



Women with Disabilities Victoria

Women with Disabilities Victoria is an organisation of women with disabilities in Victoria with a diverse and growing membership. Our members have a range of disabilities, backgrounds, lifestyles, and ages. Our **board and staff** also have disabilities.

We are united in working towards our vision of 'a world where all women are respected and can fully experience life'. Our gender perspective allows us to focus on areas of inequity of particular concern to women with disabilities; access to women's health, parenting rights, and safety from gender based violence. We have dedicated particular attention to the issue of men's violence against women with disabilities, due to its gravity and occurrence in our lives.

Overview of our Submission

Thank you for providing us with the opportunity to comment on the National Disability Insurance Scheme Draft Rules. Our submission addresses issues relating to the diversity of people with disabilities in Australia and related diversity of needs for support under the NDIS. The submission also canvasses the provisions required to ensure safety from violence and abuse within the Rules.

The Draft Rules should cover all of the relevant mechanisms concerning the NDIS which are missing in the Bill in order to fulfil Australia's human rights obligations to persons with disabilities, particularly under the Convention on the Rights of Persons with Disabilities (the Convention).¹

The Convention requires Australia to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.² This includes genuinely facilitating and supporting the independence and full participation of people with disabilities in Australian society.

As detailed below, it is our view that the Draft Rules do not provide for the highest level of freedom to make one's own choices together with appropriate support and safeguards concerning that decision-making³.

¹ Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008).

² Convention on the Rights of Persons with Disabilities, Article 4.

³ Convention on the Rights of Persons with Disabilities, Article 12.

Recognition of the diversity of people with disabilities in Australia

We are of the view that it is essential that the Draft Rules be guided by a principle that acknowledges the specific needs of women, Aboriginal and Torres Strait Islander peoples, people of Cultural and Linguistic Diversity, and Lesbian Gay, Bisexual, Transgender and Intersex people, due to the multiple, systemic and specific disadvantages experienced by these communities.

The Draft Rules are also largely silent on the issue of diversity, including recognition of gender, spiritual diversity or GLBTI status. While Part 1.2(c) under Nominees discusses cultural and linguistic diversity, there is no similar recognition that that:

- (a) gender is a contributing factor to the disadvantage of Australian women with disabilities;
- (b) parenting rights of Australian women with disabilities will not be usurped because of assumptions;
- (c) they are underpinned by the Convention on the Rights of People with Disabilities, to which Australia is a signatory; and
- (d) Commonwealth/State agreements that no person should be disadvantaged
- (e) under the National Disability Insurance Scheme are acknowledged

Given that some family members can be controlling, exploitative and violent in other ways, the family context should be assessed before deciding what role the family should play in considerations by the NDIS Agency.

The Draft Rules are also largely silent on complaint mechanisms which meet the needs of Australians with disabilities. While the Rules speak of being subject to a complaint, it is not apparent on requirements for registered providers to have complaint mechanisms in place, or how they will be assisted to manage complaints. There is the need for complaints to be registered with an external independent body to ensure the safety of participants.

The Draft Rules must provide for access to timely and comprehensive internal and external review of all significant decisions and actions taken under the NDIS and affecting participants and prospective participants.

The Draft Rules should incorporate independent external scrutiny of the actions of nominees, similar to the accountability mechanisms recommended by the Victorian Law Reform Commission in relation to substitute decision makers.

Independent advocacy support, including affordable or free legal assistance and representation, should be available on demand to all people with disabilities:

- prior to and throughout eligibility and assessment processes;
- when any issue or conflict arises with the National Disability Insurance Agency or service providers, including reviews and complaints;
- to enable them to engage in service quality processes.

Support for Parents with a disability

The Convention on the Right of Persons with a Disability article 23 states that “States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;”

Nothing in these rules should impact on the rights of Australian people with disabilities to access their parenting rights. Supports must be provided to enable them exercise choice and control in accessing their parenting rights.

The rights of people with disabilities as parents are not clearly articulated in the NDIS Legislation. The principle that requires the NDIS Agency to “where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant” allows for recognition of the needs of children of the person receiving support. However we are of the view that the need to provide support for the parenting role of people with disabilities must be more clearly spelt out in the rules.

This provision is of particular concern to women with disabilities, who are more likely to be in the role of primary child carer than men with disabilities.

National Disability Insurance Scheme Rules—Supports for participants

The supports for participants who provide care of their children must include those supports that are needed to enable them to effectively parent their children. In our submission to the Productivity Commission, we noted:

‘Mothers with disabilities have often reported that their “disability support” (such as attendant carer, home help) does not extend to provide any assistance with a baby/child. Women with disabilities who have children are not currently served well by parenting-related services, including maternity/obstetric services such as mother/baby unit for a newborn and family support services. There is a lack of enabling equipment

that supports mothers with disabilities, for example, visual alerts for a child's cry for the mother who is deaf; or a modified cot which assists a mother with poor balance to lift and cuddle her child.'⁴

Without adequate parenting support women with disabilities are at particular risk of having their children removed. Literature evidences the discriminatory attitudes that abound with regard to unfounded beliefs that women with disabilities are not competent to parent their children. The safety of children is always in the forefront of mothers with disabilities, but we need to ensure that they are provided with the supports they need to be effective parents.

