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15 February 2013

Committee Secretary
Senate Standing Committees on Community Affairs
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National Secretary
David Smith

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Dear Committee Secretary,

Re: National Disability Insurance Scheme (NDIS) Bill 2012 Submission

Please find attached the ASU National Disability Insurance Scheme (NDIS) Bill 2012 Submission.

Yours faithfully

Linda White
Assistant National Secretary

National Disability Insurance Scheme (NDIS) Bill 2012

Submission

Australian Services Union

Please find following the submission from the Australian Services Union (ASU) in response to the draft *National Disability Insurance Scheme (NDIS) Bill 2012* legislation.

Introduction

As stated in previous ASU submissions on this matter, the union is supportive of the introduction of the NDIS, however we are concerned to ensure that the model of implementation chosen is one that is consistent with the maintenance and development of a highly skilled workforce capable of sustaining quality care and support. Our previous submissions are at www.pc.gov.au/___data/assets/pdf_file/0009/110160/subdr0954.pdf.

The ASU represents workers in the Social and Community Services (SACS) sector, which includes workers in disability services. ASU members are passionate about what they do. They are motivated to work in the sector by a desire to care, support and empower people with a disability, and vulnerable members of our community.

The ASU has received many messages of support from our members for the NDIS. The sector is excited about the prospect of the scheme, and our members are keen to see it introduced as soon as practicable. Our members know very well the flaws in the current system for disability care, and the chronic underfunding that has led to the serious deficiencies outlined in the Productivity Commission's original report.

ASU members work with people with disability who are among the most vulnerable members of the community. They are committed to ensuring that all people, through the NDIS, have a high quality of life and have access to the services and support that they need and want.

The relationships between care workers and people with disability are the cornerstone of the success of the NDIS. The NDIS must work for all people with a disability, including those who are not able to make decisions for themselves or to communicate their preferences. The structure of the legislation must make explicit the high standards expected of all care workers in facilitating the self-determination agenda of the NDIS, not leave these vital issues to the rules, or even worse unregulated.

The existing disability care workforce is already under strain, with workers reporting low wages, poor conditions and an increasing lack of security of employment. To realise the full promise of the NDIS, investment in the skills and support for disability care workers must be a priority.

The final determinate of the success of the NDIS must have at its core how this new system will resource and support the most vulnerable people with disabilities. As stated clearly in this [factsheet](#) from the NSW Council on Intellectual Disability, the NDIS must work for people currently living on the fringe, who have significant challenges engaging with current services. Investing in high quality, and highly skilled workers is the best way to ensure that no one is left out of the NDIS.

“NSW CID calls upon the government authorities designing and implementing the NDIS to ensure equitable access to the NDIS by people with intellectual disability who live on society’s fringe. This requires that the NDIS includes:

- 1.** An active process of engagement with individuals on the fringe so as to gain their trust and understanding of the benefit of support services.
- 2.** Individual assessment and planning systems that accommodate the complex and dynamic needs of people on the fringe.
- 3.** Flexibility in the kinds of supports that can be funded to accommodate the disparate supports needed by people on the fringe.
- 4.** A robust workforce development strategy.”

Workforce

Retention of appropriately skilled staff is a current and growing challenge within the sector right now, and the historic low levels of funding and wages for care workers has been a significant disincentive for new workers entering the profession. There is an urgent need for a workforce development strategy, linked with the National Disability Strategy and the NDIS, to map out the long term needs of disability care workers and ensure that adequate resources are available to deliver on those goals.

In recent months the Commonwealth and most State and Territory Governments have supported before FWA, and have subsequently funded, significant wage increases for Disability Support workers who deliver social and welfare services. These increases were supported in recognition of the way in which this work has been historically undervalued and with a view to addressing the need for a quality workforce. It is imperative that any regulatory framework established in relation to the NDIS not undermine this historic commitment of nearly \$5billion by the commonwealth and State and Territory Governments.

Quality care and support will be fundamentally undermined unless clear accountabilities for education and training and duty of care responsibilities are established in the new system. The draft legislation is unclear as to the direct employment of workers, with no mention of any employment related matters in any section. With research, from Australia and the UK, showing significant challenges that can arise for participants and workers, it is essential that the principles in the legislation set out a strong commitment to ensuring that workers are also protected.

Ongoing training and education of staff, and the establishment of standards that must be met by those who seek to work in the sector either as employers and employees, are fundamental. The ASU believes that all service providers and all workers should be accredited to operate in the new system. The accreditation system should be relevant to the service they deliver.

The Award safety net must operate as the underpinning instrument of all employment relationships. The maintenance of minimum wages and conditions protects workers and participants from exploitation by unscrupulous operators in the system.

One key ASU concern is any move towards a model that resembles independent contracting. There are significant concerns about the potential for workers to be exploited and for wages and conditions to be pushed down. This will threaten the whole success of the NDIS, as this will lead to a low skilled workforce, high turnover and extreme difficulty recruiting staff. This will threaten

choice and control for participants, as workers will not have the skills and experience to fully deliver plans, as expected.

