills, experience and knowledge'. No-one could be on the board simply because they had a disability.

9.28 MS Society Western Australia expressed concerns that there are no guarantees of state representation on the board in the bill.²⁵ Although subclause 127(4) requires the minister 'seek the support of all the host jurisdictions for the appointment' to the board, the minister is only required to be satisfied that the appointment is supported by 'a majority of the group consisting of the Commonwealth and the host jurisdictions.'²⁶ The importance of proper geographic representation was further emphasized by National Disability Services' Western Australia branch:

In relation to the governance provisions of the bill as it currently stands, there are no provisions to ensure that the composition of either the board or the advisory council includes experience and knowledge of the diverse conditions across Australia; for example, state and territory differences, Indigenous issues, rural and remote service delivery et cetera. The current provisions, as they stand, could allow membership of both the board and the advisory council to be drawn from a fairly homogenous pool in which those sorts of issues are not properly understood. We believe that there is need to ensure that the criteria for appointments to those bodies properly reflect the diversity of communities around Australia. Clearly, this is a particular issue for WA, with its remoteness from Canberra and its diverse and dispersed population.²⁷

23 Mr Abrahams, Ai-Media, *Proof Committee Hansard*, 1 February 2013, p. 39.

24 Mr Bowen, National Disability Insurance Scheme Launch Transition Agency, *Proof Committee Hansard*, 5 March 2013, p. 76.

25 Mr Stafford, MS Society Western Australia, *Proof Committee Hansard*, 18 February 2013, p. 8.

26 NDIS Bill, Subclause 127(4).

27 Mr Simpson, National Disability Services, *Proof Committee Hansard*, 18 February 2013, p. 18.

9.29 The Centre for Cerebral Palsy posited that the lack of guaranteed representation of states and territories was an oversight 'since the success of the NDIS will depend on the financial contribution of State/Territories and also their knowledge, networks and goodwill'.²⁸

9.30 The LCA also queried board appointments being limited by the provisions of subclause 127(2), arguing that:

[C]apable and responsible Board Members could be appointed from a range of other fields, including disability and health advocates, medical experts and administrators, legal and regulatory experts, consumer representatives, business leaders, etc.²⁹

9.31 The bill also specifies some procedures for the minister to follow when appointing board members, and lists a range of people who are ineligible to be appointed: these include members of any parliament, legislature or local council, and any employee of any government, including any local council. Initial appointments are for a period of no more than three years.

Committee view

9.32 The committee is of the view that it is important that the minister recruit talented people with disability to the board. Although aware that concerns raised regarding mandating board membership and the assurances that the minister would take into account the desirability of including people with lived experience of disability on the board, the committee considers it prudent to remove all doubt about the importance of having people with disabilities on the board. The general underrepresentation of people with disabilities on governance boards nationally compared with the number of people with disabilities in the community points towards the benefit, at least for the time being, that legislation assures their inclusion.

Recommendation 28

9.33 The committee recommends that at least three members of the Board are people with disability.

Conflict of interest provisions

9.34 Disability Directory queried why the bill contains no provisions relating to conflict of interest of a board member, even though it contains such provisions relating to advisory council members.³⁰ The committee understands that the Commonwealth Authorities and Companies Act (the CAC Act) places relevant responsibilities and constraints on board members.³¹ In contrast, the advisory council is not governed by the CAC Act and as a consequence needs governance provisions to be in the NDIS bill.

28 The Centre for Cerebral Palsy, *Submission 598*, pp. 4–5.

29 Law Council of Australia, *Submission 575*, p. 16.

30 Disability Directory, *Submission 601*, p. 12.

31 See in particular Division 4 of that Act.

9.35 However, NPWDCC was concerned that the CAC Act protections were not sufficient in the circumstances. In particular, they argued that:

While Government organisations generally rely on the provisions of the CAC Act to deal with potential conflicts, the Council believes that given the scale of the NDIS, the fact that it is creating a more commercially driven market for providers in the transition to full implementation and that it will be the subject of significant political scrutiny over time, it is better to deal with the issue of governance conflict of interest in the NDIS legislation.³²

9.36 It was further argued by NPWDCC that:

[The] Council believes that there is an endemic conflict of interest for any person who is already a Board member or executive with a service provider organisation likely to receive funding from the scheme (via participants), or who is a participant of the scheme, to be a NDIS Board member. This is because of the commercially and politically sensitive nature of documents that board members would see and the perceived advantage that would accrue to board members.³³

9.37 The LCA similarly expressed concern that:

Board members must not be conflicted and/or hold any other position which could result in a financial advantage for them or their employer from the operation of the NDIS.³⁴

9.38 While the committee recognises the importance of avoidance of conflict of interest, it has concerns that some proposals – such as that by NPWDCC – may inadvertently act to exclude people with disabilities from board roles. The committee heard from a number of witnesses that it was important to ensure that there is adequate representation of people with disabilities on the board, and excluding all participants is likely to directly contradict this objective.

Advisory council

9.39 The bill would also create an Independent Advisory Council (council) to provide advice to the Board (Chapter 6 Part 3 of the bill).

Role of the council

9.40 Clause 144 outlines the functions of the council to provide advice to the board about the way in which the agency:

Performs its functions relating to the National Disability Insurance Scheme; and (b) supports the independence and social and economic participation of people with disability; and (c) provides reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and (d) enables people with disability

32 National People with Disabilities and Carer Council, *Submission 612*, p. 32.

33 National People with Disabilities and Carer Council, *Submission 612*, p. 32.

34 Law Council of Australia, *Submission 575*, p. 16.

to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and (e) facilitates the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and (f) promotes the provision of high quality and innovative supports to people with disability; and (g) raises community awareness of the issues that affect the social and economic participation of people with disability, and facilitates greater community inclusion of people with disability.³⁵

9.41 The bill also ensures that the advice provided by the council takes into consideration significant persons in the lives of people with disabilities such as carers and families.

9.42 The Consumers Health Forum of Australia welcomed the addition of the council:

The involvement of people with disabilities and their carers, providers and other stakeholders will be crucial to the success of the system, particularly in ensuring a smooth implementation process, providing advice on technical, security and privacy issues and in expressing the consumer experience and consumer needs.³⁶

9.43 It was suggested by COSSNSW that the chair of the advisory council should also be a member of the board to ensure a proper connection between the two bodies.³⁷

Council membership

9.44 The council would comprise a Principal Member and no more than 12 other members.

9.45 Under clause 147, members would be required to include at least four 'people with disability who have skills, experience or knowledge relating to disability services', at least two who are 'carers of people with disability and have skills, experience or knowledge relating to disability services' and at least one person 'who has skills, experience or knowledge in the supply of equipment, or the provision of services, to people with disability'.

9.46 The committee heard divergent view regarding the ideal makeup of the council.

9.47 It was emphasized to the committee that it was important that the people with disabilities on the council represented a number of different disability groups:

I think it is important for the advisory committee to have good representation from a number of disabilities...For instance, with spinal cord injuries the physical disability needs for someone who is ventilator

35 NDIS Bill, Subclause 144(1).

36 Consumers Health Forum of Australia, *Submission 520*, p. 1.

37 Ms Regan, Council of Social Services NSW, *Proof Committee Hansard*, 1 February 2013, p. 13.

dependent are very different from somebody who is a paraplegic, as it is different for somebody who has a sight problem or is deaf or has an intellectual disability. So it is really the context and the understanding within the advisory committee around the range of needs. I think that is critical.³⁸

9.48 AFDO indicated that 'at a bare minimum, people with disability should make up a clear majority on both bodies', but that there should be a sufficient pool of experienced people with disability to provide all members of both board and advisory council.³⁹ Similarly, Physical Disability Australia thought that at least half of both board and advisory council members should be people with disability.⁴⁰ Blind Citizens Australia and the SACOSS both argued that there should be a majority of council members with disabilities.⁴¹ Children with Disabilities Australia argued that the majority of people on the council should have lived experience of disability (including family).⁴² It was also suggested by Disability Justice Advocacy for the entire board and council to be made up of people with disabilities.⁴³

9.49 While there was uniform support for strong representation of people with disability on the council, other suggestions about Council membership were highly fragmented. ARATA recommended that the advisory council include both a person with 'experience or knowledge in the supply of equipment' and one with experience in 'the provision of services' to people with a disability, rather than a single person from either area, on the grounds that assistive technology 'will constitute a substantial part of the NDIS budget'.⁴⁴ The Australian Lawyers Alliance made a similar recommendation.⁴⁵ However, VICSERV argued the opposite, considering that reference to 'experience or knowledge in the supply of equipment' should be removed, as this 'seems to be a rather tenuous qualification'.⁴⁶ The RIDBC similarly queried the inclusion of equipment suppliers, noting that:

We would indicate that a person who supplies equipment would not necessarily have a broad understanding of a person with disability and disability services and may not therefore be suitable for advisory council membership.⁴⁷

38 ParaQuad New South Wales, *Proof Committee Hansard*, 31 January 2013, p. 22.

39 Australian Federation of Disability Organisations, *Submission 514*, p. 28.

40 Physical Disability Australia, *Submission 613*, p. 14.

41 Blind Citizens Australia, *Submission 594*, p. 15; South Australian Council of Social Services, *Submission 646*, p. 6.

42 Children with Disabilities Australia, *Submission 607*, p. 11.

43 Disability Justice Advocacy, *Submission 431*, p. 6.

44 Australian Rehabilitation and Assistive Technology Association, *Submission 596*, p. 2.

45 Australian Lawyers Alliance, *Submission 618*, p. 22.

46 Psychiatric Disability Services of Victoria, *Submission 611*, p. 4.

47 Mr Rehn, Royal Institute for Deaf and Blind Children, *Proof Committee Hansard*, 1 February 2013, p. 4.

9.50 NDS argued for subparagraph 147(b)(iii) to be amended so as to account for two Council seats, noting that:

A person skilled *only* in the supply of equipment would not have the broad understanding of disability services to make them suitable for Advisory Council membership. The essential knowledge base is disability service provision. The very broad range of supports used by people with disability (including early intervention therapies, equipment or assistive technology, accommodation support and supported employment) indicate that having only *one* person on the Advisory Council who has skills, experience or knowledge in the provision of services is inadequate.⁴⁸

9.51 The South Australian government recommended that the advisory committee be required to have at least one person with experience or knowledge 'with regard to people with disability in rural or remote communities' and another with regard to 'the needs and service support for children and young people with disability'.⁴⁹ The Physical Disability Council called for the advisory council to have 'representation from a range of host jurisdictions, aboriginal communities, aged services, regional and rural communities'.⁵⁰

9.52 Other groups who argued for specific representation on the council or board included: United Voice, who argued to the committee that the Council should include trade union representation⁵¹; the National Ethnic Disability Alliance who called for someone from a non-English speaking background with a disability and experience in the multicultural disability advocacy field⁵²; Muscular Dystrophy Australia suggested the inclusion of a paediatric early intervention and care expert, and a geriatric care specialist⁵³; and the Australian Services Union noted that 'the Advisory Committee will need at least one representative of disability care workers'.⁵⁴

Committee view

9.53 The evidence to the committee has clearly shown that there are a multitude of views on the appropriate mix of skills, experiences, and qualifications that should be on the council. Like all such bodies, it is necessary to balance completeness and manageability. After considering the evidence, the committee has concluded that first and foremost the council should have a majority of members with a disability. The council composition recommended below takes into account this consideration, as well as the importance of including the expertise of carers and specialist knowledge of the needs of disabled people in non-metropolitan areas. This last criterion is supported

48 National Disability Services, *Submission 590*, p. 10.

49 South Australian Government, *Submission 647*, p. 7.

50 Physical Disability Council of NSW, *Submission 597*, p. 8.

51 Mr Milroy, United Voice, *Committee Hansard*, 4 March 2013, p. 19.

52 National Ethnic Disability Alliance, *Submission 614*, p. 11.

53 Muscular Dystrophy Australia, *Submission 643*, p. 7.

54 Australian Services Union, *Submission 822*, p. 7.

by the committee because of committee members' extensive experience of the issues in health care and service provision in regional and remote Australia, reflected in numerous Community Affairs Reference Committee reports. In the case of the NDIS, there are likely to be particular issues for non-metropolitan areas in meeting the NDIS objective of ensuring the development of genuine choice for participants, a fact reflected in numerous accounts contained in the committee's many personal submissions to this current inquiry.

Recommendation 29

9.54 The committee recommends that subclause 147(5) be amended so as to read:

(5) In appointing the members of the Advisory Council, the Minister must:

- (a)** have regard to the desirability of the membership of the Advisory Council reflecting the diversity of people with disability; and
- (b)** ensure that all members are persons with skills, experience or knowledge that will help the Advisory Council perform its functions; and
- (c)** ensure that:
 - (i)** a majority of the members are people with disability; and
 - (ii)** at least two of the members are carers of people with disability; and
 - (iii)** one or more of the members is a person who has skills, experience or knowledge of disability in rural or regional areas.

