



**SUBMISSION: DEPARTMENT OF FAMILIES HOUSING  
COMMUNITY SERVICES AND INDIGENOUS AFFAIRS**

**NATIONAL DISABILITY INSURANCE SCHEME RULES  
CONSULTATION PAPER**

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# UNITINGCARE AUSTRALIA

UnitingCare is one of Australia's largest non-government providers of community services, with almost 1,500 community service delivery sites across every State and Territory, providing services to over 2 million people each year. The UnitingCare network employs 35,000 staff and 24,000 volunteers nationally and provides services to children, young people and families, people with disabilities, and older Australians, in urban, rural and remote communities. Its annual turnover is over \$2.3 billion. UnitingCare Australia is the national body for the UnitingCare network, and a national agency of the Uniting Church in Australia.

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# 1 INTRODUCTION

UnitingCare Australia would like to commend the Department of Human services for undertaking an independent review of Centrepay system, and for seeking comment from the community in this process.

UnitingCare Australia is grateful for the opportunity to provide input into the National Disability Insurance Scheme rules, and have used the collective expertise of our services to make comments in relation to the rules, which we hope will be useful in their development. However, there are two primary issues which we feel make it difficult to comment on and develop the rules at this stage. This leaves open significant potential for creating inadequate or misaligned rules:

1. With the legislation itself still in draft form, and the options presented in the Regulatory Impact Statement (RIS) undecided, we are unable to propose specific rules without the certainty that these will provide. UnitingCare Australia and its member agencies have provided significant input into both of these documents and the outcomes of these consultations and reviews will have a subsequent impact on what rules need to be developed. Therefore, our comments on these rules should not be taken in isolation but read alongside our broader points made in the legislation and RIS submissions. Specifically, key issues such as age limits and access to registered/unregistered providers for informal services etc. should not have formal rules set around them until these issues have been resolved to the satisfaction of the broader community.
2. These rules should be developed with the understanding that they will only apply to the launch sites, with the legislation, rules and RIS options to be reviewed and amended following evaluation of the outcomes of the launch sites. This will ensure that the ongoing NDIS legislation and rules will be based on evidence and experience from the launch sites, rather than being put through as an ongoing foundation before we have received the learnings from the launches.

We also believe that the wording of the rules needs to be examined to ensure that the 'detail' of the Rules does not contradict or conflict with the overall intention and spirit of the legislation. One such example can be cited in Clause 4 (11) where it mentions that supports for people with disability should 'allow them to achieve their goals, objectives and aspirations, to the extent possible'. It is a basic right and reasonable assumption that people with disabilities should be allowed to achieve their goals, objectives and aspirations, to the extent possible. As such this wording would best support the legislation and the needs of people with disabilities if it spoke of 'facilitating', 'supporting' or 'enabling', rather than 'allowing'.

## 2 RESPONSE TO THE RULES CONSULTATION PAPER

### RESPONSE TO THE RULES CONSULTATION PAPER

We have structured this submission so as to answer questions and deal with related issues within their sections, rather than addressing individual questions specifically. We have also not attempted to address all questions but focused on areas of our particular expertise and experience.

The different functions of the NDIS

The information the National Disability Insurance Agency (NDIA) should provide for people with disability who approach the NDIS should include such foundational information as:

- information about how the system works,
- what is available to them, and
- generic information about services which are available to them, including specific disability services, community based services (both formal and informal) and broader mainstream services of relevance.

The NDIA should provide this information and continue to support people in a way which reinforces person-centred and participant-directed principles, providing them with as much control as they wish (and have the capacity to manage).

In order to ensure that services are available in areas of market failure, NDIS rules need to include provision for directly funding organisations to assist people with disabilities in appropriate circumstances. As an example, in NSW, the Department of Ageing, Disability and Home Care currently fund a range of Family Support Services to work with families where there are child protection concerns for children with disabilities or where families may be at the point of relinquishing their child. This includes Intensive Family Support and Extended Family Support. Services in the UnitingCare network are the major providers of these service types. It would be appropriate to continue to provide direct service funding to these services to enable a mandated approach to continue to protect vulnerable children, as this cannot be assured under market-based funding system.

Direct funding of individual services may also be appropriate for organisations or projects that build the capabilities of individuals and families to both make best use of the NDIS funding that they have, and to create new options to meet needs where these do not currently exist. Such funding may also be needed to build community capability to foster the inclusion of people with disabilities.

