

Patricia Malowney

Attention: Senate Standing Committee on Community Affairs
Email: community.affairs.sen@aph.gov.au

Mail: PO Box 6100
Parliament House
Canberra ACT 2600

National Disability Insurance Scheme Bill 2012 – Submission

I wish to thank you for providing me with an opportunity to provide a submission for this most important and monumental Bill which will have a great impact on the lives of Australians with Disabilities

I believe that the Bill needs to have acknowledgement that the majority of Australians with disabilities are able to make decisions on their own behalf, regardless of whether their legs work or not, or they have a communication disability or they can hear or they are blind. Having said that I welcome the acknowledgement in Section 5 that when a person makes a decisions on behalf of another, those decision made must be those which the Australian with a disability would make, were they able to do so. This is truly a step in the right direction. My only quibble would be that we need to add the words *where appropriate* at the end of Section 4 (12) *The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected*. Not every person with a disability wants, or indeed needs, their family involved in the decision making process.

I am very keen for the implementation of the NDIS, having contracted Polio at the age of 4 months, resulting in paralysis of my left leg. Despite using callipers, I was able to access mainstream schooling and employment until I contracted Post Polio Syndrome at the age of 46. This severely impacted on my life, with resulting increased paralysis, fatigue and pain necessitating my retirement from work that I loved in Victoria Police and requiring my husband to become my “carer” a term he hates, as he considers himself my husband.

I am now able to participate in the community because of his ongoing support. He is now 71, and I would not be able to continue my services as a systemic advocate without him. The waiting list for support services in Victoria is a minimum 3 years. 3 years in

which I would not be able to shower, dress or do necessary tasks around my house. In effect, I would be house bound, or would lose my independence.

Under the Bill, I fit the criteria, but only if I make application before I turn 65. But what if my husband lives till I turn 66? Should I then be forced to move into a nursing home? Would it be different if I make an application now because I need access to equipment – which is an added burden for every Australian with a disability?

As an independent advocate, I am concerned that the Bill says that a person must request to be a participant in the NDIS – and that it must be in the form approved by the CEO –, it needs to be in a format which suits Australians with disabilities, and our families and supporters. It is inappropriate for a CEO to have the power decide how we need to make an application. We must have the right to be able to make the application in a format and in a way that suits us, including orally or via text or in Braille or in easy English, if that is what we need.

I am very concerned about the lack of a transparent, independent complaint mechanism which is independent and external to the agency. The result is that if I don't like what you have decided to do for me – that's fine, you will appoint someone within your organisation to review your decision. Let me give you an example of what I mean:

Section 48 talks about the CEO having the power to conduct a review of a plan. So an Australian with a disability asks the CEO to review the plan, if the CEO doesn't respond after 14 days, it is deemed to have been denied. What the... and yet the CEO can decide to conduct a review at any time. Hmm sounds like a power imbalance to me.

So I have asked for a review and I don't like the response or the CEO has decided they won't do a review, so what can I do. Well, according to Section 99, these are reviewable decisions so I can have them reviewed. So under Section 100 – Review of Reviewable Decisions –

5. (a) *the CEO receives a request for review of a reviewable decision; or*
 - (b) *the CEO is taken to have made a reviewable decision because of subsection 21(3) or 48(2);*
- the CEO must cause the reviewable decision to be reviewed by a person (the **reviewer**):*
- (c) *to whom the CEO's powers and functions under this section are delegated; and*
 - (d) *who was not involved in making the reviewable decision.*

In other words I can ask the CEO for a review and the CEO must appoint a person from their own agency to review the decision that the CEO has made. Power imbalance is

rife in this section. This system does not really in the aged care sector, and should not be imposed on the disability sector.

The Bill appears to disadvantage Victorians with disabilities who will be worse off under the NDIS. In Victoria we have the Disability Services Commissioner, who is an independent commissioner to whom complaints can be made about the decisions made, about service deliver and who can assist in mediating and conciliation, and who also has the power to conduct investigation and impose penalties.

Without an independent complaint mechanism, which has the power to conduct investigations, whether referred by the Minister or instigated by the independent, and impose penalties where needed, we will continue to see substandard treatment of Australians with Disabilities.

The bill is completely silent on the issue of abuse of Australians with Disabilities – we all know it occurs, and we all want it eliminated. Where in the Bill does the provider need to be of good character, where are the police checks? Where is the need for a register of service providers who have failed the test of good service provision? You know, the ones who are transferred or who lose their job at one agency only to appear at another service provider. Or are these all going to be in the rules?

The Bill is completely silent on the issue of diversity. Where is the acknowledgement of the need to provide culturally sensitive services for Indigenous Australians with Disabilities or CALD Australians with Disabilities, where is the acknowledgement of gendered service provision. Where are the guarantees that church based service providers will not be able to refuse service delivery if I am GLBTI or Atheist or a single parent? What if the provider does not approve of my lifestyle choices? We know that these are already issues for Australians with disabilities. Where are the protections for us?

Nothing about us without us has been the catch phrase which underpins the social justice agenda of Australians with disabilities and our families.

While the Bill talks of the inclusion of Australians with Disabilities on the Board, it does not provide an opportunity for Australians with Disabilities to apply to be on the Board. A little bit of a cherry picking opportunity for the Minister to get people who will support his/her agenda? We need the Board to be open and transparent. In addition, where is the requirement for the agency to employ Australians with disabilities? We all know how badly Australia does in relation to employment of people with disabilities when it is compared to other OECD countries. Well here is an opportunity to lift our game. EMPLOY US. There are many Australians with disabilities who have the necessary skills and experience. We just don't get a go.

Thank you for providing this opportunity to comment.

I am happy for my submission to be public.