



**A•S•U**  
Australian Services Union

## **ASU Submission**

*National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017*

Senate Standing Committee on Community Affairs

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## 1. The ASU

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Disability support
- Social and community services
- Local government
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)

The ASU has members in every State and Territory of Australia, as well as in most regional centres. Around 50% of ASU members are women, the exact percentage varies between industries, e.g. in social and community services around 70% of our members are women.

## 2. Who we represent in disability services

The ASU is the largest union of workers in the social and community services sector, which includes workers in disability support services across the country. We are the major NDIS union in Queensland, New South Wales, ACT, and South Australia. We also represent public sector disability support workers in Queensland.

The ASU's expertise in disability arises from representing the disability support workforce working in a range of different jobs roles including disability support work, care management and coordination, disability advocates, Local Area Coordinators, team leaders, and managers in disability providers.

## 3. The inquiry

The ASU is pleased to provide this submission to Senate Standing Committee on Community Affairs into the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (the Bill)*.

In preparing this submission we have consulted widely with our members who work as disability support workers. Further, we recently conducted a survey of 448 ASU members who work in disability support and asked them questions about the NDIS Code of Conduct and the Quality and Safeguards Framework.

## 4. Introduction

The National Disability Insurance Scheme is being rolled out across Australia and is due to be fully rolled out by 2020. The scheme will provide greater choice and control for people with disability over the types of supports they need, when they need them and how they want them delivered to help them lead more independent lives. The Quality and Safeguards Framework (**the Framework**) and the Bill are important steps in ensuring that participants are delivered supports in a safe and ethical way.

ASU members support arrangements that ensure that quality and safe supports are delivered. However, ASU members have some concerns in relation to the Bill. The ASU therefore makes the following recommendations to this inquiry:

1. The Quality and Safeguarding Framework, the Quality and Safeguarding Commission, the NDIS Practice Standards and the NDIS Code of Conduct must be developed and implemented in conjunction with the disability support workforce.
2. All providers of supports under the NDIS should be required to be registered.
3. The Bill must ensure procedural fairness for workers during any investigation, and an internal appeal mechanism for decisions made by the Quality and Safeguards Commission.
4. The Quality and Safeguards Commission should have an additional responsibility for workforce development and training to proactively focus on the quality of supports and the skills of the workforce, and should be resourced to fulfil this responsibility.
5. NDIS pricing arrangements need to account for time for workers and providers to meet their quality and safeguarding obligations.

## 5. The need for quality and safeguarding arrangements to be developed in conjunction with the workforce

The introduction of the Framework, the Quality and Safeguards Commission (**the Commission**) and the Code of Conduct (**the Code**) represent a significant change to the regulation of disability support work. The consequences of breaching these obligations are significant and have the possibility of ending a worker's career. Disability support workers are the people who have extensive experience in delivering support to people with disability day in and day out. Accordingly, disability support workers should be at the heart of the development of the quality and safeguarding arrangements, not merely afforded an opportunity to comment on a proposed Bill or Code that has been developed without them.

The Department of Social Services (**DSS**) states that it has consulted with advocates for people with disability and National Disability Services (the peak body for disability organisations). However, another key stakeholder group has not been consulted at all - representatives of the disability support workforce have not been consulted in relation to the development of the Bill or the Code.

In our recent survey of 448 disability support workers only 4% felt that NDIS workers have been adequately consulted about the Code by the Department of Social Services or the NDIA. Only 12% felt they were adequately informed or very well informed about the NDIS Quality and Safeguarding Framework and the Code.

To ensure the efficacy of the Framework there needs to be buy-in from the workforce. This is more likely to happen where the workforce are treated as a partner in the development of the rules that will regulate them, rather than having arrangements that they were not involved in developing imposed upon them.

### **Recommendation 1**

**The Quality and Safeguarding Framework, the Quality and Safeguarding Commission, the NDIS Practice Standards and the NDIS Code of Conduct must be developed and implemented in conjunction with the disability support workforce.**

## 6. Provider registration

Section 73B of the Bill provides that the NDIS rules may require providers to be registered in order to provide particular supports. The Bill gives no further guidance as to what kind of supports NDIS workers may need to be registered in order to provide.

The explanatory memorandum to the Bill states that the requirement for registration will apply to “high risk supports”, and offers only one example of what may constitute a “high risk support”, namely “developing or implementing behaviour support plans which may include the use of a restrictive practice”.

The DSS submission to this inquiry expands upon this and suggests that low-risk supports include “providers of every day services used by the general public, such as gardeners or domestic cleaners”. It suggests that higher-risk supports include “behaviour supports including restrictive practices”. The only examples offered appear to be at the extreme ends of the spectrum of risk – many, or most supports provided to NDIS participants are likely to fall somewhere in between these two examples, for example support with day to day living and community participation – and there is simply no guidance to indicate whether providers of those supports will need to be registered.

Only the Code will apply to unregistered providers. Action can be taken in the event that a breach of the Code has occurred and is reported. But by then, harm will have already occurred. For unregistered providers, there will be no other quality assurance, auditing, education or training required. In our view, this is inadequate. There needs to be a baseline of quality assurance in relation to supports provided to people with disability. This can only be achieved where providers of supports are registered and subject to uniform reporting and auditing obligations.

This will not interfere with the choice and control of people with disability. A baseline level of quality assurance does not restrain providers from offering a higher quality service or having higher qualifications and competencies.

In our view, the starting position should be that all providers of supports under the NDIS should be registered, and only where there is a very good reason should providers or categories of providers be exempt.

### **Recommendation 2**

**All providers of supports under the NDIS should be required to be registered.**

## 7. The need to ensure procedural fairness for workers as part of the Code

ASU members are very strongly of the view that the Bill and the Code should contain clear commitments that NDIS workers will be afforded procedural fairness in the event of a complaint or investigation.

