

**Family Advocacy submission to the  
Senate Standing Committee on Community Affairs  
National Disability Insurance Scheme Bill  
2012 Exposure Draft**

**January 2013**

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## **About Family Advocacy**

Family Advocacy is a state-wide advocacy organisation which promotes and protects the rights and interests of children and adults with developmental disability. The organisation has a high presence and profile across the State:

- building the capacity of families to undertake an advocacy role;
- developing leadership skills in families;
- making representations to government regarding legislation, policy, funding, monitoring and practice and the extent to which they reflect the needs of people with developmental disability;
- providing advocacy related information and advice.

## **Overriding Issues**

### **1. Minimising conflicts of interest in the best interests of people with disability**

#### **The role of the Agency**

Family Advocacy is concerned the legislation enacts too broad a role for the National Disability Insurance Agency (NDIA).

Family Advocacy believes that the key functions to be undertaken by the NDIA are determination of eligibility, assessment, the determination of funding and the review of plan to determine whether the supports assisted the person to achieve their goals

Specifically, Family Advocacy is concerned that whilst holding the functions identified above, the Agency can also act as both a plan manager and fund holder for an individual (Chapter 3, Division 2 & 3). We believe this creates a conflict of interest. The Agency has responsibility for the financial viability of the NDIS and hence must be mindful of the level of funding of each participant. As the plan manager, the Agency would have a role in supporting a participant to negotiate their budget. Being mindful of its role in ensuring the viability of the NDIS, the Agency would have a tendency to opt for low-cost solutions and smaller personal budgets.

People with disability need planners and plan managers that have only their best interest in mind, and focus on the supports that will lead to the best outcomes for that person, not those that are the lowest cost.

**Recommendation**

Family Advocacy recommends that the functions of the Agency be restricted to eligibility, assessment, agreeing the individual budget and the review of plan to determine whether the supports assisted the person to achieve their goals.

Family Advocacy recommends that the function of planning is undertaken by individuals and organisations that are independent of the Agency and of service provision.

**The separation of planning and service provision**

S 42 and S 43 provide the framework for participants to make choices around the management of their funds and their plans. S 70 provides the framework for service registration to be plan managers, fund managers and providers of support.

There is a conflict of interest when a service provider also assists the participant with planning, reducing the safeguards provided to the participant when the functions are separated. If a service provider is the planner, there would be a tendency to promote their services as being best for purpose. In a similar way, it would be very difficult for a service provider to assist the participant to critically review whether the plan when implemented actually helped them to work toward their goals and chosen lifestyle. Clearly a provider will not be able to impartially review their own conduct and is unlikely to suggest that a person use a different provider of supports if their needs are not being met.

It is critical that service providers are not allowed to take on a plan management role as a central tenet of the NDIS. Excluding participants' service providers from the list of people who can undertake plan management on their behalf will safeguard this independence in the emerging disability marketplace.

**Recommendation**

Family Advocacy recommends that clear separation of planning, plan management and the provision of support such that a provider of support cannot also manage a person's plan.

**2. Promoting choice and control**

S 42 and S 43 provide the framework of choice in the management of funding and the management of the plan.

Family Advocacy believes that all people with disability should be offered authentic choice and control. The legislation partly enables this through S 42(2)(a) that enables participants to manage their own funds or have their plan nominee do so on their behalf (S 42(2)(b)).

People who are able to manage their own plan are then authorised to do so under s43(1)(a) but those who need assistance are required to use a registered plan management service or the Agency. Family Advocacy believes that the function of plan management should also be available for plan nominees. Through the many self managed options available to people with disability in NSW, many family members currently manage the supports of their loved one in a most capable manner and should be enabled to do the same under the NDIS.

### **Recommendation**

Family Advocacy recommends that S 43(1) include the additional provision of enabling a plan nominee to manage the participant's plan.

## **3. Mechanisms to support people to make decisions and manage funding: Disability Support Organisations**

It is essential that mechanisms exist to support people to make informed choices and to assume as much control as possible over their funding and support. The Productivity Commission identified Local Area Coordination (LAC) and Disability Support Organisations (DSOs) to assist people across a broad range of areas including: information, self-assessment, planning, brokerage (including assembling packages of support), administration of self-directed funding, community access and inclusion, and developing the skills and confidence to practically exercise informed choice.

