
Submission to the Senate Community Affairs Legislation Committee into the National Disability Insurance Scheme Bill 2012

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Submission to the Senate Community Affairs Legislation Committee Inquiry into the National Disability Insurance Scheme Bill 2012

The Centre for Independent Studies (CIS)

This submission has been prepared by The Centre for Independent Studies (CIS) for the Senate Community Affairs Legislation Committee Inquiry into the National Disability Insurance Scheme Bill 2012.

Recommendations

1. That the NDIS rules, or draft versions of the NDIS rules, are publicly released in a timely fashion to allow for adequate scrutiny prior to the launch of the NDIS.
2. That the 'participant's statement of goals and aspirations' be redrafted to be understood as the 'participant's statement of *reasonable* goals and aspirations'.
3. That the CEO, when deciding to approve the statement of participant supports, takes into account the *reasonableness* of the participant's statement of goals and aspirations.
4. That the participant's statement of goals and aspirations must include any income support activity test or participation requirements.
5. That the committee acknowledge the need to reform the Disability Support Pension to align its goals with those of the NDIS.
6. That the requirement to take action to obtain compensation remains in its current form.
7. That eligibility for NDIS-funded supports should not be extended to people older than the pension age who have acquired a disability.

NDIS RULES

This legislation will provide the backbone for the NDIS, however many of the details of the scheme will be established within the NDIS rules, which are not publicly available at time of writing. In particular, the NDIS rules will be crucial in determining overall eligibility of the scheme, and the nature of the reasonable and necessary supports provided by the NDIS, and therefore the overall cost of the scheme. Given that the NDIS rules are not presently available, it is not possible to adequately critique some key aspects of the NDIS that the bill will bring into effect. With this in mind, it is essential that sufficient time is given to the public and the disability sector to adequately scrutinise the NDIS rules.

Recommendation 1

That the NDIS rules, or draft versions of the NDIS rules, are publicly released in a timely fashion to allow for adequate scrutiny prior to the launch of the NDIS.

PARTICIPATION PLANS – Reasonable goals and aspirations

The Australian Government Actuary's evaluation of the Productivity Commission's report indicated that "the PC's emphasis on reasonable and necessary services may not necessarily have registered and thus expectations (about the NDIS) may be unreasonably high".¹ These high expectations will likely be reflected in the participant's statement of goals and aspirations.

Having ambitious goals and aspirations reflected in the participant's statement of goals and aspirations is not a problem in itself if the statement was understood independently of any approved NDIS funding package. However, the participant's statement of goals and aspirations will inform the supports an individual can receive, and consequently their funding package (subclause 33(5)).

While many participants will only have modest goals and aspirations aimed at achieving personal independence, savvy customers have an incentive to inflate the goals and aspirations to maximise their possible funding package, which in turn has the potential to affect the overall cost of the scheme.

Furthermore, if the participant's statement includes unrealistic goals or aspirations, which are then not able to be met through reasonable and necessary supports, there is the possibility that this could cause a degree of hostility toward the NDIS and place pressure (political or otherwise) to expand the scope of the NDIS to include additional funded supports.

While many of the potential financial pressures will be mitigated by the criteria outlined in subclause 33(5) regarding what the CEO must take into account when approving the statement of participant supports, there is a need to create an understanding that the goals and aspirations of NDIS participants should also be reasonable.

With this in mind, the participant's statement of goals and aspirations (subclause 33(1)) should be amended to be a statement of *reasonable* goals and aspirations. Furthermore, this amendment should be reflected in the criteria the CEO must take into account when deciding whether or not to approve the statement of participant supports.

Recommendations 2 & 3

That the 'participant's statement of goals and aspirations' be redrafted to be understood as the 'participant's statement of *reasonable* goals and aspirations'.

That the CEO, when deciding to approve the statement of participant supports, takes into account the *reasonableness* of the participant's statement of goals and aspirations.

PARTICIPATION PLANS – Income Support Activity Test or Participation Requirements

Subclause 33(1) provides general details as to what must be included as part of the participant's statement of goals and aspirations, including their living arrangements, informal community supports, and their social and economic participation.

¹ Australian Government Actuary, 'NDIS Costings – Review by the Australian Government Actuary', August 2012, p. 30.

It is not clear that these criteria are intended to include income support payments or any additional conditions associated with income support payments, for example, participation requirements associated with Newstart Allowance or the Disability Support Pension (DSP).

Given that the NDIS is intended to provide long term disability care and support to those with a severe or profound disability, income support participation requirements may not be relevant to many NDIS participants.

However, given that one of the key objectives of the NDIS is to help people with disability participate in the community, both socially and economically, the terms and conditions of income support payments must be taken into account.

For example, from 1 July 2012, some DSP recipients under the age of 35 who are found to have a work capacity of 8 hours or more a week are required to attend regular participation interviews to develop participation plans.² Given that these plans (like Newstart Allowance activity test requirements) are aimed at improving the social and economic participation of disability support pensioners, it would be worthwhile to require NDIS participants to include in their plan any mutual obligation requirements they must meet as a condition of their income support payment.

Recommendation 4

That the participant's statement of goals and aspirations must include any income support activity test or participation requirements.

