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**ACiA Submission**

**to**

**Senate Inquiry**

**into**

**NDIS legislation**

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## **1. About ACiA**

The Attendant Care Industry Association (Australia) Ltd (ACiA) is the peak body representing government and non-government attendant care providers, including private, not-for-profit and charitable providers. Nationally ACiA represents around 100 organisations, who collectively employ more than 15,000 workers and support in the region of 40,000 clients.

ACiA's vision is that the Attendant Care industry is known and respected as a provider of quality services. To achieve this vision, ACiA provides education, resources and support to the industry, as well as developing and administering its own management systems standard (endorsed by JAS-ANZ), the Attendant Care Industry Management System Standard (ACIMSS), which has been adopted as marker of quality attendant care service by government departments across a number of States in Australia since its inception in 2008. The revised version of ACIMSS, which requires providers to demonstrate their ability to assist service users to achieve personal outcomes, to direct their own support, and to participate in their community, will be available in early 2013.

The term "attendant care" refers to any paid care or support services delivered at a person's home or in their community to assist them to remain living in the community. It targets people of all ages, with ill health or a disability. Attendant care aims to maintain or improve a person's independence, allow them to participate in their community and reduce his/her risk of admission to a facility or hospital. This is achieved by providing assistance based on each person's individual needs. It may include nursing care and assistance with all activities of daily living including personal assistance, domestic services, community access, vocational support, educational support, child care services, gardening/home maintenance, respite care, palliative care, social support, therapy program support.

Attendant care therefore supports the Commonwealth and State policies of allowing people to actively participate in society, remain in their own homes and avoid unnecessary residential care.

## **2. Context**

ACiA has previously made submissions about the proposed National Disability Insurance Scheme to the Productivity Commission, during the period of consultation in its enquiry into a National Disability Long-Term Care and Support Scheme, and has also spoken at public hearings at that time.

ACiA members are primarily concerned with how the new scheme

- will impact on the way in which quality attendant care services are delivered to individuals living in their own homes;
- the detail of arrangements by which service providers are both engaged and directed by the service users to deliver support;

- processes which ensure care and support are provided to the required standard, enhance personal outcomes and objectives, and promote the dignity and autonomy of the service user.

ACiA therefore is concerned whether or not the draft legislation provides the detail and clarity which providers will require in order to ensure that they have the capacity to place suitable staff with NDIS participants, and to make the necessary alterations to current administrative arrangements to accommodate the individualised funding imperatives of the new scheme.

ACiA, however, remains committed to the intent of the new scheme, which is to bring the scheme participant to the fore in terms of planning and directing their support. Attendant care is primarily delivered in the participant's home, and our members have a wealth of experience in responding to individual requirements and demands, and operating within the context a participant's private dwelling.

Many of the principles detailed in the new legislation articulate the respect and dignity which are conferred to participants and their families within the everyday operations of attendant care, and within this model there has been a strong association between support provided and the purpose it serves to meet the broader life objectives identified by the participant.

ACiA is very supportive, of the intention of the NDIS to ensure that the link between support and a participant's aspirations and goals is cemented in all support arrangements, and commentary on the draft legislation is also concerned to determine if this will be achieved.

### **3. Overall Comment**

ACiA, on behalf of its Board and members, remains strongly supportive of the development of the National Disability Insurance Scheme, and welcomes the draft legislation as the basis for the statutory authority, through the National Disability Insurance Agency (NDIA), for the implementation of the scheme nationally. Generally the draft legislation appears to support the key tenets of the reforms that the Productivity Commission Report recommended, namely that the scheme address the individual aspirations and needs of people with disability, that it encourages and enables control over supports and daily life, and that it be available on an equitable basis to all those eligible across Australia. Of particular significance is the primacy given to the individual's plan, as the mechanism for identifying the support required and directing the resources which will be used to assist the individual.

ACiA is making comment on the draft legislation without the benefit of having first looked at the draft rules which will accompany it and provide so much of the important detail about the scheme will operate. ACiA understands that a number of other representative organisations within the sector have been given advance copies of both the legislation and rules, and had the opportunity to provide input during the process of their drafting. ACiA seeks to be involved in the future to contribute to the development of policy and service reform, by bringing to the discussion our experience and expertise, including:

- Membership of around 100 organisations and individuals nationally, representing around 15,000 workers and up to 40,000 clients
- Membership across the aged care, disability and home and community care sectors
- Specific expertise in the delivery of support to people living at home
- Lengthy provider experience of delivering individualised support according to the wishes of participants
- Expertise and experience in the implementation of quality certification systems, through the development of our ACIMSS 2008 and its subsequent review in 2012
- Proven track record of engaging positively with reform processes, and contributing accordingly.

#### **4. List of recommendations**

Below is a summary of the recommendations made in the next section of the submission.

