

**ACCESS INDUSTRIES FOR THE DISABLED LIMITED  
SUBMISSION TO THE PRODUCTIVITY COMMISSION  
RE: INQUIRY INTO DISABILITY CARE & SUPPORT**

**INTRODUCTORY COMMENTS**

Access Industries for the Disabled Limited is a not for profit company, limited by guarantee. The organisation was established in April 1949, initially as a self-help and mutual support group, by several people with physical disabilities. In subsequent years the organisation grew and expanded, at various times establishing a variety of different service models, including what were originally referred to as *sheltered workshops*, and a residential hostel at Dulwich Hill in Sydney. In doing so, the organisation extended its services to respond to the needs of a wider cross-section of persons with disabilities: including people with intellectual disabilities, various sensory impairments, epilepsy, and acquired brain injury, amongst others.

Today, the organisation provides supported employment opportunities for about 250 people with disabilities through four Australian Disability Enterprises (ADEs) located in the Sydney Metropolitan Area (at Seven Hills and Erskine Park), Hamilton (Newcastle) and Lithgow. The organisation also provides support and assistance to around 290 people with disabilities who are employed in (or seek to gain employment in) the open labour market through our funded DES service, Equal Access Employment.

In carrying out our primary Mission to provide assistance to people with disabilities in employment related areas, Access Industries remains faithful to its original philosophy of being a service for people with disabilities, controlled by people with disabilities. In this context, our Memorandum and Articles of Association require that a simple majority of the Board of Directors must at all times involve Directors who have a disability, while not less than two-thirds of our Voting Membership must at all times be comprised of persons who have a disability.

**COMMENTS ON THE PROPOSAL FOR A NATIONAL DISABILITY INSURANCE SCHEME (NDIS):**

Access Industries for the Disabled Limited strongly supports any proposal for social policy reform that will effectively improve the quality of life for people with disabilities.

In this context, Access Industries supports the conceptual basis of the proposed National Disability Insurance Scheme (NDIS) as a framework for reform that, theoretically, ought improve the quantum and allocation of resources to provide support for people with congenital and/or acquired disabilities.

Having said this, we are beginning to grow concerned about the extent to which the current NDIS campaign is focusing on the rhetoric of what it is hoped will be achieved by the proposed reform, while little real information is forthcoming about the practical implementation issues and considerations

associated with such a reform: issues that need to be addressed to ensure that those expectations will ultimately be realised.

Whilst acknowledging that both the campaign and the overall proposal are still in a comparatively early stage of development, Access Industries believes that there are a range of issues that need to be considered *now* to ensure that the ultimate reality does not fall far short of fulfilling the expectations that are being generated by the rhetoric. Failure to do so could result in many important considerations being simply swept away in the growing tide of enthusiasm for a *concept* that may not be reflected in the final operational reality for people with disabilities.

It may be that many of the issues raised below are already under consideration within the many frameworks associated with the campaign for the NDIS. If they are not, however, then we hope that they will prove useful to future deliberations. In either event, we stress that they are not raised as opposition to, or to undermine the concept of, an NDIS. Rather, they are raised to hopefully provide some contribution towards ensuring that the ultimate reality fulfils the expectations that are being raised amongst people with disabilities, their families, carers and advocates.

#### **ISSUE 1: Ensuring that the NDIS ultimately benefits people with disabilities.**

Whilst it is probably inevitable that the NDIS will have to follow an insurance scheme model, we are very concerned that it does not ultimately become primarily a *cash cow* for a new tier of administration, and for the medical and legal sectors: diverting a substantial component of the resources that are intended to improve the lives of people with disabilities to the maintenance of a large new bureaucracy, and a series of legally based and costly actions for entitlement determinations, backed up by increasing and costly referrals to various medical practitioners/specialists for assessments and reports.

In this context, some specific concerns arise in the context of the proposal for a separate (smaller) *scheme to cover people's lifetime care and support needs if they acquire a catastrophic injury from an accident* (ie a NIIS). In the late 1970's and early 1980's, the present writer held a senior position within the Commonwealth Rehabilitation Service (CRS) in NSW. This was at a time when the CRS still operated two large rehabilitation treatment facilities (ie at Mt Wilga [Hornsby], and Camperdown [the Queen Elizabeth 11 Rehabilitation Centre]) providing Stage 3 rehabilitation, ie rehabilitation following the completion of primary medical treatment. Frequently, where *compensable injury* situations were involved, there was an unfortunate incentive to defer the commencement of third stage rehabilitation in order to demonstrate the seriousness of the level of disability acquired: thus hopefully optimising the insurance settlement determination. As a consequence, the final compensation determination would often occur some time after the original referral for rehabilitation and support, (having frequently been delayed by the need to obtain medical re-assessments along the way), with the injured person then returning for rehabilitation long after it should ideally have commenced. By this time, muscles would have atrophied, alternate coping habits developed etc, which meant that the optimum potential outcomes of early rehabilitation were frequently lost or compromised.