Note: Any member may fulfil one or more criteria in 147(5)(c)

Senator Claire Moore
Chair
Qld, Australian Labor Party

Senator Rachel Siewert
Deputy Chair
WA, Australian Greens

Senator Carol Brown
Tas, Australian Labor Party

Senator Mark Furner
Qld, Australian Labor Party

Senator Dean Smith
WA, Liberal Party of Australia

Senator Bridget McKenzie
Vic, National Party of Australia

Senator Sue Boyce
Qld, Liberal Party of Australia

Senator Mitch Fifield
Vic, Liberal Party of Australia

Senator David Fawcett
SA, Liberal Party of Australia

Senator the Hon. Lin Thorp
Tas, Australian Labor Party

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

Additional Comments – Coalition Senators

Coalition support

All Senators know that the system of support for Australians with disability is broken. The evidence received by the Committee through more than 1,600 submissions made this point in every case.

The evidence received from witnesses again reinforced that the level of support a person with a disability receives depends on a number of factors including the state they live in, whether the disability is congenital or was acquired and, if acquired, whether it was in the workplace, a motor vehicle accident or some other context. Workers compensation and motor vehicle accident insurance provides coverage in some jurisdictions. But if you are born with a disability or acquire a disability later in life it can be a different story – waiting lists and queues. The result is that many people with a disability are left without the assistance they need.

In the words of the Leader of the Opposition, Mr Tony Abbott, “the NDIS is an idea whose time has come”.

The Coalition agrees Australia needs a new system of support based on need rather than rationing with the entitlement for support going to the individual. The individual needs to be at the centre and in charge, able to pick the supports, equipment and service providers of their choice. This is the vision of the Productivity Commission’s landmark report into long term care and support for people with disability. This is the vision of the National Disability Insurance Scheme.

The Coalition has enthusiastically supported each milestone on the road to the NDIS:

- The Coalition supported the work of the Productivity Commission.
- The Coalition supported the \$1 billion dollars in the last budget.
- The Coalition supported the five launch sites.
- The Coalition supported the agreement between the Commonwealth and New South Wales for a full state-wide roll out after the Hunter launch.
- The Coalition supports this legislation.

The Leader of the Opposition, Mr Abbott, has demonstrated his personal commitment to Australians with disability and those who care for them by dedicating \$540,000 raised by the 2012 Pollie Pedal charity bike ride to Carers Australia. Along the 1,000 kilometre route Mr Abbott met with people with disability, carers and disability organisations. The next two Pollie Pedals will also be in partnership with and raise funds for Carers Australia.

Any comments the Coalition makes about the NDIS are offered in a constructive spirit - to help make the NDIS the best that it can be. The Coalition stands ready to work with the Government to see an NDIS delivered as soon as possible. The Coalition believes an NDIS can be delivered within the time frame recommended by the Productivity Commission by a prudent government that manages well.

Beyond partisanship

The NDIS is a person-centred and self-directed funding model. It is aligned to the objectives of empowering the individual, removing government from people's lives and reducing red tape. The Coalition believes that the full implementation of an NDIS would be nothing short of a new deal for people with disabilities and their carers. We have to get this right.

Because the NDIS is a once-in-a-generation reform that will unfold over the life of several parliaments, it should be the property of the Parliament as a whole, on behalf of the Australian people, rather than that of any particular political party. To get this right will require a very high level of consultation and attention to detail not just now, not just in the launch sites, but from now until full implementation.

The NDIS should be beyond partisan politics. The Coalition has been disappointed when some members of the Government have claimed the NDIS represents quintessentially Labor values. It does not. The NDIS represents Australian values. A fair go. Helping those who face challenges for reasons beyond their control. No side of politics has a mortgage on these.

The Coalition has called for the establishment of a joint parliamentary committee, to be chaired by both sides of politics, to oversee the establishment and implementation of the NDIS. A parliamentary oversight committee would lock in all parties and provide a non-partisan environment where issues of design and eligibility could be worked through co-operatively.

Mr George Christensen, the Member for Dawson has, had a motion in the House to establish this committee for some time. Regrettably, the motion has not been brought forward for a vote. Senators Fifield and Boyce moved a similar motion to establish the oversight committee on 27 June 2012. The Government and the Australian Greens combined in the Senate to vote it down.

Mr Abbott reiterated the offer to join in establishing a parliamentary oversight committee in his Press Club Speech on 31 January 2013 saying,

The Coalition is so committed to the National Disability Insurance Scheme, for instance, that we've offered to co-chair a bi-partisan parliamentary committee so that support for it doesn't flag across the three terms of parliament and among the nine different governments needed to make it work.

When the Government has been offered the opportunity to embrace genuine bipartisanship in relation to the NDIS it has declined to do so. This legislation gives the Government another opportunity to correct this.

The Coalition intends to give the Government, the Australian Greens and the independent Members and Senators an opportunity to accept the hand of cooperation by moving an amendment to this Bill to establish a non-partisan oversight committee. We urge the Government to accept this offer. The Coalition will move an amendment to this effect in the House (Attachment A).

A joint venture of all Australian Governments

It is important to note that every Government in Australia and every Opposition in Australia supports and wants to see an NDIS.

It was disappointing that the Prime Minister did not treat all jurisdictions as partners at the COAG meeting in July 2012. It was to the credit of the Victorian and New South Wales Governments that they continued to negotiate in the face of misrepresentation by the Federal Government and reached agreement to host launch sites. A cooperative approach is essential. There can be no NDIS without the states and territories. They are partners, not enemies.

The fruits of a constructive approach were evident when Premier O'Farrell of New South Wales and the Prime Minister signed an inter-governmental agreement in December 2013 for a full state-wide NDIS roll out after the Hunter launch project. The Government should continue this constructive approach in discussions with the other jurisdictions to conclude further bilateral agreements. There can be no full NDIS without an inter-governmental agreement with each state and territory.

It is worth making comment in relation to those states that are not hosting launch sites. The Productivity Commission never envisaged every state hosting a launch site and never saw the absence of a launch site as a bar to taking part in a full national rollout. Indeed Premier Newman of Queensland has written to the Prime Minister with a proposal to be part of a full national roll out. Premier Barnett of Western Australia has written to the Prime Minister proposing a joint Western Australia-Commonwealth NDIS.

Questions of funding also need to be cooperatively worked through with the states and territories. Legitimate questions and due diligence should not be portrayed as a lack of commitment to the NDIS. For example, while the Coalition emphatically supported the Government's commitment of \$1 billion to the NDIS in the last Federal Budget, there was some difficulty in reconciling this figure with the \$3.9 billion the Productivity Commission said would be necessary over the forward estimates for the first phase of the NDIS. We assume the Government will explain, account for this, and make appropriate provision in the coming budget.

The Coalition will continue to place the NDIS above politics and is prepared to work with State and Commonwealth governments towards a better deal for people with a disability.

The need for full information

This Bill establishes the framework for the National Disability Insurance Scheme and the National Disability Insurance Scheme Launch Transition Agency (the Agency). This will enable the scheme to be launched, and the Agency to operate the launch, in four sites across Australia from July 2013 and five sites from July 2014. The first stage of the Scheme will benefit more than 20,000 people with disability, their families and carers living in South Australia, Tasmania, the Hunter in New South Wales, the Barwon area of Victoria and the Australian Capital Territory.

The Scheme will provide funding to individuals or organisations to help people with disability participate more fully in economic and social life through the provision of an entitlement enabling things such as equipment, supported accommodation or personal attendant care.

The mechanics of the Agency will be established by way of legislative instruments called the NDIS rules. These regulations, the NDIS rules, will further detail areas such as eligibility and assessment criteria. The Government released a discussion paper about the rules on 1 February 2013. Rather than containing a draft set of rules, the discussion paper was a series of questions.

This is significant as the Bill itself is essentially a framework. It establishes the Agency, the Board, the Chief Executive and a general definition of eligibility. But the mechanics of the scheme will be established by the rules. A recurrent theme in evidence presented by witnesses was that it was hard to offer advice or pose questions or to plan for the launch sites in the absence of the rules.

The Government released seven sets of draft NDIS rules on the final day of hearings of the Senate Community Affairs Committee on Tuesday 5 March. These included draft rules for becoming a participant, draft rules for children, draft rules for privacy, draft rules for nominees, draft rules for supports, draft rules for registered providers and draft rules for plan management. These draft rules are still the subject of consultation with the states and territories and disability stakeholders. The Coalition will study them carefully.

The Government has also indicated that there are potentially dozens of batches of draft rules still to be released. These need to be released quickly and well before passage of the Bill. In her second reading speech, the Prime Minister indicated the Government's intention to bring the final version of the Bill to a vote in the Budget session. The remaining rules need to be released soon to enable proper scrutiny and consultation with stakeholders.

The risk, as always, with this government is in their capacity to competently implement. The interaction of three components – the NDIS Bill, the NDIS rules and the operating guidelines for the NDIS Launch Transition Agency – will determine how, and how well, the NDIS operates. The work of the Senate Committee is critical and it should have been afforded the benefit of the full NDIS rules and the operating guidelines for the Agency before concluding its work. Right now, it isn't possible to develop a complete picture of how the NDIS will unfold because of insufficient information.

A community effort

This legislation to give effect to a National Disability Insurance Scheme is in the Parliament due to a grass roots campaign by carers, Australians with disability and the organisations that support them. They came together. They decided enough was enough. They spoke with one voice. They declared “We’re as mad as hell and we’re not going to take it anymore”.

The two main intellectual drivers of the NDIS have been Mr John Walsh AM, a partner at PwC, and Mr Bruce Bonyhady AM, Chair of Yooralla and President of Philanthropy Australia, without whose determination, professional expertise and personal knowledge this legislation would not be before the Parliament.

Conclusion

This legislation is not perfect. The NDIS is a complex venture. Amendments after introduction of the legislation to the Parliament were inevitable. The Senate Committee process has again proven its worth through this inquiry. The Government has undertaken to carefully consider the work of the Committee. However, in the time available, the Committee was never going to be able to address all design issues. The onus remains on the Government. The prime function of the Committee in the compressed time frame was to seek to ventilate as many issues as possible.

While the Coalition and other parties support the NDIS and the broad architecture outlined by the Productivity Commission, the detailed design of the scheme, the legislative drafting and launch site implementation are the responsibility of the Government. The Coalition had offered to be partners with the Government in the design of the scheme and the drafting of the legislation through the establishment of a joint parliamentary committee to oversee the implementation of the NDIS. This offer was not accepted. Therefore the Coalition has not had the benefit of the information and the opportunity such a Committee would have provided to work with the Government on these issues.

The Coalition want the NDIS to be a success. The Coalition want the launch sites to run smoothly. The Coalition wants this legislation to achieve the objectives laid out by

the Productivity Commission. The Coalition stands ready to work with the Government and all jurisdictions to make the NDIS a reality.

Senator Mitch Fifield

Senator Sue Boyce

Senator Dean Smith

Senator Bridget McKenzie

Senator David Fawcett

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

National Disability Insurance Scheme Bill 2012

(Amendment to be moved by Mr Andrews)*

- (1) Page 80 (after line 17), at the end of Part 6, add:

Part 7—Joint Select Committee on the National Disability Insurance Scheme

103A Parliamentary Joint Committee on the National Disability Insurance Scheme

- (1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on the National Disability Insurance Scheme, is to be appointed according to the practice of the Parliament.
- (2) The Committee is to consist of 10 members, made up of the following:
 - (a) 2 members of the House of Representatives who are Government members;
 - (b) 2 members of the Senate who are Government members;
 - (c) 2 members of the House of Representatives who are Opposition members;
 - (d) 2 members of the Senate who are Opposition members;
 - (e) 1 member of the House or Representatives or the Senate who is a member of the Australian Greens;
 - (f) 1 member of the House of Representatives or the Senate who is an independent member.

- (3) A member of the Parliament is not eligible for appointment as a member of the Committee if he or she is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives.
- (4) A member ceases to hold office:
 - (a) when the House of Representatives expires by effluxion of time or is dissolved; or
 - (b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (3); or
 - (c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (5) or (6).
- (5) A member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (6) A member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.
- (7) Subject to the requirements of subsection (2), either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

103B Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament.

103C Functions of the Committee

- (1) The functions of the Committee are:
 - (a) to review the implementation of the National Disability Insurance Scheme; and
 - (b) to review the administration and expenditure of the National Disability Insurance Scheme; and
 - (c) to review any matter in relation to the National Disability Insurance Scheme referred to the Committee by:
 - (i) the responsible Minister; or
 - (ii) a resolution of either House of the Parliament; and
 - (e) to report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister;
 - (f) such functions as agreed to by resolutions of the House of Representatives and the Senate.

103D Annual report

As soon as practicable after each year ending on 30 June, the Committee must give to the Parliament a report on the activities of the Committee during the year.