Without this foundational and continued support and capacity building, people will be ill-equipped to pursue meaningful lives with their individualised funding and are likely instead to: be unsure about what to look and ask for, accept or choose arrangements that will not lead to the best possible outcomes (and in some cases will lead to detrimental outcomes), not understand the implications of certain decisions and have low expectations of what is possible.

Whilst LACs will be part of the Agency, DSOs would be independent.

The Productivity Commission notes that there are several potential benefits from using DSOs including:

- DSOs have in depth knowledge of what is available and can provide guidance and advice to people with disability about the quality, availability and outcomes of certain services/supports/products, lowering the 'search costs' which would be assumed by people with disability.
- DSOs experience and knowledge gives them an advantage in negotiating with providers of support and could assist a person to get the best package of support possible.
- DSOs can act as an intermediary between a person and a service or the Agency and may assist to resolve minor disputes either by acting on the person's behalf, or advising them about how best to do this.

Additionally, many DSOs in the UK are 'user-led', that is they are led and controlled by people with disability, giving them invaluable lived experience and a unique understanding about how best to assist and work with people.

The Exposure draft anticipates the role of DSOs in supporting individuals in

- S 3(4)(4) “people should be supported to exercise choice and control”
- S 3(4)(9) “people with disability should be supported in all their dealings and communications with the agency so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs”
- S 13(2)(b) where the definition of general support is “an activity engaged in by the agency in relation to a person”.

However, Family Advocacy believes that the role of the DSO needs to be more clearly stated in the legislation. In particular, the planning role of the DSO needs to be stressed with a concomitant reduction of the role of the NDIA in planning. This could be achieved by the addition of a new S 32(3) indicating that “the CEO may provide assistance to enable people with disability to prepare a plan”

Given the small number of DSOs currently operating, particularly outside major cities, the Bill should enable the Agency to assist in the creation and development of DSOs. This could be through grants, seed money, action learning projects, or commissioning established DSOs to build capacity of people with disability, to build community capacity to welcome people with disability and to support community awareness.

The community capacity building roles of DSOs are anticipated in S 31(f) “support communities to respond to the individual goals and needs of participants”. This could provide the authority to fund roles in capacity building of people with disability and families, community capacity building and community awareness.

#### **Recommendation**

Family Advocacy recommends that the role of organisations independent of service provision and the Agency is acknowledged and explicitly supported in the legislation.

#### **Recommendation**

Family Advocacy recommends that the role of DSOs in assisting people to plan is enabled through a new S 32(3) indicating that “the CEO may provide assistance to enable people with disability to prepare a plan”.

#### **Recommendation**

Family Advocacy recommends the legislation should enable the Agency to assist in the creation and development of DSOs.

## **4. The Right to Advocacy**

Family Advocacy believes that the Bill must acknowledge people’s right to have access to independent advocacy support. Independent advocacy is crucial because of its unique features including:

- Standing beside vulnerable individuals and groups and taking necessary action to defend and protect their rights and interests – while maintaining their integrity by avoiding conflicts of interest. Many people with disability and their families do not have the capacity, knowledge or skills to advocate on their own behalf without this assistance.
- Carrying out advocacy development to help build the capacity of people, families and citizens to advocate for themselves, their family member, or fellow citizen.

In addition independent advocacy:

- Makes contributions to public policy debates on behalf of people with disability and works for systems change across all areas of government, business and community life to improve the lives of people with disability.

### **Recommendation**

Family Advocacy recommends that under S 4 ‘General principles guiding action under the act’ the following statement from the National Disability Advocacy Framework which has been agreed to by all Australian government be included as an additional principle:

‘People with disability have a right to access independent advocacy support to promote, protect and ensure their full and equal enjoyment of all human rights affected by the NDIS and to enable full community participation.’

## **5. Service registration**

The degree of complexity of the registration process imposed on the provider should be determined by reference to the level of risk posed by the service to the human rights of the particular person.

Within this principle, Family Advocacy proposes a number of provisos. It is critical that the process of service registration (that will be covered in the Rules):

- enables traditionally designated high risk participants and users of high risk services to demonstrate ways in which they are taking responsibility for risk and hence provide the capacity to use supports from unregistered individuals and services.
- does not prevent people with disability from using ordinary community supports. To do so will significantly reduce people’s choice and control as well as significantly driving up the costs of the NDIS.

