# Concerns with proposed NDIS legislative and rule changes

* **Participants right to receive a draft plan before finalisation is vague** - the Tune review Recommended “participants being empowered to receive a full draft plan before it is approved by the NDIA” however, it requires the participant to request the draft, rather than it being provided as routine practice. There is no mention of a requirement for NDIA to provide a draft plan in either the Rules or Schedule 1 of the draft Act. Rather, it’s just within the new “Participant Service Guarantee”.

# Many changes to Plan Management rules, will limit a participants choice and control. Concerns include:

* + **Part 2 (8 ) 8 Supports not to be provided by particular providers -** a new rule that goes beyond the NDIA having power to specify only particular provider can deliver a support to a participant, to now allows NDIA to outline a specific provider that **cannot** provide support to the participant. This limits a person’s choice and control, a key principle of the NDIS Act. A big concern is that this power will be misused to limit participants to access only registered NDIS providers, and there are many providers and health professionals who support people with a disability who are not registered with the NDIS, but are evidenced based and recognised disciplines. NDIS registered providers do not equate to being a better quality provider or better outcomes for participants. NDIS suggests this change is aligned to the Tune Review recommendation 16b but this review recommendation was about restricting a particular provider from delivering support coordination only, not giving NDIA a blanket ability to restrict certain providers for any participant plan support.
* **Plan Management rules Part 3 (9) Unreasonable risk—registered plan management provider, plan nominee or child’s representative managing funding -** the following consideration has been added “ the possibility that the participant may receive supports from a person or entity that is not a registered provider of supports” which means that an unregistered NDIS provider could be reason for NDIS to determine there is an “unreasonable risk” and prevent a plan nominee or child representative from self managing. This limits a person’s choice and control, a key

principle of the NDIS Act. NDIS registered providers do not equate to being a better quality provider or better outcomes for participants..

# Broader powers for the NDIA CEO and delegates when determining whether to approve a plan variations (s47A) or reassessment (s48).

* + Under the proposed changes to Plan management rules, there are a list of considerations the CEO must have regard to when deciding to vary (s47A) or reassess (s48) a participants plan, but these are broad, with no clear descriptors for these considerations or what will trigger a variation or a full reassessment.
  + It also seems that CEO and delegates do not have to consult or get consent from the participants to do a review at their discretion, or outline why the CEO has initiated a plan reassessment at section 48, giving the CEO and delegates broader discretionary powers. This provision does not allow people with a disability to be equal partners in decisions about themselves and takes away their right to determine their own best interests, which contradicts the key principle 4(8) of the NDIS Act.
  + This is likely to lead to varying interpretation and inconsistency in when a plan is varied, reassessed or denial of both.
* **Language changes to section 48 of the NDIS act** - Concerned with the word “reassessment” that has replaced the word “review” under S48 on the NDIS act. It is appreciated the changes are to clarify the different plan “review processes” and mitigate confusion by participants about the multiple use of the word review but this is likely to be concerning language for people with a disability, who may misinterpret this as needing their disability/diagnosis to be reassessed or to have to undergo a formal assessment process.
* **TImeframes in the Participant Service Guarantee rules** Significant concerns about timeframes outlined for finalising plans are unreasonably long.
  + For new plans the CEO/NDIS has 90 days (for those under 7 years of age) and 56 days to finalise making a new plan with participant support. These are unreasonably long timeframes, particularly for a child participant, 3 months to finalize a new plan is a very long time to keep participants and their families waiting to know what their plan will include, and makes it hard to plan services for the year ahead or budget what funding they have left.
  + For plan “reassessment” under section 48 (currently referred to as change of circumstances/ unplanned reviews) there is a 56 day (8 week) timeframe to complete upon accepting the “reassessment” (which could take 21 days - see below). If a participant is seeking an early plan review/reassessment often this is because their needs and circumstances have changed and the plan is no longer adequately funded. Further there has also been an increase from 14 days to 21 day that NDIS has to agree to a plan variation (section 47A) or plan reassessment (under section 48). To wait 8-11

weeks is a long time if the funding is no longer adequate and risks access to services for that participant.

* Yet if the CEO initiates a plan reassessment under section 48, the timeline to finalise the new plan is only 28 days. This disparity in timeframes seems to be biased and grossly in favour of assisting the NDIS with making changes when they see fit, but not if a participant requires an urgent new plan.
* **the introduction of a direct payment platform**, allows a participant to have their funding be paid directly to the provider via a “tap and go” system and is promising. However it is understood this improved payment system is only available to registered providers, therefore participants that choose to use unregistered providers miss out on using the new easier payment system. It seems like NDIS are trying to coerce participants into only using registered providers and as outlined above this limits a person’s choice and control, which is a key principle of the NDIS Act. NDIS registered providers do not equate to being a better quality provider or better outcomes for participants.

# Becoming a Participant Rules -

* Significant Concerns that the proposed changes to ‘Becoming a Participant’ Rule has terms that are not defined, has significantly less detail than the current Rule and that important information is missing. For example “reasonable treatment” under part 8 and “other treatment” under part 9 are not defined and could lead to inconsistencies in determining who becomes an NDIS participant.
* Even more concerning is that vital information that is missing in the proposed changes, for instance in the **current Rule Part 6.2 states:**

6.2 However, a person *meets the early intervention requirements* if:

(a) the person:

1. has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or
2. has one or more identified impairments that are attributable to a psychiatric condition and are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or
3. is a child who has developmental delay; and

* The yellow highlights are not in the new Rule. The only reference to impairments that meet early childhood access requirements in the **new Rule is at point 14 which states:**

For the purposes of subsection 25(2) of the Act, a person’s impairment is prescribed (and the CEO is taken to be satisfied as mentioned in paragraphs 25(1)(b) and (c) of the Act) if:

* 1. the person is a child under the age of 6; and
  2. the impairment is a physical impairment, or an impairment to which a psychosocial disability is attributable; and
  3. the impairment, by itself or in combination with other physical impairments or impairments to which a psychosocial disability is attributable, results in developmental delay.