***Recommendation One: That the term “general supports”, as defined and used in Chapter 2, be altered to “information and coordination”.***

***Recommendation Two: That reference to the age “65” in Section 22 be replaced by aged pension age”.***

***Recommendation Three: That the International Classification of Disability, Functioning and Health (ICF) be adopted as the framework for assessing the eligibility and needs of participants of the NDIS, and that this be included in the legislation at Section 24, with appropriate amendments to that Section.***

***Recommendation Four: That definitions of “disability”, according to the ICF, including definitions of its dimensions, be provided in the legislation at Part 4 – Definitions.***

***Recommendation Five: That Section 24 be rewritten to reflect the changes above:***

***(1) A person meets the disability requirements if the person has a disability which:***

***(a) is based on the best evidence available, and is likely to be of lifetime or long-term duration;***

***(b) involves activity limitations or participation in one or more of the following areas: communication; social interactions; learning; mobility; self-care; self-management; domestic life; social, community or economic participation; and***

***(c) creates support needs which, based on the best evidence available, are likely to be of lifetime or long-term duration.***

***Recommendation Seven: That the wording in Section 33 (6) be amended to reflect that this option is only relevant in certain circumstances and for a time-limited period, to be determined by the rules, and that subsequent references***

**to the Agency managing plans in Division 3, also reflect that management by the Agency should be as a last resort.**

**Recommendation Eight: That the wording in Part 2 – Preparing participants’ plans, which refers to the responsibility of the Agency to each participant’s plan and the approval process assigned to this, be altered to reflect that aspect of the plan which relates to the appropriation of resources from the NDIS.**

**Recommendation Nine: That the categories of Registered providers of support, detailed in Section 69, be extended (in (1)) to include:  
(b) the provision of specialist disability support; and  
(c) the provision of general supports.**

ACiA sees that one of the great strengths of the legislation in its draft form is the differentiation that it makes of the various roles which will be played by different individuals and agencies to support an individual with disability who received NDIS funding to assist them in their participation and inclusion in the community. It is important that the individual has been placed at the centre of all of the arrangements, and that the role of the new NDIA has been articulated, in relation to the individual, and in relation to the other agencies involved.

ACiA and its members are particularly interested in the way the legislation deals with the following issues:

- Eligibility (Part 1 – Becoming a Participant)
- Planning (Part 2 – Participant Plans)
- Service provision and quality (Part 3 - Registered providers of support)
- Decision-making (Part 5 Nominees)
- Complaints and appeals mechanisms (Part 6 – Review of decisions)
- Compensation (Chapter 5 – Compensation payments)

This section will deal briefly with each of the above issues. Other issues will be addressed in the form of brief comments or questions in the table below in Section 4, attributed to the specific parts of the legislation.

#### **4.1. Eligibility**

ACiA accepts that any funded scheme will need to set rules about who is eligible for what, so that finite resources can be accurately targeted. The universality of the scheme poses challenges to the new NDIA in determining who will receive resources, and who will instead be referred to existing service infrastructure to have

their needs met. We note that Chapter 2 deals with “general support”, and covers the requirement of the NDIA to take on the responsibility for delivery of a range of support and information to what the Productivity Commission referred to as people in Tier One and Tier Two (potentially everyone, and those whose disability is not significant enough to warrant specialist service funding, respectively). It is encouraging that the legislation provides for the potential to fund agencies and individuals to carry out these functions. The term “general support”, however seems too generic for this purpose, and should be distinguished from the various genuinely “supportive” relationships which the legislation brings into effect. Given this, and in light of the concerns and recommendations in Section 3.3 below, it is recommended that this term be altered to “Information and Coordination”, both of which terms cover the various functions which are described in Chapter 2.

***Recommendation One: That the term “general supports”, as defined and used in Chapter 2, be altered to “information and coordination”.***

ACiA has concerns about the access criteria described in Part 1. A number of groups within the disability sector have continued to express concerns about the restrictions on eligibility based on age and residency, and we acknowledge these concerns and would prefer to see the NDIS be as inclusive as our obligations under the CRPD require. In particular, the reference to the age 65 appears to be at odds with the proposed increase in the age at which eligibility for the aged pension begins, and for this reason we suggest that reference should instead be made to “aged pension age”.

***Recommendation Two: That reference to the age “65” in Section 22 be replaced by aged pension age”.***

ACiA’s main concern in this Chapter, however, relates to Sections 24, 25 and 27, Disability requirements, Early intervention, and NDIS rules relating to disability requirements and early Intervention requirements. In order to ensure that people with disability who require support are deemed eligible for the scheme, a broader assessment framework than one which looks at attributable disability and functional capacity needs to be adopted. Many submissions to the Productivity Commission identified the International Classification of Functioning Disability and Health (ICF) as an internationally accepted system of comprehensively identifying disability-related need, by addressing body functions and impairments, activities of life and participation restrictions, and the environmental factors which enhance or impinge upon people’s ability to participate. The Productivity Commission itself recommended (Recommendation 7.1) that the ICF should be used to identify the supports required to address the reasonable and necessary care and support for their life activities. The legislation has, however, adopted a very narrow, impairment-based eligibility approach, which may lead to a restriction on access to the scheme to people on the basis of diagnosis, as will the test of “permanency”.

ACiA does not claim expertise in the area of eligibility assessment, and indeed under the NDIS the role of assessing eligibility will appropriately be taken on by the NDIA. We are advised, however, by colleagues from the Centre for Disability research and Policy and the Faculty of Arts and Sciences at the University of Sydney who through their work with the World Health Organisation engage with the ICF regularly, that it is

entirely appropriate as the framework for assessing eligibility for the NDIS. This would be achieved by using the classification to identify whether or not a person has “disability”, and that related “assistance” is required. For the purposes of the legislation what constitutes a “definition” should be contained within the Definitions section at Part 4, including the various sub-definitions (or “dimensions”) of “impairments”, “activity”, “participation”, and “environmental factors”, details of which are included in the ICF document.

