

Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Mr Ian Holland  
Secretary  
The Senate Standing Committee on Community Affairs  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

## **Inquiry into the National Disability Insurance Scheme Bill 2012**

Dear Sir

Activ, like many disability service providers, strongly supports the principles of the National Disability Insurance Scheme (NDIS) as proposed by the July 2011 Productivity Commission Inquiry report and commends the Australian Government in its efforts to implement the scheme.

Activ believes the principles of the scheme justly advance the entitlements and rights of people with disability in allowing individuals to better participate as members of our community; and perhaps most importantly live out their dreams and future aspirations.

Activ has reviewed the National Disability Insurance Scheme Bill 2012 (the Bill) in preparing this submission. Upon review, Activ is concerned that an aspect of the Bill, relating to the entitlement of individuals with disability, is fundamentally flawed in its approach. It is the organisation's view that this flaw significantly impacts the choice and control individuals can exercise. Activ views this as problematic in a scheme that seeks to empower those individuals with the right to determine their own support and care.

More specifically, this flaw is seemingly at odds with the guiding principles of the Bill as outlined in Chapter 1 Part 2 – Objects and Principles of the Bill. This chapter clearly lays out the right of people with disability to be supported in exercising “choice and control in the pursuit of their goals.” These are entitlements that Activ firmly supports and believes are necessary if the scheme is to achieve its aim of

supporting the independence and social as well as economic participation of people with disability.

However, the Bill's provision of overall discretionary power to the CEO of the National Disability Insurance Agency appears to weaken this entitlement and undermine the very objectives of the scheme. This aspect of the Bill is also incongruent with the tenor of the basic human entitlements intended in the Productivity Commission report.

By way of example, Chapter 3 – “Participants and their plans”, as currently worded means that in order to become a participant of the scheme, a person:

- may make a request,
- which the CEO must consider, but
- on which the CEO decides he is satisfied as to whether the person meets the disability criteria

This approach would appear to dis-empower the individual from their sense of entitlement. It is Activ's view that this aspect of the Bill should be amended to better reflect the guiding principles of the Bill in supporting the independence of people with disability.

Activ strongly recommends that in reviewing this Bill, the act should state that a person with disability is entitled to be a participant where they meet the criteria. Should the CEO have a view that questions whether the person meets the criteria, Activ believes it should be the responsibility of the CEO to establish this.

There is a similar concern with aspects of Division 2 – “Preparing participant's plans”. Under the proposed legislation, a participant's plan requires CEO approval. Activ disagrees strongly with this approach and believes that a participant's plan should automatically be valid if the plan meets the requirements as listed in the legislation. If the CEO is not satisfied with a plan then the onus should be on the CEO to establish why the plan does not meet the requirements. As the Bill currently stands, too much discretion is given to the CEO and in Activ's view, this undermines the individual's right to entitlement.

These concerns may seem to be an issue of semantics and our proposed changes are only subtle; however, Activ believes changing the tenor of the Bill in these two areas would better fulfil the principles relating to entitlement, as outlined in the Productivity Commission Inquiry report. Furthermore, it is the organisation's view that these matters goes to the core of having a sense of entitlement; and to that effect, this matter goes to the core of the proposed National Disability Insurance Scheme.

We understand a more detailed submission on the Bill will be made by NDS, our sector's peak body. We broadly support that submission.

I would be willing to expand on my comments should that be required.

Yours sincerely

Tony Vis  
CHIEF EXECUTIVE OFFICER

24 January 2013