## **BECOMING A PARTICIPANT – AGE REQUIREMENTS**

As outlined in our previous submission, UnitingCare Australia believes the system would be best operated if people over the age of 65 whose needs were the result of a disability rather than the ageing process, could choose to have their needs met through the NDIS and continue with that system. It is essential that people over 65 have the opportunity to be able to choose services which meet their support needs in relation to their disability. Where a person over the age of 65 requires specialist support from aged care provider, ideally this should be complimentary to, and not in lieu of the support the person receives in relation to their lifelong disability. A collaborative approach will better meet the complex needs of people with a disability who are ageing and will increase the capacity of the respective sectors to effectively meet these challenges.

Information should be provided in launch sites and in implementation of schemes to provide rationale for age requirements, and provide direction and options for those who are not eligible under the scheme (both in transition and in full implementation).

## **BECOMING A PARTICIPANT – RESIDENT REQUIREMENTS**

Given that this rule appears to be around trying to ensure that individuals do not move into one of the launch sites temporarily for the purpose of gaining access to the scheme, a simple rule would be that those who have moved to the region since the announcement of the launch sites (approximately 12 months) would not be eligible. However, given that a number of these migrations would have been for valid reasons, an additional refinement could be made that someone who has moved to a launch site during that period must remain in that site for a minimum of one to two years.

Apart from that restriction, a person should not need to continue to live in a launch site to be considered a resident, as this would put limitations on their right to freedom of movement and create unreasonable situations where opportunities in other geographical areas cannot be pursued due to the need to continue receiving services in launch sites. Transition plans to non-NDIS regions will need to be implemented to ensure continuity of service.

## **CONTINUITY OF SUPPORT**

Factors relevant in deciding whether the NDIS should continue to support otherwise ineligible people should focus on the impact of that change on the circumstances of the individual or their family or support network. Participants who will suffer major negative impacts should have their support continued, or at least have the potential for long-term transitioning between existing supports to other services in the future, with ongoing examination of impacts to the individual and their family.

## **DISABILITY REQUIREMENTS**

In examining whether an impairment is 'permanent', the criteria needs to ensure the inclusion of disabilities which are episodic in nature. This could include disabilities which appear sporadically through someone's lifespan (potentially with a number of years in between episodes), as well as those disabilities which may be diagnosed, but which may not have significant impacts on the individual for a number of years. Support plans should then take this into account.

Guidelines need to be created to allow people to provide existing assessments to meet the criteria, or to at least use these in the first instance with further assessments carried out at a later date. Existing diagnoses and other information should be used in these further assessments as appropriate. It is important that people currently utilising former HACC services are considered eligible, even if they require support for limited services.

In terms of who should conduct assessments, we believe that clearly it should not be a service provider – although assessment could potentially be undertaken by a planning organisation, with the National Disability Insurance Agency approving assessments.

A degree of self-assessment is also a valuable inclusion in the process. Assessments should be based on individual needs as the primary focus and foundation, and it is clear that disability will be determined with a combination of functional assessment, dreams and goal setting, and individual diagnosis. All elements are important for a comprehensive assessment.

## **EARLY INTERVENTION REQUIREMENTS**

In regards to innovation, the rules need to avoid specifying innovation as a desirable outcome in and of itself. Innovation is to be supported where it provides ideal and improved outcomes over the current system, but what many participants seek and benefit from most are traditional, proven services, supports and interventions. These should not be discarded in the desire for innovation.

Early and ongoing interventions should continue to be judged on their value for money, their ability to provide holistic outcomes, their flexibility in delivery, and their impact on broader community inclusion activities. We would argue that potentially a fixed proportion of a person's supports should be able to be expended on broader community inclusion activities such as participation in fitness programs, sporting activities, adult education, social activities and so on, where these activities are contributing to improved wellbeing and outcomes for participants. This is relevant both in relation to early intervention, but just as importantly in ongoing supports and services.

## **REASONABLE AND NECESSARY SUPPORTS**

Choice of which supports are not to be provided or funded by the NDIS should be based on whether supports are directly related to their disability, with those things not related to be potentially made available, but not funded through the NDIS.

Services which are available to the broader population through the health system and are functioning adequately through that system should continue to be funded in that way.