ACiA recognises that the ICF framework has to be supported by a suitable range of assessment tools, and is informed by our colleagues at the University of Sydney that adaptation is possible of current resources, which cover all the chapters relating to the dimensions discussed above. We note that Section 27 in the draft legislation, which is currently very problematic due to the definitional limitations discussed above, is however the means by which rules are applied for the purpose of establishing eligibility, and which, presumably, would generate rules about assessment tools and assessment processes. This would allow for the adaptation of the ICF assessment tools to be covered in the rules.

ACiA further notes that the notion of “permanency” of disability is problematic, both in terms of definition and assessment, and in terms of the intent of the new scheme if it is to accord with the CRPD. This is not an easy administrative challenge to overcome, but ACiA supports the proposal by our colleagues at the University of Sydney to replace the notion of permanency with that of “lifetime” (for those conditions which can be readily regarded as such), and to introduce to the legislation the term “long-term”, with an expectation that this will generally refer to a time period of between 5 and 10 years. This new category can be utilised to ensure that people who will benefit significantly from NDIS intervention can do so, whilst the nature of their condition might be such that it cannot be considered permanent. It is also hoped that the effectiveness of NDIS interventions may be such that for some people, whilst some attributes of their disability may remain, their need for specialist support into the future may decline, if supports have been built around them and participation achieved.

***Recommendation Three: That the International Classification of Disability, Functioning and Health (ICF) be adopted as the framework for assessing the eligibility and needs of participants of the NDIS, and that this be included in the legislation at Section 24, with appropriate amendments to that Section.***

***Recommendation Four: That definitions of “disability”, according to the ICF, including definitions of its dimensions, be provided in the legislation at Part 4 – Definitions.***

***Recommendation Five: That Section 24 be rewritten to reflect the changes above:***

***(1) A person meets the disability requirements if the person has a disability which:***

***(a) is based on the best evidence available, and is likely to be of lifetime or long-term duration;***



***(b) involves activity limitations or participation in one or more of the following areas: communication; social interactions; learning; mobility; self-care; self-management; domestic life; social, community or economic participation; and (c) creates support needs which, based on the best evidence available, are likely to be of lifetime or long-term duration.***

***(2) For the purposes of subsection 1, disabilities and support needs of “lifetime or long-term duration” may vary in intensity over time.<sup>1</sup>***

***Recommendation Six: That Sections 25 and 27 be rewritten to reflect the altered definition of disability described in the ICF, and the changes required by Recommendations Three, Four and Five.***

## **4.2. Planning**

In its submission to the Productivity Commission ACiA supported a nationally consistent and rigorous approach to determining need for the purpose of providing adequate supports to people with disability, and to ensure that assessments of individual need also take into account the extent to which other support, including that provided by unpaid carers, is available, and its reliability. This remains our position, and it is encouraging to see, therefore, that this will be taken account of when considering the resources that a person requires as part of their overall supports. Some caution will need to be applied to ensure that other supports are reliable and what the individual wants, and mechanisms put in place to review and remediate when circumstances change.

One concern which ACiA has is about the option for participants to nominate the Agency to manage the plan. We share the concerns of others in the sector about the potential for this to not only blur some of the role distinctions which the legislation has otherwise delineated well, but also to overwhelm the work of the Agency and to distract from its other, crucial tasks. We accept that in some instances, in the event that all other options have failed or are not available, there may be a need for the Agency to assume this responsibility, so that the plan remains managed at all times. The way in which the legislation is currently worded makes it sound like management of the plan by the Agency is one of a suite of options, rather than being something which the Agency takes on board only if certain circumstances should prevail. The wording should be amended to reflect that the Agency will take on this role *only* in certain circumstances, and as a last resort. The circumstances and the conditions around how long the Agency can take on this role should be specified in the rules relating to this section.

***Recommendation Seven: That the wording in Section 33 (6) be amended to reflect that this option is only relevant in certain circumstances and for a time-limited period, to be determined by the rules, and that subsequent references to the Agency managing plans in Division 3, also reflect that management by the Agency should be as a last resort.***

In general ACiA is supportive of the way in which the legislation details the relationship between the plan and the NDIS resources which it helps to appropriate,

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<sup>1</sup> From Submission on NDIS Bill, from Members of the centre for Disability Research and Policy and the Faculty of Arts, University of Sydney

in particular the non-prescriptive approach to what can be funded. Without the benefit of seeing the rules we remain unaware of what goods or services will be “out” of the scheme, and hope that this list will not be too long or prohibitive.

ACiA supports the principle that the plan is the property of the individual with disability, and acknowledges concerns from within the sector that the wording of the legislation implies ownership by the Agency. We accept that the Agency has significant responsibility for ensuring that a plan exists, that it is managed properly, and that the NDIS resources attached to the plan achieve its stated outcomes. To this extent the requirement of the Agency to approve and have oversight of the plan is necessary. In order to alleviate concerns that the plan is removed from the control of the participant, or becomes *only* a tool to appropriate NDIS resources, we would suggest that the wording in Part 2 – Preparing participants’ plans be amended to refer not to the “plan” in total, but to “those parts of the plan which relate to the appropriation of NDIS resources”, or wording to this effect.

