



EDAC

Ethnic Disability Advocacy Centre

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

*Ensuring a Bill that is inclusive of people of culturally and linguistically
diverse backgrounds who have a disability*

JANUARY 2013

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About EDAC

The Ethnic Disability Advocacy Centre (EDAC) is a peak not for profit community organisation in Western Australia that advocates for the rights and interests of culturally and linguistically diverse (CaLD) people with a disability and their families and carers. Individual and systemic advocacy work is undertaken in metropolitan Perth as well as in regional WA, in particular Carnarvon and the West Kimberley. Whilst EDAC client group is predominantly of CaLD background we also provide a service to Aboriginal people in the West Kimberley.

EDAC welcomes the opportunity to respond to the NDIS Draft Bill and appreciates that eligibility criteria includes all people with disability who are permanent residents of Australia. EDAC has had input into the submissions lodged by DANA and NEDA and are fully supportive of their responses. In our response to the Draft NDIS Bill, we will only comment on parts of the bill that are relevant to the needs of our client population.

Comments on the NDIS Bill

Participation in NDIS:

Although some national peak organisations, e.g. AFDO and Blind Citizens Australia have consulted their members on the NDIS it has come to EDAC's attention that individuals with disability from CaLD backgrounds in WA and Aboriginal people in West Kimberley were not informed or consulted. EDAC's constituents report that they do not know what NDIS is all about and how it would benefit them. Please note that EDAC is not funded to undertake this type of activity. The NDIS legislation needs to ensure that NDIS promotion is targeted to minority disability groups including CaLD people and Aboriginal and Torres Strait Islander people.

Whilst 15.4% of people with disability in WA are of CaLD backgrounds, only 3% access disability support services (DSC annual report 2006) – please see DSC's website for more information at: www.disability.wa.gov.au

According to WA Office of Multicultural Interests (OMI) figures based on 2006 ABS census in Metropolitan Perth, 452,886 (that's 31.3%) of the Western Australian population are born overseas – please see the details at: www.omi.wa.gov.au

National Ethnic Disability Alliance (NEDA 2010) data analysis estimates more than 1 million people (18%) with disability are from non-English speaking backgrounds. Some form of recent migration heritage is a characteristic for over 40% of people with disability. All people with disability face barriers to social participation – access to employment, technology,

social activity and economic wellbeing, however people from non-English speaking backgrounds are more likely to face deeper forms of marginalization. There is a higher prevalence of impairment for people born in non-English speaking countries aged over 45 years, especially for 'first wave' non English speaking migrants, up to 3 times that of the Australian born population. Please see the details of at: www.neda.org.au

EDAC attributes this low service uptake to a continuing lack of engagement of service providers with people with disabilities from CaLD backgrounds, as well as their lack of awareness about appropriate disability service provision to these clients. This poor representation in service usage is often said to have resulted from a range of issues, viz. lack of culturally appropriate services; lack of knowledge of service availability; and consumers' own social, language and cultural predispositions that have the tendency to present barriers in their use of mainstream disability services (*Supporting CaLD Carers EDAC 2003 - state-wide consultation in WA and review of studies in other States*).

To empower CaLD people with disability and Aboriginal and Torres Strait Islander people to participate in NDIS and to enable their access to services, the information should be made available in the preferred languages of service users. This will involve engaging interpreters and translating important information on NDIS in the languages of People with disability from NESB and Aboriginal and Torres Strait Islander people. They should also be consulted about their disability, cultural, social and religious needs to tailor services to meet their individual needs.

Advocacy:

EDAC is disappointed that the importance of independent professional advocacy is not recognised and supported in the NDIS Bill. EDAC realises that advocacy is not funded by NDIS as this may cause conflict of interest with the NDIS Agency. However NDIS legislation should support the importance, relevance and role of advocacy especially for people in minority groups from CaLD backgrounds and Aboriginal and Torres Strait Islander people in all metropolitan, regional and remote areas of Australia.

EDAC believes that professional and independent advocacy is crucial to equity and fairness in the implementation of the NDIS. Advocacy is especially critical for people from CaLD backgrounds with disability in order for them to access the system appropriately and be meaningfully involved in the choices and decision making processes. Advocacy will assist them to effectively communicate their wishes and hopefully prevent unnecessary exploitation and discrimination as the lack of English language skill and understanding of the bureaucratic system may result in them not utilizing the vital services that they need. Without providing independent advocacy, it would be difficult to provide a safeguard for people who are vulnerable and at risk of exploitation. Therefore, there is need for strong

independent advocacy to provide a continued regulatory oversight in protecting vulnerable CaLD people with disability from harm, ensuring providers adhere to a basic standard of service, providing protection from mistreatment while supporting the maintenance of quality service systems which are critical to maintain quality of life, and for individuals to realise their aspirations.