Family Advocacy believes that the choice of not using registered services must remain through the option for people with disability and/or their plan nominee (family) to be the fund holder and plan manager. We anticipate that this equates to having a direct payment. In addition, we anticipate that financial intermediaries will emerge as plan and fund managers in the new NDIS market place facilitating a greater range of choice and control than is provided by traditional services.

### **Recommendation**

Family Advocacy recommends that:

- the degree of complexity of the registration process imposed on the provider should be determined by reference to the level of risk posed by the service to the other human rights of the particular persons.
- processes be developed to enable high risk participants and users of high risk services to demonstrate ways in which they plan to take responsibility for risk and hence provide the capacity to use supports from unregistered individuals and services.
- the requirements and processes of registration do not mean that people with disability are prevented from using ordinary community supports.

## **6. Review of decisions (Chapter 4, Part 6)**

Family Advocacy is pleased to see that the Bill contains provisions for timely internal review and an avenue of appeal to the Administrative Appeals Tribunal (AAT) under S 100(6).

We believe however that the Agency must provide reasons for any decision that is unfavourable to the individual and hence S 99 should be appropriately amended.

We support the inclusion of external review in the Bill as it is important from a rights perspective to provide access to legal redress for serious disputes.

Family Advocacy proposes the development of a new middle tier of review through the development of a specialist review panel. The Launch of the NDIS and the evaluation of new processes lends itself to the trialling of a specialised review mechanism, so we believe it is essential to have it in the Bill to signal the intention to have a highly accessible and relevant appeals process.

The panels must be independent in order to minimize conflict of interest and give confidence to all people with disability. They must be specialist in order to provide a place to build the specialist knowledge that will develop in this field.

Experience in NSW demonstrates the need for specialist panels. The introduction of the DSA in NSW in 1994 was accompanied by complimentary legislation to provide for complaints, appeals and monitoring of services. The Community Services Commission (CSC) and the Complaints Services Appeals Tribunal (CSAT) so established were pivotal in significant reform in services for people with disability. In a process of streamlining government services, the CSC was rolled into the NSW Ombudsman and the CSAT into the generic Administrative Decisions Tribunal. The generalist review and appeals bodies are much less responsive to the issues faced by people with disability and hence are much less effective as mechanisms for systemic reform for better lives for people with disability.

The panel must follow key principles of:

- Timeliness – time frames are transparent and quick
- Process of dealing with the review are inquisitorial - non adversarial. The reviewer is actively involved in investigating the facts of the case, and is not merely an impartial referee between the NDIS and the person seeking a review.
- Person seeking the review is able to be supported by non legal advocate
- The process is free for the person seeking the review
- If review/appeal is about withdrawal or reduction of support, the person seeking review must be able to retain support until finalisation of all processes of review and appeal



When disputes cannot be resolved through this new specialist panel people would continue to have access to the AAT. The AAT is a legalistic tribunal that will ultimately require legal representation. Although applicants can have lay support people to assist in the AAT process, the NDIS are likely to routinely have legal representatives on their side, making it compelling that participants will need legal representation if they are serious about their application.

Family Advocacy is concerned that if this is the only avenue of external review, that participants (many of whom will be on low incomes) will need to apply for legal aid services in their State or Territory. With access to Legal Aid becoming more difficult because of funding constraints, it is likely that this will act as a limiter for participants' full access to the review process.

#### **Recommendation**

Family Advocacy recommends that S 99 be amended to require the Agency to provide reasons for any decision that is unfavourable to the individual.

#### **Recommendation**

Family Advocacy recommends the establishment of a new independent specialist panel operating in an inquisitorial mode be introduced as a middle step in the current review regime and that persons seeking review should be supported by a non-legal advocate.

#### **Recommendation**

Family Advocacy recommends that any person appealing to the AAT should be supported by free legal representation.

## **7. Complaints and appeals about the Agency**

The Bill makes no provision where participants want to complain about the supports they are receiving, the organisations and individuals who are tasked with providing that support or the NDIA as a plan, fund or support manager. Whereas other national service systems have associated complaints handling schemes (eg Aged care), the draft NDIS Bill is silent on this issue.

Family Advocacy acknowledges that the development of an independent complaints handling mechanism may require legislation separate from the NDIS Bill but believe some acknowledgement of the role should be sourced in this Bill.

In addition, the Bill needs to reference and enable the establishment of an independent and external monitoring and compliance presence which has oversight of the Agency. This would enable complaints and appeals to be processed about the actions of the Agency.