***Recommendation Eight: That the wording in Part 2 – Preparing participants’ plans, which refers to the responsibility of the Agency to each participant’s plan and the approval process assigned to this, be altered to reflect that aspect of the plan which relates to the appropriation of resources from the NDIS.***

ACiA is supportive of the self-directed nature of supports, which the existence of the plan brings into effect. The legislation has attempted to identify the range of contact points and decision-makers who will deal with the agency in regard to an individual’s plan and its management, and also brings into effect two new categories of agent: the plan management provider and the plan (and also the correspondence) nominee). The articulation of these roles in the legislation should ensure that they remain separate and independent of the other roles within the NDIS, and is a positive addition. ACiA reserves further comment, however, until more details of how these roles are envisaged to operate are made available, and notes that there appear to be no rules planned which will provide details of what characteristics these organisations and individuals may possess. ACiA is concerned about how service providers will relate to the various proxies who may be involved in support arrangements, and it would be helpful to begin a dialogue about processes that may need to be implemented sooner rather than later.

### **4.3. Service Provision and Quality**

As an industry association representing providers who support people with disability in their own homes, ACiA is particularly interested in how the legislation deals with the arrangements to purchase and manage specialist disability support services, and other goods and services. Overall the legislation appears to be putting in place a requirement for providers under the NDIS to have suitable and relevant quality assurance systems in place, to provide certainty over the purchasing arrangements, and ACiA is supportive of this for those providers who are delivering specialist disability supports. Our understanding, however, is that the NDIS is required to have the scope to purchase non-specialist supports, and this would require a different and separate quality control mechanism to be effective, and to meet the expectations of participant direction.

The division of fundable support into just two types in Section 69 (1) is problematic, and should be increased to three types. Following on from the discussion at 3.1. above, the subsection (b), which currently refers to “the provision of supports”, should be further delineated to “(b) specialist disability supports” and “(c) general supports” (assuming that Recommendation One is adhered to). This distinguishes the requirements that specialist disability support providers have to maintain the quality of service delivery according to accepted quality assurance standards, to which the NDIA will have continued input; and can refer the quality of “other supports” to the range of quality assurance and certification mechanisms that exist generally, where appropriate.

In terms of appropriate quality assurance mechanisms ACiA would be supportive of a requirement for all specialist disability support providers to have an appropriate industry-endorsed quality system in place, and to have this verified and audited by a third-party certification body, and also to use this process to ensure compliance with the National Disability Service Standards. This process would be in line with that recently adopted in NSW, and ACiA’s own Standard, the Attendant Care Industry Management System Standards (ACIMSS), which has been reviewed recently to reflect the move toward person-centred approaches and individualisation in both disability and aged care reforms, would be relevant for providers who are delivering support to people with significant needs in their homes. We note that details of how this system will work will be detailed in the rules, and look forward to commenting further upon these.

***Recommendation Nine: That the categories of Registered providers of support, detailed in Section 69, be extended (in (1)) to include:  
(b) the provision of specialist disability support; and  
(c) the provision of general supports.***

A further concern of ACiA relates to the uncertainty around the continuity of services which are currently provided to people who are currently not eligible for State-based disability funding and service, and who are likely not to be eligible for NDIS Tier 3 service support. IN NSW there are around 50,000 people who utilise what used to be HACC services for people with disability under the age of 65, administered under what is now the Community Care Supports Program (CCSP), and there are similar arrangements in other States across Australia. Whilst ACiA recognises that this is a policy issue broader than just the NDIS, there is at least an implicit assumption in the legislation that these and other services will remain or even be enhanced, if there are to be supports to which Agency staff can refer people to, diverting them away from NDIS resources. This is relevant to Chapter 2 in reference to the role of the Agency in referring people on, but also more broadly to the legislation as a whole, as the availability of certain service types will be important when it comes to purchasing supports for individuals through their packages.

#### **4.4. Decision-making**

The focus upon the individual, and the primacy that the NIDS gives to control by the participant over the supports they receive, requires there to be some level of sophistication about how decisions are made and communicated. ACiA

acknowledges that Part 5 – Nominees addresses this to the extent that the Agency will need to have clear points of contact regarding the plans and other matters it is responsible for. However, we have concerns about the extent to which the legislation has adequately established a supported decision-making framework, given that a substitute decision-making framework is not appropriate except for those participants who have a legal guardian appointed; and the lack of detail about the way in which service providers are to relate to nominees and to plan management providers, as proxies, in relation to day-to-day decisions.

Article 12 (3) refers to the requirement by the state to provide support to persons with disabilities exercise their legal capacity, and Article 19 refers to the importance of supports being under the individual's control and direction. ACiA is aware of work that has been done in various Australian States, principally by departmental officials of the various Public Advocate and Public Guardianship offices, to develop and test out operational models of supported decision making for people with significant cognitive impairments. Whilst we have not viewed any results we are aware that such models have drawn on evidence from other overseas jurisdictions, and so have as their aim the very practical implementation of strategies and supports to encourage and assist decision making by people with disability. With this in mind ACiA believes that some work should be done to strengthen the relationship of the nominee duties, articulated in Section 80, to the principles of practice of supported decision-making, so that the expectations of Articles 12 and 19 are realised in the operation of the NDIS.

