

## **Activ response to the exposure drafts of changes to NDIS Act and Rules.**

Activ welcomes the opportunity to comment on the proposed changes to the National Disability Insurance Scheme (NDIS) Act and Rules.

Some of the changes seem positive. In particular, Activ is pleased to see the proposed ability for participants to request a variation to their plan without having to undergo a plan reassessment. We hope this will mean that these variations can be applied in a timelier manner than in the current system.

There are some changes, however, that raise concerns.

### **Concerns**

#### *CEO power to vary participant plans without consultation and limited boundaries is risky*

The proposed changes empower the NDIS CEO to vary plans on their own initiative, without request, consultation or consent from participants.

While this may bring some benefits for participants, Activ is concerned around the lack of structure around this power. As a minimum, clear rules are required on how those powers can be used and what consultation is required in particular situations, to prevent the potential risks of an open-ended power for the CEO.

Although it has been explained in NDIS briefings that the power would be used for situations such as correcting a simple error included in a plan, the Act is not clear and seems to provide somewhat open-ended powers that could be interpreted differently into the future. Even in the example provided at the briefing, Activ believes the participant could and should be consulted.

Additionally, Activ believe that the CEO should be required to communicate the changes, and the rationale behind those changes, to the participant.

#### *Participants should not have to request the reasons behind decisions*

While it is pleasing to see that the rationale behind decisions will be shared with participants if they request it, Activ believes that it should be a responsibility of the NDIS to explain to the participants the reason behind every decision made about them, whether it has been requested or not.

Activ believes that it should be legislated that every decision made about a participant by a NDIA reviewer, must be accompanied by a statement of reasons.

*Timeframes and related obligations without remedy for breaches may be redundant*

It is logical to hold the NDIS to service standards and to ensure participants understand how long decisions will take. However, without any remedy for breaches of standards, the inclusion of these standards may not be effective.

The current Act sets out timelines for decisions and the NDIA reports on how they perform to their standards. These published results do not reflect Activ’s experience.

Activ’s customers have been significantly impacted by the length of time taken for funding decisions and the lack of communication around them, particularly in the case of Supported Independent Living funding. With the proposed changes, it is evident that the NDIS recognises that participants need clarity about their future and that the providers need to be able to plan their accommodation and service provision. Unfortunately, currently in Western Australia providers are finding that SIL application processes are taking six to nine months to finalise with little to no progress updates. Activ is not confident that by including more time frames in the Act and the rules without a corresponding remedy for a breach of the timelines, that this situation will be relieved.

Of the 22 SIL submissions lodged by Activ in 2021, 12 were approved and 10 were escalated on numerous occasions seeking a response. Of the 10 SIL submissions escalated the following delays were experienced;

	More than 90 days with no response from the NDIS	More than 120 days with no response from the NDIS	More than 150 days with no response from the NDIS	More than 210 days with no response from the NDIS	240 days plus with no response from the NDIS
Number of SIL submissions impacted	3	2	2	2	1

Delays in NDIS decisions significantly impact both participants and providers. In some cases, participants are being placed at serious risk. As seen in the table above, one participant has been waiting more than 240 days for an outcome from her SIL submission. This long period of uncertainty caused significant stress for those involved in the participant’s life. Activ chose to transition this participant into an accommodation group

setting as her mother passed away 12 months ago, her father recently moved into aged care to due to decline in health and her sister is fighting cancer. Without Activ and assistance from the Support Coordinator, this participant would be homeless. At present, Activ continues to escalate this case seeking an outcome for the SIL submission at its own cost.

#### *Appropriate communication is lacking under the current system*

Currently there is a complete lack of communication in the decision-making process. Participants, support coordinators and providers are often left up to their own devices to determine if funding has been approved. They are required to proactively search via the portal to determine this. Even then, this is not straightforward to establish. Additionally, there is no communication around decision delays. This leaves all parties in uncertainty and causes participants considerable stress.

An example of the lack of communication experienced by providers is the SIL Service Booking Recommendation which every SIL funded participant should receive. Activ's experience is that 50% of participants do not receive this. Of the remaining 50% that do receive a SIL Service Booking Recommendation, no rationale is provided for decreases to SIL funding. Creating further complexities to the problem, when the NDIS change the price level within a participant's plan from high intensity to standard intensity without consultation or rationale or some form of communication, the provider invests significant time doing the calculations to determine how the overall budget has been applied.

Activ believes that the opportunity has been missed to legislate for the appropriate required communication.

#### *Missed opportunity to simplify NDIS framework*

The NDIS framework is very complex and difficult to navigate for participants and providers alike. The proposed changes are adding to the complexity with new rules in different locations.

Activ has found that often planners are uncertain of the process and different planners provide different and contradicting information and there is inconsistency in approach and outcomes. The current complexity of the framework fuels this uncertainty and inconsistency.

Activ would like to see some simplification and consolidation of rules and principles into one location/document.

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