Family Advocacy considers that the most effective approach operating at state level resides with the respective Public Advocates, especially those empowered to undertake systems level investigation, reporting and advocacy.

**Recommendation**

Family Advocacy recommends that the Bill enables the provision of a national complaints handling system administered by an external independent body. The scope of this complaints and appeals organisation would include complaints about any services and supports provided or funded by the Agency as well as complaints, appeals and monitoring of the Agency itself.

## Section by section feedback

### Chapter 1

#### Part 2 – Objects and principles

Pleased to see people can be supported in their dealings and communication with the Agency (S 4) and that information is explained in a form that the person is likely to understand (S7).

Section	Issue	Recommendation
3(1) (h)	Only covers 'certain obligations that Australia has as party to the UNCRPD'	Remove 'certain' and add 'with a particular emphasis on Article 19'
3(1)(f) 3(4)(11):	Insufficient emphasis on UNCRPD article 19	<p>Amend s3(1)(f) to "promote the provision of high quality and innovative supports that enable/ support people with disability to live independently and be included in the community"</p> <p>Amend s3(4)(11) by adding a new section (b) and making changes to (c) to read "Reasonable and necessary supports for people with disability should</p> <ul style="list-style-type: none"> <li>a) Support people with disability to pursue their goals and maximise their independence</li> <li>b) support people with disability to live independently and be included in the community</li> <li>c) develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment"</li> </ul>
S4	General principles Do not reflect the UNCRPD	<p>Remove all instances of "should" and replace with "are supported to"</p> <p>Inset first principle of</p> <p>'People with disability have the same entitlement to realise their human rights and fundamental freedoms as other members of Australian society.'</p>
	The right to advocacy has been omitted and should be included	<p>Include statement used in the National Disability Advocacy Framework which has been agreed to by all Australian governments as follows:</p> <p>'People with disability have a right to access independent advocacy support to promote, protect and ensure their full and equal enjoyment of all human rights affected by the NDIS and to enable full community participation.'</p>

Section	Issue	Recommendation
4(2)	'Contribute to social and economic life to the extent of their ability'	Add 'political' to 'social and economic life'. Remove 'to the extent of their ability' – all people, with and without disability, contribute to the extent of their ability. This is limiting language, not empowering,
5(a) & (d)	'People with disability <i>should</i> be involved in decision making processes...  'The cultural and linguistic circumstances of people with disability <i>should</i> be taken into account'	Remove 'should' and replace with 'must'. This is the basis of self-determination.
5(c)	'decision that people with disability would have made for themselves <i>should be taken into account</i> '	Remove 'should be taken into account' and replace with stronger language such as 'must be at the centre...'
5(e)	Relationships, friendships and connections should be more than 'recognised'	Remove 'recognised' and replace with 'people with disability are supported to develop, maintain and strengthen their relationships, connections and friendships.'

## Chapter 3 – Participants and their plans

### Part 1 – Becoming a participant

Section	Issue	Recommendation
21 (2) (b)	'The person meets the access criteria if the person: (i) was receiving supports at the time of considering the request'	Does this mean that any person currently receiving services is deemed eligible? If so, this is a very positive addition.
21 (3) (a)	It is not fair for the participant to bear consequences of inaction by CEO.	CEO must be compelled to act/respond.
22	Age requirements Concern at the exclusion of people who acquire a <b>non-age related disability</b> at or after the age of 65 years, especially for whom the age care system does not provide suitable responses: e.g. motor neurone disease or multiple sclerosis	As a general principle, the NDIS should not include an age restriction – the UNCRPD does not discriminate on the basis of age.  Include clause that enables people over 65 to get NDIS funding for disability related supports that are not covered by the aged-care system.  The Act needs to affirm that people with disability can continue to receive NDIS funding after the person turns 65.
23 (2)	There are no residency or citizenship requirements for CACP, EACH or EACH Dementia, HACC or many other aged care programs.	Remove residency requirements for NDIS in line
24	Disability requirements appear more restrictive than equivalent Social Security Act provisions	
24 (1) (b) & (e)	'impairments are or are likely to be permanent'  It is very difficult and in some cases impossible to prove that some impairments are likely to be permanent or for the person's lifetime, for example, mental health conditions.	Replace 'permanent' and 'the person's lifetime' with 'long term.'
24 (1) (c)	'substantially reduced functional capacity'  Concern that people with low level reduced capacity, such as people recovering from stroke, early onset dementia or motor neuron disease, will not be eligible under this definition.	Eligibility will need to ensure that these people are eligible to become participants.