[parliamentary joint committee]

APPENDIX 1

Submissions and Additional Information received by the Committee

Submissions

- 1 Mr Ange Kenos
- 2 Office of the Public Advocate (Victoria)
- 3 Aids and Equipment Action Alliance
- 4 Disability Support Pensioners Australia Inc.
- 5 Mrs Michele Ferris
- 6 Confidential
- 7 Ms Julie Steele
- 8 Mrs Annie Klaassen
- 9 Mr Jim Rutherford
- 10 Mrs Lee Ann Warburton
- 11 Confidential
- 12 Mrs Elisabeth Vis
- 13 Mrs Barbara Lalor
- 14 Confidential
- 15 Confidential
- 16 Mr Jonathan Kim Sing
- 17 Confidential
- 18 Ms Angela Pound

- 19 Mrs Julie Smallhorn
- 20 Mr Geoffrey Kellock
- 21 Confidential
- 22 Mrs Mereana Gordon
- 23 Confidential
- 24 Mrs Linda Montgomery
- 25 Confidential
- 26 Ms Sandra Di Blasio
- 27 Confidential
- 28 Assoc Prof Matthew Rockloff
- 29 Ms Laura Edwards
- 30 Mr Douglas Dobson
- 31 Mr John Russell
- 32 Mr Ian Burke
- 33 Ms Jennifer Damiani
- 34 Confidential
- 35 Ms Julie O'Leary
- 36 Mrs Margaret Lee
- 37 Confidential
- 38 Confidential
- 39 Mrs Val Baard
- 40 Mr David Noakes
- 41 Confidential

-
- 42 Miss Christine Anderson
- 43 Mrs Leeann Milne
- 44 Confidential
- 45 Mrs Margaret Crawford
- 46 Mr David Wilson
- 47 Confidential
- 48 Mr Andrew Hobbs
- 49 Confidential
- 50 Mrs Susi Tuita
- 51 Mr Stuart Smyth
- 52 Dr Rosemary O'Brien
- 53 Mrs Pamela Ireton
- 54 Confidential
- 55 Mrs Bep Torkington
- 56 Miss Jennifer Wright
- 57 Mr Samuel Kennedy
- 58 Ms Rosalie Hamilton
- 59 Mrs Kathy Rawsthorne
- 60 Confidential
- 61 Miss Lynette Kurzman
- 62 Ms Julie Taylor
- 63 Confidential
- 64 Confidential

- 65 Mrs Rhonda Croft
- 66 Mr Daryl Stephens
- 67 Dr Christine Randall
- 68 Mrs Alice Beauchamp
- 69 Mrs Ann Shoobridge
- 70 Ms Karina Morgan
- 71 Mr Peter Yeo
- 72 Mrs Sheree Pfeiffer
- 73 Confidential
- 74 Mrs Carol Nichol
- 75 Ms Naomi O'Byrne
- 76 Mr Bradley Oliver
- 77 Mr Leo Wu
- 78 Confidential
- 79 Ms Gnanaletchumy Jegasothy
- 80 Miss Dianne Kelly
- 81 Confidential
- 82 Mr Alan Meagher
- 83 Ms Freda van Onselen
- 84 Prof Joan McMeeken
- 85 Mr Ernst Forger
- 86 Ms P. Seybold
- 87 Confidential

- 88 Mr Richard Thomas
- 89 Mrs Cheryl Setchell
- 90 Ms Jan Wynd
- 91 Confidential
- 92 Mr Alan Oliver
- 93 Mr Ernie Wilmott
- 94 Miss Sonia Wickham
- 95 Ms Kate Ollier
- 96 Ms Cathie Wills
- 97 Ms Patricia Chalmers
- 98 Mrs Kirsten Geersen
- 99 Confidential
- 100 Ms Rosemary Probst
- 101 Mrs Jillian Beston
- 102 Mr Arthur Apostolopoulos
- 103 Mrs Ann King
- 104 Mr Frankie Roncan
- 105 Mrs Heather-Jane Parks
- 106 Dr Alex Wood
- 107 Mrs Helen Bedford
- 108 Mrs Kylie Ramstadius
- 109 Mr Anthony Jarrett
- 110 Mr Paul Snell

- 111 Mr Darren Smyth
- 112 Mr Roger Storey
- 113 Mrs Victoria Ostergaard
- 114 Mrs Nicole Galea
- 115 Mr Tolga Balta
- 116 Mr Norman Anderson
- 117 Mrs Lee Powell
- 118 Sr Kate McGrath
- 119 Confidential
- 120 Ms Kaye Waghorne
- 121 Mrs Bernadette Duffy
- 122 Confidential
- 123 Confidential
- 124 Mrs Christine McDonald
- 125 Ms Jane Micallef
- 126 Confidential
- 127 Mrs Fiona Bell
- 128 Mrs Kerri-ann Canavero
- 129 Mr Jason Lee
- 130 Confidential
- 131 Mrs Kathy Griffiths
- 132 Mr Neil Preston OAM
- 133 Ms Katrina Kincade-Sharkey

- 134 Mrs Mary Knight
- 135 Mrs Jo Rovito
- 136 Mrs Judy Bink
- 137 Mr Sean McCandless
- 138 Mrs Vicki Johnson
- 139 Miss Heather Carney
- 140 Ms Diana Medaris
- 141 Mr Geoffrey Ashenden
- 142 Mrs Leanda Helmke
- 143 Mrs Harlene Stidworthy
- 144 Mrs Kathleen Ann
- 145 Ms Christine Taylor
- 146 Mrs Heather Liesis
- 147 Ms Vicki Smyth
- 148 Ms Michelle Elliott
- 149 Mrs Barbara De Raad
- 150 Mr Paul Johnston
- 151 Confidential
- 152 Confidential
- 153 Mrs Verelle Fudge
- 154 Ms Penelope Wilkinson
- 155 Ms Ingrid Kelly
- 156 Confidential

- 157 Mrs Anne Jeavons
- 158 Ms Lisa Holliday
- 159 Ms Jeanette Kinkead
- 160 Mr Gregory English
- 161 Mrs Maria Pywell
- 162 Mrs Michelle Hannemann
- 163 Confidential
- 164 Ms Taya Nielsen
- 165 Dr Margaret Torode
- 166 Mrs Susan Watt
- 167 Mrs Helen Mihailof
- 168 Mr Michael Bradley
- 169 Mrs Marita McArthur
- 170 Confidential
- 171 Mr Kerry Vidler
- 172 Confidential
- 173 Confidential
- 174 Mrs Julie Kohlbach
- 175 Mrs Moya Hughes
- 176 Mrs Marg Burrowes
- 177 Mr Peter Morgan
- 178 Mr Ken Klemke
- 179 Mr John Poulton

180 Miss Beryl Edmonds
181 Ms Jill McDonald
182 Mrs Ethel Jackson
183 Confidential
184 Ms Laura Bloom
185 Mrs Trish Marshman
186 Ms Marianne Dalton
187 Confidential
188 Mrs Cherie Bailey
189 Miss Tanya Fitch
190 Mrs June Madden
191 Miss Katherine Bill
192 Ms Judy Down
193 Mr Peter Macpherson
194 Mrs Anita Audrain
195 Mrs Evelyn Wakeling
196 Mr Stephen Brown
197 Mr David Dawes
198 Ms Nicky McDonald
199 Ms Gay Brummer
200 Mrs Renata Valenca
201 Ms Veronique Menand
202 Confidential

- 203 Mr and Mrs Jeff and Marge Bishop
- 204 Ms Michelle Frank
- 205 Mrs Marie Patterson
- 206 Confidential
- 207 Mr Ian Holowko
- 208 Ms Bridget Nunan
- 209 Ms Sharne Vogt
- 210 Ms Marchelle Withers
- 211 Confidential
- 212 Ms Shirley Watkins
- 213 Dr Jane Ralls
- 214 Mrs Joyce Mullemeister
- 215 Mrs Nita Harvey
- 216 Mrs Jean Sietzema-Dickson
- 217 Ms Dawn Jacobs
- 218 Mrs Karen Rapley
- 219 Miss Lisa Brumley
- 220 Confidential
- 221 Mrs Gabrielle Mortimer
- 222 Mr Hussein Eggu
- 223 Mrs Rosemary Muller
- 224 Ms Dianne Nixon
- 225 Mr Ray Ahearn

- 226 Confidential
- 227 Mrs Terry Darby
- 228 Mrs Robyn Rogers
- 229 Mrs Veronica Byrne
- 230 Mrs Shani Goldsbro
- 231 Ms Vivienne Marie Newton
- 232 Mr Patrick Boyce
- 233 Ms Debbie Voysey
- 234 Confidential
- 235 Mrs Lynda Hamilton
- 236 Mrs Swati Lele
- 237 Mrs Leonie Langlands
- 238 Mrs Kathy Harris
- 239 Mrs Iman El-Cheik Hussein
- 240 Mr Harry Grimes
- 241 Ms Dianne Mullin
- 242 Mr Hamish Murray
- 243 Mrs Vicki Sciulli
- 244 Mrs Lily Holland
- 245 Mr Anthony Morrissy
- 246 Mrs Marilyn King
- 247 Mr Ian Hill
- 248 Mr Alan Aldrich

249 Mr and Mrs Tim Cawthorn

250 Ms Johanna Lamborn

251 Confidential

252 Mr Gerard Nolan

253 Mr Robert Parsons

254 Ms Terra Starbird

255 Mrs Robin Keough

256 Mrs Caroline Livanos

257 Mr James Gillett

258 Mrs Dianne Ward

259 Confidential

260 Mr Michael Bencic

261 Ms Diane Davies

262 Ms Aviva Sheb'a

263 Ms Margaret Peace

264 Confidential

265 Mr Matthew Gilbert

266 Miss Melanie Brown

267 Mr Daniel Kyriacou

268 Name Withheld

269 Confidential

270 Mr Richard Spencer

271 Mrs Julie Lloyd-Wilson

272 Mrs Lynette May
273 Confidential
274 Mr Terence Reed
275 Confidential
276 Confidential
277 Ms Tania Curlis
278 Mr Ken Patterson
279 Ms Kim Meurer
280 Mrs Jill Hinchliffe
281 Mrs Cathy O'Sullivan
282 Mr Paul Wetherbee
283 Mrs Susan Moore
284 Mr Kerry Fahey
285 Mr William Gilbert
286 Confidential
287 Confidential
288 Ms Patricia Ramsden
289 Mrs Sara Sutherland
290 Ms Felicity Morris
291 Miss Kylie Clark
292 Ms Catherine Hunter
293 Mrs Leah Kateiva
294 Name Withheld

- 295 Mrs Roma Dale
- 296 Mrs Mary Spencer
- 297 Mrs Bev Watts
- 298 Ms Fiona Hooton
- 299 Mrs Dorothy Guterres
- 300 Miss Joanne Cooper
- 301 Mrs Kathy Jones
- 302 Mrs Vanessa Pike-Russell
- 303 Ms Jewels Smith
- 304 Mrs Janet Burgin
- 305 Confidential
- 306 Mr David Matthews
- 307 Director Michael Pavia
- 308 Miss Cheryl Hendy
- 309 Confidential
- 310 Ms Kylie Ridding
- 311 Ms Mary Thornhill
- 312 Mr Sean Gerathy
- 313 Mrs Joan Jenkins
- 314 Confidential
- 315 Mrs Margaret Makewell
- 316 Mrs Norelle Kasberger
- 317 Mrs Dianne Gardner

- 318 Mr Michael Kean
- 319 Ms Judy Muirhead
- 320 Mr Russell Warfield
- 321 Mrs Linden Johnston
- 322 Mr Alain Berthelot
- 323 Mrs Bic Gresty
- 324 Confidential
- 325 Mrs Geraldine Gartland
- 326 Mrs Leanne Riley
- 327 Mr Kevin Stafford
- 328 Ms Heather Starling
- 329 Ms Lisa Horne
- 330 Mrs Tania Nand
- 331 Mrs Kim Cluff
- 332 Mrs Judy Kippin
- 333 Confidential
- 334 Mrs Coral Johnson
- 335 Confidential
- 336 Ms Shirley Cass
- 337 Ms Heather Renton
- 338 Mrs Carey Doyle
- 339 Mr Peter Demmery
- 340 Ms Karen Ewings

- 341 Mrs Debbie Wisdom
- 342 Miss Wendy Howard
- 343 Ms Melinda Loew
- 344 Confidential
- 345 Confidential
- 346 Mrs Cindy Howard
- 347 Ms Adrienne Wooding
- 348 Mr Andrew Stewart
- 349 Mrs June Wilson
- 350 Mrs Maree Young
- 351 Mrs Annemarie Ross
- 352 Confidential
- 353 Mrs Jeannette Doyle
- 354 Mrs Kim Maloney
- 355 Mrs Pam Rogers
- 356 Mrs Judith Weise
- 357 Mr Damian Stefanoff
- 358 Confidential
- 359 Ms Ketra Wooding
- 360 Confidential
- 361 Confidential
- 362 Mrs Lynne van der Laak
- 363 Ms Nanette Herry

- 364 Miss Emma Gallagher
- 365 Confidential
- 366 Mrs Rhonda Stock
- 367 Ms Chelle Destefano
- 368 Ms Trish Harvey
- 369 Ms Dawn Prasad
- 370 Mr Mike Dwyer
- 371 Confidential
- 372 Mr Alex Jones
- 373 Mr Shahzad Jamil
- 374 Ms Natalie Reid
- 375 Mr Muhammad Khan
- 376 Confidential
- 377 Mr and Mrs James and Rosemary Burn
- 378 Confidential
- 379 Confidential
- 380 Miss Kate McGuigan
- 381 Mrs Susan Clark
- 382 Ms Charmaine Idris
- 383 Ms Nadine Olsen
- 384 Ms Nancy Donaldson
- 385 Confidential
- 386 Ms Cate Davies

