

**MCGRILLEN, Hilda**

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**From:** MCGRILLEN, Hilda  
**Sent:** Friday, 18 March 2016 9:38 AM  
**To:** MCGRILLEN, Hilda  
**Subject:** FW: a few quick paragraphs on the NDIS Act review [SEC=UNCLASSIFIED]

-----Original Message-----

**From:** KIRKALDY, Jennifer  
**Sent:** Wednesday, 25 November 2015 9:31 AM  
**To:** MCGRILLEN, Hilda <Hilda.MCGRILLEN@ndis.gov.au>  
**Cc:** ANAWATI, Nick <Nick.ANAWATI@ndis.gov.au>  
**Subject:** a few quick paragraphs on the NDIS Act review [SEC=UNCLASSIFIED]

Hi Hilda,

Could you please put together a few very quick paragraphs on the NDIS Act Review covering:

- EY's treatment of our submission (eg, how our submission is reflected in the draft recommendations)
- key recommendations, and
- next steps (inc any further consultation, finalisation of the report, and consideration by government)?

I have previously prepared the following update which might help but don't take them as too close a guide:

- The draft NDIS Act Review report has been provided to the Steering Committee which will meet to consider the draft report on 25 October.
- All but three of the NDIA's submissions have been incorporated into the report. The exceptions are: widening of delegation groups, amendments to Compensation sections and amendment to acquittal processes of NDIS Amounts.
- None of the additional recommendations contradict submissions made by the Agency. A copy is attached (but should be kept to a limited distribution).

Would you mind putting these together over the next half hour or so (they really only need to be quick).

Thanks,  
 Jen

Jennifer Kirkaldy

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The NDIA's submission is categorised into four types of recommendations. These are:

1. minor changes;
2. substantive issues identified during trial;
3. changes required to implement the SDOM; and
4. necessary reforms to implement stronger cost controls.

Minor changes to improve the language or provide further clarification include general improvements to sections such as extending the Agency's reporting timeframes, enhancing the Agency's information gathering powers and the addition of a Scheme principle to highlight the importance of an insurance-based approach to planning.

The submission recommends substantive changes to address issues that have arisen during trial or which represent emerging Agency experience. For example, clarification is needed in s. 24 around how the disability requirements should operate for people with chronic health conditions. The need for this clarification is evident in two decisions from the Administrative Appeals Tribunal. In addition, legislative recognition for the role of supporters is needed as experience throughout trial has showed that the current provisions do not reflect the lived experience of co-decision making and supported-decision making.

In its submission, the Agency requests greater clarity in the legislative framework regarding the circumstances in which the CEO is permitted to specify how particular matters are to be implemented in practice. This would enable the Agency to effectively implement the SDOM. Similarly, the Agency requests an explicit regulation-making power to allow the CEO to delegate power under the Act to non-government bodies, to recognise that some functions could be delivered more effectively through these mechanisms to achieve better outcomes for participants.

In addition, the Agency has identified measures that would assist with controlling costs and promoting Scheme financial sustainability. Strengthening provisions relating to payment and acquittal processes of NDIS amounts for self-managed plans would give the Agency greater power to control costs by having visibility of the spend on supports. Likewise, measures to identify and recover compensation amounts from participants will greatly assist the Agency's ability to control Scheme costs, by ensuring participants are using their compensation awards for what they are intended, and therefore not needing to claim these supports from the NDIS.

Ernst and Young (EY) have provided the draft *Independent Review of the NDIS Act* report to the NDIS Act Review Steering Committee.

The draft report contains approximately 35 recommendations. Its key findings have identified that, overall, the existing legislative framework is enabling government to further the objectives and principles in the NDIS Act. However, it was noted that the legislative framework will be tested during transition to full Scheme and for this reason, another review of the NDIS Act should be conducted in three years time.

EY noted that there is a need for greater clarity on the intent of government policy and how the NDIS should be administered with regard to delivery of ILC and the intentions of the disability requirements in s. 24 and how this should interact with chronic health conditions. The review has also indicated that there is scope to amend the NDIS Act to enhance the efficiency and effectiveness of NDIS administration, and also scope to amend the wording of the Act to ensure the legislative framework better reflects government policy, Scheme operation and the lived experience of people with disability.

In its draft report, EY have adopted several recommendations put forward in the Agency's submission to the review. Exceptions to this include the Agency's suggestion of widening delegations groups, amendments to compensation provisions and changes to the acquittal processes of NDIS amounts. It should be noted that none of EY's recommendations contradict submissions made by the Agency.

EY will finalise its report in late December 2015, for presentation to DSS and the Minister for Social Services. Under s. 208 of the NDIS Act, the Minister is then required to do the following:

- Provide a copy of the report to the COAG Disability Reform Council (DRC) and ask them to make recommendations in response to the report;
  - Table a copy of EY's report in each House of Parliament within six months of giving the report to the DRC;
  - Obtain COAG's response to the report within six months after giving a copy of the report to the DRC; and
  - Table COAG's response in each House of Parliament.
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