***Recommendation Ten: That further work be done in Part 5 – Nominees, and in particular Section 80, to ensure that the principles of supported decision making are implemented in the practices adopted by nominees in their work with NDIS participants.***

We note that the rules will further specify the duties of the nominee in relation to the participant (80 (4)), which will be welcome. Some broader principles of supported decision making, however, are required, as per the recommendation, which may in turn specify requirements of plan management agents and others who have responsibility for assisting a participant in the implementation, management and acquittal of the plan.

#### **4.5. Complaints and Appeals mechanisms**

Part 6, Sections 99 and 100, outline the process by which decisions of the Agency can be reviewed, and who can trigger such a review. ACiA supports the process of reviewing decisions made by the Agency, but is not aware of any reason why all decisions should not be reviewable. The prescription of what may be reviewed indicates that some processes and decisions will not be subject to the same level of accountability.

In Section 100 there is an expectation that the participants themselves will have to initiate the review, and, whilst this is in line with the principle of keeping the participant central to decision-making, provision should be made also for others to support the participant to request the review. In addition, none of the processes

acknowledge the role that people close to the participant, and independent advocates, can play by way of assisting the participant through the review process.

ACiA also believes that the legislation should articulate the mechanism by which participants can raise concerns and complaints about the standard of service provision provided, as well as allegations of abuse and neglect and other matters, regardless of the fact that this might not fall within the Agency's jurisdiction. The NCIS will ultimately bring into effect a range of support and other transactions, increasingly within the general community, and some specific safeguards will have to be developed and coordinated, if not by the Agency at least under the auspices of the NIDS, to address the range of problems which may occur for individuals. The current Complaints Resolution and Referral Service and National Disability Abuse and Neglect Hotline provide the basis for an external complaints body, but their scope, resources and powers would need to be altered and enhanced for them to be effective in this role.

ACiA has no specific recommendations to make at this point on these matters, but would be happy to take part in further discussion on what might be the best way to address systems failures outside of the regulated NDIA.

#### **4.6. Compensation**

ACiA is aware of the rationale for requiring participants to seek entitlements they may have to compensation, so that resources from the NDIS are not inappropriately expended. ACiA shares the concerns of much of the sector about the expectation placed on individuals with disability to seek this compensation, especially when the process may be stressful, onerous and/or costly. We would recommend that other means be attempted, whereby the Agency take on a role of seeking compensation and other entitlement funding where they believe that a participant is more appropriately paid for by another authority or scheme.

ACiA is also concerned that an unintended consequence of this requirement may be the inadvertent cost-shifting between cost jurisdictions, in particular where a participant may successfully obtain lifetime support funding from another agency. Whilst currently there is no provision for lifetime care to be administered by other disability schemes, we are not sure that the legislation precludes the possibility of the funds associated with such an arrangement being converted into an individualised, NDIS "package", and administered and managed differently to the way in which support is currently arranged in these schemes currently. This may be the case as the National Injury Insurance Scheme (NIIS) develops across the various States and Territories, and additional compensatory disabilities are included, resulting in a shifting of resources from those insurance schemes to the NDIS, and less certainty and viability issues for providers within those schemes. In light of very little information about how the new NIIS may operate, ACiA also wishes to know whether there is consideration of the NDIA being the sole administrator of specialist disability support resources, including those currently administered by lifetime care authorities, or if the current arrangements for lifetime care will continue and be extended into jurisdictions where they currently do not exist.

## 5. Brief comments on specific sections

The table below provides some further commentary on specific sections of the legislation.

Section	Comments and Recommendations
Part 1—Preliminary	
1 Short title	
2 Commencement	<p>The timings specified in the draft Bill point toward having most of the regulations and operations in place and with the requisite authority when the launch sites commence in July 2013, given that many of the Chapters and Sections will come into effect immediately after the Bill is passed. However, Some Chapters and Sections may not come into effect until up to six months after the Bill is passed, including, importantly, those parts covering Children (Part 4), Nominees (Part 5), and the Review of Decisions (Part 6). It is essential that these Parts commence, and details of how they are to be put into effect clearly communicated to participants and service providers, prior to the commencement of the launch sites.</p>
Part 2—Objects and principles	
3 Objects of Act	<p>It is important that this section of the Bill reference the relationship between the proposed NDIS and Australia’s obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the key principles of which have served to drive the progressive nature of the NDIS. The specific obligations, relating to the provision of support, the autonomy of the individual with disability, and the importance of supported decision making, amongst other CRPD clauses, should be identified specifically in the Objects.</p> <p>In addition, the Bill should reference in the Objects the National Disability Strategy (NDS), which serves as the framework of inclusion towards which the operation of the NDIS is such a key component. This needs to be less specific, assuming that the NDS will change and progress over time, but needs to stand as a key reference point for all activity related</p>