Additionally, community based and voluntary services should not be transformed into 'funded' services through the NDIS, and as such services which are traditionally voluntary in nature and available in that form should not be funded directly (although may be supported more broadly in other ways).

More broadly, in terms of issues for determining reasonable and necessary supports, the NDIS criteria for supports should make reference to the appropriate human rights instruments, so that we ensure that the supports are provided with the intention of fulfilling the individual's human rights. While we respect that the guidelines outlined in Clause 34 will have been developed in line with relevant human rights instruments, we believe it is important to state these instruments and the relevant rights explicitly, to provide stronger rationales in guiding what supports will uphold the individual's human rights and which may not.

## MANAGEMENT OF PLANS

In our view, the primary criteria in deciding unreasonable risk for a participant is in relation to whether a participant has the capacity to make an informed decision themselves, or are able to be supported to do so. Determination around unreasonable risk should therefore not be made around the potential for risk, but rather an individual's capacity to be aware of that risk and make an informed decision accordingly – even if their subsequent decision may be regarded as 'risky'. NDIS rules should allow individuals the dignity of risk. The rules should not operate from a position where we seek to take control away from the participant, even if this entails some degree of risk. Risk should only be sought to be moderated where it has the potential to impact on their individual rights or those of others. Minimum intervention and control over the individual should be the default position of the NDIS, unless proven otherwise in the individual's circumstances (either due to lack of capacity, or previous demonstration of unacceptable behaviour or decisions).

Participants should have full flexibility in making changes to the delivery of their support arrangements without requiring a review of the plan, and provided reasonable flexibility around minor changing of goals within that plan provided that it does not radically alter the plan and subsequent support arrangements. More significant goal changes would require a review of the plan, as would significant changes in circumstances (eg. Death of family member, life transitions, etc).

## INFORMATION SHARING

UnitingCare Australia takes the position that the NDIS should follow similar principles in regards to privacy as that undertaken in mainstream sectors such as health, taxation & employment. These principles are working well within these sectors with the mainstream population having sufficient protections regarding privacy whilst still benefiting from the efficiencies and conveniences that sharing of that information provides. We don't believe the NDIS should be treated any differently.

The only exception would be in areas of potential conflict of interest, where discretion will need to be exercised accordingly.

## REGISTERED PROVIDERS OF SUPPORT

In line with our submission regarding the draft legislation, people who have requested the NDIA to manage all or some of their supports should not be limited to only registered service providers. Non-registered services should be available to all participants (at least in regards to low-risk services). It is likely that many people who require the support of the NDIA to manage their supports will have complex vulnerabilities. Limiting their service choice will only serve to further entrench their disadvantage.

Service providers' registration should be based on criteria relating to meeting necessary quality standards, their business status (non-profit or for profit), price of service, percentage of management fees, and the evidence of outcome-based supports.

## CHILDREN

As with adult participants, children should be assessed in regards to their capacity and that of their parent before appointing someone else to act on their behalf. We believe the existing protocols in this area to be sufficient and should be incorporated into the NDIS rules. The need for different processes in circumstances where child protection issues are present needs to be examined.

## SUPPORTING DECISION-MAKING

Our position on nominees and the appropriateness of an individual to be a nominee is that the current definition in the Rules should be broadened to cover issues related to conflict of interest between the participant and their nominee in regards to their support package. This is currently sufficiently protected within the Guardianship arrangement, and we would seek to see this confirmed within the NDIS legislation to ensure that no conflict of interest or abuse is allowed to continue under the nominee arrangements.

Additional duties of a nominee are around that of being a support person, and an independent party to support the individual and assist in decision making and negotiations. Nominees should be appointed for a fixed period (which is not excessively long), and we believe that the regular review is a positive process which need not be a prolonged, bureaucratic or onerous process, but could in fact be an encouraging and rewarding experience where nominees can be affirmed and supported in their roles.

There is new work being done on supported decision-making models that are empowering for people with disabilities and this work should inform the NDIS rules.

## COMPENSATION

UnitingCare Australia believes that the NDIA should not be given the power to require a person to secure compensation in respect of the cost of supports. Instead, we would seek to examine whether it is possible for the NDIA to seek redress through compensation on behalf of the person whilst providing continued support.

Any compensation achieved through these processes could then be used to offset the overall size of their NDIS support package.