Section	Issue	Recommendation
	<p>In NSW alone there are approximately 50,000 people who use low level community care services such as domestic assistance, personal care or community transport, without which their capacity and quality of life would decline rapidly. This represents a more costly outcome to Government than providing low level support at an earlier stage: experience from HACC shows that people who do not receive timely and consistent low level support can quickly escalate to very high levels.</p>	
26	Request for person to undergo assessments or examinations.	Agency must meet the cost of any assessments or examinations that are required. This should be consistent throughout the Bill where requests are made.
26 (3) (b)	28 days to submit information and reports. Extended time is likely to be needed to collect this information, particularly for people in rural areas.	More than 28 days should be given for reports to be received, particularly for people in rural/remote areas.
30 (2)	CEO must give written notice of revocation	<p>Before taking a decision to revoke a person's status as a participant in the NDIS the CEO should, in keeping with the principles of natural justice:</p> <ul style="list-style-type: none"> <li>• give notice of an intention to revoke and the reasons for this</li> <li>• offer the person the opportunity to present their case for continuation; and</li> <li>• give due consideration to the person's case before making any revocation decision.</li> </ul>

## Part 2 – Participant’s Plans

### Division 1 – Principles relating to plans

Very positive that plans are individualised and directed by the participant (s31).

Section	Issue	Recommendation
31 (d)	Strengthening and building capacity of families and carers is vital work – language used is too weak.	Remove ‘where possible’
31(f)	Not possible for individual plans to support communities to respond to individual’s goals	Remove principle
31 (k)	<p>“coordinate the delivery of disability services where there is more than one disability service provider”.</p> <p>Providers of supports may not necessarily be disability service providers – this covers traditional service delivery only.</p>	Replace “disability service provider” with “provider of supports”.

### Division 2 – Preparing participants’ plans

Section	Issue	Recommendation
32(3)	Assistance in planning	Add a new section indicating “CEO may provide assistance to enable participants to prepare a plan”
33	The planning provisions appear to give ownership and authorship of a person’s support arrangements to the CEO. This will have the effect of removing from the person with disability, effective control and choice over key life decisions. It also has the potential to tie a person into support arrangements that are inflexible and inadequately responsive to the inevitable changes in a person’s wishes and life circumstances.	<p>Government should seek as far as possible by its processes, to enable people with disabilities to exercise effective control over their supports through:</p> <ul style="list-style-type: none"> <li>• Providing an indicative Budget that is capable of delivering reasonable and necessary support</li> <li>• Providing resources, as required, to enable support planning involving people of the person’s choosing</li> <li>• Approving a person’s Budget following consideration together with the person of whether the indicative Budget is sufficient to resource their desired support arrangements</li> <li>• Checking in that the person’s human rights are being respected</li> </ul>

Section	Issue	Recommendation
		and they are living as they wish. <ul style="list-style-type: none"> <li>• Avoid decision-making about those aspects of a person’s life that would not ordinarily fall within the purview of government for people without disabilities.</li> </ul>
33 (2)	“A participants’ plan must include a statement prepared with the participant”  Participant should be in control of preparing this statement (with appropriate support).	Replace “with participant” with “by participant with support”
33 (6)	No clarity about decision making process in relation to Plans required to be managed by the Agency	Rules must provide process for deciding whose plans are managed by the Agency  Participants whose plans are managed by the Agency must not be required to use a registered plan management agency
34(c)	Value for money	Rules must identify process for determining value for money
34 (e)	Reference to what it is reasonable to expect of families, networks, community.	Provision must be reworded to take into account: <ul style="list-style-type: none"> <li>• what the participant wants from family, carers, networks, community</li> <li>• what the family, carers, networks, community are willing to provide</li> <li>• what the family, carers, networks, community are able to provide</li> </ul>
38	Copy of plan to be provided: implication that the Agency owns the plan	People with disability should provide their agreed plan to the Agency, not the other way round.
40 (2)	6 week grace period is too short. For example people from diverse ethnic countries often travel overseas to visit family or to attend significant events for blocks of time and graduated high school students commonly take a ‘gap’ year (or period of months) to travel.	Extend grace period to 26 weeks.