This would also provide an excellent modelling which over time enables those who seek advocacy support to build their confidence to advocate on their own behalf. After all, the purpose of NDIS is to put people with disabilities in control of their own lives and increase the level of participation in the use of support services by giving the participants greater opportunity for choice and control of the most appropriate services.

In instances where the partner or family member as the carer is abusive, there needs to be safeguards in place to protect the person with the disability. UNCRPD and Disability Services Standards 9 ensure that the human rights of people with disability are to be protected and that they are also protected from any forms of abuse and neglect. This should also be incorporated in the NDIS legislation. There needs to be in place appropriate complaint mechanisms and regular reviews and monitoring of services to prevent exploitation of people with disability.

EDAC recommends that Service Support Standards should be audited at least once a year and should not only stem from complaints. Annual monitoring should be mandatory (at any given time of the year) with a reasonable notice time. EDAC welcomes the national regulation of service support standards and advocates that the assessment structure be culturally relevant and meaningful. At the same time it would assist service providers to better understand the cultural and linguistic needs of this group. Systemic advocacy will also play a key role in addressing anomalies and policy reforms to protect the rights of this vulnerable group.

Objects and Principals:

In reference to 3 Objects of Act (1) (h) - *Give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities –*

NDIS legislation should be in line with all the national and international anti-discrimination legislations. It should be articulated that the NDIS has been developed within a human rights framework through appropriate referencing, not only to the UNCRPD, but all ratified and relevant human rights conventions. Therefore 3(h) should be replaced with the words in the Human Rights and Anti-discrimination Bill 2012 3(1)(b) – “in conjunction with other laws, to give effect to Australia’s obligations under the human rights instruments”

This should include the UN's other Conventions on the Rights of Child, Rights of Refugees, Rights of Women and Rights of Migrant Workers and their families. Being a Commonwealth Parliament Act, it should be specified that the objects of the act are in conjunction with other laws to give effect to Australia's obligations under the human rights instruments that are listed in all other acts including the Migration Act, Social Security Act, Race Discrimination Act and Religious Vilification Act.

Substantive equity should be an over-arching principle of the NDIS legislation. Substantive Equity means meeting people's special disability, cultural, and other needs to bring them up to an equal state with people with disability in the mainstream and providing people from CaLD, Aboriginal and Torres Strait Islander people equal opportunities to access the services that are available for all people in Australia. However, sometimes treating everyone equally may disadvantage some people in minority groups like those from non-English speaking backgrounds. To provide equitable services, the information should be available in the preferred languages of the client. Interpreting and translating services should be a separate line item in funding arrangements over and above the mainstream services that are available for all Australians. It should be recognised as additional funding. Please refer to Western Australia's *Substantive Equality Framework* which is available on the Equal Opportunity Commission's website at: www.eoc.wa.gov.au

According to the WA Disability Services Commission's (DSC) the concept of substantive equality encompasses the following understandings, that:

- rights, entitlements, opportunities and access are not necessarily distributed equally throughout the community.
- equal or the same application of rules to unequal groups can have unequal results. Where services cater to the dominant, majority group, then people who are not part of the majority group and have different needs may miss out on essential services – please see DSC's website for details at: www.disability.wa.gov.au

This framework is underpinned by many statutory and policy obligations for equality and multicultural sensitivity, such as those inscribed in:

- WA Equal Opportunity Act 1984
- Racial Discrimination Act 1975
- Public Sector Management Act 1994
- Western Australian Charter of Multiculturalism and state-wide Language Policy.

The basic principles are that people with disabilities from an Aboriginal and Torres Strait Islander or CaLD background, their families and carers:

- have the same rights as other citizens in Western Australia to participate fully in community life;
- are enriched by their culture, enrich others by sharing their culture, and are encouraged to maintain involvement with culture where possible; and

- may access information, advocacy, supports and services which are culturally responsive and free from discrimination and are developed in partnership with CALD and Aboriginal and Torres Strait Islander people with disabilities, their families, carers and communities;
- develop strategies to address additional needs and vulnerabilities arising from people facing double discrimination (such as culture and disability) or multiple issues such as unemployment, poverty, health and education.

