

Response to National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

Leadership Plus is a Victorian advocacy service for people with disability, funded by the National Disability Advocacy Program. We prioritise people with an acquired brain injury and those living in the local government areas of Kingston, Casey and Dandenong from culturally and linguistically diverse backgrounds.

In addition to our systemic work, Leadership Plus provides advocacy to approximately three hundred individuals each year. A majority of this work involves assisting people with disability in their interactions with the National Disability Insurance Scheme (NDIS, the Agency): access, planning, internal reviews and external appeals at the Administrative Appeals Tribunal (AAT). We are specifically funded to assist people with their external appeals and have a significant workload with advocates working full time on matters directly relating to the *National Disability Insurance Scheme Act 2013*.

General Concerns

Leadership Plus welcomes the opportunity to provide feedback on the proposed legislation, and to highlight the potentially adverse impacts that the implementation of such changes may have on NDIS participants. However, we note that the time frame of four weeks to respond to the proposed changes has been grossly inadequate. It has been more than 18 months since the Tune review was tabled in Parliament, and the complexity and breadth of the sixteen documents relating to the legislative changes reflect the time taken in their preparation. A minimum of three months would be a realistic timeframe for the disability advocacy sector to respond to these documents.

There has been no time to consult with the people with disability whose material lives will obviously be the most impacted by the proposed legislative changes or to support them to make their own submission to the Agency. Perhaps most egregiously in terms of inclusiveness and accessibility, there has been no Easy Read version of the guide to preparing a submission provided for people with cognitive disability.

Due to the time constraint in responding to the proposed legislative changes, we are unable to consider all aspects with the kind of rigorous analysis that they deserve. We therefore offer the following brief comments and hope they will guide the Agency in continuing to improve participants' experience of the NDIS.

Positive Aspects of Proposed Changes

Leadership Plus supports the following proposals:

- Inserting timeframes into the legislation and Rules, including timeframes around access, participant plans and internal reviews;
- Annual reporting by the Commonwealth Ombudsman to review the Agency's performance against the Participant Service Guarantee, in addition to participant experience;
- Clarification of the language around the different types of 'reviews' which was a source of confusion between participants and the Agency;
- Confirmation of the AAT's jurisdiction when it comes to reviewing plans which have been varied or replaced by new plans over the course of an external appeal.

Concerns Regarding Potentially Adverse Impacts of Proposed Changes

Proposed section 47A allows participant plans to be varied without a 'reassessment'.

We welcome this change as it permits plans to be amended where the amendments are not significant and *when it is requested by the participant* – such as where there are technical errors, changes to a participant's goals, or changes resulting from an AAT decision.

However, s 47A also permits plans to be varied at the discretion of the CEO, without request, consultation, or consent from the participant. We consider this to be a change that is unwarranted and deeply concerning. The CEO already has discretionary power to conduct reassessments – for example, if a participant declines to have their plan varied, the CEO can still undertake a full reassessment if that is needed.

4

The CEO's power to vary plans without consultation or consent by the participant should be exercised only in rare cases of urgency where the participant cannot be consulted within a reasonable time. The CEO's power to vary plans is also not constrained. Rule 10 of the new Plan Administration Rules sets out a non-exhaustive list of matters the CEO must consider when deciding to vary a plan on their own initiative. But these matters do not limit the CEO's power. This has the potential for variations like changes to funding amounts or restrictions on how funding could be used. These variations could be made without consultation with participants.

The CEO's discretionary powers are exercised through their delegate, which in practice usually means the NDIS planner, with all the inconsistencies in skills, training and experience in the field of disability that might be expected of individuals employed within a large federal bureaucracy. Arbitrary and sometimes uninformed decisions about funding and types of supports can be made by a delegate with profound and detrimental consequences for the person with disability.

We acknowledge that such decisions can be reviewed, either internally or at the AAT, but this aspect presupposes that the participant has the resources and knowledge to pursue a review, or has access to an advocate to assist in the process. Many disability advocacy agencies have had to close their books or maintain consistently long client waitlists for assistance with external appeals in particular. Resources are finite and there is strong argument that disability advocates are under-resourced to meet the burgeoning demand. We note that the entire review process can be complex and lengthy, particularly in the case of external reviews, and that many people with disability report the experience as being one that is stressful and disempowering. Arguably, there are many more NDIS participants unaware of review options or advocacy.

We also note that data produced by the Agency and AAT shows that not only is there an increasing number of AAT applications year-on-year, but that NDIS appeals are also significantly more likely to result in a change to the original decision as compared to the AAT's other divisions. That is, in cases that are appealed to the AAT, **the Agency's initial decision is more frequently found to be wrong than decisions made by any other government body appealed to the AAT.** We cannot see the justification in further entrenching the CEO's power, through their delegate, to vary a participant's plan without consultation, when too many decisions under the present legislation are already overturned on appeal.

Rather than risking increasing escalation of reviews to the AAT, with all the attendant costs to the Agency and the potential harm to the participant, we would like to see

more resources directed to appropriate training in disability awareness for delegates tasked with making the decision to vary a participant's plan. Apart from rare and exceptional circumstances, we consider it a matter of human rights for participants to be consulted about any aspect of their NDIS plan.

With more time, we would welcome the opportunity to provide more detailed feedback on the experience of people living with disability and the potential and significant impact of this legislation change.