		to the improvement of conditions for people with disability in Australia.
4	General principles guiding actions under this Act	<p>This is an important section, which articulates the rights of people with disability, and frames the responsibility of the NDIS to work toward the achievement of these rights. Given this, some modification is necessary:</p> <p>4(2) Delete “to the extent of their ability” and replace with “according to their ability, and to the same extent as other members of the community”.</p> <p>4(12) Add, after “significant persons” the words “playing an important and meaningful role”, to help distinguish between those who play a destructive role. This wording also does not only recognise families and friends who play an actively supportive role, as “carers”.</p> <p>4(13) The lack of distinction made here (and throughout the Bill), about the various types of “supports”, make this Principle confusing and unsatisfactory. The distinction needs to be made, within the range of what is fundable under NDIS, between “specialist disability supports” and “generic supports”, and, perhaps, the “general supports”, the latter of which refers to those supports which are generally available to members of the community to a lesser or greater extent, depending on their circumstances, and which are generally not paid for directly, nor receive funding to purchase.</p> <p>4(14) Replace “effectiveness” with “a focus on individual outcomes and achievements”.</p>
5	General principles guiding actions of people who may do acts or things on behalf of others	<p>This is an important section, and the requirements are important to guide those assisting participants in ways that are truly consultative and place the person at the centre of decision making. 5(a), however, seems to be an important statement of principle, which could sit in the previous section as an overarching principle which requires Section 5 to address. This would lead to a rewrite of 5(a), to the effect:</p> <p>“people with disability are to be supported to participate in decision making processes, and to make as many decisions as possible for themselves, and to continue to increase their decision making capabilities and the scope of the decisions they make”</p>

6	Agency may provide support and assistance	It is important that the Agency be prepared to assist, including financially, in the preparation of, for example, the statement of goals and aspirations, but any acts of assistance must be provided by people or agencies other than the Agency
7	Provision of notice, approved form or information under this Act etc.	It is a good provision that there is some onus on the Agency to provide information relevant to NDIS to participants in language and formats which are accessible and understood. In practice there needs to be a commitment on the part of the Agency to ensure that all participants are informed in ways that are meaningful to them, so that they are able to participate on an equal footing.
9	Definitions	<p>The definition of “community care” in the Aged Care Act 1997, is shortly to be changed, given that from July 2013 a new form of care, “home care” will replace community care.</p> <p>The definition of “developmental delay” appears to be somewhat random (one amongst a host of potential disability “types”) chosen for definitional purposes, and also reflects an older, medical approach to disability definitions than those adopted in CRPD, in the NDS and the WHO’s current literature on disability, including the International Classification on Disability Functioning and Health (ICF) (see the broader discussion about this at 4.1. above). It flags a much larger difficulty of the Bill, in that the full range of dimensions of disability, classified under ICF, has not been adopted in the Bill to ascertain eligibility for the NDIS, nor to identify and address needs and the extent to which they are reasonable and necessary. It seems very out of place within the Definitions section.</p>
13	Agency may provide coordination, strategic and referral services etc. to people with disability	The terminology used “general supports” is confusing here, although the delivery of some support to people with disability, other than funded, specialist disability support, is in line with the recommendations of the Productivity Commission to deliver “Tier 2” supports. (See Recommendation One at 4.1. above.)
	Chapter 3—Participants and their plans	In general this Chapter is clear. Concerns remain about the restrictions based on age (discussed above), and on residency status, which is arguably at odds with the requirements for people entering the Aged Care sector, for example. Of more concern, however, are the disability requirements in Section 24, which appear to preclude people



		with HIV/AIDS and other chronic medical conditions, and those for whom disability may be a temporary, episodic experience, but which nonetheless requires significant and often specialised assistance. This has been the failing of previous disability schemes, and the expectation is that the NDIS will address this.
22	Age requirements	There will no doubt be many submissions which continue to argue for the removal of any age restriction. ACiA sees the articulation of the age 65 as unhelpful and not in keeping with changes to eligibility for the aged pension due to come into effect some years hence, and Recommendation Two at 4.1. above proposes a change to the wording here.
23	Residence requirements	ACiA understands that the residency requirements here are more restrictive than those, for example, within aged care legislation, and do not conform to our obligations under CRPD.
24	Disability requirements	This needs to adopt the framework of the ICF, in line with the recommendations of the Productivity Commission, and focus on “disability” and “assistance required” as the key criteria (with the definition of “disability” included in Part 4 – Definitions.
25	Early intervention requirements	This section also need to adopt the ICF framework.
27	National Disability Insurance Scheme rules relating to disability requirements and early intervention requirements	Recommendation Four above at 4.1 proposes that this section be rewritten to accommodate the ICF as the framework for determining disability eligibility, with the rules providing details of the tools which may be deployed to assess eligibility and need by means of ICF.
Part 2—Participants’ plans		
Division 1—Principles relating to plans		
31	Principles relating to plans	These are strong principles, and it is good to have the importance of the individual’s plan as the key driver of funded support codified within the Bill. (k)This paragraph refers only to “disability services” whereas that term has not been defined or treated separately from funded supports, and wrongly assumes that the NDIS