Where individual contracting has been introduced in disability services overseas, it has had negative impacts on choice for people with disabilities, particularly for people with intellectual disabilities, people from some CALD backgrounds, people in remote areas, GLBTI people and for young people. In all these cases, governments are currently looking at initiatives to address these significant problems. It is vital that the Australian NDIS learns from these experiences and enshrines safeguards into the legislation now, to protect against the race to the bottom of individual contracting.

Individual and/or sub-contracting also poses a significant risk to participants, with responsibilities diluted and unclear.

A significant protection that the NDIS could include for both care workers and participants, is to include provision in the legislation that all workers engaged in NDIS service delivery, whether for individuals or service providers, must be deemed employees. This would ensure a high quality workforce in which lines of accountability and duty of care are clear.

Delivery of NDIS

The ASU strongly supports the philosophy of self determination and the objective of empowering people to exercise genuine choice in respect of service provision in the disability sector. The ASU believes this objective is better achieved by implementing a hybrid system of individualised funding and block funding. The ASU remains opposed to the cashing out of funding in whatever model is adopted and the introduction of individualised contracts.

The successful implementation of the NDIS relies on the availability and development of a highly skilled and motivated workforce. The current disability workforce is already under significant strain, and within such a ground-breaking reform of the disability sector, this must be addressed.

While the legislation outlines that registered providers must comply with quality standards, there is no such provision to ensure that the full cost of service provision is met by both the individualised funding packages and those managed by service providers. Currently, workers in the disability sector are often only paid for work directly with a client, despite often having significant travel time between workplaces. This is an added disincentive for attracting and retaining workers in the sector and must be addressed as part of the funding process for the NDIS.

It is unclear whether participants, who are funded individually and employ staff directly, are responsible for all related worker costs, such as superannuation, taxation, insurance and OHS. There is no provision in the legislation for covering the training needs of the workforce, nor any commitment to the current Award. Ongoing education and training must be the responsibility of both the employer and the employee.

In previous submissions, the ASU has raised the following key issues in relation to funding:

“Funding often falls short of the realities of quality service provision. Funding for wages is in many cases only provided for the time spent with a service user, and is only paid in accordance with the minimum rates in the Award. This limits the ability of organisations to pay workers a competitive wage and provide conditions that will enable workers to be attracted and retained by the sector.

"While an individualised funding approach to disability services may initially appear to increase flexibility and individual choice, it has many harmful impacts that make it ineffective as a model of funding essential human services."

The draft legislation does not address this fundamental question in regards to the long term sustainability of the NDIS. Specific clauses must include the need to adequately address the needs of workers when developing participant plans. This applies to both the need for continued block funding of service organisations, and a comprehensive set of safeguards and protections for workers employed under individualised funding agreements.

Block funding is vital for the retention of skilled and experienced staff, particularly with specialist skills. Research from the UK, in particular, has shown that the impact on workers of individualised funding, as the sole mechanism for delivering services in the disability sector, has reduced their access to training and support. This has made staff retention difficult. Managing multiple individualised contracts has also increased the administrative challenge for service organisations. This is of particular concern for smaller organisations, who may have specialised disability services available currently, but limited capacity for complex administrative or IT tasks.

The ASU is pleased that Section 14 of the legislation specifically provides for the Agency to directly fund organisations, but would like this strengthened, to include the implications for workforce development, training and support for care workers.

The recent Equal Pay case demonstrated the historic undervaluing of care work across a range of sectors, including disability workers. It is vital that the pay increases gained, through that landmark case, are not undermined by the NDIS. The current Award, with the update from the Equal Pay case, must set the minimum standard for all workers across the NDIS (whether employed by service organisations or by individuals), while leaving room for Agreements, that set higher wages and improved conditions. This must be included in all advertisements and letters of engagement. Workers employed under the NDIS must have access to collective bargaining, including workers directly employed by participants.

For supports funded through service providers, it is important in developing and retaining quality service provision, that those providers deliver the service and are not able to further contract out the NDIS funding supports. This will assist in ensuring that services are responsible for quality service delivery and are accountable for the NDIS funding they receive.

While flexibility is an important part of the long term success of the NDIS, it must not come at the expense of decent working conditions. All participant plans must be adequately funding to include fair penalty rates and to encourage the formation of a secure workforce. Increased casualisation will undermine the necessary workforce development that must occur for the NDIS to achieve its goals of fundamental reform of the disability sector.

For example, the minimum pay levels in the Award operate according to a worker's skills and experience and set basic wages and conditions. There is a risk that without safeguards, such as minimum qualifications for certain jobs, employers may choose to hire workers with no or minimal skills or experience as a means of driving down wages costs to competing on price.

