



DANA Disability Advocacy
Network Australia

Submission

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

October 2023

About us

Disability Advocacy Network Australia (DANA) is the national representative body for a network of independent disability advocacy organisations throughout Australia. We also are a member of the NDIS Workforce Dialogue, convened by Minister Shorten.

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Introduction

Disability Advocacy Network Australia (DANA) thanks the Senate Standing Committee on Education and Employment for the opportunity to contribute to the current inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.

DANA represents independent disability advocacy organisations across Australia who provide significant amounts of advocacy support to people with disability and their families, particularly in relation to the National Disability Insurance Scheme (NDIS).

Advocates, as independent supporters of people with disability, act in the interests of the person with disability and have no connection to government, the NDIS, or to disability service providers, or disability support workers, creating a genuine service committed to upholding individual human rights. Many advocates are also people with disability or family members. Advocates are an independent voice with and for people with disability when services and supports go wrong, and engage in preventative support, empowering people with disability as consumers.

Advocacy involves many different roles: advocacy at individual, peer, systemic, family, legal and citizen levels all have an impact on wellbeing and outcomes for people with disability.

Currently, the NDIS and related matters now occupy about 50% of the disability advocacy workload.

This intensive and specialist engagement with the NDIS gives advocates, and DANA, significant insight and expertise about the functioning of the scheme, how people with disability and their families are faring, and how to improve and reform aspects of the NDIS that will improve outcomes. DANA has also contributed to previous consultations about quality and safeguarding, regulation and registration.

We have significant concerns about the lack of consultation with people with disability and our families, supporters, advocates and organisations about the potential impacts of this legislation. We urge the Committee to consider measures to engage with disability representative organisations on this legislation.

Our key recommendation to the Committee is:

Recommendation: The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 is amended to ensure that the needs of people with disability who use digital labour platforms are considered in any Fair Work Commission orders.

Choice and control

Choice and control by people with disability and their families is central to individualised funding systems, including the NDIS. People with disability rightly need and expect to have a choice about how, when and by who their services and supports are delivered. This control by people with disability and families is also a key safeguard against violence and abuse.

Before the NDIS, the seminal Shut Out report¹ revealed how little choice and control people with disability had - people with disability talked in depth about not having any say about what happens in their lives, including over the services and supports they used.

The report heard that the previous disability support system was 'characterised as irretrievably broken and broke, chronically under-funded and under-resourced, crisis driven, struggling against a vast tide of unmet need. As a result, many felt more time was spent rationing services than delivering them.' People with disability also said that 'the system is characterised by a 'one-size-fits-all' approach in which there is very little choice or flexibility. Programs and services were built around organisational and system needs, rather than the needs of clients.' People reported immense frustration with what services and supports were available, and with the demeaning process of proving eligibility.

The implementation of the NDIS has both increased the availability of services and supports, and the ways to get those supports. People with disability and families have been able to structure supports around their lives, using a variety of services to meet their needs.

Retaining this choice and control and the flexible use of supports and services is vital for people with disability and their families. The recent Own Motion inquiry into platform providers by the NDIS Quality and Safeguards Commission found that people with disability used these platforms:

because they could exercise choice and control and services could be delivered more flexibly. Cost was also a consideration but not nearly as central to decision making as choice and flexibility. For a small number of participants, Platform Providers are their only means of accessing the services and supports they need.²

DANA recently commissioned for the NDIS Review a report - Redesigning the NDIS³ - by Dr Simon Duffy and Dr Mark Brown, that advocated for a NDIS 2.0 where people with disability 'create a system of personal budgets and self-directed support to ensure everyone has clear and meaningful entitlements they can control.'

This reiteration of control from and by people with disability of their support budgets is a vital step to fully realising the vision of the NDIS.

¹ <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/shut-out-the-experience-of-people-with-disabilities-and-their-families-in-australia>

² <https://www.ndiscommission.gov.au/own-motion-inquiry-platformproviders#paragraph-id-6266>

³ <https://www.dana.org.au/online-dana-discussion-redesigning-the-ndis-report/>

NDIS issues

DANA has engaged significantly with the current NDIS review, raising a number of issues with the functioning of both the market of services and supports and the NDIS Quality and Safeguards Commission.⁴ Advocates are increasingly managing consumer-level complaints⁵ and issues with service provision and acting as market stewards. In addition, advocates are strongly concerned about the lack of action from the Commission in response to credible and repeated complaints about violence and abuse against people with disability.

Current regulatory and registration systems are inadequate to address the scale of violence and abuse of people with disability, and to provide consistent, high-quality services available from their NDIS plans. These systems are not accessible and rely on people with disability and their families making complaints in order to activate regulatory mechanisms. There is little to no proactive work to ensure quality service delivery.

