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# Response to proposed NDIS legislative improvements and the Participant Service Guarantee

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## 1. Introduction

### 1.1 About Blind Citizens Australia (BCA)

Blind Citizens Australia (BCA) is the national representative organisation of Australians who are blind or vision impaired. Our mission is to inform, connect and empower Australians who are blind, or vision impaired and the broader community. We provide peer support and individual advocacy to people who are blind, or vision impaired across Australia. Through our campaign work, we address systemic barriers limiting the full and equal participation of people who are blind or vision impaired. Through our policy work, we provide advice to government and the community on issues of importance to people who are blind or vision impaired. As a consumer-based organisation, our work is directly informed by lived experience of blindness and vision impairment. Our members, our directors and most staff are blind or vision impaired.

### 1.2 About people who are blind or vision impaired

There are currently more than 453,000 people who are blind or vision impaired in Australia[[1]](#endnote-1) with estimates that this will rise to 564,000 by 2030.[[2]](#endnote-2) According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age.[[3]](#endnote-3)

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities. The extent to which people can actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

## 2. Blind Citizens Australia's submission

Blind Citizens Australia (BCA) would like to make a submission responding to the proposed NDIS legislative improvements and the Participant Service Guarantee. Our response is based on consultations with our members, previous and current submissions, and advocacy work in the sector.

## 3. Submission context

This submission is based on existing legislation and frameworks, noting gaps in the fulfilment of requirements laid out in existing documentation. The pertinent acts and legislation are:

1. The Disability Discrimination Act 1992 (Cth) (Austl.)
2. National Disability Insurance Scheme 2013 (Cth) (Austl.)
3. United Nations Convention on the Rights of Persons with Disabilities (CRPD) 2006
4. The National Disability Strategy 2010-2020 (this strategy coordinates the implementation of the UNCRPD)
5. The National Disability Agreement 2008
6. Exposure Drafts of the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Amendments) Bill 2021.

## 4. Submission

Blind Citizens Australia (BCA) welcomes the opportunity to provide a response to the proposed NDIS legislative improvements and the Participant Service Guarantee. We particularly welcome the fact that independent assessments have not been introduced within this reform, and that section 34 has not had an amendment to the language of ‘reasonable and necessary’ in terms of supports and services.

Additionally, we welcome many of the flagged changes, although we would like to raise reservations about the precise nature of some changes. These reservations largely stem from the compressed timeline for consultation, which has not allowed sufficient time to map changes against the recommendations from the 2019 review of the NDIS Act (the Tune Review). This is in direct contravention of Article 29, Participation in political and public life of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD), which states that State Parties shall “…ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with other.”

In our submission, we will address Changes to Plan Variation, changes to Becoming a Participant rules, Changes to Plan Management and Payment of Supports, and Reasons for Decisions. Finally, we will address additional changes which do not fall into any of these categories.

### 4.1 Changes to Plan Variation

BCA welcomes the inclusion of timeframes for Plan Reviews into the proposed changes to the NDIS Act. Further, the clarification of the language about Plan Reviews is welcomed to assist NDIS participants in understanding the processes that are undertaken when a Review is requested. This particularly relates to Schedule 1, 47A and 48. Section 47A allows for plans to be varied without a complete reassessment, enabling minor changes or corrections to a plan, at the “CEO’s own initiative or at the request of the participant.” Section 48 allows a reassessment of a plan at the “CEO’s own initiative.” This reassessment can either alter the plan entirely or cause a variation of the plan.

BCA welcomes stipulation of clear timeframes for changes, with a variation decision being capped to 21 days or less. Further, we welcome the ability for a rapid change of smaller changes to a Participant’s plan via variation. There are other changes, though, that we wish to address here. The powers vested in the CEO carry significant risk for Participants, because the CEO can vary or alter plans without consultation or consent of a Participant (refer to Rule 10 of the new Plan Administration Rule). The NDIS should operate with a Participant-centred approach, where people with disabilities are able to advocate themselves for funding for supports to live the life that they choose. The NDIS should not operate for people with disabilities, but rather with people with disabilities. Additionally, variation or reassessment needs to be supported by multidisciplinary or other professional recommendations for people who have disabilities e.g., for people who are blind or vision impaired, an Orientation and Mobility (O&M) specialist has unique insight into the supports needed for mobility etc.

### 4.2 Changes to Becoming a Participant Rules

The changes to Becoming a Participant rules have some welcome changes, with clarity being offered around the criteria of permanent impairment, or substantially reduced functional capacity (section 8 covers psychosocial disability), and clarity around Early Intervention Requirements.

The part of this change which requires further clarification is around this phrasing: “The impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.” The boundaries of “available and appropriate” require demarcation, to determine the point that options are deemed to be exhausted for treatment and the length of measures a Participant would be required to execute to meet this criterion. Does this take into consideration economic cost, or physical access to the treatment, in terms of availability? Further, how is management of a treatment measured to be appropriate or inappropriate? Would a clinical trial be considered appropriate, even if it carried significant risks to the Participant?

BCA has received feedback about continuous requests for re-evaluation of a disability meeting access criterion, despite the condition already being deemed permanent, with no treatment available or appropriate for their blindness which is functionally linked to a neurological condition.

An additional point for consideration in making this amendment is that disabilities often have a fluctuating functional impact, e.g., a person who is blind or vision impaired who has residual vision may be able to use their remaining vision in low light, however they may struggle in bright light or vice versa, or fatigue may cloud their vision further restricting the visual field, or pain from straining the eye may substantially reduce capacity to see at any given time. Consequently, the question needs to be posted about whether this change in the rules about Becoming a Participant need to be extended to other disabilities?

