



## **SUBMISSION TO SENATE INQUIRY INTO NATIONAL DISABILITY INSURANCE SCHEME BILL 2012**

**Prepared by  
COTA National Policy Office**

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**COTA Australia**

GPO Box 1583  
Adelaide SA 5001  
08 8232 0422  
[www.cota.org.au](http://www.cota.org.au)

Authorised by:  
Ian Yates AM  
Chief Executive

Prepared by:  
Jo Root  
National Policy Manager

## INTRODUCTION

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COTA Australia is the national policy vehicle of the eight State and Territory COTAs (Councils on the Ageing) in NSW, Queensland, Tasmania, South Australia, Victoria, Western Australia, ACT and the Northern Territory.

COTA Australia has a focus on national policy issues from the perspective of older people as citizens and consumers and seeks to promote, improve and protect the circumstances and wellbeing of older people in Australia.

COTA welcomed the decision to have the Productivity Commission Inquiry into Disability Services, put in a submission to the Inquiry and welcomed the overall direction of its recommendations. We believe that the Australian Government's decision to implement a National Disability Insurance Scheme (NDIS) will ensure that people living with a disability and their families and carers will finally be able to access the supports they need to lead a full and inclusive life.

Our Submission reflects concerns older people have raised with us with regard to the way the NDIS is designed.

## ISSUES

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### **Self determination**

One of COTA's key policy principles is that older people should have control over their own lives. We believe that a similar principle should apply to people living with a disability and indeed it is one of the principles of the Convention on the Rights of Persons with Disabilities.

The proposed legislation does not have an explicit statement acknowledging that the majority of people with disabilities are able to make decisions on their own behalf and should be empowered to do so. Such a statement should be added.

COTA welcomes the requirement in the Bill that people who are making decisions on behalf of others should make the decisions as the person with a disability would have if they were able to do so. This is a principle that should also apply when people are making decisions on behalf of older people who have impaired decision making capacity.

COTA has some concerns over the role of families and other carers and does not believe they should be allowed to overrule the wishes and desires of the person with a disability. Whilst we accept the wording in the legislation that their role should be respected it should not take precedence particularly when people are capable of making decisions themselves. This is often a contentious issue when in discussions of self managed or consumer directed care where the desires of the person needing the support and care may not be the same as their family or carers. We would support adding the words "where appropriate" at the end

of Section 4(12) which says *The role of families, carers and other significant persons in the lives of people with a disability is to be acknowledged and respected.*

### **Age of eligibility for NDIS**

The upper age limit for eligibility for NDIS funded services has caused the most concern amongst older people. The legislation identifies that “a person meets the age requirements if the person was aged under 65 when the access request in relation to the person was made” (22 1(a)).

The reasoning for this seems to be based more on past funding and bureaucratic arrangements than on the real needs of people and when they acquire their disability. The division between a disability acquired as part of the “normal process of ageing” and one acquired at some other part of one’s life has been convenient for assigning responsibility for support and care in the past i.e. the Commonwealth took responsibility for most aged care or shared it with the States for those needing support after the age of 65 and the States took primary responsibility for support and care for people under 65.

COTA accepts there needs to be some distinction between the support needs that are a result of ageing and those that come for other reasons and that the NDIS is designed for people with higher levels of disability than are experienced by many older people. However the age limit of 65 years is problematic and there is much debate about what age should be used to determine when a person is “old”.

The age of 65 is used because it is currently the age at which people are eligible for the age pension and used to be considered by the community the age at which a person is considered old. However life expectancy has increased significantly since the (originally male) pension age was set and nowadays most people would not consider 65 to be old. The Commonwealth uses the age of 70 for its aged care planning system and 70 or 75 years are used to determine eligibility for a number of health initiatives and limits on superannuation contributions and other government programs.

There are a number of diseases and conditions that can occur at any age that give people a severe disability. Regardless of their age people with these diseases will get similar disabilities and need similar support and care - but their age alone will determine what care and support they can access. COTA believes this is discriminatory.

One condition that illustrates the problem is motor neurone disease (MND) which can be acquired at any age but somewhere between 40-50 per cent of people living with MND are over 65 when they are diagnosed. That group would not be able to access the full suite of disability services that somebody under 65 can access and it is clear that aged care services are often not adequately funded or designed to meet the needs of these clients whose disease progresses rapidly. COTA supports the MND Australia NDIS Position Statement which calls for the development of an adequate safety net to ensure access to needs based

care regardless of age, particularly where the condition progress rapidly. We think this approach could be applied not just to progressive neurological diseases but to other conditions that progress rapidly and are not age related.

COTA is also aware the there are concerns amongst organisations representing people with vision loss that the 65 year cut off will preclude many older people from accessing much needed specialist rehabilitation services. We agree that there is a correlation between vision loss and ageing so it could be seen as a part of the ageing process. However not all vision loss is ageing related and vision rehabilitation is a specialist service that is not included in the current suite of aged care services but sits in the disability service sector. If people over 65 are to be directed to the aged care sector for assistance with vision then the services needed to be adequately resourced to provide that service.

### **People with a disability as they age**

In the COTA submissions to the Productivity Commission inquiries into Caring for Older Australians and Disability Services we raised our concerns about which services people with disability could access as they age. The Productivity Commission recommended that people should choose between disability services and age services once they reach 65 and assumed that the needs of people over 65 would be best met by the aged care system. For people to maintain the same level of service, particularly with regard to access to specialist aids and equipment would require some additional funding to that provided under mainstream aged care services. There is nothing in the legislation that deals with this issue.

COTA's position is that consistent with the National Aged Care Alliance vision statement and COTA's principles against age discrimination, people in receipt of disability support services should not lose those services because they reach a particular age. Disability related needs do not stop when a person reaches 65 years nor do people automatically have aged care needs at 65. Aged support and care service entitlement should not become a substitute for continuing disability service entitlement.

We believe that as the care needs of people with a disability increase due to the ageing process they should gain aged care and support entitlements in the same way as all other people. These entitlements would be in addition to the disability care and support entitlements and there would need to be a mechanism for ensuring they can be combined effectively.

## CONCLUSION

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Overall COTA believes that the legislation in the Bill establishes a NDIS that will benefit many people with a disability and should be supported. However COTA recommends the following amendments:

- There be an explicit statement of the principle that participants have decision making capacity
- Adding in "where appropriate" to Section 4 (12)
- Allow for people with specified conditions to access NDIS services after the age of 65 years. The conditions to be included can be listed in a schedule that could be developed with expert advice.