Our consultations with both disability advocates and people with disability found the following key concerns:

- not enough advocacy support is available for NDIS participants
- raising an issue does not lead to change
- mainstream supports (like the legal system) are not accessible for people with disability
- reporting issues is too difficult
- not enough support for participants from family, friends, or allies
- no specific support for NDIS participants around quality and safety
- NDIS services being unsafe⁶

Advocates and people with disability suggested a range of solutions and improvements:

- more funding for advocacy and available to support people with disability with quality and safety issues
- giving the NDIS Commission more power to investigate issues and regulate NDIS services and service providers
- more information and support about quality and safety to help participants choose safely and make complaints when they need to
- focusing on making sure people have community connections and access to friends, family and decision supporters
- more training requirements for service providers
- making sure people with disability are safe accessing mainstream services, like the legal system, to make complaints
- more safety requirements for service providers.⁷

⁴ <https://www.dana.org.au/discussion-paper-quality-and-safety/>

⁵ <https://www.dana.org.au/wp-content/uploads/2023/09/230822-NDIS-Review-Consumer-Protection-final.pdf>

⁶ DANA NDIS Review consultation, forthcoming on DANA website

⁷ As above

Across focus groups and surveys, the issue of getting quality support, ensuring access to independent information and receiving timely responses to complaints were at the forefront of issues raised.

The recent Own Motion inquiry into platform providers⁸ by the NDIS Quality and Safeguards Commission raised significant concerns about this, saying people with disability ‘felt commodified, overwhelmed, underserved and at times unsafe. Exercising choice and control should never be at the cost of personal safety and participants have a right to feel seen and valued as consumers of services in the NDIS market.’

Independent disability advocates play a key role in supporting choice and control of people with disability when using NDIS supports.

⁸ <https://www.ndiscommission.gov.au/own-motion-inquiry-platformproviders#paragraph-id-6266>

Disability support workers and people with disability

People with disability have the biggest stake in a high quality, reliable, skilled and safe workforce of disability support workers who are essential to living their lives.

Research into what people with disability view as important in disability support workers found that 'online support provider platforms centred around these values have been developed, providing avenues for people to lead their supports. However, more needs to be done to support people with disability to take charge of their supports and realise these principles in practice.'⁹ This aligns with our findings through the NDIS Review.

The research asks people with disability about what makes a support worker and finds that attitudes towards people with disability are key, rather than qualifications alone.¹⁰ This need for disability support workers with a willingness to see the person with disability as a whole person is partly why people with disability may use platform providers and prefer to do so.

Having the flexibility to choose the right disability support workers, as well as the right kind of support, is vital for people with disability, particularly those that are looking for specific characteristics or qualities, such as LGBTIQ+ friendly, specific support experience or availability at specific times.

Many people with disability who live in regional and remote areas also often use a wide range of supports including from platform providers, because of the lack of other services in those areas.

⁹ Megan Topping, Jacinta Douglas & Di Winkler (2022) "Let the people you're supporting be how you learn": a grounded theory study on quality support from the perspective of disability support workers, *Disability and Rehabilitation*, DOI: 10.1080/09638288.2022.2148300

¹⁰ As above

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

Given the importance of both choice and flexibility, and building a quality workforce, to people with disability and their families, DANA has been keen to engage on the current Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.

However, we have significant concerns that the views and needs of people with disability and families have not been properly considered in either the development of the Bill or in the public discussion about the new legislation.

While we agree that there is merit in the Fair Work Commission being able to apply some minimum standards, we remain concerned that the essential support needs of people with disability may not be prioritised.

For example, a recent industrial relations change¹¹ required many workers to work a minimum two-hour shift. While the NDIS was clear that this should not impact on people with disability who required less support, and that providers needed to manage this, the experience of people with disability was that this was not the case. Advocates reported that people with disability were being expected to pay for two hours of minimum support whether they wanted it or not, and then finding their allocated support budgets were being exhausted months earlier than expected.¹²

This shows that the needs of people with disability are not being considered in delivering changes to industrial instruments.

Recommendation: The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 is amended to ensure that the needs of people with disability who use digital labour platforms are considered in any Fair Work Commission orders.

Minimum rates of pay

We strongly support disability support workers being paid the correct rate of pay, including when they use platform providers. This ensures that the overall workforce quality and stability can improve, and people with disability can be confident of having the right support workers when and where they need them.

Quality work

DANA also supports high quality disability support work, with access to training, including as delivered by people with disability and based in disability rights. The current NDIS Review is looking at how to incentivise good quality support and focus on outcomes, rather than the current model that promotes quantity of support. However, mandatory training and qualifications needs very careful consideration and extensive consultation with people with disability, families, supporters and their organisations.

All of the current discussions about improving worker conditions must be in accord with this goal of the NDIS Review. In addition, the Disability Royal Commission final report

¹¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/pr737905.pdf>

¹² <https://www.ndis.gov.au/news/8076-changes-social-community-home-care-and-disability-services-schads-industry-award-1-july-2022>

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recommendations to end violence and abuse against people with disability need to be accommodated in any changes to industrial relations instruments and legislation.