### 4.3 Changes to Plan Management and Payment of Supports

BCA would like to provide feedback about changes to Plan Management and Payment of Supports, particularly in creating a risk management strategy for the provision of supports to Participants. This safeguarding mechanism for Participants is a critical feature of any changes; a systemic failure in safeguards for Participants was revealed in the highly publicised circumstances surrounding the death of Ann Marie Smith in April 2020. Further, BCA welcomes the changes around Payment of Supports which would create a system whereby a Participant can tap a card to pay for the provision of services or supports.

BCA would like to request an extension to the clause that the CEO must be satisfied that self-management of a plan does not create an ‘unreasonable risk’ to the participant, to ensuring this ‘unreasonable risk’ is also mitigated for plans that are not self-managed (‘unreasonable risk’ being defined in Section 10).

In terms of the changes to Payment of Supports (section 45), it is essential that any move to create a ‘tap-and-go’ system is electronically accessible for people who are blind and vision impaired, including the provision of accessible format information about how to operate this system. If this system is run via a smartphone app, it is essential that this app is compatible with screenreading technology e.g., Voiceover on the iOS platform. This process requires codesign with people with disabilities, and user testing by people with disabilities, at every stage in the tap-and-go system development. Further, Participants of the scheme more broadly need to have the ability to opt out of any tap system, if they wish to pay via another method, or using a combination of methods.

### 4.4 Changes to Reasons for Decisions

BCA welcomes the changes to Reasons for Decisions rules in section 100 which compels the CEO to provide participants with ‘reasons for a decision.’ BCA has received frequent feedback from our members that the lack of transparency about decision-making has created challenging circumstances when requesting an unscheduled review of a plan or when advocating for supports or services in scheduled plan meetings.

The draft change specifies that a reason for decision will be given on request of the participant. We recommend that all decisions are provided with the reason for the decisions as a matter of course, rather than only on request. This would bring this in line with recommendations in the Tune Review.

### 4.5 Other Changes

BCA would like to address missed opportunities in this consultation on the NDIS legislation reform. BCA members have raised significant concerns about the lack of mandated leadership requirements for board members of the NDIA.

The Act sets out the requirement that, for the first time, people with lived experience of disability be considered for board appointments. We highlight the difference in definition of “people with disability”, who may be NDIS participants, and “people with lived experience of disability” who may include family of people with disability, to promote the appointment and reporting of numbers of both people with disability and people with lived experience of disability to the NDIA board.

The wording of the explanatory material provided states:

“Section 127 relates to the appointment of Board members and includes, at subsection (2), that a person is only eligible for appointment as a board member where the Minister is satisfied that the person has skills in one of a number of fields, for example, the provision or use of disability services, or financial management. This amendment will add lived experience of disability as a field for the appointment of Board members.”

While the appointment of people with disability to the NDIS board is a welcome addition to legislation, this wording implies that a person with disability may have a skill of ‘use of disability services’ and would not have other requisite board skills or knowledge. There are leaders with disability who serve on boards, are CEOs and participate in leadership development courses, who have governance and financial management skills. These people and their governance skills should be recognised in the appointment of people with disability to the NDIS board.

BCA members have raised significant concerns about the lack of mandated leadership requirements for board members of the NDIA with disability.

It is important that representation in a governance capacity is legislated, to ensure that the experiences of people with disability are truly represented in the places where oversight of the NDIA occurs.

## 5. Recommendations

BCA strongly recommends the following actions:

1. Section 47A is amended to allow for a participant to be consulted and provide consent for any plan variation or reassessment. Further, it is strongly recommended that constraints are placed upon the CEO’s power; the boundaries of these constraints must be transparently stipulated with the rules.

2. Clarification and clear delineation of the boundaries around ‘reasonable and appropriate’ treatment that would be considered prior to access being granted to the NDIS.

3. The rules for Becoming a Participant are extended to acknowledge the fluctuating functional impact of some disabilities beyond psychosocial disabilities.

4. The criterion for risk assessment in plan management is extended beyond self-managed to plans that are not self-managed.

5. An introduction of a tap-and-go system for payment of supports has an opt-out option for Participants who wish to use an alternative method of payment, or a mixture of payment types.

6. An introduction of a tap-and-go system for payment of supports is provided with accessible format information e.g., braille, large copy hard print, audio, or electronic format, and that the method for payment is accessible itself i.e., the Participant does not require third party assistance to complete a transaction. If this system is run via an app, it needs to be compatible with screenreaders like Voiceover on the iOS platform.

7. Codesign processes are used to design, create, and implement a new payment system for NDIS Participants. People with disabilities must be able to provide input at every stage in the design process, and people with disabilities must be engaged in user testing prior to rollout of the system to ensure that it meets accessibility requirements.

8. The provision of reasons for decisions to all Participants is a legislated requirement for all decision making about NDIS plans, without the Participant necessarily needing to request the provision of reasons. This is equally applicable to scheduled or unscheduled review of plans.

9. Section 58 of the proposed changes is amended to include a legislated requirement for board members of the NDIA who have disabilities themselves, and therefore, direct experience of disability.

1. Vision 2020. *State of eye health in Australia*. <http://www.vision2020australia.org.au/our-work/avoidable-blindness-and-vision-loss> [↑](#endnote-ref-1)
2. Australian Network on Disability. *Disability statistics*. <https://www.and.org.au/pages/disability-statistics.html> [↑](#endnote-ref-2)
3. Vision2020. *Eye health in Australia*. <http://www.visioninitiative.org.au/common-eye-conditions/eye-health-in-australia> [↑](#endnote-ref-3)