		can only fund specialist disability services, and that the plan is focused wholly on the purchasing of specialist disability services. This can be addressed by replacing the term “disability services” with “funded supports”, as there is no need in the principles to draw a distinction between generic and specialist supports.
	Division 2—Preparing participants’ plans	This Division is very important, and ACiA is supportive of the primacy given to the plan to drive the support which is to be provided.
34	Reasonable and necessary supports	ACiA through its member providers is familiar with the concepts of “reasonable and necessary” as guiding principles for eligibility of support and the range of supports to be provided. It is supportive also of the principle that a participant’s existing support network be taken into consideration when resources through the NDIS are being allocated. The wording at (e), however, seems to allow for an interpretation of current normative levels of support provided by carers and others informally, which, in the context of supporting people with disability, is significantly higher than the expectations placed on family members and friends of people without disability. We are concerned, therefore, about the range of interpretations possible of the phrase “what it is reasonable to expect that families .. to provide”, who will be delegated within the Agency to determine this in each individual case, and how this will be monitored for consistency.
40	Effect of temporary absence on plans	This Section appears overly restrictive on the use of NDIS supports to facilitate travel, especially if this travel does not affect their residency. Global travel for significant periods of time, for the purpose of work or study, are not uncommon, and opportunities should not be denied to people with disability to also experience this because their supports are invalid once they leave the country. Obviously some restrictions will need to be placed on the funding of supports which will mainly be sourced and used overseas, if a person’s residency officially or de factor shifts to another country. But the Section as is appears to unnecessarily restrict general travel and thus deny a significant participation opportunity for people with disability.
41	Suspension of plans	
	Division 3—Managing the funding for supports	

	under participants' plans	
43	Choice for the participant in relation to plan management	ACiA is not aware of the contemporary thinking about how plan management services will operate, or what type of organisations will undertake this role. We are supportive of the principle that these roles are specified and separate from other roles, in particular the delivery of specialist disability support. But we are uncertain about whether or not they will remain exclusive from other roles undertaken, and are unaware of where the legislation prevents agencies from taking on multiple roles. Again, there is a practical aspect to this, namely the way in which plan management agencies will relate to service providers, and the role of the individual in day-to-day decision making when these arrangements are in place.
	Division 4—Reviewing and changing participants' plans	ACiA also supports the flexibility around the change in any or all aspects of their plans, as and when needed
48	Review of participant's plan	It would appear out of keeping with the intent of the legislation, and what has preceded, that in (4) a review of the plan could be initiated without some level of involvement from the participant.
	Part 2—Privacy	
60	Protection of information held by the Agency etc.	ACiA is of the view that information about the extent to which outcomes identified by participants have been achieved, as a result of NDIS intervention, is a vital aspect of quality assurance and continuous improvement in the new scheme, and supports the use of individualised data, in de-identified form, for this purpose. There does not appear to be any distinction made in this and subsequent sections between personal participant data, which presumably identifies them and their circumstances, and de-identified data for the purpose of reporting and statistical collation. ACiA believes that such a distinction should be made, allowing the various protections and safeguards to be in place in relation to the storing and transference of personal information of participants, whilst dealing in a more proactive way with the de-identified data which is gathered over time.
	Part 3—Registered providers of supports	ACiA supports the requirement of specialist disability support providers to be accredited through the application of industry standards which are verified by third parties (see above)

		4.3). The distinction needs to be drawn, as mentioned in Recommendation Nine, between specialist disability support providers, and general support providers.
69	Application to be a registered provider of supports	See Recommendation Four and 4.3 above.
70	Registered providers of supports	See Recommendation Four and 4.3 above
73	National Disability Insurance Scheme rules for registered providers of supports	In light of ACiA's recommendation to have two categories of service providers, we agree that the rules should address the requirements of this section in relation to specialist disability support providers. There needs to be some other set of requirements, and mechanisms to implement them, for the providers of general supports.
Part 5—Nominees		
	Division 1—Functions and responsibilities of nominees	As discussed at 4.4 above, this section needs to have a much stronger supported decision-making framework articulated, otherwise the legislation may inadvertently place proxies in positions of control over the choices of people with disability, without having gone through the processes currently in place to determine whether or not a person's rights should be limited by guardianship.
80	Duty of nominee to participant	This section needs some amendment, with a stronger focus on supported, rather than substitute decision-making. The rules which will attach to this section must make explicit the way in which the nominee may act as a spokesperson for the participant, but must act as an advisor in relation to decisions, and to facilitate the participant to make those decisions – otherwise the nominee does become a substitute decision-maker, and this can only be sanctioned if the proper processes of applying for guardianship, and being assessed by a tribunal, have taken place.
85	Right of nominee to attend with participant	The requirement to use only the nominee as a person to accompany the participant to various assessments or medical examinations seems unnecessarily restrictive, and contrary to what should ideally occur, and currently occurs in practice, whereby a person with disability can choose the most appropriate and willing person to accompany them, dependent upon what the appointment is for. Some additional words should be added to this to convey that it is not only the nominee who can perform this role, and also that in