We note from some of the documentation that has been distributed to date that there is an occasional reference to terms such as *eligible supports* and *eligible services* etc. We find this interesting (albeit inevitable) in documents that frequently seek to imply that the NDIS will effectively transfer all power and choice to people with a disability. We can only conclude that – as is also inevitable – the NDIS will have to have an administrative arm with the power to develop associated policies, procedures and guidelines that will no doubt constrain the types of supports and services that will be deemed eligible for the purposes of the NDIS. If this is the case, there is a clear potential that the administrative frameworks and guidelines will not pass on *full choice* to consumers, merely choice from within a limited range of *bureaucratically and administratively acceptable* options. There is thus a possibility that while the administrative arrangements may change, the actual outcome for consumers will not be significantly different.

This, in turn, opens up the whole issue of the appropriateness/effectiveness/accuracy of any assessment and determination arrangements, as well as any appeals mechanisms that might apply.

The current documentation also makes regular reference to *service brokers* as a further tier within the NDIS operating structure. The potential to divert resources from people with disabilities therefore extends to the size and effectiveness of whatever administrative arrangements are put in place, the medical/ legal framework that might be involved (or whatever alternate assessment, determination and appeals mechanisms are put in place), and whatever quaternary services (such as brokers) might be embraced by the NDIS. It would be unfortunate if the foreshadowed huge increase in resources to support people with disabilities was substantially compromised by being siphoned off to what would simply be another bureaucratic process.

## **ISSUE 2: Availability of Services:**

Underpinning much of the rhetoric about the NDIS is a conceptual commitment to providing (largely financial) resources to consumers who would then be free to choose the services and supports that they wish to purchase with those resources.

This is a commendable objective, but there are clearly some constraints on its practical implementation.

In order for consumers to *exercise a choice* there must be a sufficient range of services and supports available. There must also be clear information available as to what these services and supports can provide, and how they will provide it, so that the consumer can identify and make an *informed choice* about the service(s) that best meet their needs. Most critically, there must be available places within these services so that the consumer can access his/her service of choice: otherwise the NDIS-provided support simply has no *negotiable* value. In effect, this means that there must be a potential *oversupply of available services* in order for true choice to occur. To date, this has been far from the case.

It is unrealistic to suggest that *existing service networks* would be in a position to absorb the potential demand levels being foreshadowed in the proposed model.

It is particularly unrealistic to suggest that consumers in more rural and remote areas are likely to have access to a large range of potential and demonstrably different services. Population sizes, transport issues and operational diseconomies will have a major and unavoidable impact on the development and economic sustainability of services in different regions; as will difficulties in attracting and retaining suitably trained and experienced staff.

If individual service development and/or expansion is to be contingent upon consumers exercising a choice to access a particular service (and paying for that service from the financial resources that have been allocated to them through an NDIS), then a number of potential issues arise, including:

- a) services need a guaranteed minimum level of support in order to exist. They cannot remain viable if they are subject *entirely to the vagaries of consumer choice and payment*. (ie they need to maintain premises; they need to recruit, train and retain appropriately skilled staff; they need to meet a range of basic operational costs etc.)
- b) there would almost certainly be an extended lead time between additional demand becoming apparent, and a service provider being able to put in place the additional resources required to respond to that demand (including, depending upon the circumstances, acquiring additional premises and equipment, recruiting and training additional staff etc).

Some clarification is needed as to whether, under an NDIS model, the actual service system will be *totally dependent on fees income* generated from consumers via an NDIS, or whether it will be supplemented by some form of Commonwealth and/or State-funding arrangement (eg through a continuation of Case-Based Funding arrangements for *employment services*, CSTDA arrangements etc for other service types, in either their current or a modified form).