In the event that a complaint is made in relation to a worker’s conduct or that an investigation is commenced, it should be guaranteed that:

- The worker will be notified of any allegations that are made against them (including particulars of the allegations);
- The worker will have an opportunity to respond to any allegations made against them;
- The worker will be entitled to be represented in relation to the allegations or in any investigation.

These principles are presently protected in our industrial relations system, and should not be undermined by the Framework, Bill or Code. These principles are even more important given the grave consequences that can flow to a worker for a breach of their obligations.

It is critical that workers are given an opportunity to respond to allegations at an early stage, to ensure that any information they are able to provide is as close as possible in time to the time of the alleged conduct.

There should also be a requirement that investigations are completed as soon as practicable (while not adversely affecting the quality of the investigation), given the impact uncertainty may have on a worker. We are also of the view that there should be some guidance provided in relation to circumstances in which a worker may be stood down or suspended. The impact of a stand down or suspension would be particularly serious for casual workers, who would not be able to access any form of paid leave during such an investigation.

There should also be an internal appeal process available in relation to decisions made by the Commission, rather than necessitating an appeal to the Administrative Appeals Tribunal in the first instance. This will ensure that matters can be dealt with promptly, and at lower expense and stress to all parties.

### **Recommendation 3**

**The Bill must ensure procedural fairness for workers during any investigation, and an internal appeal mechanism for findings made by the Commission.**

## **8. Investment in workforce development and training is paramount to ensuring a quality NDIS**

The ASU is concerned that workers will not get access to adequate training and support to understand the Framework, the Bill, and the associated Code and Practice Standards, and to consistently meet their obligations under the regulatory regime. Current training arrangements for NDIS workers are wholly inadequate.

The obligations on workers that arise out of the Bill and the Code will require workers to continuously develop new skills and qualifications relevant to the diverse needs of individual clients. These skills are essential to ensure that the individual rights of participants are promoted.

However, there is currently no person-centred professional development plan for the NDIS workforce. The capacity for NDIS workers to have their skills recognised, to develop new skills and to attain relevant person-centred qualifications is severely limited.

Furthermore, continuing professional development, in-house training and induction, and access to study leave is limited and varies across providers. As the sector becomes more competitive with the entrance of large for-profits in the market, access to these supports by workers will be further diminished as providers drive to reduce costs and increase profits.

Many of the obligations set out in the Code will require workers to have access to training and supervision. We fear that without significant investment of time and funding for training and education the Bill, the Commission and the Code will be ineffective in ensuring people with disability have access to safe and quality supports.

In our recent survey, in relation to training, our members told us the following:

*Workers need individual training and support to ensure they have the skills and abilities to manage and prevent violence, exploitation, neglect and abuse.*

- ████████ NSW

*Is there funding for training in this area, especially for new workers in the field, also ongoing for those already employed?*

- ████████ Victoria

*Need to ensure staff are trained on quality and safety standards and how to implement them and how to raise and act on their concerns.*

- ████████ QLD

The Commission will not in itself ensure a quality and safe NDIS, and nor will the Bill or the Code. There must be a proactive focus on skills and quality, rather than a punitive approach that is applied after an issue arises.

#### **Recommendation 4**

**The Quality and Safeguards Commission should have an additional responsibility for workforce development and training to proactively focus on the quality of supports and the skills of the workforce, and should be resourced to fulfil this responsibility.**

## **9. NDIS pricing and quality and safeguarding obligations**

NDIS pricing arrangements need to account for time for workers and providers to meet their quality and safeguarding obligations.

It is critical that measures to ensure quality and safety are not introduced in a vacuum. As it presently stands, the quality and safeguarding arrangements appear, in some ways, to be divorced from the NDIS funding model.

NDIS pricing assumes that only 5% of time excluding leave (which works out to just 3 minutes an hour) is not directly with participants or travelling between clients. This simply does not adequately allow for the necessary administration, training, peer support, team meetings, and supervision that is required in the role of a disability support worker.

Further, there are specific requirements set out in the draft Code that cannot be accommodated under current pricing arrangements. For example, the expectation that providers must offer reasonable supervision is limited by the fact that there is inadequate time and funding for supervision is built in to the NDIS pricing model, as described above. Another example is the obligation for workers to maintain competence in the supports they provide - this must be underpinned by adequate time and funding for training.

A further example is the expectation for workers to keep detailed and comprehensive records. As stated above, the current pricing model only allows 3 minutes an hour of non-client facing time. This is inadequate to allow for the administration that may be required, let alone training and supervision requirements. We are concerned that workers will need to complete these records outside of their paid working hours in order to comply with the Code.

We do not dispute that these requirements are necessary in order to ensure a quality NDIS. Our concern lies in the capacity for these requirements to be met under current price settings.

#### **Recommendation 5**

**The Quality and Safeguards Commission should have an additional responsibility for workforce development and training to proactively focus on the quality of supports and the skills of the workforce, and should be resourced to fulfil this responsibility.**

## **10. Conclusion**

ASU members support the introduction of the Quality and Safeguarding Framework as an important step in ensuring a quality and safe NDIS.

However, it is critical that workers are at the heart of the development of these quality and safeguarding arrangements, as they are significantly impacted, and have a deep understanding of the

requirements disability support work and how the quality and safeguarding arrangements will be implemented on the ground. Further, NDIS workers' rights to procedural fairness in the event of a complaint or investigation must be expressly protected.

The most significant problem with the Bill is that it is not underpinned with adequate funding and resources for training, workforce development, supervision, and administration for NDIS workers. Passing the Bill without addressing this critical issue undermines the goals of the Bill, and will not ensure a high quality and safe NDIS.