



NDIS Amendment (Participant Service Guarantee and other measures) Bill 2021 – Diversity South Comments

Background

Diversity South is a disability service organisation located in Mandurah Western Australia. For 25 years we have provided a range of supports and services to people with disability including those with high and complex needs. Regional and quality service provision across the Peel region and surrounding areas is our primary focus.

The Australian Government is proposing changes to the legislation underpinning the National Disability Insurance Scheme (NDIS) with the intent to make processes easier and better for NDIS participants.

The proposed changes are directly informed by the outcomes of the 2019 independent review of the NDIS legislation, conducted by Mr David Tune AO PSM

The relevant recommendations aligned to the proposals are the:

- the Participant Service Guarantee (PSG);
- improvements to payment flexibility, streamlining of processes and reducing red tape (plan administration); and
- recognising the transition of the NDIS to a full scheme that is available across Australia.

The government is also proposing amending the existing Rules on Plan Management and Becoming a Participant and minor changes to the Rules on Children, Nominees and SDA. It is noted the legislative amendments are grouped thematically in three schedules

- Schedule 1 will contain all the amendments which implement the Participant Service Guarantee (PSG) as well as two other minor measures.
- Schedule 2 will contain measures to make the Scheme more flexible. These measures are participant-focussed and build on the PSG measures in Schedule 1.
- Schedule 3 contains more technical amendments which are consequential to the transition of the NDIS to a full scheme.

Diversity South provides these comments as part of DSS seeking feedback however it is noted the short time frame for consultation does not acknowledge the critical nature of the proposed amendments and the



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potential adverse impact the proposed changes may directly have on the lives of participants. This is in direct contrast to the recent commitment by Disability Ministers across Australia to greater co-design and partnership with participants, providers and other stakeholders.

Submission

Participant Service Guarantee Rules

1. Do the Rules provide clarity to participants on the timeframes that will apply to NDIA decision-making?

The introduction of a policy which gives greater clarity around service expectations of the NDIA is welcomed in principle. However, what is unclear is if there are any consequences of these timeframes not being met by agency staff, or how these changes will be resourced.

2. Are the timeframes within which things must be done appropriate? Are they too long or too short?

There is still no clear pathway for participants in critical or crisis situations to access immediate support.

3. Are the proposed engagement principles and service standards that will underpin how the NDIA works alongside people with disability in delivering the NDIS appropriate? Are there additional particular types of consultation or engagement important to consider?

It is important that engagement is conducted between Participants, their carers and peers, Disability Service Providers, mainstream interfaces and the NDIA to make sure that the experience of interfacing with NDIS is a positive one. Ideally a “no wrong door” policy should be adopted to ensure that people with disability receive the supports they need in the first instance, with the financial transaction to be considered secondary to their needs.

4. The Commonwealth Ombudsman will provide an annual report to Government on the NDIA’s performance in delivering the Guarantee. The Rules set out what will be in that report. The Rules also set out the things the NDIA must report on in its quarterly report to Governments. Do the Rules clearly explain how both of those reports



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NDIS processes and the Participant Service Guarantee – proposed legislative improvements engage.dss.gov.au 2 Department of Social Services 2021 ensure the NDIS delivers on the promises of the Guarantee?

Whilst it is clear that the Commonwealth Ombudsman will be reporting on the NDIA's performance against the Participant Service Guarantee, it is not clear as to what authority they will have to enforce these rules. A report in itself does not provide participants with a practical solution to the service limitations of the NDIS in its current form.

Plan Administration Rules

1. Do the Rules clearly set out the circumstances in which a participant's plan can be varied, and the circumstances in which the NDIA would ordinarily first conduct a reassessment? (sections 10, 11 and 12 of the Rules)

Decision making power in the outlined rule changes rely heavily on assigning interpretative powers to NDIA delegates. This is fraught with danger to people with disability without clear definitions of the proposed changes. Further clarity is required in the rules regarding the following:

- Definition of 're-assessment'
- Definition of 'variation'
- Criteria for 're-assessment' as opposed to 'variation'
- Potential consequences of a plan re-assessment such as decline in value of funded supports
- Rights of appeal available to a participant who is subject to a 're-assessment' or plan variation

Being that the rules allow for the NDIA to initiate both plan variations and 're-assessments' as well as participants, it should also be clear in what circumstances that this would be deemed appropriate.