387 Confidential

388 Confidential

389 Ms Barbara Day

390 Mr Sean Rapley

391 Mrs Rebecca Heeschen

392 Confidential

393 Confidential

394 Mrs Anthea McStay

395 Mr Alastair McEwin

396 Mrs Kate McConkey

397 Ms Lisa Monaghan

398 Ms Rebecca Irvine

399 Mrs Pippa Grey

400 Miss Audrey Collins

401 Miss Erin Anderson

402 Mr Peter Him

403 Ms Jackie Hall

404 Mr Michael Kane

405 Ms Jane Alexander

406 Mr Brandon Stroud

407 Ms Sandra Kelly

408 Confidential

409 Confidential

- 410 Communities@Work
- 411 Ms Ruth Martyn
- 412 Mr Thomas Demmery
- 413 Mrs Margaret Viero
- 414 Mrs Michelle Langridge
- 415 Mr Peter Woodruff
- 416 Mrs Susan Carovigno
- 417 Confidential
- 418 Confidential
- 419 Family Planning NSW
- 420 Confidential
- 421 Confidential
- 422 Dr Renee Testa
- 423 Mr Mike Lawson
- 424 Mr Blackie Forster
- 425 Prof Harold Luntz
- 426 Confidential
- 427 Mr Sam Mauchline
- 428 The Royal Society for the Blind
- 429 Name Withheld
- 430 Victorian Disability Services Commissioner
- 431 Disability Justice Advocacy Inc.
- 432 Ms Christina Morris

- 433 Disability Information Advocacy Service Inc.
- 434 ANGLICARE Sydney
- 435 Ms Patricia Malowney
- 436 Name Withheld
- 437 Gippsland Carers Association Inc
- 438 Ms Deborah Robins
- 439 Carers Queensland Inc.
- 440 Mr Adam Johnston
- 441 Novita Children's Services
- 442 Neuro Muscular Alliance Tasmania
- 443 MND Australia
- 444 Women With Disabilities ACT
- 445 Dr Coralie Graham
- 446 Mr Brian O'Hart
- 447 Mr Grant Patterson
- 448 Confidential
- 449 Health and Community Services Complaints Commissioner of South Australia
- 450 Ms Lisa Brockwell
- 451 Mr Ian Dalwood
- 452 NOFASARD
- 453 Epilepsy Action Australia
- 454 Mrs Stephanie Crawford
- 455 Mrs Suzanne Hill

- 456 Activ Foundation Inc.
- 457 Cerebral Palsy Alliance
- 458 Confidential
- 459 Mrs Gillian Neumann
- 460 Mrs Cheri O'Connell
- 461 Australian Physiotherapy Association
- 462 Dietitians Association of Australia
- 463 Ms Samantha Jenkinson
- 464 Mrs Katrina Malone
- 465 Miss Beke Pyne
- 466 Miss Bree Forster
- 467 Mrs Sarah Morgan
- 468 Mr Darryl Steff
- 469 Mr Chris Lynch
- 470 Confidential
- 471 Mrs Sam Hanton
- 472 Confidential
- 473 Mrs Judith Buckley
- 474 Mr Mark Floresta
- 475 Care Inc
- 476 Mrs Kristine McConnell
- 477 Mrs Helen McLaughlin
- 478 Confidential

- 479 Mrs Janine Kimberley
- 480 Confidential
- 481 Ms Elizabeth Maddox
- 482 Mrs Debra Gilbertson
- 483 Orygen Youth Health
- 484 Speech Pathology Australia
- 485 The Royal Women's Hospital
- 486 Office of the Australian Information Commissioner
- 487 Housing Choices Australia
- 488 Insurance Council of Australia
- 489 Siblings Australia Inc
- 490 Toowoomba Intellectual Disability Support Association
- 491 The Royal Australian and New Zealand College of Psychiatrists
- 492 Australian Human Rights Commission
- 493 Office of the Public Advocate Queensland
- 494 Multiple Sclerosis Australia
- 495 Ms Heidi Forrest
- 496 Inclusion Works
- 497 Queensland Advocacy Inc.
- 498 AMPARO Advocacy Inc
- 499 Young People In Nursing Homes National Alliance
- 500 Endeavour Foundation
- 501 Paraplegic and Quadriplegic Association of NSW (ParaQuad NSW)

-
- 502 Legal Aid NSW
- 503 Aboriginal Disability Justice Campaign
- 504 Ai-Media
- 505 Attendant Care Industry Association (Australia) Ltd
- 506 Carers NSW
- 507 Welfare Rights Centre Inc.
- 508 NSW HACC Issues Forum
- 509 Hunter Disability Support Organisation
- 510 NSW Council for Intellectual Disability
- 511 Post Polio Victoria
- 512 Mr Dale Reardon
- 513 Vision 2020 Australia
- 514 Australian Federation of Disability Organisations
- 515 JacksonRyan Partners
- 516 Disability Advocacy Network Australia (DANA) Ltd
- 517 Duchenne Foundation
- 518 Early Childhood Intervention Australia
- 519 House with No Steps
- 520 Consumers Health Forum of Australia
- 521 MIGA
- 522 Salvation Army Australia Southern Territory
- 523 NSW Disability Network Forum
- 524 Royal Australasian College of Physicians

- 525 Telethon Institute for Child Health Research
- 526 Cootharinga North Queensland
- 527 Avant Mutual Group
- 528 Brain Injury Australia Inc
- 529 Assistive Technology Suppliers Australasia Inc
- 530 Open Minds
- 531 Private Mental Health Consumer Carer Network (Australia)
- 532 Gellibrand Support Services
- 533 Slater and Gordon Lawyers
- 534 Mr and Mrs Peter and Beverley Rubenach
- 535 Every Australian Counts
- 536 Australian Blindness Forum
- 537 Western Australia's Individualised Services
- 538 Ethnic Disability Advocacy Centre
- 539 Community Safeguards Coalition
- 540 Tasmanian Government
- 541 Queenslanders with Disability Network
- 542 Aboriginal and Torres Strait Islander Disability Network of Queensland
- 543 Carers WA
- 544 Occupational Therapy Australia
- 545 Arthritis Australia
- 546 Sexual Health and Family Planning ACT (SHFPACT)
- 547 UnitingCare Community Options

-
- 548 Spinal Injuries Association
- 549 MDA National Insurance
- 550 Australian Institute of Health and Welfare
- 551 FECCA
- 552 Mental Health Council of Australia
- 553 Alzheimer's Australia
- 554 Name Withheld
- 555 Children's Not for Profit Group
- 556 Macular Degeneration Foundation
- 557 People With Disability Australia
- 558 NSW Consumer Advisory Group - Mental Health Inc.
- 559 Youngcare
- 560 Professor Christine Bigby
- 561 Australian Federation of Deaf Societies
- 562 Australian Association of Social Workers
- 563 National Council on Intellectual Disability
- 564 Bolshy Divas
- 565 Health Services Union
- 566 Carers Victoria
- 567 Psychotherapy and Counselling Federation of Australia (PACFA)
- 568 Nulsen
- 569 Centre for Independent Studies
- 570 Neurological Alliance Australia

- 571 Federation of Community Legal Centres Victoria and Women with Disabilities Victoria
- 572 Melba Support Services
- 573 Australian Medical Association
- 574 Australian Federation of AIDS Organisations
- 575 Law Council of Australia
- 576 Comcare
- 577 Deaf Australia Inc.
- 578 Centre for Disability Research and Policy and the Faculty of Arts and Sciences (University of Sydney)
- 579 Aussie Deaf Kids, Parents of Deaf Children and Parents of the Hearing Impaired of South Australia
- 580 Mr Michael Upston
- 581 Capital Community Housing
- 582 ACT Disability, Aged and Carer Advocacy Service (ADACAS)
- 583 Youth Disability Advocacy Service
- 584 Royal Australian College of General Practitioners
- 585 Touching Base
- 586 KinCare
- 587 Just Better Care Australia
- 588 Arts Access Australia
- 589 Victorian Equal Opportunity and Human Rights Commission
- 590 National Disability Services
- 591 Australian Psychological Society

-
- 592 Just Better Care (Melbourne office)
- 593 Australian Association of Developmental Disability Medicine
- 594 Blind Citizens Australia
- 595 Law Society of South Australia
- 596 Australian Rehabilitation and Assistive Technology Association
- 597 Physical Disability Council of NSW
- 598 Centre for Cerebral Palsy
- 599 NSW Ombudsman
- 600 Inability Possability
- 601 Disability Directory
- 602 Australian Medicare Local Alliance
- 603 Mental Health Coordinating Council
- 604 Cairns Community Legal Centre Inc.
- 605 Suncorp Group
- 606 Combined Pensioners and Superannuants Association of NSW Inc. (CPSA)
- 607 Children with Disabilities Australia
- 608 Victorian Government
- 609 Financial Services Council
- 610 Victoria Legal Aid
- 611 Psychiatric Disability Services of Victoria (VICSERV)
- 612 National People with Disabilities and Carer Council
- 613 Physical Disability Australia Ltd
- 614 National Ethnic Disability Alliance (NEDA)

- 615 Department of Families, Housing, Community Services and Indigenous Affairs
- 616 National Seniors Australia
- 617 COTA Australia
- 618 Australian Lawyers Alliance
- 619 First Peoples Disability Network (Australia)
- 620 United Voice
- 621 Name Withheld
- 622 Name Withheld
- 623 Mr Fergus Nelson
- 624 Mr Ray Walter
- 625 Ms Naomi Hart
- 626 Ms Faye Druett OAM
- 627 Mrs Mary Nolan AM
- 628 Women With Disabilities Australia
- 629 Mr Peter Thompson
- 630 SA Council on Intellectual Disability Inc. (SACID)
- 631 Confidential
- 632 Ms Leslie Cope
- 633 Ms Barbel Winter
- 634 Mr David Heckendorf
- 635 UnitingCare Australia
- 636 Anglicare Australia
- 637 Polio Australia Inc

-
- 638 National Rural Health Alliance
- 639 Dr Maree Dyson
- 640 ACT Human Rights Commission
- 641 Cerebral Palsy League of Queensland
- 642 Developmental Disability Council of WA and People with Disabilities WA
- 643 Muscular Dystrophy Australia
- 644 Cystic Fibrosis NSW
- 645 National, State and Territory Councils of Social Service (COSS)
- 646 South Australian Council of Social Service
- 647 South Australian Government
- 648 Confidential
- 649 Mrs Julieanne Skinner
- 650 Confidential
- 651 Ms Gillian Ray-Barruel
- 652 Mr Dom Mithen
- 653 Name Withheld
- 654 Confidential
- 655 Mount Isa Centre for Rural and Remote Health
- 656 Ms Lyn Hamilton
- 657 Mrs Sandra Lieschke
- 658 Confidential
- 659 Confidential
- 660 Mr Andrew Sutherland

- 661 Confidential
- 662 Mrs Wendy Coles
- 663 Mrs Caroline Butler
- 664 Mrs Catherine Murphy
- 665 Mrs Penelope Reardon
- 666 Mr Richard Van Dam
- 667 Mrs Ann Betros
- 668 Confidential
- 669 Confidential
- 670 Mr Colin Hayes
- 671 Futures Alliance
- 672 Carers Australia
- 673 Ms Di Shepherd
- 674 Ms Carolyn Smith
- 675 Ms Jill Warne
- 676 Mr Gavin Greaves
- 677 Mr Kevin Wall
- 678 Mrs Jean Reynolds
- 679 Mr Allan Collier
- 680 Mr Mitchell Nielsen
- 681 Mrs Jackie Pankhurst
- 682 Mrs Martina van den Broek
- 683 Mrs Elizabeth Noble

684 Mrs Fay McInnes
685 Mrs Kate Kearney
686 Miss Alison Cook
687 Mrs Leslie Bishop
688 Mrs Joan Calcutt
689 Ms Chris Sweeney
690 Ms Johanna Michelson
691 Confidential
692 Confidential
693 Confidential
694 Ms Rose Grasmeder
695 Confidential
696 Confidential
697 Mr Mark Kunach
698 Ms Shona Duniam
699 Ms Fran Cummins
700 Mrs Judy Cullen
701 Mrs Christina Booth
702 Mrs Anne Buchanan
703 Confidential
704 Mrs Tracey-Lee Pitot
705 Confidential
706 Confidential