We note that section 7, *Supports most appropriately funded through the NDIS* states that supports that would ordinarily be most appropriately funded or provided under the NDIS include:

- (a) disability-specific intensive family supports, which are required as a direct result of a person's functional impairment, including for parents with disability;
- (b) disability-specific parenting education and training programs;

Women with Disabilities Victoria endorses this recognition of parenting support needs. This family support must extend to provision for practical personal care, such as cooking, bathing and dressing of children under the direction of a parent with a disability, to be part of the care plan of a parent with a disability.

National Disability Insurance Scheme Rules—Children

While the rules in this section would appear to be appropriate we recommend provision for parents with a disability be considered in conjunction with the needs of children with a disability. Parents with disability must be provided with the appropriate support under the NDIS to meet the requirements related to children with a disability under the NDIS.

Part 3.2 allows for the CEO to determine if it is not appropriate for the person who has parental responsibility to be the child's representative. Given the high rates at which women with disabilities lose access to their children:

- What criteria has been developed to ensure that women with disabilities will not be disadvantaged?
- Will there be supports in place to enable women with disabilities to undertake their parental responsibilities.

Similarly, Part 4 does not acknowledge that women with disabilities may not have day to day care of their children because of a lack of suitable and adequate supports.

⁴ Women with Disabilities Australia and Women with Disabilities Victoria, *Submission in Response to the Productivity Commission's Disability Care and Support Draft Report* (May 2011).

- Will the lack of suitable supports be taken into account under section Part 4, particularly where the mother has lost the capacity under condition 2, part 4.5 (c) – the person is responsible for the Child’s long-term or day-to-day care, welfare and development?
- Will Australian women with disabilities who have lost their children due to the lack of suitable supports be able to challenge the decisions of the CEO?

National Disability Insurance Scheme Rules—Nominees

We endorse the principle adopted by the draft Rules to incorporate a presumption that participants have decision-making capacity. Therefore:

- participants should be empowered and enabled to appoint their own nominees;
- in situations where participants are themselves unable to make appointments, empowering an external authority comparable to a guardianship and administration tribunal, rather than the CEO, to appoint nominees;
- in situations where a participant has a decision making impairment that inhibits his or her ability to appoint a nominee, any preferred nominee of a participant should still occupy that role, unless such an appointment would be deleterious to the participant’s personal and social wellbeing.

The Rules should provide more detail about the role of plan nominees, including the principles governing their operation, rather than stating that the CEO is able to specify limitations, without an understanding of how that will be determined.

Well being and Safety of people with disabilities

The Rules should establish a process by which the appointment of nominees can be challenged by interested parties when concerns exist about the personal and social wellbeing of participants.

We are particularly concerned for the safety of people with disabilities given the high rates of violence and abuse against people with disabilities and women with disabilities in particular. The Rules must ensure that those persons who cannot be appointed under Part 4.4 include persons who are an unacceptable risk to the safety, health and wellbeing of the participant.

We recommend that in addition to taking account of relevant convictions, part 4.8 (g) requires a register of nominees, that includes working with vulnerable people checks.

The safety of participants should be a priority, and it is of great concern that under part 6.4 (b) that where the CEO has reasonable grounds to believe that the nominee has caused, or is likely to cause, severe physical, mental or financial harm to the participant, that the CEO is able to but not required to cancel the nominee. Unless the CEO is required to cancel the nominee's rights this represents a breach of the Commonwealth/State agreement that no participant should be worse off under an NDIS. For example, if a person was found to be abusive or violent they may be liable under the Victorian Family Violence Protection Act 2008.

We recommend that part 6.4 (b) require the CEO cancel the nominee's rights where the CEO has reasonable grounds to believe that the nominee has caused, or is likely to cause, severe physical, mental or financial harm to the participant.

Workforce development and safeguards

The Draft Rules are silent on the issue of workforce development, so that there are no standards, training or registration requirements, other than as a registered provider, to ensure the safety of participants. In effect this means that individuals who provide disability support as employees are not required under the Draft Rules to be registered or to undergo any police or other checks. The provisions of Part 3.10, revocation of registration as a provider are inadequate for this purpose. There is no provision for whistle blower protection for those who are concerned about the behaviour of other staff.

For example: Many who work in the disability sector know that when a person is dismissed from an organization for inappropriate behaviour, they are then free to work at another agency. Referee checks are not always undertaken, and workers who report inappropriate behaviour will meet the alleged perpetrator at other workplaces.

By being silent on workforce development, the Rules do not adequately allow for training to take place to ensure that the social and cultural needs of participant are the priority.

For example: will support workers who have a religious or cultural objection to the spiritual, cultural and sexual identity of participants of participants be required to respect the needs of participants?

We recommend that the rules put in place requirements to ensure that persons employed under the NDIS are regulated to ensure the safety and well-being of persons with a disability receiving support.