

**Submission to Department of Social Services regarding NDIS Amendment  
(Participant Service Guarantee and other Measures) Bill 2021**

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<b>NDIS's relevance to the Author</b>	Father of a young man with significant disabilities who has been an NDIS participant since mid-2018
<b>Intent of Submission</b>	To highlight concerns with proposed changes to NDIS legislation
<b>Date of Submission</b>	30 September 2021

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## 1 Introduction

The Department of Social Services (DSS) has advised the Government is proposing changes to the *National Disability Insurance Scheme Act 2013* (NDIS Act). Among the material published regarding the proposed changes there is an:

- Exposure Draft of the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021* (draft Bill)
- Explanation of proposed amendments to the *National Disability Insurance Scheme Act 2013* (explanation document)

The author thanks the DSS for the opportunity to comment on the proposed amendments and has prepared this submission to serve that purpose.

In support of the comments offered later in this submission the author will provide some background on his son.

## 2 Background

The author's son – referred to hereafter as 'MJ' – is a man in his early 30's. He was diagnosed with Autism Spectrum Disorder (ASD) at the age of two and with a significant intellectual impairment in his school years<sup>1</sup>. He completed his schooling at a state-run special school. In 2008, during a prolonged hospital stay to battle a viral infection MJ developed epilepsy. It took over a year to get the seizures under control, during which time MJ lost further cognitive and motor function.

MJ requires a high level of support, has poor gross and fine motor skills, and consistently demonstrates a range of challenging behaviours.

Prior to entering the NDIS in mid-2018, MJ's challenging behaviour had become so frequent and intense that his family – fatigued and stressed by the continual conflict with MJ, and tension with his service provider – feared they would have to formally implement restrictive practices.

NDIS enabled MJ's family to select, hire and train the right kind of people to support MJ. NDIS also afforded access to competent experienced professionals (Speech and Language Pathologists, Occupational Therapists and Psychologists) to help the family and support team build an understanding of how MJ experiences the world and how best to help MJ make his way in that world.

MJ's transformation in this environment has been nothing short of amazing – though he still has his moments of stress and frustration, he is a much calmer happier young man (a fact backed up by the behavioural data routinely collected by the family and support team).

MJ is currently supported by a team of five individuals who assist him both at home and out in the community.

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<sup>1</sup> MJ was ascertained at a level 6, now equivalent to ASD Level 3.

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### 3 Comments and questions

Having read both documents listed in section 1 of this submission, the author has elected to focus his comments on Schedule 2 (flexibility measures) of the draft Bill – specifically item 32 on payments made under the NDIS.

Pages 34 and 35 of the explanation document – Payments made under the NDIS – explains what item 32 of the draft Bill will enable the National Disability Insurance Agency (NDIA) to do. To quote,

This amendment will enable the Agency to pay service providers directly on behalf of participants, including self-managing participants, through a new payment platform. Enabling direct payment to providers will benefit participants in several ways, including:

- Reducing the financial burden on participants with self-managed funding by paying providers of supports directly. Participants will no longer be required to fund the payment of supports up-front from their own funds before claiming payment from the NDIS as a reimbursement.
- Reducing administrative overhead by simplifying the claiming process, compared to manually claiming for payment from the NDIS through the Participant portal or mobile app, including receipt keeping and reconciling payments.
- Allowing the Agency to more closely see what participants are using their plan budgets for, helping provide vital data to inform what services and activities appear to be most effective in helping participants achieve their goals; as well as helping to identify where market supply of services may be lacking.

The example provided at the end of page 35 talks of being able to “tap and go” and for “claims made through the new Point of Sale (POS) system” not needing additional record keeping or financial reconciliation.

The author’s questions and comments will be grouped into two sections:

- The first section focuses practical day-to-day issues.
- The second section considers broader implications.

#### 3.1 Practical day-to-day issues

References to “tap and go” and “Point of Sale (POS) system” suggest to the author this new NDIS functionality will be realised as a cashless debit card not dissimilar to that already provided by Services Australia<sup>2</sup> or something like a virtual credit card<sup>3</sup> used via a smart phone.

My son MJ can be accompanied by any one of his support workers to an appointment. MJ does not own a mobile device<sup>4</sup> that supports POS transactions. Also, a substantial number of MJ’s NDIS-related purchases are made on-line.

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<sup>2</sup> <https://www.servicesaustralia.gov.au/individuals/services/centrelink/cashless-debit-card>

<sup>3</sup> <https://www.canstar.com.au/credit-cards/virtual-credit-cards/>

<sup>4</sup> For example, a smart phone.

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This leads the author to pose some questions to the DSS:

QUESTIONS	COMMENTARY
<p>1. If a virtual credit card model is adopted,</p> <ol style="list-style-type: none"> <li>a. On what kind of device will the virtual card be able to be installed?</li> <li>b. Will the virtual card be able to be installed on multiple devices?</li> <li>c. Will MJ need to acquire a mobile device? Will NDIS cover the cost of such an acquisition?</li> </ol>	<p>MJ may be accompanied to an appointment by any one of his support workers depending on the day of the week of the appointment and the weekly staff roster. If the NDIS declined to cover the cost of a mobile device for MJ, the virtual credit card would need to be stored on the mobile device of all support workers. This would be an undesirable arrangement as there would be an increased potential for unintentional misuse and increased risk of the virtual credit card being lost or stolen.</p>
<p>2. If a physical card model is adopted,</p> <ol style="list-style-type: none"> <li>a. Will it also be able to be stored virtually on a mobile device?</li> <li>b. Will purchases be able to be made where the card is not present?</li> <li>c. Will transactions with the card require the use of a PIN?</li> </ol>	<p>The use of physical card will require a range of support services akin to those provided by commercial card providers. For example,</p> <ul style="list-style-type: none"> <li>• A phone line to report lost or stolen cards.</li> <li>• Regular statements so participants can review their expenditure and flag fraudulent transactions.</li> </ul>
<p>3. How will this new functionality be used to make on-line purchases?</p>	<p>Items such as disposable gloves for the support workers are purchased at a discount from on-line stores. This affords those supporting MJ with the flexibility to make this kind of purchase when most convenient and helps get the most out of the available funds.</p>
<p>4. Will existing purchasing mechanisms remain? For example, claiming a reimbursement for a NDIS-related purchase made with one's own funds.</p>	<p>A few of the allied health professionals supporting MJ are either a small business or sole trader. They do not support POS transactions, instead raising invoices which are paid for post-event via on-line methods. Indeed, if these allied health professionals were forced to support POS transactions, their increased business costs would no doubt be passed on to MJ.</p>
<p>5. What is the NDIS doing to mitigate the increased risk of fraud that will likely accompany the introduction of this new functionality?</p>	<p>Over many years credit (and debit) card providers have established sophisticated methods and mechanisms to reduce the number of fraudulent transactions. Given the apparent operational similarity of the NDIS' new payment platform, it seems reasonable to assume industrial-level fraud will at least be attempted.</p> <p>Also the DSS and NDIS are stating the participant "will not need to keep years of NDIS records and receipts, and there is no need for reconciliation</p>

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QUESTIONS	COMMENTARY
	or preparation for audits". This seems <b>very unwise</b> as the participant will have no records to refer to if (when?!) they need to dispute fraudulent transactions with the NDIS. This could see already reduced NDIS budgets bled of needed funds.

The author believes it would be necessary for the NDIA to continue to support existing purchasing mechanisms as the logistics associated with a single card – be it physical or virtual – will make things more difficult for the participant. In simple terms, it will reduce flexibility while potentially increasing the risk of fraud – all to the participant’s detriment.

### 3.2 Broader implications

The explanation document makes it clear that this new functionality will enable the NDIA to “more closely see what participants are using their plan budgets for”. This is the same NDIA that has a Sustainability Action Taskforce in place focusing to “slow growth in participant numbers, slow growth in spend per participant”<sup>5</sup>.

Also, on 1 March 2021, the then Minister for the NDIS – the Hon. Stuart Robert MP – discussed this functionality in a radio interview with Leon Byner of 5AA<sup>6</sup>. The context of Mr Robert’s comments where in relation to NDIA’s anti-fraud and inappropriate spending safeguards. See an extract from the interview transcript below.

**Leon Byner:** Have you, yourself as Minister, cottoned onto something that has been omission that you want to fix with regards to people who get NDIS?  
**Minister Robert:** Lots of things. The- for example, one of them is we don't pay all invoices. Something like half the scheme is paid to self-managed and we, the Commonwealth, there's no visibility at all about where payments have gone and we've noticed some terrible anomalies - people paying for holidays and for yachts.  
**Leon Byner:** For yachts?  
**Minister Robert:** For yachts.  
**Leon Byner:** Are you telling me that people have been getting some assistance form the taxpayer and they've used it to buy a boat?  
**Minister Robert:** Yes, yes. And this is what our fraud crackdown has noticed. And one of the easiest ways to get on top of this is for Commonwealth to pay every single invoice. It removes a lot of administrative impediment away from participants anyway and gives full visibility to the Commonwealth. So all that's happening this year. We've had two requests for information and we're about to go for tender for the provider to do that.  
**Leon Byner:** Yeah. So, in view of the fact that there are people who've tried to rort the system. As you will get no matter what you do...  
**Minister Robert:** Of course.

<sup>5</sup> <https://www.theguardian.com/australia-news/2021/apr/13/ndis-cost-cutting-taskforce-told-to-reduce-growth-in-participants-and-spending>

<sup>6</sup> <https://formerministers.dss.gov.au/19079/interview-with-leon-byner-5aa-mornings/>

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These points suggest the NDIA's "market stewardship role"<sup>7</sup> has the potential to evolve into a transaction-by-transaction critique of participant purchases. If this scrutiny leads to an increase in challenged purchases and demands for refunds, the NDIS experience for the typical participant will get worse. Energy that should be invested in making the most of opportunities NDIS provides will instead be poured into justifying choices and decisions to the NDIA.

### **4 What this means for the NDIA**

The NDIA has already suffered reputational damage in 2021 with the "Independent Assessments" issue. If the NDIA elects to adopt an aggressive "market stewardship role" – for example, using algorithms and generic rules to challenge or reject participant purchases en masse – it will further ostracise and embitter NDIS participants and their families.

It will be NDIS participants who are least equipped to deal with a battery of queries from the NDIA who will be the most impacted. This will undermine the original intent of the NDIS to see the disabled in Australia treated as equal citizens.

The author appreciates the evolving and challenging nature of providing a well-rounded service to support and better the lives of individuals accessing the NDIS. The author hopes the above comments demonstrate his – and other families in the same position – experience, and concern for the matter and how it impacts both the author's son and the greater disabled community. The author will endeavour to continue advocating for the best and most effective service disability support model that can be developed in Australia and hopes his comments would be regarded in good stead.

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<sup>7</sup> See explanation document, bottom of page 35.