707 Ms Toni Ryan

708 Confidential

709 Mrs Claire Mollison

710 Confidential

711 Ms Sharon Schulz

712 Mr Justin Grogan

713 Mr Ron Welsh

714 Miss Georgina Smith

715 Ms Maree Ireland

716 Confidential

717 Ms Christine Mackay

718 National Welfare Rights Network

719 Ms Julie Guilfoile

720 Confidential

721 Miss Rhiannon Webb

722 Confidential

723 Confidential

724 Mrs Toni Pickering

725 Mr Ken Briggs

726 Ms Kristine Hipkin

727 Mrs Karen Baker

728 Mr J. Everett

729 Mr Andrew Corbett

- 730 Mr Sam Jackson
- 731 Sister Frances Hogan
- 732 Mr Ivor Morton
- 733 Ms Anita Veivers
- 734 Mr Trevor Pye
- 735 Confidential
- 736 Ms Trudy Dosiak
- 737 Mr Damien Gallagher
- 738 Mr Shawn Burns
- 739 Mrs Janice Ireland
- 740 Ms Virginia Walters
- 741 Association for Children with a Disability
- 742 Confidential
- 743 Mrs Christine Dellamarta
- 744 Mr Jeff Hann
- 745 Dr Thea Blackler
- 746 Confidential
- 747 Mrs Melanie Kent
- 748 Confidential
- 749 Confidential
- 750 Ms Joanne Allan
- 751 Ms Karla Eldridge
- 752 Mrs Carmel Vandersman

- 753 Ms Marian Luehman
- 754 Ms Michele Foley
- 755 Mr Richard Buttery
- 756 Confidential
- 757 Confidential
- 758 Rev and Mrs Ron and Bronwyn Herbert
- 759 Mrs Vi Scott
- 760 Mrs Paula Kelly
- 761 Mrs Lynda Young
- 762 Confidential
- 763 Confidential
- 764 Mrs Rochelle Hodge
- 765 Mr Ben Hummerston
- 766 Mrs Margaret Bain
- 767 Ms Loanne Castle
- 768 Mrs Dianne Donnellan
- 769 Mr and Mrs Tim and Frances Foley
- 770 Mrs Roslyn Morton
- 771 Family Advocacy
- 772 Name Withheld
- 773 Ms Hayley Reed
- 774 Ms Sindy Rennick
- 775 Ms Elizabeth Condon

- 776 Mrs Kerrie Fanning
- 777 Ms Cheryal Pates
- 778 Mrs Katherine Wurf
- 779 Mrs Jodee May
- 780 Mrs Jo Marley
- 781 Confidential
- 782 Confidential
- 783 Confidential
- 784 Mr Ben Ekman
- 785 Ms Margaret Atkins
- 786 Mrs Nicole Milne
- 787 Confidential
- 788 Mr Darren Cunningham
- 789 Confidential
- 790 Mr Andy Tychon
- 791 Confidential
- 792 Mrs Vicki Lovegreen OAM
- 793 Ms Karen Smith
- 794 Mrs Mary Fielding
- 795 Mrs Fiona Cave
- 796 Mr Scott Comerford
- 797 Confidential
- 798 Ms Susan Matthews

- 799 Mrs Tina Naughton
- 800 Mrs Lindy Ryan
- 801 Women With Disabilities WA Inc
- 802 Confidential
- 803 Ms Christine Mulholland
- 804 Ms Leslie Brown
- 805 Mr Chris Hewitt
- 806 Mrs Katrina Hartley
- 807 Ms Cheryl Tomlinson
- 808 Confidential
- 809 Ms Jolene Doherty
- 810 Ms Mary Rahilly
- 811 Miss Brooke Evans
- 812 Miss Johanna Machell
- 813 Mrs Barbara Geary
- 814 Confidential
- 815 Mrs Kim Harvie
- 816 Mr John Norman
- 817 Mrs Debbie Armstrong
- 818 Ms Amber Overton
- 819 Ms Cherie Ross
- 820 Confidential
- 821 Mr Peter Hudson

-
- 822 Australian Services Union
- 823 Ms Laura Maddock
- 824 Mr John Crompton
- 825 Mrs Gina Webb Hall
- 826 Mrs Paula Dent
- 827 Mrs Alanna Bailey
- 828 Confidential
- 829 Ms Carol Griffiths
- 830 Mrs Coral Rizzalli
- 831 Mrs Angela Alexander
- 832 Confidential
- 833 Ms Katherine Omdahl
- 834 Mrs Shirley Rudd
- 835 Mrs Mary Bates
- 836 Mrs Lynn Chopping
- 837 Mr Glenn Hose
- 838 Professor Chris Dubelaar
- 839 Confidential
- 840 Confidential
- 841 Confidential
- 842 Lt Col Miles Farmer
- 843 Dr Nola Firth
- 844 Ms Zainab Zahr

- 845 Miss Jan Harber
- 846 Ms Heather Rumball
- 847 Mrs Lia Battisson
- 848 Mr Stan Schirmer
- 849 Mrs Margi Bruce
- 850 Mrs Jo Stephens
- 851 Australian Council of Trade Unions (ACTU)
- 852 Mrs Dianne Murphy
- 853 Ms Margaret King
- 854 Mr Robbie Streeting
- 855 Confidential
- 856 Western Australian Association for Mental Health
- 857 Confidential
- 858 Ms Kim Allen
- 859 Mr Meredith Swift
- 860 Mrs Bonnie Arnold
- 861 Ms Wendy Haag
- 862 Confidential
- 863 Mrs Dawn Garioud
- 864 Mrs Tess Pomfrett
- 865 Confidential
- 866 Ms Adele Newberry
- 867 Confidential

868 Mrs Raelene Purtill
869 Mr Bruce McDonald
870 Dr Jane Bringolf
871 Confidential
872 Mrs Charlotte Ashford
873 Mrs Margaret Wort
874 Mr Rod McNab
875 Ms Glenda Scaddan
876 Confidential
877 Ms Deborah Pearson
878 Mrs Denese Ferguson
879 Mrs Susan Griffiths
880 Mrs Val Date
881 Ms Brenda Remocker
882 Mrs Wendy Collier
883 Mr Joseph Filocamo
884 Mrs Sue Brown
885 Confidential
886 Ms Manda Leong Johnston
887 Confidential
888 Confidential
889 Ms Michelle Donnan
890 Mrs Christine Walsh

891 Ms Ashlea Webb
892 Ms Anne Blight
893 Mrs Lorraine Tye
894 Ms Cathy Hall
895 Confidential
896 Mr Phillip Brady
897 Mr Brett Lawless
898 Mrs Sue Charlton
899 Confidential
900 Confidential
901 Mrs Dulcie Chattin
902 Mr Zlatko Capan
903 Mrs Wendy Vanke
904 Ms Meera Naidu
905 Confidential
906 Mrs Jemimah Read
907 Confidential
908 Mr Andrew Tranter
909 Ms J. Lo Grasso
910 Ms Ana Barassi
911 Mr Phillip Pascoe
912 Ms Carmel Crouch
913 Confidential

914	Mrs Juanine Mansfield
915	Ms Leigh Creighton
916	Mr Gavan Bennett
917	Ms Mary Maher
918	Ms Carla Ryan
919	Confidential
920	Confidential
921	Confidential
922	Confidential
923	Mrs Imorgan Morgan
924	Mrs Kate Casleyke
925	Miss Barbara Hunt
926	Mrs Leanne Jessop
927	Ms Wendy Orford
928	Mrs Susan Doumbos
929	Ms Barbara Braithwaite
930	Mrs Alison Fenton
931	Mrs Tracey-Leigh Symons
932	Mr Brett Haslett
933	Ms Anita Jones
934	Mr Graham Appleton
935	Mrs Rosie Read
936	Mrs Jill Mitchell

937 Mrs Lindy Phillips

938 Ms Katrina Williams

939 Confidential

940 Mr Steve Horvath

941 Mr Neil Mangels

942 Ms Jenny Brickell

943 Mrs Belinda Horvath

944 Ms Robyn Collins

945 Mrs Sandra Hawkins

946 Confidential

947 Mrs Bev Davis

948 Confidential

949 Confidential

950 Mrs Bev Visona

951 Mrs Jenne Walter

952 Mrs Cassie Van Diemen

953 Mrs Lyn Tisdell

954 Mr Chris Jensen

955 Mr Lawrence Molachino

956 Confidential

957 Mrs Laura Garraway

958 Mr Bruce Smith

959 Confidential

960 Ms Jenna Williams
961 Ms Phoebe Dangerfield
962 Mrs Marie Whitrow
963 Mrs Marie Symon
964 Mrs Kathy Reed
965 Mr David Jensen
966 Confidential
967 Mrs Jane Russ
968 Confidential
969 Mr John Bromley
970 Mr Peter A Brown
971 Mr Ricardo Mastroieni
972 Confidential
973 Mrs Mora Main
974 Mrs Joanna Wagg
975 Mrs Zelda Poke
976 Carers Alliance
977 Let Us Hear
978 Confidential
979 Mrs Christina Thow
980 Mrs Peggy Bensley
981 Mrs Marlo Wild
982 Confidential

- 983 Mrs Cathy Manners
- 984 Confidential
- 985 Miss Natalie Hammond
- 986 Mrs Betty Sowden
- 987 Confidential
- 988 Confidential
- 989 Confidential
- 990 Ms Sally Shackcloth
- 991 Mrs Gail Anderson
- 992 Mr Gerard Weerasinghe
- 993 Mrs Geraldine Notman
- 994 Ms Lisa Doyle
- 995 Ms Elizabeth Stevenson
- 996 Ms Ingrid James
- 997 Mr Demetrios Didaskalou
- 998 Ms Victoria Portegys
- 999 Mrs Melanie Hose
- 1000 Confidential
- 1001 Ms Sue Nash
- 1002 Confidential
- 1003 Mrs Rosemary Van Hilst
- 1004 Confidential
- 1005 Confidential

- 1006 Confidential
- 1007 Mrs Cassie Gardner
- 1008 Ms Georgie Osborne
- 1009 Miss Kelly-Ann Brent
- 1010 Ms Patricia Godfrey
- 1011 Confidential
- 1012 Ms Vivian Roman
- 1013 Mrs Margaret Hibbins
- 1014 Mrs Jo Johnston
- 1015 Ms Mara Bennett
- 1016 Mrs Lyn Cornell
- 1017 Ms Florence Davidson
- 1018 Mrs Ros Sammut
- 1019 Confidential
- 1020 Mr Tim Sheedy
- 1021 Mrs Janina Dytman
- 1022 Miss Kylie O'Brien
- 1023 Mrs Rachel Griffiths
- 1024 Confidential
- 1025 Mr David Napier
- 1026 Mr Nigel Caswell
- 1028 Miss Bridie Kean
- 1029 Confidential

- 1030 Mrs Michaela Sloan
- 1031 Confidential
- 1032 Confidential
- 1033 Mr Kevin Campbell
- 1034 Ms Gemma Holleran
- 1035 Confidential
- 1036 Confidential
- 1037 Mrs Lorraine Woodman
- 1038 Confidential
- 1039 Mr Gueogui Koumbarov
- 1040 Mrs Narelle Minati
- 1041 Confidential
- 1042 Mr David Brazel
- 1043 Ms Angela Mays
- 1044 Confidential
- 1045 Mrs Louise Keogh
- 1046 Ms Aniela Marciniak
- 1047 Ms Michelle Dunn
- 1048 Ms Tracey Brown
- 1049 Confidential
- 1050 Confidential
- 1051 Ms Elena Kuchina
- 1052 Confidential

- 1053 Confidential
- 1054 Confidential
- 1055 Mr Ian Weatherley
- 1056 Confidential
- 1057 Mrs Carolyn Knight
- 1058 Mr Michael Esdaile
- 1059 Dr Dianne Simmons
- 1060 Ms Jill Coleman
- 1061 Miss Carla Murray
- 1062 Ms Celeste Cunningham
- 1063 Miss Heidi Jarvinen
- 1064 Ms Sarah-Jane Terrill
- 1065 Mrs Colleen Dolan
- 1066 Confidential
- 1067 Confidential
- 1068 Confidential
- 1069 Mrs Mary Tehan
- 1070 Confidential
- 1071 Mrs Vanda Fear
- 1072 Confidential
- 1073 Ms Faye Bastow
- 1074 Confidential
- 1075 Miss Shannon Kendall

- 1076 Mrs Natalie Bird
- 1077 Ms Jeanette Sticker
- 1078 Confidential
- 1079 Confidential
- 1080 Mrs Lauren Threadgold
- 1081 Dr Barbara Rissman
- 1082 Mr Benjamin Mejia
- 1083 Mrs Pam Posavac
- 1084 Mrs Liz Stanley
- 1085 Mr Michael Gravener
- 1086 Mrs Aileen Shearer-Cox
- 1087 Ms Susan Young
- 1088 Mrs Margaret Coney
- 1089 Mr Andrew Eldridge
- 1090 Confidential
- 1091 Ms Sarah Woods
- 1092 Dr Bruce Richard Simmons
- 1093 Mr Paul Hammond
- 1094 Confidential
- 1095 Confidential
- 1096 Mrs Simone Murphy
- 1097 Miss Amy Carkeek
- 1098 Mrs Marjorie Ross

- 1099 Ms Sarah Carter-Murray
- 1100 Mr Alberto Guterres
- 1101 Ms Leonie Dillon
- 1102 Mrs Derrin Muirden
- 1103 Confidential
- 1104 Mr B. Amivpanahi
- 1105 Confidential
- 1106 Ms Patricia van Ritten
- 1107 Confidential
- 1108 Confidential
- 1109 Miss Melissa Freeleagus
- 1110 Confidential
- 1111 Mrs Edith Doherty
- 1112 Ms Ella Giuffrida
- 1113 Mrs Catherine Lockwood
- 1114 Mr Russell Barker
- 1115 Confidential
- 1116 Ms Margaret Booker
- 1117 Mrs Wendy Wignell
- 1118 Confidential
- 1119 Mrs Wendy Lane
- 1120 Miss Kate Smedley
- 1121 Confidential

