



SUBMISSION:

Proposed NDIS legislative
improvements and the
Participant Service Guarantee

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Introduction

Audiology Australia (AudA) welcomes the opportunity to provide a submission response to the Australian Government’s consultation on the proposed National Disability Insurance Scheme (NDIS) legislative improvements and the Participant Service Guarantee.

AudA is the peak professional body for the health profession of audiology, representing over 3,000 audiologists across Australia. Audiologists are hearing health practitioners who provide hearing services and supports to a wide range of clients, including to NDIS participants. Audiologists help their clients preserve, manage, and improve their hearing and balance and their ability to process and understand sounds. Currently, there are 22,363 participants with a hearing impairment in the NDIS. This represents 5% of the total 466,619 NDIS participants (NDIA 2021).

In principle, AudA supports the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill) and the proposed changes to the NDIS Rules. We consider that the Bill and proposed legislation will help ensure that the National Disability Insurance Agency (NDIA) is able to effectively support people with disability and improve NDIS processes and participants’ access to supports.

AudA has provided the following comments on the Bill and the NDIS Rules for the Government’s consideration. We have also provided responses to selected questions supplied in the Guide for Submissions. Please refer below.

National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measure) Bill 2021

Schedule 1 of the Bill – Participant service guarantee

AudA supports the following proposed amendments to the *National Disability Insurance Scheme Act 2013* which AudA considers will improve participant experiences with the NDIS, as follows:

Item	Amendment	Comment
1, 2	Amends section 9 to provide for the definition of the ‘ <i>Commonwealth Ombudsman</i> ’.	AudA strongly supports this amendment as we consider the clarification of the Ombudsman role will enhance accountability and participant redress.
3, 4, 5	Amends section 20 which provides the timeframe within which the CEO must consider and decide access requests.	AudA supports this amendment.
10, 11	Amends paragraphs 26(2)(b) and 26(3)(b) to give a prospective participant up to 90 days to provide information requested by the NDIA to support an access decision.	AudA supports this amendment.

18	Repeals subsection 37(2) to remove the existing prohibition on varying a plan.	AudA supports this amendment.
38	Inserts new table items 6 and 6A in subsection 99(1) to provide that a decision by the CEO to vary a participant's plan or not is a reviewable decision.	AudA strongly supports this amendment.
40	Inserts new subsections 100(1B) and (1C) which creates the capacity for a person to request the CEO give them reasons for a reviewable decision which has been made.	AudA supports this amendment. However, AudA considers that every decision made by a NDIA reviewer should be automatically accompanied by a statement of reasons.
46	Inserts new subsection 101(2) which applies if a participant makes a request for review of a decision to approve or vary a statement of participant supports.	AudA strongly supports this amendment.
48	Clarifies the Administrative Appeals Tribunal's (AAT) jurisdiction, including the power for a plan to be amended while a matter is before the AAT.	AudA strongly supports this amendment.
54	Clarifies the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Participant Service Guarantee.	AudA strongly supports this amendment.

AudA raises the following concerns regarding proposed amendments to Schedule 1 of the Bill, as follows:

Item	Amendment	Comment
13	New section 32 provides that if a person becomes a participant, the CEO must facilitate the preparation of the participant's plan.	AudA is concerned by the lack of reference to a timeframe by which the CEO must facilitate the preparation of a participant's plan.
22	New section 47A empowers the CEO to vary a participant's plan without requiring a plan reassessment to be undertaken, or a new plan to be created.	AudA is concerned by Section 47A in which a variation of a participant's plan can be made on the CEO's own initiative.
50	Repeals subsection 174(3) of the Act which allows the Minister to make a legislative instrument prescribing the matters which must be contained in the quarterly report.	AudA considers that there is limited justification for removing prescribing of matters in their entirety from direct Ministerial authority.

59	All new rule-making provisions in Schedule 1 in relation to the Guarantee will be Category C rules, which requires the agreement of the Commonwealth and a majority of the states and territories.	AudA considers that the new rule-making provisions in Schedule 1 in relation to the Guarantee should require unanimous agreement by states and territories.
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Schedule 2 of the Bill – Flexibility measures

AudA supports the following proposed amendments to Schedule 2 of the Bill, as follows:

Item	Amendment	Comment
1, 2	Removes moderating language from section 4 referring to the capabilities of people with disability.	AudA supports this amendment.
3	Reinforces that people with disability are central to the NDIS and should be included in a co-design capacity.	AudA supports this amendment.
6	Removes the word 'gender' and replaces it with 'sex, gender identity, sexual orientation and intersex status'.	AudA supports this amendment.
4	Specifically recognise and respect the relationship between people with a disability and their families and carers.	AudA supports this amendment.
7, 8	Enables the CEO to publish approved forms that will assist participants to download, print and upload.	AudA supports this amendment.
10, 11	Amends section 14 of the Act to include funding of persons or entities to provide early intervention supports.	<p>AudA strongly supports the new paragraph 14(2)(a) which will allow funding to be provided to assist participants to fully access supports to mitigate impacts of market challenges.</p> <p>AudA supports the new paragraph 14(2)(b) which will allow funding to be provided to Early Childhood Early Intervention partners.</p>
12, 13	Amends section 17A of the Act, which sets out the principles relating to the participation of people with disability in the Scheme.	AudA supports this amendment.
14 to 18	Removes references to 'psychiatric conditions' when determining eligibility and replace with 'psychosocial disability'.	AudA strongly supports the update to the language of the Act in respect of psychosocial disability.
23	Amends section 31 of the Act which sets out principles relating to participant's plans.	AudA supports this amendment.

24	The effect of this amendment is to provide that a participant’s plan should strengthen and build capacity of families and carers to support participants who are children.	AudA supports this amendment.
32	Repeals and substitutes section 45 of the Act to clarify how payments can be made under the NDIS scheme.	AudA supports this amendment in principle.
33	Clarifies that a person who receives a NDIS amount on behalf of a participant must spend the money in accordance with both the participant’s plan and requests.	AudA supports this amendment.
34	Empowers the NDIS rules to prescribe requirements for NDIS providers that receive NDIS amounts of behalf of participants to retain records for a specified period of time.	AudA supports this amendment.
43	Sets out circumstances in which the CEO may require a person to take action to obtain compensation.	AudA supports this amendment.
50	Requires the Minister when making NDIS rules to have regards to the objects and principles of the Act, as well as to the need to ensure financial sustainability of the NDIS.	AudA supports this amendment.

AudA raises the following concern regarding proposed amendment to Schedule 2 of the Bill, as follows:

Item	Amendment	Comment
22	Inserts new subsections 27(2) and 27(3), which deals with the scope of NDIS rules that may be prescribed in relation to disability requirements and early intervention requirements.	AudA is concerned that the new subsections 27(2) and 27(3) will make the NDIS Rules too prescriptive in the assessment of whether a person has a permanent disability or reduced functional capacity.

Are there any other changes which could improve the participant experience in the NDIS?

We highlight that AudA members have reported receiving numerous comments from parents regarding the need for greater flexibility in using NDIS funding for their child who has a hearing impairment. Parents have stated that they would much prefer that funding for “community engagement” be allowed for them to purchase appropriate hearing aids, which would enable their child to participate more freely in situations where it is difficult to hear and understand what is being said.

In one specific example, a family was provided \$14,000 for “community engagement” but simply wanted to use \$3000 of the funding to purchase appropriate hearing aids for their child. If the family were able to use the funding to purchase appropriate hearing aids, it would make it easier for their child to enjoy “community engagement” activities.

National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021

Are the proposed engagement principles and service standards that will underpin how the NDIA works alongside people with disability in delivering the NDIS appropriate?

AudA considers the proposed engagement principles and service standards to be appropriate. In particular, we highlight the importance of ensuring that participants are provided with consistent information about the NDIS, their plans and funding allocations for supports and services.

We note that AudA members have previously raised the issue of there being significant funding discrepancies between participants of similar hearing losses. Whilst it is understood that participant plans are specific to participants’ needs, the significant variations in funding for hearing participants with similar needs and goals has led to confusion on the part of our members about how best to advocate for their clients’ hearing health care needs. It indicates that there are potential differences in the decision-making processes undertaken by NDIA staff and reveals a lack of transparency as to how outcomes are reached.

AudA members have also reported issues that they have experienced with NDIS planners, including there being significant variations in NDIS planners’ understanding of hearing and balance issues and how the NDIS eligibility criteria apply to people with hearing difficulties.

Our members believe that a better awareness of the effectiveness, necessity, and value of supports recommended by audiologists is required within the NDIS to ensure that Local Area Coordinators and NDIS planners are well informed on participants’ hearing health care needs and the importance of audiological interventions and supports. We note that an increased and uniform awareness of the hearing health care needs of hearing participants may help to support consistency in NDIA decision-making for this participant group.

Other comments – Interventions for children on the autism spectrum

AudA has received substantial feedback from members indicating that certain reasonable and necessary interventions that have been shown to be beneficial for the clinical needs of children with autism and functional listening difficulties are frequently and consistently declined by the NDIA on the basis that there is no evidence to support their use.

In regard to assistive technology (AT) such as the remote microphone technology (RMT), we note that there is significant evidence supporting the use of this AT as a reasonable and necessary intervention for children with autism and functional listening difficulties. AudA’s submission on RMT as a reasonable and necessary intervention can be viewed [here](#).

As such, AudA strongly recommends that the NDIA consider the inclusion of RMT and auditory therapy as interventions for this participant group.

References

National Disability Insurance Agency (NDIA), NDIS Quarterly Report to disability ministers, published 30 June 2021