### Division 3 – Managing the funding for supports under participants’ plans

Section	Issue	Recommendation
43(1)	Options for plan management. Many families of people with disability are already undertaking a major role in planning and facilitating support. This opportunity needs to be available in the plan management role.	Must include Plan nominee as option for plan management role.
43 (5)	This sentence strips a participant of their control. Language must affirm participants right to choice and control over who manages their funding.	Remove “so far as reasonable practicable” Replace with “seek and enact the wishes...”
44	Circumstances in which participant must not manage plan  The designation that a person must not manage their plan is a very serious step.	NDIS rules must provide guidelines for use of this provision with clear definitions of “unreasonable risk’

### Division 4 – Reviewing and changing participants’ plans

Section	Issue	Recommendation
48	Capacity for crisis response i.e. where an immediate change is necessary due to crisis such as a person’s health declining or their nominee falling seriously ill.	Additional clause to strengthen the requirement for reviewing and changing of a person’s plan rapidly in a time of crisis or rapid change.
48 (1) and (4)	Any review of a plan must involve the participant.	Include statement to this effect.  A participant’s plan cannot be reviewed without involvement from participant.

## Chapter 4 – Administration

### Part 1 – General Matters

Section	Issue	Recommendation
57 (1)	Penalty for refusal or failure to comply with requirements is harsh and unnecessary.	Penalty should be removed.

### Part 3 – Registered Providers of support

Section	Issue	Recommendation
General	Plan management providers must be independent of support providers  Fund manager must be independent of service providers	Clarification in part 3 that ensures that the functions of plan management, fund management and provision of support are separated
70(3)(a) & (b)	Specifying that providers are registered in regard to a class of support or class of persons is likely to create and reinforce programs and silos which are restrictive.  Whilst it is recognised that different classes of support may require different levels of registration, it is not necessary to restrict service provision in this way.	Remove classification of registrations.

### Part 4 – Children

Pleased to see this section, especially the need to ascertain the wishes of a child (s74)

Section	Issue	Recommendation
74 (1)(b) and (5)	The removal of parental authority should not take place without Court or Tribunal order.	Amend section
74(2)	Plan management requests	The person should be able to choose a non-registered plan manager.
74 & 76 (1)	Duty of person to ascertain wishes of the child.	Positive requirement

### Part 5 – Nominees

Section	Issue	Recommendation
80 (4) (b)	A nominee having regard and giving appropriate weight to the views of the participant is an essential part of their role, not one that can be prescribed separately.	This sentence should be incorporated into 80 (1) to strengthen the requirements of nominees.
85	Participants should not be limited to taking their plan or correspondence nominee to	Participants should be able to be accompanied by a person of their choice,

Section	Issue	Recommendation
	assessments/examinations. They should be able to take anyone they choose, for example they may like to have a family member who knows their medical history, but is not their nominee, attend a medical examination with them. There are also likely to be incidences where a nominee is not able to attend.	not just their nominee/s.
85(1) (d)	Crucial that it is not up to the discretion of the person conducting the examination or assessment whether or not a participant can be accompanied. This clause takes control and choice away from the person and puts it in the hands of professionals.	Remove this clause.
86(2)(b)	CEO can appoint a plan nominee This is a serious decision that can have significant impact on the autonomy of the participant and any action by the NDIS to limit their decision making ability needs to be clearly justifiable and defensible.	S 86 must contain greater specificity as to the criteria that can be used by the CEO to appoint a plan nominee.  Service providers should not be allowed to be appointed as plan or correspondence nominees. This could be the role of Disability Support Organisations and independent advocates.  People from ATSI and CALD backgrounds must be offered the choice of a nominee from their culture if appointed by CEO.
88 (4)	Provision relating to appointment of nominees  If the decision-making power of a person is to be removed then this should occur only in accordance with State/Territory Guardianship arrangements.	Amend to reflect
90 (3)	Cancellation of nominee appointment by CEO	Cancellation or suspension of a nominee should only occur after considering the views of the participant and the nominee. CEO must give reasons for deciding to cancel the appointment
91 (1)	Severe harm– requirement for CEO to report this to authorities, not just suspend or cancel appointment of nominee	Include statement that requires CEO to report severe harm to authorities.

