



Women With Disabilities ACT
WWDACT

23 January 2013

Committee Secretary
Senate Standing Committees on Community Affairs
Parliament House
Canberra ACT 2600
Australia
E: community.affairs.sen@aph.gov.au

Sent By Email

Dear Sir or Madam

Feedback on the National Disability Insurance Scheme Bill 2012

Women with Disabilities ACT (WWDACT) would like to thank you for the opportunity to provide you with our feedback on this important issue. We are happy for our views to be made public. Please let me know if we can be of further assistance. The contact officer for this matter is Emilia Della Torre. She can be contacted on tel: (02) 6290-2166 or by email: e.dellatorre@wchm.org.au.

Yours sincerely

Sue Salthouse
Convenor
Women With Disabilities ACT

strong women, strong voices

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Winner of the 2012 International Women's Day Award—Community Category

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Feedback on the
National Disability Insurance
Scheme Bill 2012
to the
Senate Standing Committees on
Community Affairs

January 2013

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Background

Women with Disabilities ACT (WWDACT) is a systemic advocacy and peer support organisation for women and girls with disabilities in the ACT. WWDACT follows a human rights philosophy, based on the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of Discrimination against Women. In the ACT there are 31,542 women with a disability, who make up 56.4% of the total population with disabilities.¹ We enthusiastically welcome the proposed introduction of the National Disability Insurance Scheme (NDIS) and the Stage One NDIS launch site program that will commence in 2013 in the Australian Capital Territory as one of the five national launch sites.

Introduction

WWDACT is grateful for the opportunity to provide feedback on the draft *National Disability Insurance Scheme Bill 2012*, framework legislation for the operation of the NDIS in Australia. The circumstances of women and girls with disabilities are distinct from those of men and boys with disabilities and they must be afforded due and appropriate attention as the NDIS is set up and rolls out. Only with an embedded gender focus will the NDIS achieve its objectives to improve the wellbeing and social and economic participation of people with disabilities and their carers.² Generally WWDACT is supportive of the submissions of the Australian Federation of Disability Organisations (AFDO) and Women With Disabilities Australia (WWDA) in this regard. WWDACT's comments below focus on some of the unique and specific perspectives of our constituents.

¹ Australian Bureau of Statistics, *Disability, Ageing and Carers Australia: Summary of finding 2009*, Cat no: 4430.02009, Commonwealth of Australia, Canberra, 2012 quoted in Strong Women Great City A snapshot of finding from a survey of ACT women with disabilities Women with Disabilities ACT and women's centre for health matters, December 2012 at page 3.

² The objective of the NDIS is to improve the wellbeing and social and economic participation of people with disabilities and their carers by building an NDIS that delivers care and support through an insurance approach." National Insurance Disability Scheme – Background Information Program Guidelines Suite Department of Families, Housing, Community Services and Indigenous Affairs (4 August 2012) at page 4. See http://www.fahcsia.gov.au/sites/default/files/part_c_-_application_informationv2.pdf

Summary

1. A gender focus must be embedded into the broad legislative framework of the *National Disability Insurance Scheme Bill 2012* so that the individualized approach to programs and services adopted by the NDIS can become a workable and meaningful reality.
 2. Schedules must be appended to the *National Disability Insurance Scheme Bill 2012* to clarify exactly how the scheme will operate across jurisdictions. Each Schedule must detail all the State or Territory legislation being called into operation by the NDIS at any one time.
 3. Potential participants and participants under the NDIS must always be the subject (and not the object) of their actions, plans and programs.
 - 3.1. The need to put in place strict accountability and review mechanisms in relation to both the appointment of nominees and the on-going responsibilities of nominees
 - 3.2. The need to develop transparent and consistent guidelines to assist the CEO of the Agency to exercise her or his powers under the *National Disability Insurance Scheme Bill 2012* in a manner which is gender sensitive - especially in relation to nominees.
 4. The governance of the NDIS must provide leadership and strategic direction that meets the needs of both women and men participants.
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1. **A gender focus must be embedded into the broad legislative framework of the exposure draft of the *National Disability Insurance Scheme Bill 2012* so that the individualized approach to programs and services adopted by the NDIS can become a workable and meaningful reality.**

The NDIS is designed to provide individual participants with individualised support. WWDACT recognizes that this new, individualised approach adopted under the

NDIS is designed to overcome the currently unsatisfactory one-size-fits-all provision of programs and services to women and men with disabilities.³

The need for an express gender-embedded focus is recognized in Article 6 of The Convention on the Rights of Persons with Disabilities (CRPD) which states:

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

The functions of the Agency set out in Clause 118 need to expressly reflect gender differences. One-size-does-not-fit-all in relation to the provision of NDIS programs and services to women with disabilities and men with disabilities. Our experience suggests that in its current form there is a real risk that the needs of women and girls with disabilities will be lost or overlooked once the implementation of the NDIS starts to roll out. Without an embedded gender focus, there is a real risk that the NDIS will fail to meet one of its prime objectives; namely, to provide individual participants with individualised support.

