



Disability
Justice
Advocacy inc.

**Submission to the Senate Community Affairs Committee
Draft National Disability Insurance Scheme Legislation**

22 January 2013

Part 2 – Objects of Act

The objects make insufficient reference to Australia's human rights obligations and the UN Convention on the Rights of Persons with Disabilities (CRPD) and other relevant conventions

1. The objects of this 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.

Some key questions that are not resolved by these objects are:

- Which obligations under the CRPD will be given effect under these objects?
- Which ones will not?
- What are Australia's obligations under the UN Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women?
- Why aren't these included in the Objects?

Recommendation 01: Disability Justice Advocacy (DJA) believes these questions need to be addressed under the objects of the Act.

5 General principles guiding actions of people who may do acts or things on behalf of others

It is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far

as practicable, in accordance with both the general principles set out in section 4 and the following principles:

(a) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves;

(b) people with disability should be encouraged to engage in the life of the community;

(c) the judgements and decisions that people with disability would have made for themselves should be taken into account;

Recommendation 02: Disability Justice Advocacy (DJA) believes that a person should be supported to make decisions when they require help to do so.

6 Agency may provide support and assistance

(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.

(2) However, subsection (1) 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.

Recommendation 03: 6.1 above does not compel an Agency to provide assistance to prospective participants and actual participants which leaves the issue open to abuse. DJA believes it needs to explicitly include recognition that 'assistance' should involve independent individual or systemic advocacy. Independent or systemic advocacy should be used to assist people with disability, including past, present and potential participants. It should be offered as needed for any aspect of the scheme.

4.9 Definitions

developmental delay means a delay in the development of a child under 6 years of age that:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) results in substantial reduction in functional capacity in one or more of the following areas of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) cognitive development;
- (iv) motor development; and

(c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated.

Recommendation 04: DJA believes that developmental delay must not be restricted to children aged under six because of potential cultural, medical and sociological delays in obtaining a diagnosis which often only occurs when the child attends school and teachers make initial observations about potential developmental delay.

Definition of Advocacy

Recommendation 05: DJA believes there should be a clear definition of advocacy such as that used by FaHCSIA under the National Disability Advocacy Program at

<http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program>

22 Age requirements

(1) A person **meets the age requirements** if:

(a) the person was aged under 65 when the access request in relation to the person was made; and

Recommendation 06: DJA recommends there should be no age cap of 65 for the NDIS because disability is not restricted by age and can happen at any time including to those aged 65 and over. Likewise disability supports are too often inadequate under the aged care system.

69 Application to be a registered provider of supports

(1) A person or entity may apply in writing to the CEO to be a registered provider of supports in relation to either or both of the following:

(a) managing the funding for supports under plans;

(b) the provision of supports.

Note 1: If the funding for supports under a plan is managed by the Agency, supports are to be provided only by a registered provider of supports (see subsection 33(6)).

Note 2: A registered plan management provider of supports may in certain circumstances manage the funding for supports under a plan (see subsection 42(2)).

Recommendation 07: DJA 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.

Part 5—Nominees

Recommendation 08: DJA recommends that Plan nominees must be accountable and used sparingly with clear criteria for who can be appointed as plan nominees and how they can be appointed, and especially that service providers should not be nominees due to the inherent conflict of interest.

127 Appointment of Board members

(2) A person is eligible for appointment as a Board member only if the Minister is satisfied that the person has 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 or schemes with long-term liabilities;*
- (c) financial management;*
- (d) corporate governance.*

(6) In appointing the Board members, the Minister must ensure that the Board members collectively possess an appropriate balance of skills, experience or knowledge in the fields mentioned in subsection (2).

147 Appointment of members of the Advisory Council

(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:

(i) at least 4 of the members are people with disability who have skills, experience or knowledge relating to disability services; and

(ii) at least 2 of the members are carers of people with disability and have skills, experience or knowledge relating to disability services; and

(iii) at least one of the members is a person who has skills, experience or knowledge in the supply of equipment, or the provision of services, to people with disability; and

(iv) any other members are persons with skills, experience or knowledge that will help the Advisory Council perform its function.

Recommendation 09: DJA believes that there should be a disability-only Board and Advisory Council because of the diversity of knowledge, skills and experience amongst people with disabilities who would make excellent candidates.

Trevor Carroll
Executive Officer
Disability Justice Advocacy Inc.
86 Herbert Street, Northcote, VIC 3070
Tel: 9445 7433 Fax: 9489 2988

www.justadvocacy.com