Accreditation of all workers, whether working directly for participants or for service providers, will also ensure quality service delivery across the huge range of services that will be available under the NDIS. Service providers also must be accredited to raise industry standards.

Transition

With such a fundamental reform, provision for a successful transition is vital. All existing providers should be granted transitional status as an accredited agency for three years and then required to be re-accredited each 5 years. New entrants to the field would require accreditation before entering the field.

All existing staff should be granted transitional accreditation for three years and then require accreditation renewal every 5 years. All new staff would require accreditation before engaging in service delivery.

It is also important that the workers, who will be assisting participants in developing their plans, receive initial and then ongoing training and support. The legislation makes no specific provision for this support by the Agency.

There also needs to be significant work done to clarify the responsibility for training of the disability care workers, no matter who is employing them. More work also needs to be done in properly examining the issues to do with training and education, including the role of people with disabilities, service providers, government and the workforce in shaping the future workforce to ensure that TAFEs and universities offer education that is appropriate for the needs of the NDIS and the person centred approach now and into the future.

Clarification is also needed about what provisions should be included in the legislation to ensure that workers employed under a participant's plan are able to have their entitlements protected, or adequate notice paid if a plan is changed or suspended.

Information and reports

The research conducted into individualised funding models, both in Australia or overseas, has predominately focused on the experience for the participant.

However, the research that has been conducted into the impact of individualised funding on disability care workers highlights the potential dangers of deregulation and atomised service delivery. For workers remaining in service organisations, they have experienced a lack of job security, caused by the uncertainty of demand. This unpredictability also led to a lack of investment in training and development, leading to a drop in skills and qualifications.

For workers, the costs of having a more flexible workforce has been borne by them directly, leading to far less job security, lower wages and working unpredictable and unsocial hours. There has also been a significant loss in access to training and qualifications that now has to be rectified, particularly in the UK. Workers report challenges in adhering to OHS practices, particularly when working in isolation.

It is important that the Agency takes on the role of collecting and analysing data in relation to workforce issues. In conjunction with the workforce development strategy, the Agency should be using workforce information from the Launch sites to prioritise areas for futures work. Participant plans should also have a workforce data reporting aspect.

As part of this engagement by the Agency with broader workforce development issues, the Advisory Committee will need at least one representative of disability care workers.

Key recommendations:

Recommendations:

1. That the NDIS legislation includes a commitment to block funding for service organisations.
2. All individualised funding packages for participants include the full cost of providing services, such as back office and service delivery costs.
3. Responsibility for OHS, superannuation, taxation and workers compensation of workers employed under the NDIS is to be clearly addressed.
4. Inclusion of provision for ongoing wage increases, in line with workers in other related fields.
5. That adequate funding should be provided for worker flexibility via ensuring minimum hours, penalty rates and other minimum legal conditions are accounted for.
6. The Award safety net must operate as the underpinning instrument of all employment relationships. Include provision for ongoing training of all workers employed under the NDIS.
7. That a national workforce development strategy is developed and introduced.
8. That the review of the launch sites includes data collection and research on the experiences of workers.
9. That the NDIA has an ongoing role in reporting on working conditions for people employed under the NDIS.
10. That workers have a representative on the NDIS Advisory Committee.
11. That any debt recovery process gives priority to outstanding payments to workers.
12. Adequate funding and resources are provided to all workers involved with the implementation of plans, reports and provision of information to the Agency.
13. The Agency is to provide clear and ongoing advice and support to all disability care workers about the implementation of the NDIS.
14. all service providers and all staff should be accredited to operate in the new system. The accreditation system should be relevant to the service they deliver.
15. All existing providers should be granted transitional status as an accredited agency for three years and then required to be re-accredited each 5 years. New entrants to the field would required accreditation before entering the field.
16. All existing staff should be granted transitional accreditation for three years and then require accreditation renewal every 5 years. All new staff would required accreditation before engaging in service delivery.
17. All staff engaged under the NDIS should be deemed employees so as to ensure a high quality workforce in which lines of accountability and duty of care are clear.

Specific legislation changes:

Section 14 – strengthen this section to explicitly include the full range of services that block funding will cover, including training, administration and management support.

Section 31 – add *clause (l)* ensures full funding for all work required to deliver the plan, no matter the delivery mechanism.

Section 34 - add *clause (i)* specifying that funding for supports must include all employee-related costs; provide provision for worker entitlements and redundancies; cover ongoing training and skills development.

- add *clause (j)* specifying that funding can only be delivered to accredited support agencies and staff.

- add *clause (k)* specifying that all staff must be deemed employees.

Section 41.2 – add *clause (d)* to ensure that workers, employed under the participants plan, are paid their full entitlements.

Section 53.2 – add *clause (f)* to include reporting on any and all matters relating to workers employed under the participants plan.

Section 73.1 – add *clause (d)* to require compliance with the relevant Award and/or Agreement
- add *clause (e)* to require accreditation of service providers and staff.