WWDACT endorses the detailed position of Women with Disabilities Australia on the need to gender the NDIS rollout.⁴ For example, we agree that gender will be relevant to the way women and girls with disabilities access the NDIS at every tier

³ “The key rationales for a new approach stem from faults in the current system” Disability Care and Support Productivity Commission Inquiry Report Volume 1 No. 54, 31 July 2011 at p 102
<http://www.pc.gov.au/__data/assets/pdf_file/0012/111270/disability-support-volume1.pdf>

⁴ Women With Disabilities Australia (WWDA) (2011) *‘For Pollyannas or Pessimists? can we make the NDIS positive, fair & equitable for women?’*. Paper prepared and presented by Sue Salthouse at the Disability & Carers Congress, 2-3 May 2011, Etihad Stadium, Melbourne

of service. We agree that data must be collected by gender and made available by gender at all stages of the NDIS processes.

The overview and overall framing of the NDIS recognises a range of factors currently contributing to disadvantage within the population of people with disabilities. This can be easily extended to include gender, side by side with socio demographic factors such as non-English speaking, cultural and indigenous background; age; impairment group; and geographic residence. The impact of gender is relevant to the entire population of people with disabilities. The NDIS can then reflect the perspective of women and men with disabilities. All data, quality measures, monitoring, research, complaints and governance systems should reflect gender, including the 2020 review of the NDIS. Attention to gender across all of these systems would be consistent with reporting other equity issues such as rural versus urban or non English-speaking access and best practice.⁵

- 2. Schedules must be appended to the *National Disability Insurance Scheme Bill 2012* to clarify exactly how the scheme will operate across jurisdictions. Each Schedule must detail all the State or Territory legislation being called into operation by the NDIS at any one time.**

The NDIS has been designed as a national scheme to overcome the currently unsatisfactory and fragmented provision of programs and services to women and men with disabilities.⁶ WWDACT recommends that schedules of relevant State and Territory legislation should be appended to the *National Disability Insurance Scheme Bill 2012* to clarify exactly how the NDIS will operate across jurisdictions.

⁵ Women With Disabilities Australia and Womenwithdisabilitiesvictoria, Submission in Response to the Productivity Commission's Disability Care and Support Draft Report May 2011 at p 5
<<http://www.wwda.org.au/WWDVDVPCResponse2011.pdf>>

⁶ "The key rationales for a new approach stem from faults in the current system" Disability Care and Support Productivity Commission Inquiry Report Volume 1 No. 54, 31 July 2011 at p 102
<http://www.pc.gov.au/__data/assets/pdf_file/0012/111270/disability-support-volume1.pdf>

2.1 The need for clear, comprehensive and consistent law-making

The *National Disability Insurance Scheme Bill 2012* must be as user-friendly as possible. The NDIS will touch the lives of some of the most vulnerable members of our society. This Bill must be clear, comprehensive and readily accessible. Attaching Schedules to the *National Disability Insurance Scheme Bill 2012* which detail relevant State and Territory laws will help to clarify in one document the entire legislative scheme under which the NDIS will operate. Clarity, certainty and consistency are important characteristics of any piece of legislation: particularly legislation as important as the *National Disability Insurance Scheme Bill 2012*. Many laws in Australia relevant to the roll-out of the NDIS are largely the responsibility of States and Territories. Attaching a series of schedules of relevant State and Territory laws to the *National Disability Insurance Scheme Bill 2012* is feasible and essential.⁷

2.2 The need to minimize jurisdictional differences

In its current form, there is a real risk that the *National Disability Insurance Scheme Bill 2012* will operate in a fragmented fashion to exacerbate existing jurisdictional differences. This would be exactly the opposite result to the whole ethos of setting up a new, national NDIS scheme. This real risk arises from the fact that many of the laws relevant to the operation of the NDIS are State and Territory laws.

Let's take an example. General Principal 6 of the *National Disability Insurance Scheme Bill 2012* states:

(6) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.

⁷ These Schedules already exist in large part. See, for example, Appendix One [Australia's Fourth Report Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](https://www.dfat.gov.au/issues/human-rights/downloads/16_march_torture.pdf) June 1997-October 2004 at < https://www.dfat.gov.au/issues/human-rights/downloads/16_march_torture.pdf >

Conduct amounting to “abuse, neglect and exploitation” is criminal conduct. Criminal conduct is mainly regulated by State and Territory laws. So although the NDIS purports to be a national scheme, under the *National Disability Insurance Scheme Bill 2012* the operation of State and Territory laws will still be very significant. State and Territory laws are not necessarily consistent with one another i.e. there is no national criminal law code. The same problem applies to very many aspects of welfare law relevant to the NDIS as well.