- 1122 Confidential
- 1123 Mr David Anderson
- 1124 Mr Matthew Campbell
- 1125 Ms Karli Dettman
- 1126 Dr Sarah Lindsay
- 1127 Mrs Rebecca Hart
- 1128 Ms Sandy Jeffs
- 1129 Ms Margaret Crowe
- 1130 Ms Sue Watts
- 1131 Ms Anne-Maree Northey
- 1132 Confidential
- 1133 Mrs Bernadette O'Shannessy
- 1134 Ms Maureen Webb
- 1135 Mrs Bev Waterfield
- 1136 Ms Therese Conlon
- 1137 Mr Colin Wansbrough
- 1138 Ms Anna-Maria Sacilotto
- 1139 Miss Jade Blackmore
- 1140 Mr Rick Staines
- 1141 Ms Amanda Wedgwood
- 1142 Mr Michael Fraser
- 1143 Mrs Sharyn Weir
- 1144 Mr Alan Wynn

- 1145 Mrs Linda Dwight
- 1146 Ms Gaye Robertson
- 1147 Mrs Bridgette Barnes
- 1148 Mrs Leonie Bosscher
- 1149 Ms Miriam High
- 1150 Ms Barb Tudic
- 1151 Mr Michael Coleman
- 1152 Ms Jacqui Pierce
- 1153 Mrs Elizabeth Young
- 1154 Miss Janelle Daniels
- 1155 Mrs Sandy Morris
- 1156 Mrs Jenny Thompson
- 1157 Miss Jacqui Rogers
- 1158 Mrs Nora Drazin
- 1159 Confidential
- 1160 Confidential
- 1161 Ms Ursula Nesci
- 1162 Confidential
- 1163 Ms Marcia Larkan
- 1164 Mrs Sharon Hayes
- 1165 Mrs Louise Hanratty
- 1166 Miss Rebecca Smith
- 1167 Miss Lucinda Balcombe Quick

- 1168 Mrs Michelle Hartshorn
- 1169 Mrs Julianne Lehmann
- 1170 Miss Erin Johnson
- 1171 Confidential
- 1172 Mr Michael Schroeter
- 1173 Ms Amanda Tinney
- 1174 Ms Tania George
- 1175 Ms Helen Lynes
- 1176 Mr Helmut Neubauer
- 1177 Mr John Levy
- 1178 Mr Peter Bolik
- 1179 Ms Marion Verwey
- 1180 Ms Hinia Gunawan
- 1181 Miss Heather Lucas
- 1182 Mrs Bridgette Faulkner
- 1183 Mrs Leona Jones
- 1184 Mrs Hilary Conway
- 1185 Confidential
- 1186 Mrs Michelle Wallis
- 1187 Confidential
- 1188 Mrs Sharma Edwards
- 1189 Mrs Jo Dissanayake
- 1190 Mr Dominic Chiaravalloti

- 1191 Mrs Kirsty Scott
- 1192 Mr John Conway
- 1193 Confidential
- 1194 Mrs Wendy Dixon-Yousiph
- 1195 Mrs Kath Creme
- 1196 Mr Alister Rau
- 1197 Mr Gordon Proudfoot
- 1198 Confidential
- 1199 Mrs Liz Edmonds
- 1200 Mrs Jenny Radford
- 1201 Mrs Maureen Butler
- 1202 Confidential
- 1203 Mr Zayan Miah
- 1204 Ms Jennifer Garrett
- 1205 Confidential
- 1206 Ms Jill Fowler
- 1207 Mrs Jennifer McManus
- 1208 Mr Takeshi Fujitani
- 1209 Ms Lorraine Clark
- 1210 Confidential
- 1211 Ms Caron Kambi
- 1212 Mr Stephen Scott
- 1213 Confidential

1214 Confidential

1215 Confidential

1216 Confidential

1217 Mrs Nan McColl

1218 Mrs Christine Edwards

1219 Confidential

1220 Confidential

1221 Mr Craig Beck

1222 Mrs Sandra Smith

1223 Mrs Debra Koster

1224 Miss Christine Bulmer

1225 Ms Marion Trabe

1226 Confidential

1227 Ms Katherine Gifford

1228 Ms Carol Smart

1229 Confidential

1230 Ms Vicki Lyons

1231 Mrs Lorna Carroll

1232 Mrs Lorraine Britton

1233 Mr Rod Thompson

1234 Mrs Andrea Baxter

1235 Confidential

1236 Confidential

- 1237 Ms Karen Anderson
- 1238 Ms Kyoko Hasebe
- 1239 Mr and Mrs Ian and Joan Gains
- 1240 Mr and Mrs Keith and Shirley Collier
- 1241 Mr Darcy Tyrrell
- 1242 Ms Colleen McGrath
- 1243 Mrs Genevieve Cormick
- 1244 Ms Julie Gerrish
- 1245 Confidential
- 1246 Ms Gretchen Young
- 1247 Mrs Melissa Vollebergh
- 1248 Mrs Wendy Maller
- 1249 Mrs Leonie Napier
- 1250 Mrs Jenny Lawson
- 1251 Mr John Gorman
- 1252 Confidential
- 1253 Ms Paula Morrow
- 1254 Mrs Jenny Nechvatal
- 1255 Mrs Toni Skehan
- 1256 Mrs Marilyn Rook
- 1257 Confidential
- 1258 Ms Robyn Hurley
- 1259 Mr Donald Murray

- 1260 Confidential
- 1261 Miss Jenny Addison
- 1262 Mrs Nicole Lucas
- 1263 Ms Frances O'Reilly
- 1264 Mr Philip Kidner
- 1265 Mr Nick Durrant
- 1266 Mr Rohan Braddy
- 1267 Ms Jacalyn Roney
- 1268 Ms Carolyn Watt
- 1269 Mr Gordon Kitto
- 1270 Confidential
- 1271 Mr Raymond Cranwell
- 1272 Ms Robyn Canning
- 1273 Ms Shona Edwards
- 1274 Confidential
- 1275 Mrs Annabel Lawlor
- 1276 Ms Lauren Tyrrell
- 1277 Confidential
- 1278 Ms Barbara Cooper
- 1279 Mr Perry Cross
- 1280 Mrs Anne Bourne
- 1281 Professor Barbara Singer
- 1282 Mrs Terri Carroll

- 1283 Ms Lorraine Diaz
- 1284 Confidential
- 1285 Dr Cas and Chris O'Neill
- 1286 Mrs Vivienne Johnson
- 1287 Mrs Patricia Cook
- 1288 Confidential
- 1289 Mr Isuru Patabendige
- 1290 Mrs Ruth Aldrich
- 1291 Miss Pauline Howell
- 1292 Mr Michael Williams
- 1293 Confidential
- 1294 Ms Diana Ots
- 1295 Mrs Heather Wittingslow
- 1296 Confidential
- 1297 Ms Ondine Sherman
- 1298 Ms Celia Dynon
- 1299 Confidential
- 1300 Mr Ian Stephens
- 1301 Confidential
- 1302 Mrs Val Braendler
- 1303 Confidential
- 1304 Mrs Nicola Bushell
- 1305 Mr Shilo Wilson

- 1306 Confidential
- 1307 Mrs Margaret Small
- 1308 Confidential
- 1309 Mrs Joyce Chapman
- 1310 Mrs Veronica Treloar
- 1311 Confidential
- 1312 Mrs Janet Baker
- 1313 Mrs Tracey Rowe
- 1314 Miss Nicole McCarthy
- 1315 Confidential
- 1316 Mr Adam Watson
- 1317 Mrs Deirdre Bennett
- 1318 Ms Maureen Bell
- 1319 Ms Yulan Lawson
- 1320 Mrs Susan Fernance
- 1321 Ms Sharyn New
- 1322 Mrs Julie Burton
- 1323 Mr Christopher Coombes
- 1324 Mrs Rhonda Pagonis
- 1325 Ms Jo Middleton
- 1326 Mr Russell Forster
- 1327 Mrs Gillian Dowling
- 1328 Mrs Heather van der Sluys

- 1329 Miss Rebecca Palin
- 1330 Mrs Megan Toole
- 1331 Confidential
- 1332 Miss Rachel Gray
- 1333 Miss Fiona Thompson
- 1334 Miss Rosalie Yeo
- 1335 Confidential
- 1336 Mr Kevin Finlayson
- 1337 Ms Rachelle Burgoyne
- 1338 Mrs Sarah Collins
- 1339 Mrs Amanda Neil
- 1340 Mrs Narelle Hughes
- 1341 Mrs Emma Cooke
- 1342 Mrs Amy Thompson
- 1343 Ms Rebbecca Mercier
- 1344 Mrs Alison Bird
- 1345 Confidential
- 1346 Mrs Birute Goulding
- 1347 Ms Diana Lay
- 1348 Confidential
- 1349 Confidential
- 1350 Mrs Gail Day
- 1351 Mr Benjamin Crosthwaite

- 1352 Ms Marisa Crowe
- 1353 Mrs Margaret Jaques
- 1354 Mrs Christine James
- 1355 Miss Belinda Rappeport
- 1356 Mrs Lainie Thornton
- 1357 Ms Gulay Isler
- 1358 Mr Scott Robinson
- 1359 Ms Catherine Gray
- 1360 Mrs Hilary McPherson
- 1361 Mr Richard Blackall
- 1362 Mrs Wendy Farrelly
- 1363 Confidential
- 1364 Ms Simone Reilly
- 1365 Mrs Lynne Foreman
- 1366 Mrs Juanita Van Dam
- 1367 Confidential
- 1368 Mrs Elizabeth Weir
- 1369 Confidential
- 1370 Ms Margaret Williams
- 1371 Mrs Amal Said
- 1372 Mrs Lisa Burnette
- 1373 Ms Alison Musk
- 1374 Mr Puspa Acharya

- 1375 Confidential
- 1376 Mrs Joyce Schroeter
- 1377 Mr Bruce Macrae
- 1378 Dr Bryan Wright
- 1379 Mrs Jo-Anne Pretorius
- 1380 Mrs Evelyn Blancaflor
- 1381 Ms Maree Kinniburgh
- 1382 Ms Alison Quigley
- 1383 Ms Sarah Mcrae
- 1384 Miss Rebecca Monetti
- 1385 Mr Gerald Hunt
- 1386 Ms Rhonda Crisp
- 1387 Confidential
- 1388 Ms Anne McCormick
- 1389 Mrs Amanda Kokolis
- 1390 Mrs Geraldine Gray
- 1391 Ms Denise Hassett
- 1392 Ms Laura Bodycoat
- 1393 Confidential
- 1394 Mr Michael Merrett
- 1395 Ms Aline Burgess
- 1396 Ms Christina Brown
- 1397 Confidential

- 1398 Mrs Samantha Powell
- 1399 Mr Elmer Rafeld
- 1400 Mrs Julie O'Keefe
- 1401 Mrs Violeta Watkin
- 1402 Ms Dianne Taylor
- 1403 Confidential
- 1404 Ms Elizabeth Hill
- 1405 Ms Robyn Cooney
- 1406 Confidential
- 1407 Mrs Kathleen Hassell
- 1408 Mrs Sandra Parsons
- 1409 Mrs Elaine Campagna
- 1410 Ms Maggie Matheson
- 1411 Confidential
- 1412 Ms Anna van den Broek
- 1413 Ms Marilyn Pelman
- 1414 Confidential
- 1415 Confidential
- 1416 Confidential
- 1417 Ms Sandy Turner
- 1418 Ms Christine David
- 1419 Ms Kathryn Duff
- 1420 Mrs Jennifer Moore

- 1421 Ms Nihal Iscel
- 1422 Confidential
- 1423 Mrs Joyce Croft
- 1424 Mr John Nairn
- 1425 Ms Christine Russell
- 1426 Mr Peter Ryan
- 1427 Mrs Susan Payne
- 1428 Confidential
- 1429 Confidential
- 1430 Mr Andrew Niklaus
- 1431 Dr Ramsay Sallis
- 1432 Mr Andrew Brak
- 1433 Mrs Elizabeth Canavan
- 1434 Ms Nell Stetner
- 1435 Confidential
- 1436 Mr John Campbell
- 1437 Confidential
- 1438 Mr Vince Townsend
- 1440 Confidential
- 1441 Mrs Chris Smith
- 1442 Confidential
- 1443 Confidential
- 1444 Mrs Joanne Reeves

- 1445 Mrs Juel Hanson
- 1446 Confidential
- 1447 Confidential
- 1448 Ms Heather Milton
- 1449 Ms Judi Hollingsworth
- 1450 Mrs Rosa DiNatale
- 1451 Confidential
- 1452 NSW HMMS State Council
- 1453 Confidential
- 1454 Mr John D Cameron
- 1455 Mrs Margaret Stevens
- 1456 Mr Maurizio Viani
- 1457 Mrs Sylvia Lowrey
- 1458 Confidential
- 1459 Mr Bruce Donaldson
- 1460 Mrs Rebecca Carter
- 1461 Mrs Marie Dennaoui
- 1462 Miss Jessica Conway
- 1463 Confidential
- 1464 Ms Rebecca Reeves
- 1465 Confidential
- 1466 Ms Cheryl Hansen
- 1467 Confidential