CaLD people with disability as participants:

It is a requirement of the UNCRPD (article9) that people with disability have access on an equal basis with others, to information and communication, including information technology. EDAC is concerned with what happens for a person with a disability from CALD background who cannot prepare their own "statement" of "goals, objectives and aspirations" (Chapter 3, Part 2) due to barriers to understanding of English language? NDIA through the NDIS bill should put in place a support system that is easy to navigate and displays invaluable support services to individuals. EDAC recommends that the following be inserted: To empower CaLD and Aboriginal and Torres Strait Islander people with disability to participate in NDIS and to enable their access to services, the information should be made available in the preferred languages of service users through the use of accredited interpreters and translations. They should also be consulted about their disability, cultural, social and religious needs to tailor services to meet their individual needs.

Eligibility Criteria:

The NDIS should be accessible for people with disability who have legal rights to live in Australia. Any person who resides in Australia at the time of acquiring a disability should be eligible for funding. In accordance to the UNCRPD principles which Australia is a signatory to, children under the age of 18 years who are not recognised as permanent residents under the proposed Bill, would miss out on the vital disability supports including early intervention services which could be detrimental to their development and is contrary to the United Nations article 3 Convention on the rights of the Child and UNCRPD article 7.1 and 7.2. In CRPD article 24.2C and D. Asylum seekers who are waiting for their permanent residency are eligible for limited social security benefits and some Medicare. EDAC would recommend that they should also be eligible for the NDIS as UNCRPD provides no discrimination on the basis of citizenship.

Accessing care and support services are basic human rights. Due consideration needs to be given to those individuals with disabilities who relocate from countries with which Australia has bilateral agreements e.g. New Zealand. Australia has a moral obligation to address this

problem whether through bilateral agreement or undertake some concessional measures. Failure to provide reasonable and necessary supports is inhumane and will inhibit the capacity of the person and their families and carers to contribute to Australian society. It is a restriction that is likely to cost society more in the end than it saves.

Establishment of agency and rules and engagement:

Workforce development and capacity building

NDIS legislation should require all staff who work in the NDIA to have professional development training in providing culturally competent and safe service to CaLD and Aboriginal and Torres Strait Islander people with disability, their families and carers. Their professional development should also include working with qualified and NAATI Accredited interpreters. It should be a basic requirement that staff have the relevant qualifications and training in working with people with various disabilities from minority groups to ensure equitable access to the NDIS. NDIA should also ensure that people with disability are employed at all levels of the agency including in decision making capacities.

Currently there is no representation of people from NESB on any of the NDIS committees and their voices are not being heard. Aboriginal people and people from NESB with disability should be included in the boards and committees of the NDIA and in also Minister's NDIS Advisory Council.

Choice and control:

Most migrants with a disability from CALD background may have experienced social and economic challenges as well as negative attitudes. They may not have had the opportunity for any form of disability services before arriving Australia. It is therefore significant that CaLD individuals with disability should be provided with adequate training to build their own capacity so that they know what services are available to them, how to access those services; what they are eligible for or not.

Within the CALD community, clarification about "support needs" within the assessment process may be unclear due to the complexities of the inter-relationships and caring role of family members within the community. The scheme in its current form limits the abilities of CaLD people with disability to have choice and control when it comes to development of their own participatory Plan; there appears to be a gap in relation to how this cohort accesses information about services. The preparation, review and replacement of a participant's plan, and the management of the funding for supports under a participant's plan, can only so far be reasonably practicable if the individual applicant has adequate

information and understanding – to be in a position to direct his/her own individualised plan.

EDAC recommends that the “support needs” within the CALD community be reasonable and culturally responsive in benchmarking cost of services. For example, if a service requires a longer contact time due to the use of interpreters, then the funding benchmark for CaLD people with disability needs to be higher. Training should be available for individuals with disability from CaLD backgrounds and Aboriginal and Torres Strait Islander people to ensure their access to information, supports and services to be in control of their lives and ensure their meaningful inclusion and participation in the wider society as valued citizens of Australia.

Concluding remarks:

The introduction of the NDIS marks an important milestone and the federal Government have taken a great step towards reforming the disability sector support. EDAC is very positive about the proposed NDIS initiatives and strongly believes it has the potential to dramatically improve the lives of many people with disability. However, we would like to see a disability support system across the country that ensures **all** people with disability have equity of access to NDIS funding to meet their needs to live a full and productive life.