		some circumstances it may be appropriate for a participant to have an independent advocate accompany them.
Division 2—Appointment and cancellation or suspension of appointment		
86	Appointment of plan nominee	There is no doubt that the Agency needs to have some responsibility for the appointment of appropriate nominees, and in some circumstances determine who that nominee might be, if it appears likely that one is needed and is not forthcoming. However (2) (b) should emphasise that this is only in specific circumstances and not only if the Agency sees fit. Those circumstances should be detailed in the rules (which are scheduled to be written in relation to Section 88).
88	Provisions relating to appointments	ACiA supports the approach taken in (6)(b) to detail who may <b>not</b> be appointed as nominees, rather than attempt to determine who may. Without having seen the draft rules, however, we remain concerned, as in our comments to Section 60 above, relating to clear distinction of roles and ensuring multiple roles are not taken on by the same provider, that role distinctions are maintained.
91	Suspension etc. of appointment of nominees in cases of severe physical, mental or financial harm	ACiA regards the authority given to the Agency, in relation to suspending nominees, is a very important safeguard against abuse and maladministration. Given that this Section refers specifically to behaviour which is criminal in nature, we believe that the legislation should contain a requirement for the Agency to bring proceedings against the nominee, or at least provide support to the participant if they wish to bring those proceedings to bear.
93	National Disability Insurance Scheme rules may prescribe requirements etc.	The role of the plan nominee would appear to bring with it not only great responsibility, but also a great deal of skill, both in terms of working closely with the participant to ascertain and communicate her/his decisions, and working well with a range of professionals and with the Agency. It is hoped that the rules will at least provide a description of the minimum skillset required to fulfil this role, and give some idea as to whether the expectation is for this person to be a professional person or someone who is close to and has a friendly or caring relationship with the participant. If the former, there would need to be some detail of

		remuneration for this role.
Part 6—Review of decisions		
99	Reviewable decisions	As discussed at 4.5 above, ACiA sees no reason why all decisions should not be able to be subject to review.
100	Review of reviewable decisions	In this section it should be made explicit that a participant who is challenging a decision is entitled to have the assistance of an independent advocate, or other associate of their choosing. This follows on from Section 85 above, where it is important that legislation recognise other associates of the participant, than those prescribed in the legislation, to fulfil supportive roles if and when required.
103	Applications to the Administrative Appeals Tribunal	There is nothing in the legislation about the timeframes for the review of decisions, or at least timeframes associated with particular milestones within the appeals process. There are no rules scheduled to be drawn up for these Sections, so it would be important to include some timeframe expectations in the act.
Chapter 5—Compensation payments		
105	Consequences of failure to comply with a requirement to take action to obtain compensation	This Section appears particularly punitive toward participants.
Part 1—National Disability Insurance Scheme Launch Transition Agency		
118	Functions of the	In addition to the functions listed, the Agency must also be required to report on its

Agency	operations and its achievements, including quality outcomes for participants, and to make these public. The framework for evaluating the success of the Agency must be established with reference to the National Disability Strategy (NDS) and the CRPD.
127 Appointment of Board members	ACiA is concerned to ensure that the full range of skills is included on the Board, in line with its various functions. Currently the requirements to be on the Board relate only to expertise in finance and insurance, and service delivery, over and above general expertise in board governance. The role of the Agency, however, is to gather and report on data, and to ensure the NIDS operates in accordance with NDS and CRPD, and some expertise in international law and in data management would also be useful. We would agree that experience of living with disability should be included as a relevant skill/experience, but that this should not be confined to experiencing disability within the context of disability service use. There also should be a duty to disclose interests, as there is for members of the Advisory Council at Sections 152 and 153.
Part 3—Independent Advisory Council	
Division 1—Establishment and function	
144 Function of the Advisory Council	ACiA is supportive of the establishment of this Council, and does not understand why in (3) the corporate governance of the Agency, and the money paid to the Agency, cannot be considered by the Council.
148 Term of appointment	ACiA is interested to know how appointments will be made, and what merit selection process will be adopted. There do not appear to be any rules scheduled to be drafted which will address this, so perhaps the legislation should mandate the process, so that it is transparent and appointments genuinely based on merit.
Division 2—Staff etc.	There is currently a very low proportion of people with disability employed by the public service in Australia, and it would seem appropriate for a new agency, which is dedicated to improving the lives of people with disability, to require some affirmative action in the

		employment of people with disability.
Division 1—Reporting		
Subdivision A—Reporting by Board members		
172	Annual report	The Agency should report in their Annual Report on the achievement of the Section 3 objects of the Act and on participant satisfaction with the performance of the Agency, including data and analyses of participant outcomes. The Annual Report should be a public document, made broadly available and in a wide variety of formats.
202	Delegation by the CEO	<p>The way in which the authority of the Agency’s CEO is delegated to officers within the Agency will be critical to both the smooth administration of the NDIS, and to the safeguarding of the participants, providers and other stakeholders. These delegations, whilst not included in the rules, should come under some initial scrutiny by a range of stakeholders who are concerned to see the NDIS operate successfully, and a period of consultation set for constructive feedback to be provided.</p> <p>This Section appears to preclude the possibility of delegation by the CEO/Agency of the roles of the Agency to non-government organisations, or agencies run by State governments. This is in line with community expectations of the national approach to administering the NDIS, but is there not going to be some overlap, at least initially, with existing mechanisms within some States, in the coordination and referral of people within Tier 2 (such as the proposed Ability Links program in NSW)? If this is the case are agreements in place with the relevant State bodies to dismantle their mechanisms in favour of those run by the Agency?</p>
Part 4—Review of the Act		
208	Review of operation of Act	The process of establishing the NDIS has been inclusive and consultative all the way through, and the Review of the Act should also stipulate the inclusion of a range of stakeholders, most notably participants and their representative bodies, and providers along with theirs.