Section	Issue	Recommendation
96 (1)	'If the CEO gives notice to a participant who has a correspondence nominee, the CEO may inform the correspondence nominee...'	Remove 'may' and replace with 'must'

## Part 6 – Review of decisions

Section	Issue	Recommendation
	Independent specialist panel to review decisions	Develop provisions to enact.
99	All decisions made by the CEO should be reviewable	Delete list and replace with 'all decision reviewable'. If the CEO requests a review, reasons should be given.
100 (2)	Allowing only people 'directly affected' by a reviewable decision is too narrow.	Any person should be able to request a review of a reviewable decision, including those acting in the public interest.
100 (6)	Negative decisions in regard to a review must always be accompanied by reasons.	Add sentence to this affect.
103	Appeal to the AAT	Provision for free legal representation for the participant

## Chapter 5 – Compensation Payments

### Part 1 – Requirement to take action to obtain compensation

Positive that the CEO can disregard certain compensation payments (s116)

Section	Issue	Recommendation
104 & 105	It is not appropriate to require a person to seek compensation involving court action. Compensation actions commonly take many years to be resolved and place huge amounts of emotional and fiscal strain on the individuals involved. Over the period of the action the person with disability is often required to 'maintain' the level of their disability and replay traumatic events.	Where a person has decided not to seek compensation but the CEO requires it, the person can cede their compensation rights to the Agency to seek/act on their behalf. Remove the threat of no support in s105 if a person does not take action to acquire compensation - the NDIS is a no fault scheme.



## Chapter 6 – NDIS Launch Transition Agency (NDISLTA)

Section	Issue	Recommendation
118	<p>Functions of the Agency</p> <p>The Agency should report on the achievement of the NDIS in pursuing objectives and implementing principles.</p>	<p>Include in (1): ‘to manage, advise and report on the operations and achievements of the NDIS with reference to the underlying principles and objectives.’</p>
127	<p>Members of the Board</p> <p>The Board must include people with disability but must simultaneously avoid the perception or actual conflict of interest</p> <p>Chair of the Advisory Council should be a member of the Board to act as a ‘bridge’</p>	<p>Add new</p> <p>S127(2)(e) “who has no current involvement with a registered disability provider organisation(s) either in an administrative or board capacity or as an individual in receipt of services from a provider”</p> <p>(f) is not a current participant of the NDIS</p> <p>Add wording to include chair of advisory committee to be member of the Board</p>
144 (3) (c) & (d)	<p>Council must be able to provide advice on corporate governance of the Agency and on money handled by the Agency.</p>	<p>Delete s144 (3) (c) &amp; (d)</p>
146 and 147	<p>Ratio of people with disability on the Advisory Council is too low.</p> <p>People from diverse backgrounds and regions should be represented on the Advisory Council.</p>	<p>There should be 15 members of the Advisory council, with:</p> <ul style="list-style-type: none"> <li>• 8 position for people with disability</li> <li>• 2 positions for families/carers</li> <li>• 5 positions for other stakeholders including service providers and academia.</li> </ul> <p>As much as possible, members should be sought from diverse jurisdictions, including rural and remote, and from CALD and ATSI backgrounds.</p>
172	<p>Annual report</p> <ul style="list-style-type: none"> <li>• Annual report should include KPIs.</li> <li>• Report must be made publicly available in accessible formats and in a timely manner.</li> </ul>	<p>Add sections addressing these matters.</p>
174	<p>Quarterly reports</p> <ul style="list-style-type: none"> <li>• Data should be made public, and available according to jurisdictions.</li> <li>• Data on the number of people turned away should also be included.</li> </ul>	<p>Add statements addressing these matters.</p>

## Chapter 7 – Other Matters

Section	Issue	Recommendation
182 (4)	Issuing debts for people that have not retained records is likely to elicit unintended breaches.	Delete
188 (5)	<p>Written notice of requirement</p> <p>If a person is required to appear before an officer, they should be able to take any person or advocate to accompany them.</p> <p>A person may receive a notice long after it has been sent, particularly people in rural areas, giving them limited time to respond.</p>	<p>Add sentence to this affect.</p> <p>Replace '14 days after the notice is <i>given</i>' with 'received'.</p>
192	Good that the CEO can waive debt, but this could be expanded.	<p>Include sentence such as:</p> <p>'The CEO is empowered to waive debt under other circumstances including extraordinary circumstances.'</p>
208	<p>Review of operations of act</p> <p>Public consultation must be included in the review.</p>	Include statement to this affect.