

Submission Brief to the

NDIS Draft Legislation Inquiry

January 2013

From the beginning of discussions around the possibility of implementing in Australia a long-term care and support scheme for people living with disability Anglicare Australia has advocated for a system that is flexible, focuses on the individual for providing support and which is based on consumer choice. It was commendable of Government to adopt these same principles as they were recommended by the Productivity Commission. Since then, the development of this draft legislation shows that commitment to these fundamental principles has not waived.

Anglicare Australia members are involved at each of the NDIS launch locations, each having focus on particular challenges and opportunities to ensure readiness come 1 July 2013. Each of these organisations has come together as a working group to support each other in their preparations and to assist the wider Anglicare Australia network to be NDIS aware. This group plans to meet several times over the coming year but held their inaugural meeting in November 2012. Arising out of the working group's discussions were particular concerns which remain relevant given the current draft legislation.

Overall, the objects of the legislation are clear with transparency and accountability strong attributes. Our questions in particular relate to the formal provision of services by informal/natural supports and we seek further clarification on assessment.

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Interplay of definitions and family employment

There may be any number of reasons why a person may wish to engage their carer or personal friend as a formal provider of support. Irrespective of these reasons (but within the bounds of reasonableness), the fundamental premise of the NDIS is to ensure that care and support commensurate with need are available to participants. Anglicare Australia appreciates that the notion of employing friends and family with NDIS funds is not without its ethical, industrial and fiscal concerns. However, should it become an option, as we feel it should...

Q1. What likely impacts on the carer from this form of employment, if any, would there be in regard to carer payments/benefits/status?

A carer in this legislation is defined as someone who provides care without payment or compensation, nor are they bound by a contract. Both of these conditions would likely occur if the participant chose to employ or remunerate their informal supporters as a provider of services to them.

As with other government allowances and pensions, contingencies are in place in the case of reportable earnings. In many respects, being employed as a provider of support is similar to any other part time job, however, it is also very different in many other. Because care requirements may be in addition to 25hrs a week being remunerated for such time will cause ineligibility for the carer payment. Although the amount the carer is being remunerated may not be sufficient to cover the loss of the carer payment.

Remunerating carers for their time and energy is a way for participants to acknowledge their support and in return, show their appreciation. At no point, due to remuneration should a carer be worse off. Therefore a pro-rata approach to carer payments could be a way around the issue. For instance, if a participant remunerates a carer for an amount that is less than the carer payment but which covers more than the allowable 25 hours then the amount should be supplemented by the government to the limit of the otherwise eligible carer payment amount.

Recommendation 1:

Before the legislation is enacted, the likely impacts on the carer in regard to carer payments, benefits, and status from this form of employment, if any; and what impacts that might have on the choices of the participant, ought to be investigated.

Q2. If a family member or friend agrees to become a paid employee, would they have to register as a provider and become subject to all the regulations and conditions prescribed for those entities?

Similar to the issues that arose for volunteer foster carers in relation to workplace health and safety laws, a question remains as to whether independent carers would be subject to the same rules that apply to corporate entities. The legislation dictates that resources may only be directed to registered providers of support. Though, the principle of resource burden that applied to making domestic foster homes places of business also applies here in that individuals are not set up with the same processes to handle intensive reporting processes.

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Recommendation 2:

If individuals must register as formal service providers then the rules for reporting be of a simplified form.

Q3. If a carer does become a registered provider of care services does that then preclude them from becoming the plan nominee?

It is likely that those who have been guardians or primary carers in the past would become the plan nominee. However if those same individuals are registered as service providers as they might be due to stipulations around expenditure of funds (ie Question 2) then a potential conflict of interest arises in the perceived ability to direct funds to particular, namely themselves, providers.

Recommendation 3:

Before the legislation is enacted, this particular issue is considered in full by the committee to resolve any unintended consequences that might arise due to the interplay between remuneration, provision of care and the role of the nominee.

These lingering questions have not, in the opinion of Anglicare Australia, been fully satisfied by the objects of the draft legislation. The responses to these questions impact on a core component of the NDIS – choice – and ought to be resolved to the satisfaction of the committee before the legislation is endorsed.

Minimisation of Assessment

Potential for participants to undergo several assessment processes due to the request of further evidence in consideration of access and support planning.

One of the hallmarks of the current system is the over-assessment of people as they progressed through the disability support system. Repetitive assessment is time consuming, costly and has ranging effects on participants to the degree that it can become quite invasive.

As participants apply to become covered by the scheme there is a potential for the burden of assessment to be realised again. Particularly in the combination of access requests and the approval of statements of participant support. Both of these requests, you would think, are likely to come close together. Given that an access request must be approved or denied within 28 days and the commencement of support planning to commence no later than 14 days after that. On both occasions the CEO of the Transition Agency has the power to call for further assessment to substantiate the claim.

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Recommendation 4:

Where the CEO of the Transition Agency may request further assessment either in the consideration of the access request or statement of participant supports, may those assessments, where possible, be valid for a period of time to limit the extent to which participants are subject to ongoing and possibly repetitive assessment.

Anglicare Australia

Anglicare Australia is a network of 45 independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the faith that every individual has intrinsic value. Our services are delivered to one in forty Australians, in partnership with them, the communities in which they live, and other like-minded organisations in those areas. In all, over 17,771 staff and 17,908 volunteers work with over 480,000 vulnerable Australians every year delivering diverse services, in every region of Australia.

Anglicare in every community