To append, for example, a schedule of relevant criminal law provisions to the *National Disability Insurance Scheme Bill 2012* would (i) assist a participant understand how the *National Disability Insurance Scheme Bill 2012* will impact on her or him directly; and (ii) highlight to State and Territory legislatures any jurisdictional discrepancies that may need to be harmonized at some stage.

This is an important gender issue. For example, women and girls with disabilities are many times more vulnerable to abuse, neglect and exploitation than men with disabilities. Research indicates that violence against women and girls with disabilities is a problem, and that compared to non-disabled women and girls, women and girls with disabilities:

- experience violence at higher rates and more frequently;
- are at a significantly higher risk of violence;
- have considerably fewer pathways to safety;
- tend to be subjected to violence for significantly longer periods of time;
- experience violence that is more diverse in nature; and,
- experience violence at the hands of a greater number of perpetrators.⁸

3. Potential participants and participants under the NDIS must always be the subject (and not the object) of their actions, plans and programs.

⁸ Women’s Centre For Health Matters *Women With Disabilities Accessing Crisis Services A Project to assist domestic violence/crisis services in the ACT to better support women with disabilities who are escaping domestic and family violence* (2010) at page 5 at <http://www.wchm.org.au/WWDACT/wwdact-reports-and-publications>

The successful operation of the NDIS will require skillful development of participant plans. Principles 31(b) and (g) and (i) and Clause 74(5)(a) *National Disability Insurance Scheme Bill 2012* already lay the groundwork for recognition of the agency of a participant under the NDIS. The appointment of a plan nominee on behalf of a participant under clauses 86 and 88(2) is critically important in this regard. The same considerations apply to actions of a correspondence nominee.

The lives of many women and girls with disabilities have been about survival rather than flourishing. When the NDIS has been in operation for a decade, when women and girls with disabilities have a longer experience in being able to imagine a future and operate independently, then it may be possible to do the goal setting.⁹

In general, WWDACT supports the known positions of the Australian Federation of Disability Organisations (AFDO) and Women With Disabilities Australia (WWDA) in relation to the questions surrounding plan nominees; correspondence nominees and the role of the CEO of the Agency in relation to nominees generally.

3.1 The need to put in place strict accountability and review mechanisms in relation to both the appointment of nominees and the on-going responsibilities of nominees

WWDACT urges the introduction of formal accountability and formal review mechanisms regarding the appointment and responsibilities of nominees. This is a gendered issue. Women with disabilities (rather than men with disabilities) are less likely to be vocal at every stage of the preparation, review or replacement of their participant plan. This potentially allows the appointment and participation of a partner or carer as their plan nominee or correspondence nominee. This partner or carer will then be in a position of power over the participant and control of support funding. Unless there are strict accountability requirements placed on a nominee

⁹ Interview with WWDACT member, 1 September 2012

and unless an on-going review of the actions of nominees is put in place under the NDIS, there is a real risk that women with disabilities will be subject to prolonged economic and emotional abuse under the scheme. The participant must remain the subject of these review and accountability procedures at all times and to the greatest extent possible.

3.2 The need to develop transparent and consistent guidelines to assist the CEO of the Agency to exercise her or his powers under the *National Disability Insurance Scheme Bill 2012* in a manner which is gender sensitive - especially in relation to nominees

Much of the operational detail which will determine how the powers and functions of the CEO of the Agency will operate under the NDS is not contained in the framework *National Disability Insurance Scheme Bill 2012*. The detail will be found in the Rules for the NDIS. WWDACT looks forward to the opportunity to peruse and respond to the Rules once they are made public.

4. The need for the governance of the NDIS to provide leadership and strategic direction that meets the needs of women and men participants

In drafting the NDIS rules, WWDACT urges the Government to have direct and express regard to:

- Workplace Gender Equality Act 2012 (Cth) to ensure the Agency workforce is balanced; and
- special measures under Sex Discrimination Act 1984 (Cth) such as the appointment of at least one women with disability as a member of the Board and the Independent Advisory Council.

Conclusion

An NDIS must ensure women and men with disability, wherever they live, receive care and support based on their needs, and have choice and control over this support. The aims and objectives of the NDIS will not be met unless *National Disability Insurance Scheme Bill 2012* has an embedded gender focus and takes the particular circumstances of women and girls with disabilities into account. Women and girls with disabilities have the opportunity to flourish under the NDIS: to become recognised, valued and considered members of society. The operational complexities of the NDIS must engage with social as well as medical and functional models of disability. This national scheme presents a wonderful opportunity to model best employment practice of females and males with disabilities throughout the National Disability Insurance Agency and the NDIS Launch Transition Agency as well. In fact, the successful employment of women and men with disabilities within these institutions should become a key benchmark of the national scheme's success.