- 1468 Mrs Laura Reed
- 1469 Mr Ivano Cascone
- 1470 Miss Sarah Reilly
- 1471 Confidential
- 1472 Ms Michele Elze
- 1473 Confidential
- 1474 Ms Jennifer Bradley
- 1475 Ms Jayne Eldred
- 1476 Confidential
- 1477 Confidential
- 1478 Ms Amara Campbell
- 1479 Confidential
- 1480 Confidential
- 1481 Mrs Nicole Skinner
- 1482 Mr Gary Allsop
- 1483 Confidential
- 1484 Mr and Mrs Daryl and Linda Sommerville
- 1485 Mr Ken Price
- 1486 Mr Geoffrey Hallmann
- 1487 Mr John Camm
- 1488 Miss Elizabeth Inglis
- 1490 Ms Marie Hell
- 1491 Confidential

1492 Confidential

1493 Confidential

1494 Mrs Victoria Fahey

1495 Confidential

1496 Confidential

1497 Mr Alex Brak

1498 Confidential

1499 Confidential

1500 Ms Kim Simmons

1501 Mr Conrad Gershevitch

1502 Confidential

1503 Confidential

1504 Ms Leah Newnham

1505 Ms Katherine Baychek

1506 Confidential

1507 Mrs Kaylene Connolly

1508 Confidential

1509 Mr Rathish Karthigesu

1510 Confidential

1511 Ms Sandra Findlay

1512 Mrs Florence Teillet

1513 Ms Sandra Hargreaves

1514 Mrs Bronwyn Wiesberger

- 1515 Ms Yvonne Avery
- 1516 Ms Leanne Ardossi
- 1517 Mrs Jenni Hauwert-Swistak
- 1518 Mrs Belinda McDonald
- 1519 Rev Andy Calder
- 1520 Mrs Clare Kanakis
- 1521 Mr Eugene Hall
- 1522 Mr Geoffrey Pfitzner
- 1523 Ms Kate Swaffer
- 1524 Mrs Marie Lugg
- 1525 Confidential
- 1526 Ms Elizabeth Coe
- 1527 Confidential
- 1528 Ms Bernadette Hawthorne
- 1529 Mr Mark DeGregorio
- 1530 Confidential
- 1531 Ms Wendy Francis
- 1532 Confidential
- 1533 Ms Jennifer Reading
- 1534 Confidential
- 1535 Ms Tracey Fletcher
- 1536 Ms Melanie Schlaeger
- 1537 Mrs Anne Pitkin

1538 Mr James Macdougall

1539 Confidential

1540 Confidential

1541 Ms Jenny Clarke

1542 Confidential

1543 Confidential

1544 Mr George Theobald

1545 Ms Merla Garrett

1546 Mr Shiva Iyer

1547 Mrs Patricia Chambers

1548 Confidential

1549 Mrs Suzanne Tuttle

1550 Miss Tennille Thomasz

1551 Confidential

1552 Confidential

1553 Mrs Sheryne Tully

1554 Ms Valarie Sands

1555 Mr Michael Sawatske

1556 Ms Margaret Bain

1557 Confidential

1558 Confidential

1559 Mrs Sue Sweeney

1560 Confidential

1561 Mrs Rebecca Walker

1562 Ms Haydee de Guzman

1563 Ms Barbara Thomas

1564 Mrs Kim Frumar

1565 Mrs Karen Barnes

1566 Ms Tina DeSarro

1567 Ms Kylie Trevasons

1568 Confidential

1569 Mrs Jeanette Anderson

1571 Ms Trish Cross

1572 Mr G.K. Meredith-Bramwell

1573 Mr Aaron Richardson

1574 Mrs Trish Mckay

1575 Confidential

1576 Ms Hilary Rumley

1577 Mrs Jacqueline Noyes

1578 Mr Ian Reeves

1579 Care Connect

1580 Ms Pauline Gambley

1581 Mr Ken Callan

1582 Confidential

1583 Mr Stephen Ferris

1584 Miss Hannah Rubenach

- 1585 Confidential
- 1586 Mr Greg Blair
- 1587 Ms Angela Gourlay
- 1588 Confidential
- 1589 Ms Lisa Ashford-Potter
- 1590 Ms Kerrie Morgan
- 1591 Mr Richard Hockey
- 1592 Mrs Evelyn Scott
- 1593 Mr John Roberts
- 1594 Ir John Holden
- 1595 Mr Peter Andersen
- 1596 Ms Judy Longbottom
- 1597 Confidential

Additional Information

- 1 Discussion paper in response to the Productivity Commission's Disability Care and Support inquiry report, from Mental Health Coordinating Council, received 21 January 2013
- 2 Submission to the Select Council on Disability Reform, from Mental Health Coordinating Council, received 21 January 2013
- 3 Submission to the Productivity Commission's inquiry into Disability Care and Support, from Young People In Nursing Homes National Alliance, received 14 February 2013
- 4 Response to the Productivity Commission's Draft Report into Disability Care and Support, from Young People In Nursing Homes National Alliance, received 14 February 2013
- 5 Preliminary position paper on Independent Advocacy and Independent Information, from NSW Disability Network Forum, received 1 March 2013
- 6 Commonwealth Draft NDIS Rules - For becoming a participant, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 7 Commonwealth Draft NDIS Rules - Children, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 8 Commonwealth Draft NDIS Rules - For the protection and disclosure of information, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 9 Commonwealth Draft NDIS Rules - Nominees, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 10 Commonwealth Draft NDIS Rules - Supports for participants, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 11 Commonwealth Draft NDIS Rules - For registered providers of supports, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013
- 12 Commonwealth Draft NDIS Rules - Plan management, from Department of Families, Housing, Community Services and Indigenous Affairs, received 5 March 2013

- 13 Building an Industry of Choice Summary Report (March 2013), by Natasha Cortis, Gabrielle Meagher, Sharni Chan, Bob Davidson and Toby Fattore, from Health Services Union, received 6 March 2013
- 14 Building an Industry of Choice Final Report (March 2013), by Natasha Cortis, Gabrielle Meagher, Sharni Chan, Bob Davidson and Toby Fattore, from Health Services Union, received 6 March 2013
- 15 Overview of My Access Checker, from Department of Families, Housing, Community Services and Indigenous Affairs, received 7 March 2013
- 16 Screen shots of My Access Checker, from Department of Families, Housing, Community Services and Indigenous Affairs, received 7 March 2013
- 17 Tabled document from Montrose Access, at Brisbane public hearing 30 January 2013
- 18 Tabled document from Queensland Disability Network, at Brisbane public hearing 30 January 2013
- 19 Tabled document from NSW Council for Intellectual Disability, at Newcastle public hearing 31 January 2013
- 20 Tabled document from Mr Brian O'Hart, at Perth public hearing 18 February 2013
- 21 Tabled document from Mr Ray Walter, at Perth public hearing 18 February 2013
- 22 Tabled document from Carers WA, at Perth public hearing 18 February 2013
- 23 Tabled document from Ms Julie Guilfoile, at Perth public hearing 18 February 2013
- 24 Tabled document from Ethnic Disability Advocacy Centre, at Perth public hearing 18 February 2013
- 25 Tabled document from Australian Lawyers Alliance, at Adelaide public hearing 19 February 2013
- 26 Tabled document from Carers Australia, at Hobart public hearing 22 February 2013

Answers to Questions on Notice

- 1** Answers to Questions on Notice received from Queensland Advocacy Inc, 31 January 2013
- 2** Answers to Questions on Notice received from Carers Queensland, 1 February 2013
- 3** Answers to Questions on Notice received from Montrose Access, 14 February 2013
- 4** Answers to Questions on Notice received from National People with Disabilities and Carer Council, 6 March 2013
- 5** Answers to Questions on Notice received from Alzheimer's Australia, 8 March 2013

APPENDIX 2

Public Hearings

Tuesday, 29 January, 2013

Crystal Room, Mercure Hotel, Townsville

Witnesses

Mental Illness Fellowship of North Queensland Inc.

AUDAS, Mr Jeremy, Chief Executive Officer

Townsville Independence Program for Adult Community Living Inc (TIPACL)

BROWN, Mr Duncan John, Chief Executive Officer

Community Connection Inc.

CAMPBELL, Ms Peggy, Human Resources

NAUGHTON, Ms Debbie, Family & Individual Coordinator

Supported Options in Lifestyle and Access Services Inc.

CLARK, Ms Rhonda Florence, Chief Executive Officer

CLUMPOINT, Ms Cindy, Mental Health Recovery Worker, Palm Island

SIEBEL, Ms Elizabeth, Carer and Board Member

Deaf Services Queensland

CLEWS, Ms Liza, Community Development Officer

Cootharinga

GRANT, Mr Rob, President,

WALSH, Mr Brendan, Chief Executive Officer

EDWARDS, Mr Brett, General Manager Community Living Service

O'NEIL, Mrs Julie, General Manager, Training, Respite, Allied Health and Rehabilitation Technology Service

Independent Advocacy Townsville

SPELLING, Ms Pam, Chairperson

Ingham Disability Support Services

SUTTON, Ms Elizabeth Anne, Chief Executive Officer

Inclusion Works

THOMPSON, Mr Ric, Coordinator

Wednesday, 30 January, 2013

Undumbi Room, Queensland Parliament House, Brisbane

Witnesses

Young People in Nursing Homes Alliance

MORKHAM, Dr Bronwyn, National Director

BLACKWOOD, Mr Alan McKenzie, Director of Policy and Innovation

MontroseAccess

BOURKE, Mr Darrel, Chief Executive Officer

Queensland Advocacy Incorporated

WADE, Mr Ken, Director

COLLYER, Mr Nick, Systems Advocate

Endeavour Foundation

DAVIDSON, Ms Gail, General Manager, Disability Services

Welfare Rights Centre Inc.

WARRINGTON, Ms Georgina, Director

DAVISON, Mr Andrew, Solicitor

Hear and Say

DORNAN, Dr Dimity, Executive Director

Queenslanders with Disability Network

VICARY, Ms Fran, Chief Executive Officer

EDMONDS, Mr Mark, Network Facilitator

Amparo Advocacy Inc.

FORDYCE, Ms Maureen, Manager

Queensland Alliance for Mental Health Incorporated

O'TOOLE, Ms Cathy, President

NELSON, Mr Richard, CEO

Carers Queensland

WALBANK, Ms Sarah, Policy and Research Officer

Kids Matters Occupational Therapy

WILLIAMS, Ms Vivienne, Director

Thursday, 31 January, 2013

Mulubinba Room, City Hall, Newcastle

Witnesses

Cystic Fibrosis, New South Wales

ADAIR, Ms Michele, Chief Executive Officer

Paraplegic and Quadriplegic Associations of New South Wales (ParaQuad New South Wales)

