

2 July 2014

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001
By email disability@alrc.gov.au

Dear Executive Director

I am pleased to make this submission on behalf of the National Disability Insurance Agency (**Agency**) in response to the ALRC's discussion paper 'Equality, Capacity and Disability in Commonwealth Laws' (May 2014).

This submission is confined to the proposals and questions in Chapter 5 of the discussion paper, which deals specifically with the National Disability Insurance Scheme (**NDIS**), and in particular the implications for the NDIS of the new National Decision-Making Principles and Commonwealth decision-making model proposed by the ALRC.

Preliminary matters

It is important to note two preliminary matters.

First, the NDIS Act includes provisions that require an independent review of the operation of the Act. The review must commence on 1 July 2015 and report by 1 January 2016. It follows that any proposals for review of, or amendments to, the NDIS Act and rules should have regard to the timetable for this statutory review.

Second, the NDIS is a cooperative scheme agreed to by the Commonwealth and all state and territory governments. While the NDIS Act is a Commonwealth law and is administered by the Commonwealth Minister for Social Services, it was developed in consultation with state and territory governments and any proposals for amendments to the NDIS Act and rules would have to be considered carefully by the Commonwealth in consultation with each of the NDIS's stakeholder governments..

Comments on proposals

Chapter 5 includes three proposals to amend the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**) and NDIS rules made under that Act.

In summary, the proposals are to:

- amend the objects and principles in the NDIS Act to ensure consistency with the new National Decision-Making Principles proposed by the ALRC in the discussion paper (Proposal 5-1), and

- amend the NDIS Act and rules to include supporter and representative provisions consistent with the new Commonwealth decision-making model proposed by the ALRC (Proposals 5-2 and 5-3).

The Agency is supportive of the objects and principles to which these proposals are directed.

The Agency believes the proposals are consistent with the current objects and principles of the NDIS Act. For example, the first object set out in section 3(1)(a) of the NDIS Act is to give effect, in conjunction with other laws, to Australia's obligations under the Convention on the Rights of Persons with Disabilities (see section 3(1)(a)).

The proposals are also consistent with the strategic priorities of the Agency, as reflected in its 2013-16 Strategic Plan (see copy attached). For example, one of the three goals identified in the 2013-16 Strategic Plan is that people with disability are in control and have choices, based on the UN Convention on the Rights of Persons with Disabilities. Clearly, the proposals, as well as the proposed new National Decision-Making Principles and Commonwealth decision-making model, are consistent, generally speaking, with the Agency's efforts to achieve this goal.

The Agency also acknowledges and supports the ALRC's observations that the ALRC has not been overly prescriptive about how the Commonwealth supporter or representative models might operate in the context of the NDIS, and that it would be necessary to undertake further detailed consideration of operational implications.

Comments on questions

The questions posed in Chapter 5 of the discussion paper essentially relate to the interaction between the NDIS and other systems including state and territory appointed decision-makers and the management of NDIS funds.

The Agency recognises the importance of ensuring that to the greatest extent possible the NDIS operates in a way that complements other arrangements for supporting people with disability including in relation to the management of NDIS funds.

The Agency is working collaboratively with others including state and territory guardianship and administration tribunals to address the issues raised by these and other questions. For example, the Agency has been entering into arrangements for the exchange of information, consistent with the privacy provisions of the NDIS Act, with state and territory guardianship and administration tribunals.

The Agency looks forward to continuing to build on this early collaborative work, and considering the issues raised by these questions in further detail.

On behalf of the Agency, I would like to thank the ALRC and its Commissioners for their work on this inquiry, and for the opportunity to contribute to their consideration of these issues.

Yours sincerely