### **ISSUE 3: Implications of new arrangements for the relationship between Persons with a Disability and their Service Providers/supports of choice:**

A continuing issue in the current service system is the nature of the relationship that exists between people with disabilities and service providers. For most CSTDA-funded services the core relationship is that of service user/service provider (or consumer/service provider), although in some instances it overlaps with that of tenant/landlord and in others (eg services for persons with mental health issues) could encompass a patient/treatment role. Under the proposed NDIS a further relationship will be added: that of purchaser/vendor.

From currently available documentation, it remains unclear whether specialist employment services (i.e. ADE's and DES services) will be embraced by the proposed NDIS. Some documentation *implies* that they will, others imply that they might be excluded. Some documentation *implies* that DES services will be embraced, but appear silent on the issue of ADE's.

If ADE's are to be embraced by the NDIS, then some interesting potential issues arise in the context of the relationship between people with disabilities and service providers. For many years it has been acknowledged that conflicts can arise from the duality of purpose of ADE's: the principal tensions being between the roles of service user (consumer)/service provider, and that of employee/employer. Under an NDIS as proposed, the additional purchaser/vendor relationship will add some significant complications that could have major implications for Quality management, Standards/KPI's, and assessments.

It also raises some interesting issues for *wage determination for supported employees in ADE's*. For example, it is conceivable that the true cost of the service being purchased (ie the potential service fee) could exceed the assessed wage entitlement of a supported employee. In such a case, would the arrangement be dealt with through separate transactions (ie a paid wage and the application of a separate service fee), or would the supported employee simply pay the service provider the net difference from his/her NDIS entitlements. Obviously, the converse situation would have to apply if the assessed wage entitlement exceeded the service fee. The question would then arise as to what monitoring arrangement would need to be put in place by the responsible authorities (eg funding departments, the NDIS administration, Fair Work Australia, DEEWR etc) to ensure appropriate implementation and control of these arrangements.

Clearly, some service support models incorporate a greater capacity to respond flexibly to *individualised support packages* and *individual consumer choice*. Certainly, this capacity is reduced substantially in the context of an ADE service, because the service is directly impacted by the nature of the business customers it has, the type of work this involves, the specific jobs and tasks this generates, and the training, skills development and promotional opportunities these in turn create.

Just as the acceptance of a particular position in open employment by a person without a disability does not *entitle* or *guarantee* that person the right to self-determine whatever other job they will carry out in the future, nor can absolute and/or unlimited flexibility or choice be provided in ADE services, or indeed in open employment situations supported through DES services.

#### **ISSUE 4: Implications of proposed NDIS on relationship between Government and the Service Sector:**

One of the most frequent criticisms of the current service system involves the extent of bureaucratic involvement and "red tape" that is involved, and the quantum of resources that must be diverted in order to satisfy the associated requirements and demonstrate compliance.

Several documents relating to the NDIS imply that the new scheme would replace (or be intended to replace) all existing funding arrangements. Intrinsically, this offers a major opportunity to streamline the bureaucratic approach, especially given what appears to be the intention regarding the shift in the relationship between people with disabilities and service/support providers (see above).

If full credence is to be given to the proposals outlined in the current documentation, then under the NDIS the primary *funding* relationship will shift, and be between the person with a disability and the NDIS administration: just as it is between a claimant and their insurer. Once a determination is made by the insurer (ie the NDIS), the *settlement* resources are allocated to the claimant, who presumably then has the right to determine how he or she allocates/spends them.

At that point, the implied situation is that the person with a disability simply becomes a *purchaser* of services and/or supports, which axiomatically means that the core relationship is then between the person with a disability and whichever service/support network he or she elects to use and pay for. It is difficult to see what *legitimate role* exists for the government or the NDIS in that relationship. (In normal insurance arrangements the insurer does not intervene in issues surrounding how a claimant ultimately applies their insurance settlement. If the NDIS administration, the Commonwealth or State government were to seek to do so in the context of an NDIS, this would seem to be inherently discriminatory.)

This, of course, opens up a whole range of potential issues. On the positive side, it opens up real opportunities for streamlining administrative arrangements, reducing red tape, and achieving real economies that could be passed on to improve the actual quality of services being delivered. (It is one of the tragic ironies of the current system that substantial resources that could be applied to improving service quality must be applied to bureaucratic compliance arrangements.) On the negative side, it could open the door to exploitation of people with disabilities through overcharging, over- or under-servicing, reduction in quality standards etc.

Having said this, there is occasional reference within the available documentation to terms such as *approved services* and *approved service providers*. This appears to imply some form of government or administrative intervention and an *accreditation* system. The question then arises as to how this might work: especially if it has no linkage to a funding mechanism such as the block grant or case based funding system.