BOSOTTI, Mr Max, Chief Executive Officer

HARVEY, Ms Tonina Louise, AM, General Manager Community Services

Stockton Hospital Welfare Association

CUNEO, Mrs Wendy, Deputy President

DARABI, Mr Daniel, Private capacity

Family Advocacy

EPSTEIN-FRISCH, Ms Belinda, Systemic Advocate

SAMPERI, Ms Nadia Ray, Systemic Advocate

FORREST, Ms Heidi, private capacity

Samaritans Foundation

GRAHAM, Ms Lynne, Director, Organisational Development

Disability Advocacy NSW

GRIERSON, Mr Mark, Chief Executive Officer

PEEK, Ms Catherine, Deputy Chief Executive Officer

Hunter Disability Support Organisation

HUGHES, Ms Linda, Community Development

MAHONY, Ms Catherine, Community Development

Mai-Wel Ltd

KEARNEY, Ms Pennie, Chief Executive Officer

MS Australia

TAME, Ms Susan, Manager Community Services

LYDON, Ms Amanda, Community Support Worker/Nurse, Hunter Region

Motor Neurone Disease Association, New South Wales

OPIE, Mr Graham, Chief Executive Officer

New South Wales Council for Intellectual Disability

SIMPSON, Mr Jim

Friday, 1 February, 2013

Macquarie Room, Parliament of NSW, Sydney

Witnesses

Ai-Media

ABRAHAMMS, Mr Tony, Chief Executive Officer

JONES, Mr Alex, Brand Ambassador

Aboriginal Disability Justice Campaign

McGEE, Mr Patrick, Coordinator

BALDRY, Professor Eileen, Member

Attendant Care Industry Association

BLEASDALE, Mr Michael, Executive Director

Legal Aid New South Wales

HITTER, Ms Monique, Executive Director, Civil Law Division

FINLAY, Ms Jackie, Senior Solicitor, Civil Law Division

Australian Human Rights Commission

INNES, Mr Graeme, Disability Discrimination Commissioner

POTTS, Dr Helen, Principal Advisor, Disability Rights Unit

Carers NSW

KATRAKIS, Ms Elena, Chief Executive Officer

Council of Social Services New South Wales

KUMAR, Ms Rashme, Senior Policy Officer

REGAN, Ms Christine, Senior Policy Officer

Royal Institute for Deaf and Blind Children

REHN, Mr Chris, Chief Executive

THOMSON, Mr Craig, Director, Clinical Services

Monday, 18 February, 2013

Committee Meeting Room 2, Legislative Assembly Committee Office, Perth

Witnesses

Carers Western Australia

COATES, Mr Paul, Chief Executive Officer

Centre for Cerebral Palsy

HOGBEN, Ms Judy, Chief Executive Officer

de MEL, Dr Leela, Senior Policy Officer

GRANVILLE, Mr David, Manager, Strategic Options

Mental Health Commission

DILLON, Mr Eric, Director, Policy Strategy and Planning Directorate

GUILFOILE, Ms Julie, Private capacity

Developmental Disability Council of Western Australia

HARVEY, Ms Taryn Rae, Chief Executive Officer

Ethnic Disability Advocacy Centre

ROSE, Ms Wendy Sharon, Chief Executive Officer

RAJAN, Mr Suresh, Treasurer, Board of Management

ISCEL, Ms Nihal, Manager, Advocacy Services

JENKINSON, Ms Samantha, Private capacity

Senses Foundation

KARASINSKI, Ms Debbie Anne, Chief Executive Officer

McCONNELL, Mr Kelsen, Private capacity

McCONNELL, Mr Robert, Private capacity

McCONNELL, Mrs Kristine, Private capacity

People with Disabilities Western Australia

McGHIE, Miss Monica Anne, President

O'HART, Mr Brian, private capacity

Western Australia Individualised Services

WALKER, Ms Marita, Chairperson
PEARMAN, Ms Leanne, Executive Officer

National Disability Services, Western Australia

SIMPSON, Mr Terry, State Manager

Bolshy Divas

SOFTLY, Ms Jackie, Spokesperson

MS Society Western Australia

STAFFORD, Mr Marcus, Chief Executive Officer

Nulsen Association

TREWERN, Mr Gordon, Chief Executive Officer

Activ Foundation Inc

VIS, Mr Tony Jan Frederik, Chief Executive Officer

WALTER, Mr Ray, private capacity

Tuesday, 19 February, 2013

McLeod Room, Julia Farr Association, Adelaide

Witnesses

Australian Lawyers Alliance

KERIN, Mr Anthony, National President
BOYLEN, Mr Patrick, President SA

Medical Insurance Group Australia

CORSINI, Mr Maurie, Underwriting Manager

Royal Society for the Blind of S.A. Inc.

DALY, Mr Andrew Rex, Executive Director

Office of the Health and Community Services Complaints Commissioner, South Australia

TULLY, Mr Steve, Health and Community Services Complaints Commissioner
EDWARDS, Ms Sandy, Manager, Complaint Resolution Service

First Peoples Disability Network Australia

RANKINE, Ms Gayle, Chairperson
GRIFFIS, Mr Damian, Executive Officer

Private Mental Health Consumer Carer Network (Australia)

McMAHON, Ms Janne, OAM, Independent Chair
SPRINGGAY, Ms Margaret, Representative

National Organisation for Fetal Alcohol Syndrome and Related Disorders

MIERS, Ms Sue, Chair, Board of Management
PICKEN, Ms Leila, National Policy Officer
MIERS, Mr Tony, Board Member and Public Officer

Novita Children's Services

THOMPSON, Mr Ian, Company Secretary
RAPPEBERG, Mr Glenn, Chief Executive

Law Society of South Australia

RISCHBIETH, Mr Thomas John Hugh
WHITE, Mr Stephen John

South Australian Council of Social Service

WOMERSLEY, Mr Ross, Executive Director

Wednesday, 20 February, 2013

Chamber, City Hall, Geelong

Witnesses

Colac Otway Region Advocacy Service

BRADY, Mr Paul, Coordinator
BUCHANAN, Ms Jessica, Advocate

Office of the Public Advocate

CHESTERMAN, Dr John Henry, Manager of Policy and Education

Disability Services Commissioner

HARKIN, Mr Laurie AM, Disability Services Commissioner
COULSON BARR, Ms Lynne, Deputy Disability Services Commissioner

Barwon Health

HAYLES, Ms Robyn, Executive Director, Community Health and Rehabilitation Services

Victoria Legal Aid

HILTON, Ms Kristen, Director, Civil Justice, Access and Equity & Regional Director Barwon and South Coast

PARKINSON, Ms Josephine, Senior Policy and Projects Officer, Civil Justice, Access and Equity

Australian Federation of Disability Organisations

HOBSON, Ms Leah, NDIS Engagement Officer

Gateways Support Services Inc.

MALONE, Mrs Rosemary, Chief Executive Officer

Association for Children with a Disability

McGARRY, Mrs Elizabeth, Chief Executive Officer

Carers Victoria

PIERCE, Ms Gillian, Program Manager, Policy and Research

Karingal Inc.

STARKEY, Mr Daryl, Chief Executive Officer

PIERCE, Ms Jacqueline, Manager, ARCSupport

Thursday, 21 February, 2013

Committee Room G.6, Parliament of Victoria, Melbourne

Witnesses**Vision 2020 Australia**

JACKSON, Associate Professor Jonathan, Chair, Low Vision and Rehabilitation Committee

AH TONG, Mr Brandon, Policy and Public Affairs Adviser (Vision Australia)

Royal Australian and New Zealand College of Psychiatrists

BENNETT, Dr Chad, College Fellow

Uniting Care Community Options

SHEPHERD, Mr Scott, Chief Executive

CHAPMAN, Mr Eddie, Principal Policy and Research Officer

Slater and Gordon

GRECH, Mr Andrew, Managing Director

CLAYTON, Ms Julie Kirsten, Principal Lawyer

MANN, Mr Nicholas, Associate, Melbourne TAC Claim

Post Polio Victoria

PICKERING, Miss Jill Elizabeth Margaret, President

COOPER, Dr Margaret Maxine, Convener, Advocacy Working Group

DYSON, Dr Maree, Private capacity

BrainLink Services

STRUGNELL, Ms Sharon, Chief Executive Officer

HARRIS, Mr Rod, Advisor to Board

Guide Dogs Victoria

HURD, Mr Steve, Client Systems Business Manager

JacksonRyan Partners

JACKSON, Mr Max, Partner

RYAN, Ms Margaret, Partner

Alzheimer's Australia

REES, Mr Glenn, Chief Executive Officer

STOKES, Ms Kaele, Strategic Projects Manager

LINCOLN, Mr Neville

Early Childhood Intervention Australia

MATTHEWS, Ms Lauren, Executive Director

Orygen Youth Health Research Centre

McGORRY, Professor Patrick Dennistoun, Executive Director

Housing Choices Australia

NANKIN, Ms Jean, Development Manager

SMITH, Mr Michael, Client Services Manager

Blind Citizens Australia

PASCUAL, Mrs Cheryl, President

ZAMMIT, Ms Jessica, National Policy Officer

Muscular Dystrophy Australia

STRUK, Mr Boris, Executive Director

Youth Disability Advocacy Service

TALEPOROS, Dr George, Manager

Friday, 22 February, 2013

Committee Room 1, Parliament of Tasmania, Hobart

Witnesses

Neuromuscular Alliance Tasmania

ASHFORD, Ms Anne, Secretary

Self Help Workplace

BAIN, Ms Donna, General Manager and Public Officer

Arts Access Australia

BENNISON, Mrs Emma Jane, Chief Executive Officer

Optia Incorporated

STUBLEY, Mr John, Chief Executive Officer

BESWICK, Mr Drew Anthony, Chief Operating Officer

CRATES, Ms Nicola, Specialist Support Services Manager

Veranto

BYRNE, Mr Paul, Chief Executive Officer

Bapcare

DANGERFIELD, Mr Graham, Chief Executive Officer

Bapcare, Tasmania

D'ELIA, Ms Mary, State Operations Manager

Australian Blindness Forum

ENGLISH, Mr Daniel Barry, Chairman

Department of Premier and Cabinet

EVANS, Mr Nick, Director, Community Development Division

Women With Disabilities Australia

SWIFT, Ms Karin, President

FROHMADER, Ms Carolyn, Executive Director

Advocacy Tasmania Inc.

HARDAKER, Mr Ken, Chief Executive Officer

MS Society of Tasmania (Member, Neuromuscular Alliance Tasmania)

LANGDON, Ms Mary, Client Services Manager

Speak Out Association of Tasmania Inc.

MALLET, Ms Mary, Manager

Association for Children with Disability, Tasmania

PEGG, Ms Caroline, Chief Executive Officer

Monday, 4 March, 2013

Committee Room 2S3, Parliament House, Canberra

Witnesses**National Disability Services**

BAKER, Dr Ken, Chief Executive

ANGLEY, Ms Philippa, National Policy Manager

Aged and Carer Advocacy Service

MAY, Mrs Fiona, Chief Executive Officer, ACT Disability

HARRISS, Ms Jane, Advocate, ACT Disability

ANNETTE, Ms Leanne, Client, ACT Disability

People with Disability Australia

WALLACE, Mr Craig, President

BOWDEN, Mr Matthew, Co-Chief Executive Officer

BEVAN, Ms Ngila, Advocacy Projects Manager

Brain Injury Australia

RUSHWORTH, Mr Nick, Executive Officer

BROOKES, Dr Derek, Policy Officer

Occupational Therapy Australia

NORRIS, Ms Rachel, Chief Executive Officer

CHARIKAR, Mr Karl, National Policy Manager

McDONALD, Dr Rachael, Member

Macular Disease Foundation Australia

HERAGHTY, Ms Julie, Chief Executive Officer

CHOO, Mr Mark, Policy and Research Officer

Youngcare

CONRY, Mr David, Chairman

COX, Ms Anna, General Manager, Strategy and Research

Carers Australia

CRESSWELL, Ms Ara, Chief Executive Officer

ELDERTON, Ms Sue, Policy Manager
JOHNSON, Mrs Helen, Member of the Board

VICSERV

CROWTHER, Ms Elizabeth, President

Mental Health Commission of New South Wales

FENELEY, Mr John, Commissioner

Children with Disability Australia

GOTLIB, Ms Stephanie, Executive Officer

FORSTER, Mr John, Member

National People With Disabilities and Carer Council

GALBALLY, Dr Rhonda, AO, Chair

LAWDER, Ms Nicole, Chief Executive Officer, Homelessness Australia

Communities@Work

HARWOOD, Ms Lynne Harwood, Chief Executive Officer

Parents of Deaf Children

KENNEDY, Ms Kate, Coordinator Information and Advocacy

United Voice

MILROY, Mr Jack, National Political Coordinator

SPALDING, Ms Meg

National Seniors Australia

O'NEILL, Mr Michael, Chief Executive Officer

SKINNER, Ms Marie, Senior Policy Advisor

Disability Advocacy Network Australia

SIMMONS, Ms Andrea, Chief Executive Officer

OWEN, Mr David, Policy Consultant

Council for the Ageing

YATES, Mr Ian AM, Chief Executive

ROOT, Ms Josephine, National Policy Manager

Health Services Union

WILLIAMS, Mr Lloyd, Acting National Secretary

SVENDSEN, Ms Leigh, National Industrial Officer

Polio Australia

TIERNEY, Dr John William OAM, National President and National Patron
 THOMAS, Ms Gillian, Vice-President

Tuesday, 5 March, 2013

Committee Room 2S3, Parliament House, Canberra

Witnesses**Department of Families, Housing, Community Services and Indigenous Affairs**

WILSON, Ms Serena, Deputy Secretary

BOWEN, Mr David, Chief Executive Officer, National Disability Insurance Scheme
 Launch Transition Agency

CARMODY, Ms Margaret, General Manager, National Disability Insurance Scheme
 Launch Transition Agency

FIELD, Mr Anthony, Group Manager, National Disability Insurance Scheme
 Legislation

HARTLAND, Dr Nick, Group Manager, Design, National Disability Insurance
 Scheme Taskforce

Financial Services Council

BROWN, Ms Eve, Senior Policy Manager, Trustees

Community Living Association, Western Australia

CAMPBELL, Mr Iain Niall, Chief Executive Officer

National Ethnic Disability Alliance

CRANFIELD, Mr Dwayne, Chief Executive Officer

DE LA TORRE, Mr Juan, Council Member

MOHAMED ISMAIL, Ms Norhawa Bee, Research and Policy Officer

Neurological Alliance Australia

SMEATON, Mr Daryl, Chief Executive Officer, Parkinson's Australia

FARRELL, Mrs Deborah, Acting Regional Manager (Victoria), MS Australia

National Rural Health Alliance

GREGORY, Mr Gordon, Executive Director

FRANZE, Mr John, Policy Officer

HOPKINS, Mrs Helen, Policy Consultant

Empowering People in Communities, Western Australia

HOUGH, Ms Kathryn Lee, Chief Executive Officer

Law Council of Australia

PARMETER, Mr Nick, Manager, Civil Justice

REDPATH, Mr Bill, Chair, NDIS Working Group

Federation of Ethnic Communities Councils of Australia

WEBSTER, Miss Janice, Senior Policy Officer