DSP REFORM

The Productivity Commission recommended as part of its NDIS feasibility study that, 'The Australian Government should reform the DSP to ensure that it does not undermine the NDIS goals of better economic, employment and independence outcomes for people with disabilities.'³ The Productivity Commission estimates that as a result of DSP reform, there will be 15.9 per cent reduction in the DSP population by 2050; an increase in the employment of people with disability by 220,000 by 2050; and, an increase in GDP by nearly \$24 billion.⁴ This is on top of the expected \$8 billion GDP increase as a result of the NDIS by itself. If the social and economic benefits of the NDIS are to be maximised, DSP reform is crucial. To this end the committee should acknowledge the importance of reforming the DSP to align its goals with that of the NDIS.

Recommendation 5

That the committee acknowledge the need to reform the DSP to align its goals with those of the NDIS.

COMPENSATION PAYMENTS

A number of stakeholders have raised concerns regarding the compensation provisions (Chapter 5) of the bill. These provisions may require an individual to sue for compensation with respect to a

² Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), '[Disability Support Pension – Participation Requirements](#)', Website retrieved 21 January 2013.

³ Productivity Commission, *Disability Care and Support*, Report no. 54, Canberra, pp 68-69.

⁴ As above, p. 962.

personal injury and provide power to the Agency to undertake cost recovery actions if a compensation claim is successful.

It is often forgotten that the Productivity Commission recommended the establishment of two schemes, the NDIS and the National Injury Insurance Scheme (NIIS). The NIIS is intended to cover those who acquire a severe or profound disability via a catastrophic accident, for example, in a car or workplace accident.

The compensation measures outlined in the bill are intended to reflect the distinction between the NDIS and the NIIS, and also 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.

The states will be major financial beneficiaries if the compensation claim requirements in the bill are removed because these costs will effectively be transferred in their entirety from the states to the Commonwealth, given that the Commonwealth has agreed (at least with NSW) to bear 100 per cent of the population, financial and transition risks.

The bilateral agreements negotiated between the Commonwealth and the states were costed on the basis of an NDIS eligible population, rather than the combined NDIS and NIIS populations. Given that the Commonwealth is bearing most of the financial risks associated with the launch sites, if there is no requirement to seek compensation, then the NDIS related costs to the Commonwealth will increase.

Furthermore, state governments will be financially better off if the compensation claim requirements are removed. For example, if someone who has already paid a compulsory third party insurance premium via a scheme like the TAC, makes a claim from the NDIS rather than the TAC, the TAC will retain the revenue from the premium but does not have to pay out the corresponding liability. State governments can then levy a special dividend against the government owned insurance provider, effectively propping up their budget's bottom line.

The situation facing individuals that acquire a disability as a result of a catastrophic injury not covered by compulsory third party insurance is somewhat different – as they will have to engage in litigation for compensation, if there is a liable party. The compensation arrangements outlined in the bill effectively continue the existing arrangements with respect to compensation litigation.

It is important to note 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. This is what the cost recovery elements of the bill relate to. For example, someone who is already receiving NDIS supports may be required to initiate a claim (subsection 104(1) & (2)), 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.

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.

Recommendation 6

That the requirement to take action to obtain compensation remains in its current form.

ACQUIRING A DISABILITY AGED 65+

Given the importance of age as a key factor in determining eligibility for the NDIS, it is also imperative that those people who are 65 years or older when they acquire a disability are *excluded* from the scheme.

At present only individuals who acquire a disability before the age of 65 are to be included in the scheme. Once an existing NDIS participant turns 65 years of age, they will have the option to continue receiving NDIS funded supports or move onto the aged care system. Individuals who acquire a disability after the age of 65 will receive disability supports from the aged care sector.

The exclusion is necessary to ensure that taxpayers and the Australian economy generate the maximum benefits possible from such a scheme. Many of the economic benefits of the NDIS are derived from people with disability moving off welfare and into work because the NDIS will provide them with adequate support to do so.⁵

However, the expectation to move from welfare to work only exists for those of working age, typically those eligible for DSP. Once people become eligible for the age pension at the age of 65, community expectations to work evaporate and so do the expected returns from increased workforce participation.

Restricting eligibility for NDIS-funded supports to those younger than the pension age will ensure taxpayers receive the maximum return on their investment in the NDIS. To extend the scope of NDIS-funded support to those older than the age pension has the potential to undermine the long-term financial sustainability of the scheme and undermine many of the expected economic benefits of the NDIS.

Furthermore, extending the scheme to include all those who acquire a disability over the pension age could potentially undermine the entire aged-care sector because of the strong correlation between ageing and disability.

The ABS' Survey of Disability, Ageing and Carers (SDAC) 2009 shows that the older people get, the more likely they are to have a disability; and the proportion of those who have a severe or profound disability is higher than for other age groups.⁶ For example, approximately 70% of all people aged 90

⁵ Productivity Commission, *Disability Care and Support*, Report no. 54 (Canberra: 2011), chapters 6 and 20.

⁶ ABS (Australian Bureau of Statistics), *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, 2009*, Cat. No. 4430.0 (16 December 2010), 5–7.

or more have a 'severe or profound' disability, while only 9% of those aged 65–69 are assessed with the same level of impairment.⁷

If people older than the pension age were allowed to move out of the aged care system and onto the disability care system, there would simply be a substantial movement of people claiming supports from one system to another, with no obvious welfare gains for the individuals receiving these supports or financial gains for the taxpayers who are paying for these supports.

If the government chooses to expand the eligibility for the NDIS to include people older than the pension age who acquire a disability, the government will need to establish a sound economic case for doing so because at present only the contrary is apparent.

Recommendation 7

Eligibility for NDIS-funded supports should not be extended to people older than the pension age who have acquired a disability.

⁷ As above, 7.

The Centre for Independent Studies (CIS)

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