

Submission to Dept Social Services on the Section 10 NDIS Supports by the Direct Employers Network

Who are we?

NDIS Direct Employers Network is a common interest advocacy and peer support group for adults (NDIS Participants and Nominees) who:

- Directly employ ongoing support staff for self and/or family member/s who are NDIS participants. Some directly employ supports for one participant. Others for more than one related participants (e.g. couples who are both participants; multiple members of a family who are participants)
- Carry the full legal and regulatory responsibilities of an employer
- Directly employ staff via one of the various possible small business social enterprise structures including:
 - as an ABN registered business;
 - as a Company;
 - as an incorporated association;
 - as a Trust
 - or via a WPN (most common in Western Australia)
- Usually have self-managed or plan managed NDIS Participant Plans

We recognise that those who directly employ support staff are a unique group, different to self-management, as we self/family govern and operate an entity and carry the full legal and regulatory responsibilities of employers in the state and federal jurisdictions.

This includes the employer responsibilities for a proactive approach as regulated in various jurisdictions (e.g. for proactive prevention of harassment and for workplace health and safety etc)

Direct Employers are a diverse group including participants with varied disabilities, varied levels of support needs from low need to complex 24/7 high intensity support needs, and varied individualised models of supports developed and fine-tuned overtime to meet unique individual needs, context and circumstances. Direct Employers are a growing in numbers, particularly for participants with very high support needs who are often inadequately supported by the traditional old style inflexible services. The passed "Closing the Loopholes" Bill has also tightened the definition of employee and who needs to pay super, many NDIS participants are now *required* to become direct employers, significantly increasing the Direct Employers cohort. It is especially important to recognise that this latter group of people are not direct employers by choice, but by legal requirement of these recent legislative changes.

Collectively we have some things in common including:

- dissatisfaction with the old style paternalistic models of support offered by traditional service providers with many of us having had very negative experiences of these services in the past, and

- persistent determination to fully self-direct supports despite the significant unpaid work and responsibilities of being the employer, and
- lived experience of the better outcomes we achieve through the choice, control and flexibility of direct employment of bespoke and innovative supports
- adhering to the rules and guidelines of the NDIS including:
 - not spending beyond the total NDIS Plan value but driving maximum benefit for the funding dollars for the participant in line with their Plan goals
 - adhering to the guidelines of how Participants can use different budgets in the NDIS Plan
 - adhering to rules such as not employing family members nor deriving personal benefit.
- obligations to fulfil the legal requirements of other federal and state regulators, including but not limited to: ATO, Fairwork, state workcover bodies, portable leave bodies.

Under the recommendations of the NDIS Provider and Worker Registration Taskforce for a separate category of registration, Self-Directed Supports Registration Category we will be subject to compliance processes including Participant Check-ins and Complaints and Reporting requirements. This mitigates potential risk.

What are our concerns about the NDIS Supports lists for those who self-direct NDIS supports by direct employment?

This submission is limited to raising concerns specific to us as Direct Employers and does not address additional concerns we hold regarding other general issues about the lists. Members of our group will make individual submissions regarding those additional concerns.

It needs to be noted that Direct Employers may directly employ up to 8-25 employees for whom we have full legal employer responsibility.

The key gaps in the NDIS Supports List for Direct Employment situations include:

- **The legitimate oncosts and provisions arising from our responsibilities as legal employers of workers.** This includes regulated provisions for meeting all state and federal regulator requirements of employers, such as Workplace health and Safety and staff entitlements provisions such as long service leave provisions and Domestic and Family Violence Leave. This includes provisions for the regulated requirements for a proactive approach by employers in relation to prevention of workplace harassment, which brings costs such as mandatory training of staff on this and development/adaption of relevant resources etc.
- **Capacity building supports for participants to develop skills for self-directed supports** through direct employment
- **Provisions for essential employer responsibility oncosts in the event of an incident** such as a staff grievance process requiring investigation or mediation.
- **Purchase of workplace equipment specifically for directly employed employees work use.** For example purchase of a printer or ergonomic office chair for personal participant use is not an NDIS support but purchase of a printer or ergonomic office chair for employees use in the workplace is an essential cost of direct employment responsibility.

All workplace equipment purchases for employee use should be recognised as legitimate NDIS claims (e.g. filing cabinet/filing shelf, staff desk, WHS gear such as Workplace First Aid Kit; subscription fees for necessary workplace software/apps etc. etc)

Surely the NDIA cannot expect NDIS participants to use personal money to pay for workers office equipment for a meeting employer responsibility for safe effective workplace.

- **Purchase of workplace consumable supplies for directly employed employees use** e.g basic staff amenities, stationary, staff PPE and infection control supplies
- **Accounting and book keeping services costs** if used by the direct employer of supports e.g book keeper to run Single Touch Payroll
- **Regulator required costs for setting up and maintaining the directly employment entity type** e.g. ASIC Annual Company Return fee applicable if using a company structure to directly employ
- **Costs of Self-directed Supports Registration if the recommendation of the NDIS Provider and Worker Registration Taskforce is implemented**

If the NDIS Supports List does not include all the legitimate employer responsibility oncosts and provisions of direct employment it will cause conflict with other regulators such as the ATO and Fair Work rulings. Failure to include these will be in direct conflict with other laws and will place direct employers in a position to be non-compliant and unlawful employers with penalties imposed on us. Further Minister Bill Shorten has publicly and repeatedly assured the disability community that self-management and direct employment will continue to be possible under the NDIS. We expect these assurances to be delivered including by recognising the legitimate full extent of oncosts arising from direct employment of support staff.

There are varied types of direct employment including those with an ABN (there is a diverse range here including a company structure, sole trader or social enterprise model, or Trust). Other operate with WPN. Each have different implications for how they operate in relation to NDIS claiming and special considerations need to be provided for in order to fulfil their employer obligations.

There are also concerns about the new legislation failing to account for direct employment of supports including:

1. criteria for getting an exception to the NDIS Supports list is old thinking about what a support is and doesn't take into account how a direct employer fits
2. the type of documentation required for claiming will be a new legislative instrument that must consider how direct employment works. A financial and claiming framework being inserted into the legislation has implications for direct employers. Evidence required for claiming will have to include acknowledging direct employment models in their diversity.

The Direct Employers Network would greatly appreciate the opportunity to further discuss these issues and to meet with the relevant NDIA/DSS decision-makers involved in finalising the NDIS Supports Lists.

We can be contacted on ndisdirectemployers@gmail.com