



**Psychiatric Disability Services**  
of Victoria (VICSERV)

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## Submission

### Response to the National Disability Insurance Scheme Bill 2012 (Exposure Draft)

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Authorised by Kim Koop, Chief Executive Officer, VICSERV

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## **Psychiatric Disability Services of Victoria's (VICSERV) role**

VICSERV is a membership-based organisation and the peak body representing community managed mental health services in Victoria. These services include housing support, home-based outreach, psychosocial and pre-vocational day programs, residential rehabilitation, mutual support and self-help, respite care and Prevention and Recovery Care (PARC) services.

Many VICSERV members also provide Commonwealth funded mental health programs.

VICSERV welcomes the opportunity to provide feedback on the exposure draft of the National Disability Insurance Scheme Bill 2012. In particular, VICSERV recognises that the National Disability Insurance Scheme (NDIS) will affect the clients of our member services as well as the way that the organisations themselves will evolve into the future.

The community managed mental health service system whilst made up of various program types, comes together in its common goals and underpinning values which is actively supporting the recovery of those with a severe mental illness. Recovery is not only possible, but the goal of support is to assist people in reaching their full potential and live a contributing life.

An equally important underpinning is that of upholding and promoting human rights. This includes the principle that people use community managed mental health services on a voluntary basis and that service provision is done in a way that is consistent with human rights and responsibilities.

Whilst expressed in the explanatory memorandum, a glaring omission from the Bill is the recognition of the human rights of participants of the scheme and the requirement that these rights, particularly those as contained in the *Convention on the Rights of Persons with Disabilities* underpin all aspects of the NDIS.

## **Recovery**

The scheme is fundamentally about recovery in the sense of how community managed mental health services understand the term to mean which is supporting people to lead a full and contributory life. Yet the Bill does not talk about recovery being one of the key aims of the scheme. Ideally, a set of recovery principles should be set out in the legislation to guide decision making, eligibility, assessment, plan development and reasonable supports under the scheme.

## **Supported decision making under the Scheme**

VICSERV recognises that even though the NDIS is geared to optimising choice and control for participants over the support they receive, there will be some people who will require some support to make decisions and/or communicate their desires. Though it is agreed

that there should be some mechanism to effect this, the current drafting of the Bill does not use the language of supported decision making as it stands.

A clear omission from the Bill is the presumption of capacity for all participants under the scheme. Beginning with a presumption of competence for decision making, planning and comprehending information should be central to the NDIS with a high threshold for displacing this presumption. Whilst there are some references to 'supported decision making' within the Bill (for example s.80(4)) many features of the legislation are inconsistent with the true meaning of supported decision making.

In relation to the nominee scheme, the Bill seeks to establish two forms of nominees with varying powers: *plan nominees* and *correspondence nominees*. Further extrapolation of the role of the plan nominee is required especially better articulating the scope of the role within the Bill. Furthermore, more stringent checks and balances need to be included to ensure that nominees are using their power appropriately and there is protection against potentials of conflict of interest. This includes the ability of interested persons to challenge nominee appointments on certain grounds. In particular, the wishes of the participant need to be paramount rather than just a consideration, particularly if the CEO of the Agency is exercising the power of appointment.

It is interesting to note that the Bill does not allow for a participant to appoint a nominee directly, rather they are only able to request a person's appointment via the Agency. This is contrary to the ideal of self-determination under the scheme. Rather, VICSERV would like to see participants able to directly appoint nominees. Related to this is the recognition and enforcement under the scheme of current advanced statements. Again, this is integral to the supported decision making process and ensuring that the participant's wishes are realised and needs to be included in the Bill.

It is unclear how the nominee scheme will interact with established state and territory substitute and/or supported decision making schemes. There is a risk of complicating already complex systems by adding further bureaucratic processes to the mix. The NDIS legislation needs to clearly recognise these existing systems and clarify as much as possible their points of intersection as well as difference.

### **Requirement of registered providers**

Under s.70 of the Bill providers may be registered to either manage the funding of supports under a person's plan and/or provide supports. Whilst VICSERV understands that requirements such as quality standards, reporting content and competencies of registered providers will be included in the NDIS rules, it would have been helpful if these were released in conjunction with the draft Bill to ensure a more fulsome analysis and response.

Nevertheless, there are some requirements in VICSERV's view which need to be enshrined in the legislation in relation to registered providers including:

- The requirement that services are recovery focused and underpinned by values of recovery as understood by participants and their families

- Human rights of participants of the scheme being the primary consideration of actions or decisions taken by providers
- Safeguards to ensure that potential conflicts of interest can be reported and determined by an independent body
- Periodic review of providers to ensure continued adherence to quality requirements and currency of registration
- Professional development requirements for certain providers of services
- Quality assurance processes to ensure best possible service offerings
- Core provider capabilities

What also requires clarification in the Bill are the types of supports which can be purchased under the scheme and whether all categories of support need to be in fact provided by registered providers. For example, general services such as landscaping or cleaning are not disability support specific and thus would not need to be purchased from a registered provider under the scheme. Obviously disability or care support most definitely would need to be purchased from a registered provider under the scheme.

### **Requiring the recovery of compensation payments**

VICSERV is concerned of the onerous nature of s.104 which enables the CEO of the Agency to require a participant take legal action to obtain compensation in respect of a personal injury. At times, the costs of legal action to pursue a claim are not only prohibitive but also may not have a reasonable prospect of success. While it is a requirement for the Agency to consider reasonableness of success before instigating this power, it would seem that such a decision would need to be informed by specialist legal expertise in the area of compensation claims rather than it being an administrative based decision alone. Furthermore, these processes can be lengthy, meaning that support needs go unmet whilst waiting for final determinations. VICSERV is of the view that less onerous alternatives are explored to replace this requirement.

### **Independent Advisory Council Membership**

VICSERV is pleased that one of the criteria for appointing members of the Advisory Council is the “desirability of the membership of the Advisory Council reflecting the diversity of people with disability.”(s.147(5)(a) It is particularly important to capture experiences with various disabilities including those of impaired psychosocial functioning and that the Council has that experiential perspective.

VICSERV however does not support the proposition as outlined in s.147(5)(b)(iii) that the Council consists of person with “experience or knowledge in the supply of equipment.” The fundamental underpinning of the scheme is service provision that is based on the choice and preferences of the participants not the supply of equipment alone though of course this would be part of the service provision. Expertise of supply of equipment alone seems to be a rather tenuous qualification and as such VICSERV recommends that the reference is removed.