One option might be to adopt something along the lines of the Commonwealth Therapeutic Goods Administration (TGA) system, which requires organisations and sites involved in carrying out any work under the scope of the TGA to be *licensed*, and periodically inspected/audited to confirm continuing compliance with the provisions of the license. Another option might be to adopt the *Standards Australia* accreditation and auditing methodology, linked to some rationalisation of the *Disability Services Standards* to better reflect the proposed new operational paradigm.

An associated issue arises from the expectation that people with disability would be able to use their NDIS entitlements to access *mainstream* (ie non disability-specific) and *for profit* services and supports. The question then becomes: would such services also have to be accredited/licensed, and would they be likely to become so if only a very small percentage of their client population is ever likely to comprise people with a disability covered by the NDIS? The answer to this question almost certainly lies in the level of complexity, cost and administrative burden imposed by any accreditation system. The potential

implications for service availability and flexibility of support arrangements for people with a disability would depend upon the answer.

#### **ISSUE 5: Funding Considerations:**

Within the documentation currently available, there are frequent criticisms of what are referred to as *block funding arrangements* (presumably embracing Case Based Funding and CSTDA arrangements), together with references to a proposed change of funding to individuals who could then exercise their choice to *purchase services*.

This clearly raises the issue of *Fee Scales* for services, together with arrangements for how they are determined, monitored, and paid. Currently, the Commonwealth and State governments exercise an element of control over these issues through the determination of Case Based Funding levels. In the context of deliberations re: potential *Fee Scales*:

- a) would service providers have the right to determine the fee scales to apply within their services to maintain their economic viability? (If so, what controls would need to be implemented to ensure that overcharging does not occur to capitalise on the availability of NDIS resources).
- b) Would the Commonwealth (and/or State) seek to retain some control over costs by implementing a form of *Scheduled Fees arrangement*, as occurs in the health system?

If a *Scheduled Fee* arrangement is to be imposed, then what are the implications if the scheduled fees do not adequately cover the true costs involved. Obviously, this has been an on-going problem under the various manifestations of *block funding*, and remains an issue to this day. The fragile economic viability of ADE's, and presumably most other service types, demonstrates that funding constraints have resulted in Governments of all persuasions being reluctant to acknowledge the true costs of providing services. Is there any real likelihood that this will change under an NDIS arrangement?

In terms of *portability*, would the NDIS support be *inflexible* and have to apply at a consistent rate to services providing similar services irrespective of their location and any other factors that might have a significant impact on the real costs of providing that service in a different location/environment?

If a competitive, market-based environment is to be encouraged, would a *Scheduled Fee* arrangement be contemplated? If so, would the concept of an acceptable *profit margin* be embraced in the arrangements for the *profit sector*, and would this also apply to the *not-for-profit sector*? If not, then why not (especially if any future service expansion and maintenance would have to be financed from fees income)?

Of major significance would be the administrative arrangements attached to any fee/payment system. Would the person with a disability pay the service/support directly, or would fees be charged to the NDIS for reimbursement? How administratively complex would the claim procedure be, and what sort of time frame would apply between the provision of a service, the lodgement of a fee claim, and the

payment of that claim? The answers to these questions will have major implications for the cash flow and economic viability of services/supports under the proposed system.

Finally, would eligibility for the provision of supports to people under the NDIS be subject to a capacity to satisfy some pre-determined outcome expectations (ie KPI's) within a given cost structure, and would this entail a capacity to demonstrate compliance with the Disability Services Standards in either their present, or a modified form. Would the same criteria apply to both profit and not-for-profit services, disability-specific and mainstream services? If not, why not?

Significantly, many of the issues raised above have been raised by the sector on numerous occasions since the mid-1980's: frequently in the context of proposals for revised funding arrangements to replace the oft-maligned *block funding* arrangements. Undoubtedly there are many other issues to be considered as well, and indeed additional issues spring to mind the more one thinks about the overall concept. Clearly, there is a need for a better system: one that is demonstrably fair and equitable, efficient and cost effective, sufficiently flexible to genuinely respond to the needs of people with disabilities, and adequately resourced to provide security and an improved overall quality of life for people with disabilities.

We suggest that if the NDIS is to be that system, it is imperative that its practical development and future administrative arrangements address the issues raised above.

Submitted on behalf of the Board of Directors of Access Industries for the Disabled Limited.

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**Chief Executive Officer/  
Company Secretary**