2. Any other general comments

Sections 14, 47A and 48 propose new rules. Section 209(8) provides for NDIS Rules to be categorised into Category A to D. This section of the Act is central to the national governance of the NDIS, because it



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CREATING A FULFILLING LIFE FOR PEOPLE WITH DISABILITY provides for rules to be approved either with the unanimous support of all jurisdictions, a majority of jurisdictions or by the Minister after consulting with jurisdictions. It would appear that many of the rules that would allow for Plan Variations to occur will be changed from Category A (requiring unanimous support of all jurisdictions) to Category D (in control of the Minister after consultation with jurisdictions). This will give the Commonwealth Minister unilateral control of much of the decision making of the NDIS, dilute the powers of state government stakeholders and undermine the shared governance of the scheme.

The NDIS requires joint governance by all jurisdictions and should not be diluted by amending the rules to give the Commonwealth Minister unilateral power. This is strongly opposed.

Plan Management Rules

1. Do the Rules clearly set out the circumstances in which a support must be specifically identified in a plan? (section 6 of the Rules)

Section 6 of the proposed Plan Management Rules set out the delegations for the determination (inclusion or exclusion) of the provision of supports to participants by service providers. This delegated power can effectively remove the participants “choice and control” of service provider as referenced in the Act. It is unclear as to whether these decisions can be appealed, and what evidence besides opinion of delegate will be considered first prior to making this decision.

2. Do the Rules clearly set out the things the NDIA will consider in protecting participants from provider conflicts of interest and help them maximise the benefits of their NDIS funding? (Section 8 of the Rules)

The NDIA should consider adapting supported decision making practices to build the capacity of participants and their nominees to recognize conflicts of interest that may arise during service provision, as opposed to excluding a particular method of service delivery or provider. Enacting a rule which prohibits a particular provider eliminates a participants overall choice and control goes against the intention of the scheme overall. The draft legislation and accompanying examples suggest this proposed power might extend beyond circumstances of clear conflicts of interest for a participant.



3. The Rules set out the considerations taken into account when a participant or their representative request to self-manage their NDIS funding, or use the support of a registered plan management provider. Is it clear how these considerations are designed to protect participants from unreasonable risk or harm? (sections 9 and 10 of the Rules)

Imposing the same rules relating to capacity upon Plan-Managed participants will place many participants, particularly those in regional and remote areas where the markets are thin, at significant risk. Plan managed funding allows participants to exercise greater choice and control by utilizing unregistered and mainstream supports to meet their goals. Furthermore it can be used as a way of accessing supports in an innovative way when access to registered providers is limited.

Whilst it is accepted that there can perhaps be a risk to a participant in accessing unregistered providers as they are not regulated, there is a greater risk to a participant when they are unable to access any services at all due to the way their plan is configured. Changes to this rule will result in many participants being required to instantly change the way they receive services, creating significant instability and risk of degeneration of condition.

It may be more appropriate to consider another mechanism to safeguard participants from risk of unregistered providers, rather than eliminating their access to them all together. Similarly the proposed changes will significantly reduce the demand for plan managers, an intermediary support which been established in good faith specifically for the purpose of supporting NDIS participants by registered providers at an expense which will not be able to recouped.

Becoming a Participant Rule

4. Any other general comments

While we acknowledge the importance of greater flexibility and streamlined administration, the proposed changes will not achieve this and potentially have an adverse impact on people with complex needs and those living in regional and remote locations., it is not clear why they have been limited to psychosocial disability and not made available to all cohorts who experience fluctuating disability and disability with complex treatment pathways.



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Expanding the Scheme eligibility to include those with episodic mental health symptoms will also lead to additional participants, and added pressure to sustainability. It should perhaps be considered that those in this category be the responsibility of the Mental Health system as opposed to the NDIS.

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CEO

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